lessly, recklessly, negligently" (Paragraph 6), "drove his car in violation of existing statutes and ordinances" (Paragraph 7), and "due solely to . . . negligence and carelessness" (Paragraph 8) are often used as conlusions of law, we do not believe they need be stricken in this case. The plaintiff has specified in these same paragraphs the defendant's actions which form the basis of her claim; the material facts have been alleged. Thus the defendant is not harmed by the inclusion of these words. A pleading which sets forth such material facts as to make out a cause of action is sufficient even though it contains conclusions of law. *Pichcuskie vs. Antonio*, 27 Northumberland 108, 111 (1954); 2A Anderson, *Pennsylvania Civil Practice* Sec. 1019.10. The plaintiff's conclusions are to be considered harmless surplusage which may be ignored. *See, e.g., Home Builders Association of Metropolitan Pittsburgh vs. Allegheny Co. Plumbing Board*, 50 D&C 2d 275, 281 (1970); *Lynch vs. Hoover*, 3 D&C 2d 686, 689 (1955). Accordingly, defendant's motion to strike these paragraphs of the complaint will be denied.

Apparently at the time this accident happened the plaintiffs were planning to get married. Because of it, their wedding had to be postponed. In paragraph 13 of the complaint Pamela asks to be reimbursed for expenses incurred because the wedding was not held at the time it was planned. These expenses include long distance telephone tolls (apparently to let people know they should not come), some food repreparation costs and the rent and utilities for their apartment, unused until the wedding actually occurred. The defendant moves to strike this paragraph as not including recoverable damages.

Generally a person who is injured in an accident is entitled to recover expenses incurred because of the injury. *Goodhart v. Pennsylvania Railroad Company*, 171 Pa. 1, 14 (1896); *Wiley v. Moyer et al.*, 339 Pa. 405, 410, 15 A.2d 145, 147 (1940); *Smith v. Borough of East Mauch Chunk*, 3 Pa. Super. 495, 503 (1897). Our difficulty in this particular matter is that actually the plaintiff did not incur some of these expenses because of the accident. Some were items that she had to pay for which she had already contracted. The telephone tolls and the cost of repreparation of food are expenses occasioned by the accident. The rent and utilities she would have had to pay whether she had the accident or not. If she lived at some other place during her period of recuperation and incurred expenses which she would have not had had she lived in the apartment, then those would be the expenses which she incurred because of the

accident. For these reasons, we will strike the items or rent and utilities in paragraph 13.

Defendant demurs to Randy's cause of action and we will sustain that because we agree with the defendant that since Randy and Pamela were not married at the time of the accident, even though they were to be married in three days and the wedding was postponed for one and one-half months due to Pamela's injuries, Randy has no cause of action.

In Pennsylvania it is clear that a husband cannot recover for loss of consortium of his wife where the cause of action arose prior to the marriage. *Donough et ux. v. Vile*, 61 D&C 460 (C.P., Philadelphia, 1947); *Sartori v. Gradison Auto Bus Co., Inc.* 42 D&C 2d 781 (C.P., Washington, 1967); *Rockwell v. Liston*, 71 D&C 2d 756 (C.P., Fayette, 1975).

ORDER OF COURT

February 7, 1980, in accordance with our opinion we deny defendant's motion to strike paragraphs 6, 7 and 8 of the complaint, we grant the motion to strike the rent and utilities items in paragraph 13 of the complaint, but deny the motion as to the telephone tolls and repreparation of food. In this connection if plaintiff is able to plead an actual expenses incurred for housing and utilities, we will permit her to plead over for that purpose.

We sustain the demurrer to Randy E. Aker's cause of action.

We grant the plaintiff Pamela J. Akers twenty days from this date to file an amended complaint. If none is filed, then the defendant has twenty days from the expiration of the twenty-day period granted to Pamela J. Akers to file her amended complaint in which to file his answer, if one is desired.

GROOMS, et ux. v. CREAMER, C.P. C.D. Franklin County Branch, No. F. R. D. 1979 - 325

Visitation - Father - Grandmother - Visitation During Incarceration

1. A court may order visitation with a grandparent if the court is convinced such visitation is in the child's best interest.

2. Imprisoned parents are not prevented from visiting with their children in prison.

3. Visitation can only be denied where to do so would have a severe adverse impact on the child's welfare, where there is a real and grave threat to the child.

Nancy A. Longenbach, Esq., Legal Services, Inc., Attorney for Petitioners

William C. Cramer, Esq., Attorney for Respondent

OPINION AND ORDER

EPPINGER, P.J., January 14, 1980

Roger L. Grooms is the father of a child born out of wedlock to Constance C. Creamer. Prior to the time he was incarcerated in the State Correctional Institution at Rockview, the mother permitted the child, Jeffrey L. Creamer, born February 10, 1976, to visit Roger's mother, Beulah V. Grooms and Roger. For a time the father was confined in the Franklin County jail and the grandmother took the child to the jail to visit the father.

Now the mother does not want either the father or the grandmother to have visitation rights with the father, so this action was filed.

In addition to the visitation privileges the grandmother had with the child, she actually took care of him for a time because on occasion the mother was confined in the Franklin County Prison. So there is no question that there is a strong relationship between the grandmother and the child. She has contributed much to his well-being and it is obvious she loves and cares for him very much.

The mother has some complaints against the father. She stopped living with him, she said, because he beat her. She also states that the child has asthma and that she is afraid that he will be adversely affected by visiting with his grandmother and his father.

We conclude that both the father and the grandmother should be permitted to visit with the child. We have been convinced that it is in the child's best interest that he be permitted visitation with his grandmother. *Commonwealth ex rel. Fetters v. Albright*, Pa. Super. , 405 A.2d 1260 (1979). We believe this is especially fruitful because the only way the child can visit with the father is through the grandparent.

Our only concern about the child's visiting the father is that he is in a prison. That was no deterrent to the mother's visiting the child when she was in prison and none when the father was in the Franklin County jail. However, we are required to consider what is in the child's best interest. *Spells v. Spells*, 250 Pa. Super. 168 378 A.2d 879 (1977).

There was a time when children were not allowed in prisons. It is not clear whether this administrative policy was adopted for the benefit of children or to minimize visitation problems. The law favors visitation rights with non-custodial parents because of the strong policy to promote the child's relationship with both parents. *Commonwealth ex rel. Sorace v. Sorace*, 236 Pa. Super 42, 344 A.2d 553 (1975). Visitation can only be denied where to do so would have a severe adverse impact on the child's welfare, where there is a real and grave threat to the child. *Scott v. Scott*, 240 Pa. Super. 65, 368 A.2d 288 (1976); *Sorace*, supra.

We conclude that at this time imprisoned parents are not prevented from visiting with their children in prison. It has been held that if an imprisoned parent fails to utilize whatever resources exist to maintain contact with his child, he may forfeit his parental rights. *In re Adoption of McCray*, 460 Pa. 210, 331 A2d 652 (1975). The right of a father, even though confined, to visit with his child was held to be a fundamental right guaranteed by the First and Fourteenth Amendments. *Mabra v. Schmidt*, 356 F. Supp. 620 (D.C. Wis., 1973).

Whatever the child's problems may be when he returns from a visit with his father, we think his interests are best served by maintaining a relationship with his father. In this respect the mother said that sometimes the child came home from visits with the father and was upset. There was no evidence the father mistreated the boy. See *Leonard v. Leonard*, 173 Pa. Super. 424, 98 A.2d 638 (1953).

There was a prior order in this case. Under that order, dated March 23, 1979, the father was permitted to visit with his son Jeffrey every other Saturday and the grandmother was given the responsibility of transporting the child for the visitation. The general format of that order seems appropriate even today. However, because the father is confined at Rockview, we think it would be appropriate to grant the grandmother and the father joint visitation privileges every other weekend from Saturday morning at 9:00 until Sunday evening at 6:00, and it will be the grandmother's responsibility to see

that the child visits his father on each of these weekends.

ORDER OF COURT

January 14, 1980, the prayer of the petition for visitation rights for Roger L. Grooms and Beulah V. Grooms is granted, and Roger L. Grooms and Beulah V. Grooms are granted joint visitation rights with Jeffrey L. Creamer, Roger L. Grooms' son, on Saturday, January 26, 1980 from 9:00 in the morning until Sunday, January 27, 1980 at 6:00 in the evening and every second weekend thereafter. Beulah V. Grooms shall provide all transportation for the exercise of these visitation rights and on each occasion shall provide transportation for the child to visit with Roger L. Grooms at his place of confinement at least once during the weekend.

In addition, Roger L. Grooms and Beulah V. Grooms are granted joint visitation rights to be exercised as above, on holidays, according to a schedule to be developed by the parties. If the parties cannot work out such a schedule, on application, the court will make an appropriate order.

The parties shall each pay their own costs.

COMMONWEALTH v. BARNETT, C.P. Cr. D, Fulton County Branch, No. 83 of 1978

Criminal Procedure - Evidence - Guilty Plea - Admission

1. The actual plea of guilty may not be introduced at trial after it is withdrawn since it is a conviction and not a mere admission or extra judicial confession.

2. Statements by a defendant made in connection with entering a guilty plea will be admitted into evidence although the plea is later withdrawn.

Gary D. Wilt, District Attorney, Attorney for the Commonwealth

Richard L. Shoap, Esq., Attorney for the Defendant

OPINION

EPPINGER, P.J., October 23, 1979:

Richard Lee Barnett entered a plea of guilty to robbery, a felony of the third degree. During the colloquy prior to the court's accepting the plea, Barnett was asked what he did that led him to plead guilty to the charge. In his response Barnett said he assaulted the victim and the victim gave him money, and since he didn't want the money, he assaulted the victim again. He later stated that he took the money.

The Court accepted the plea and Barnett signed it on the complaint. Later, after Barnett filed a motion to withdraw the guilty plea, the court found that the crime of robbery had not been sufficiently explained to the defendant and granted the motion. *Commonwealth v. Tabb*, 477 Pa. 115, 383 A. 2d 849 (1978). The plea was withdrawn. Before trial, Barnett moved to suppress all statements made in connection with the entry of the guilty plea. We denied the motion, except that we ruled that the actual guilty plea as entered on the information could not be introduced into evidence.

In *Commonwealth v. Henderson*, 217 Pa. Super 322, 272 A. 2d 202 (1970), the district attorney cross-examined the defendant at trial concerning his earlier guilty plea. The appellate court held that to be error, citing *U.S. ex rel. Spears v. Rundle*, 268 F. Supp. 691 (1967). The court also relied upon *Kercheval v. United States*, 274 U. S. 220, 47 S. Ct. 582, 71 L. Ed 1009 (1927), where it was said:

> A plea of guilty differs in purpose and effect from a mere admission or an extra-judicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive.

The *Kercheval* court held that under proper circumstances a guilty plea could be withdrawn, a plea of not guilty substituted and a trial had.

It is clear then that the actual plea of guilty may not be introduced at trial after it is withdrawn because, as the *Kercheval* court said, it is not a mere admission or extra-judicial confession, but a conviction. What we permitted to be introduced falls into the former category, an admission, though it was made at the time the defendant was entering a guilty plea. The defendant's rights had been explained to him. He stated what he did. Whether his statements, together with the other evidence to be introduced at trial, constituted the crime of robbery was a matter for the jury to determine, and there was no cause to keep these statements from the jury.

No hearing was held in the matter because it was agreed