

Steven W. Daley and April Daley, Plaintiffs v.
Gordon W. Lansdowne and Vitran Express, Inc., Formally Known as PJAX, Inc., Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action - Law
No. 2012-3688

HEADNOTES

Amending Pleadings; Punitive Damages; New Causes of Action

1. It is within the discretion of the trial court to determine whether to grant leave to amend a complaint. The trial court should not grant leave if it results in surprise or prejudice to the other party. Department of Transp. v. Pennsylvania Industries for Blind and Handicapped, 886 A.2d 706, 717 (Pa. Cmwlth. 2005).
2. Where the proposed amendment to the pleadings introduces a new cause of action, the amendment should not be allowed if the statute of limitations has expired.
3. Where the proposed amendment does not change the cause of action, but merely amplifies that which has already been averred, the amendment should be allowed.
4. A request for punitive damages does not constitute a cause of action. It is a mere incident to a cause of action.
5. An *ad damnum* clause which requests punitive damages is not deficient for failing to include the words “outrageous, vindictive, willful or wanton.” Rather, it is within the province of the jury to determine if the proven conduct arises to such a level.

Appearances:

Joseph J. Nypaver, Esq., *Attorney for Plaintiff*

James DeCinti, Esq., *Attorney for Defendants*

OPINION

Before, Herman, P.J.

Procedural and Factual Background

Plaintiffs, Steven W. Daley and April Daley, bring this action against Defendants, Gordon L. Lansdowne and his employer Vitran Express. Plaintiffs allege that on September 15, 2010, Mr. Lansdowne was negligent in operating his tractor-trailer when he struck Mr. Daley’s vehicle. The collision caused substantial injuries to Mr. Daley. The matter was commenced by filing a Praecipe for a Writ of Summons on September 10, 2012. A complaint was filed on October 15, 2012. Defendants answered the Complaint on October 25, 2012. On February 6, 2014 the instant Motion to Amend Complaint was filed. Defendants answered the Motion, and both parties filed briefs. The matter is now ready for decision.

Discussion

A party may amend the pleadings by way of consent from the opposing party or through the consent of the court. Pa. R. Civ. P. 1033. “The determination of whether to grant leave to amend a complaint lies within the sound discretion of the trial court; such leave should not be granted if it results in surprise or prejudice to the other party or where the amendment is against a positive rule of law.” Department of Transp. v. Pennsylvania Industries for Blind and Handicapped, 886 A.2d 706, 717 (Pa. Cmwlth. 2005).

Defendants are challenging the Motion to Amend the Complaint based on two arguments. First, that the statute of limitations has already run. Second, that the Complaint fails to allege any facts to support a finding that Plaintiffs would be entitled to punitive damages.

Statute of Limitations

As to the first argument, we find that the proposed amendment to the complaint would not violate the statute of limitations. Plaintiffs seek to add a demand for punitive damages to the ad damnum clause, however, we find that a claim for punitive damages is not a cause of action and, therefore, is not precluded by the statute of limitations.

“Where [a] proposed amendment does not change the cause of action, but merely amplifies that which has already been averred, the amendment should be allowed. An amendment states a new cause of action where the amendment rests on a different legal theory, basis for recovery or relationship between the parties. Id. (internal citation omitted). “While amendments to pleadings are liberally granted in general, an amendment which introduces a new cause of action, i.e., new theory, will not be permitted after the statute of limitations of that cause of action has expired.” Id.

Upon review of the relevant case law, it appears to be well-settled that “[a] request for punitive damages does not constitute a cause of action. Feingold v. SEPTA, 517 A.2d 1270 (1986); Nix v. Temple University of the Commonwealth System of Higher Education, 596 A.2d 1132 (1991). It is a mere incident to a cause of action.” Kane v. Douglas, 67 Pa. D. & C.4th 336, 2004 WL 2491775 (Lancaster Co. Com. Pl. 2004).

The classification of punitive damages not being a separate cause of action was further clarified in Taylor v. Ryder Truck Rental, Inc., 41 Pa. D. & C.3d 396, 399-400, 1984 WL 2695 (Chester Co. Com. Pl. 1984).

Although an award of punitive damages requires proof of a different kind of negligence than is required in a simple negligence action, the Superior Court in Daley v. Wanamaker, 317 Pa. Super. 348, 464 A.2d 355 (1983), allowed plaintiff to amend her complaint after the statute of limitations had run to include a claim for punitive damages. The court, citing Hilbert v. Roth, 395 Pa. 270, 276, 149 A.2d 648, 652 (1959), stated: “The right to punitive damages is a mere incident to a cause of action -- an element which the jury may consider in making its determination -- and not the subject of an action in itself. Dailey, supra, at 362.”

Taylor v. Ryder Truck Rental, Inc., 41 Pa. D. & C.3d 396, 1984 WL 2695 (Chester Co. Com. Pl. 1984.)

We find that the authority overwhelmingly shows that a claim for punitive damages is not a new cause of action. As such, the statute of limitations can not prohibit amending the Complaint in this matter so that the ad damnum clause includes a claim for punitive damages.

Sufficiency of Facts to Support Punitive Damages

Next, we address Defendants’ argument that the facts averred in the Complaint fail to support a claim for punitive damages.¹

The standard governing the award of punitive damages in Pennsylvania is settled. “Punitive damages may be awarded for conduct that is outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of others.” Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984) (quoting Restatement (Second) of Torts § 908(2) (1979)); see also Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355, 358 (1963). As the name suggests, punitive damages are penal in nature and are proper only in cases where the defendant’s actions are so outrageous as to demonstrate willful, wanton or reckless conduct. See SHV Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 587 A.2d 702, 704 (1991); Feld, 485 A.2d at 747-48; Chambers, 192 A.2d at 358. See also Restatement (Second) of Torts § 908, comment b. The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct. Kirkbride v. Lisbon Contractors, Inc., 521 Pa. 97, 555 A.2d 800, 803 (1989); Restatement (Second) of Torts § 908 (1) (“Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.”). Additionally, this Court has stressed that, when assessing the propriety of the imposition of punitive damages, “[t]he state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious.” See Feld, 485 A.2d at 748; see also Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088, 1097 n. 12 (1985) (plurality opinion).

Hutchison ex rel. Hutchison v. Luddy, 870 A.2d 766, 770-71 (Pa. 2005).

Defendants argue that the Complaint’s allegations do not demonstrate outrageous conduct which was willful, wanton, or reckless. We disagree. The Plaintiffs have alleged that the driver of the truck disregarded the flashing

¹ While this argument is more properly the subject of preliminary objection, we will address it here as it is heavily related to the instant motion and to avoid further delay in this matter.

lights warning drivers of the stopped traffic ahead which caused him to collide into Plaintiff's vehicle at 65 miles per hour and, in doing so, violated a list of provisions of the Motor Vehicle Code. The decision as to whether this rises to the level of outrageous conduct is not ours to make. Rather, it is for the trier of fact to decide at trial.

Here plaintiffs do not seek to allege any new facts but simply want to amend the ad damnum clause to include a prayer for punitive damages. Plaintiffs, however, did not use such words as outrageous, vindictive, willful or wanton in any of their allegations. Defendants maintain that this is fatal to plaintiffs' motion since the allegations presently in the complaint do not support a claim for punitive damages. We do not believe that whether or not plaintiffs used certain magic words is the determining factor; rather, the question is whether plaintiffs' factual allegations are sufficient, if proven, to support an award of punitive damages by the jury.

Taylor v. Ryder Truck Rental, Inc., 41 Pa. D. & C.3d 396, 1984 WL 2695 (Chester Co. Com.Pl. 1984.). The Taylor court reviewed a similar issue, and we find their reasoning compelling. It is of no moment that the Complaint in the matter before us does not contain words such as "outrageous," "reckless," or "intentionally." Plaintiffs have set forth sufficient facts to allow a jury to find that those facts arise to the standard for punitive damages.

Conclusion

The Plaintiffs' Motion to Amend the Complaint will be granted because it does not set forth a new cause of action which would violate the statute of limitations. Further, the Complaint sets forth sufficient facts to support a claim for punitive damages.

ORDER

NOW THIS 28th day of March 2014, upon review and consideration of the Plaintiffs' *Motion to Amend Complaint*, the Defendants' answer thereto, and the briefs in support:

IT IS HEREBY ORDERED that Plaintiffs *Motion to Amend Complaint* is **GRANTED** pursuant to the attached opinion.

Pursuant to the requirements of Pa. R. Civ. P. 236 (a)(2), (b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Opinion and Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.