

Ray, et al v. Senecal, et al

STEVEN K. RAY AS EXECUTOR OF THE ESTATE OF NANCY J. RAY & CHARLES G. RAY AS EXECUTOR OF THE ESTATE OF NANCY J. RAY & RANDALL E. RAY AS EXECUTOR OF THE ESTATE OF NANCY J. RAY, Plaintiffs, v. KEITH E. SENEAL, M.D. & CUMBERLAND VALLEY EMERGENCY ASSOCIATES, MARK FREDERICK YUREK, M.D. & PETER JON WEI FANG, M.D. & CHAMBERSBURG IMAGING ASSOCIATES, P.C. & TIMOTHY PATRICK WALSH, M.D. & THE CHAMBERSBURG HOSPITAL, A/K/A SUMMIT HEALTH SYSTEM, Defendants  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action - Law, No. 2001-3951, Jury Trial Demanded

*Punitive Damages; Remedies; Medical Malpractice*

1. Pennsylvania courts have adopted the rule in section 908 of the Restatement (Second) of Torts regarding the imposition of punitive damages.
2. For punitive damages to be awarded, the conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others and not awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence.
3. At a broad level, the most important point to underscore is that acts of negligence taken alone are not a sufficient basis for awarding punitive damages.
4. The act, or the failure to act, must be intentional, reckless or malicious.
5. Neither the Restatement nor Pennsylvania case law provides for a different standard for medical malpractice cases from tort actions in general.
6. Allegations of ordinary negligence cannot be transformed into allegations supporting punitive damages by making conclusory assertions as to reckless indifference.

Appearances:

Dean Orloff, Esq., *Counsel for Plaintiffs*

Andrew Foulkrod, Esq., *Counsel for Defendant Senecal and CV Emergency Assoc.*

Daniel Grill, Esq., *Counsel for Defendant Yurek*

Lauralee Baker, Esq., *Counsel for Defendant Fang and Defendant Chambersburg Imaging*

Andrew Briggs, Esq., *Counsel for Defendant Walsh*

Kevin Osborne, Esq. & Cindy Nicholson, Esq., *Counsel for Defendant Chambersburg Hospital and Summit Health*

OPINION

Van Horn, J., February 3, 2003

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Background

On December 21, 1999, the Plaintiffs' Decedent was transported by ambulance to Chambersburg

Hospital where Plaintiffs' Decedent was seen by Defendant Senecal as the emergency department physician. At that time, the Decedent complained of severe chest pain, severe pain between the shoulder blades, and nausea. In Decedent's medical history information, she indicated that she had hypertension, was a smoker, and had an aortic aneurysm, as well as two cerebral aneurysms. The Plaintiffs' Decedent further indicated that her father had died of a cerebral aneurysm. Plaintiffs allege that Defendants were aware that the Plaintiffs' Decedent had an enlargement of the thoracic aorta and presented to Defendants with a classic case of a dissecting aortic aneurysm - a medical condition which will result in death if there is no timely surgical intervention. Plaintiffs assert that Defendants' failure to perform certain diagnostic tests on Decedent on a medical emergency basis was contrary to the applicable standard of care. Plaintiffs further assert that by the time the diagnosis was made and the Decedent transferred to another institution for surgical intervention, the subsequent medical care and treatment by all Defendants proved too little too late. Plaintiffs aver that Decedent's death the next day on December 22, 1999, was a direct and proximate result of Defendants' negligence, carelessness, gross negligence and/or recklessness and their delay in diagnosis and surgical intervention.

From these facts arose the current medical malpractice action, instituted on March 5, 2002, when Steven K. Ray, Randall E. Ray, and Charles G. Ray, as Executors of the Estate of Nancy Ray, filed a Complaint against Keith E. Senecal, M.D.; C.V. Emergency Associates; Mark Frederick Yurek, M.D.; Peter Jon Wei Fang, M.D.; Chambersburg Imaging Associates, P.C.; Timothy Patrick Walsh, M.D.; and The Chambersburg Hospital a/k/a Summit Health System individually. Count IX of Plaintiffs' Civil Action Complaint included a claim for punitive damages against all Defendants.

All Defendants filed Preliminary Objections to Plaintiffs' Complaint and filed briefs in support of their Preliminary Objections. Plaintiffs then filed Answers in opposition to Defendants' Preliminary Objections and filed memoranda of law in support of Plaintiffs' Answers. The Preliminary Objections were disposed of by Order of Court dated August 2, 2002, and Plaintiffs subsequently filed an Amended Complaint. All Defendants filed Preliminary Objections to Plaintiffs' Amended Complaint and filed Briefs in Support of their Preliminary Objections. Plaintiffs filed Answers in Opposition to Defendants' Preliminary Objections to Plaintiffs' Amended Complaint. Oral argument on the Preliminary Objections to Plaintiffs' Amended Complaint was scheduled and heard on January 2, 2003. The matter is now ripe for disposition on the matter of Defendants' Preliminary Objections to Plaintiffs' Amended Complaint.

### Discussion

Before the Court are Defendants' Preliminary Objections to Plaintiffs' Amended Complaint relating specifically to the claim of punitive damages. Regarding the imposition of punitive damages, Pennsylvania courts have adopted the rule in Section 908 of the Restatement (Second) of Torts, which provides as follows:

#### § 908. Punitive Damages

(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.

(2) 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. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984); Restatement (Second) of Torts, § 908 (1977).

Comment (b) to § 908 states that for punitive damages to be awarded, "the conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others...and not awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence...." Restatement (Second) of Torts, § 908 (1977), Comment (b). In grappling with the language in the Restatement of the operative phrases, "outrageous conduct," "evil motive," and "reckless indifference to the rights of others," the Court in Medvecz v. Choi, 569 F.2d 1221, 1226 (3rd Cir. 1977) (applying Pennsylvania law) stated that "at a broad level, the most important point to underscore is that acts of negligence taken alone are not a sufficient basis for awarding punitive damages."

Neither the Restatement nor Pennsylvania case law provides for a different standard for medical

malpractice cases from tort actions in general; so then, the "question is whether there has been sufficiently aggravated conduct contrary to the plaintiffs' interest, involving bad motive or reckless indifference, to justify the special sanction of punitive damages." *Id.* at 1227. In making such determination, "the state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious." Feld v. Merriam, 506 Pa. 383, 396, 485 A.2d 742, 748 (1984).

It is the role of this trial Court to determine whether Plaintiffs have pled sufficient facts from which a jury could reasonably conclude that the Defendants acted outrageously because "punitive damages may not be awarded for ordinary negligence or gross negligence." Slappo v. J's Development Associates, Inc., 791 A.2d 409, 417 (Pa. Super. 2002).

"It is well settled that punitive damages will lie only in cases of outrageous behavior, where defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others. Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct."

*Id.* quoting Bannar v. Miller, 701 A.2d 232, 242 (Pa. Super. 1997) (citations omitted), *appeal denied*, 555 Pa. 706, 723 A.2d 1024 (1998).

In the matter at bar, Plaintiffs' Complaint alleges that Defendants "acted carelessly, negligently and with gross negligence, a result of which the Plaintiffs' Decedent sustained serious and permanent injuries - culminating in her death." (Plaintiffs' Complaint, ¶ 29.) However, Plaintiffs' Amended Complaint fails to claim with specificity particular acts by Defendants that would persuade this Court to reasonably conclude that the Defendants acted outrageously, with an evil motive or reckless indifference to the Plaintiffs' Decedent. The Amended Complaint fails to show knowledge on the part of the Defendants that would support an allegation of an evil motive or reckless indifference to the rights of the Plaintiffs' Decedent. In fact, there was very little difference between Plaintiffs' original Complaint and the Amended Complaint. Rather, Plaintiffs reiterated in their Amended Complaint conclusory statements without supporting factual allegations using inclusive, broad language that was contained in their original Civil Complaint filed on March 5, 2002, and objected to earlier by Defendants in their first round of Preliminary Objections, which this Court disposed of by Order of Court dated August 2, 2002. Allegations of ordinary negligence cannot be transformed into allegations supporting punitive damages by making conclusory assertions as to reckless indifference. Therefore, this Court finds that Plaintiffs failed to allege facts indicating intentional disregard of a known risk, reckless indifference, or outrageous conduct of the Defendants sufficient to sustain an award of punitive damages.

The case at bar is distinguishable from Kellogg v. Peterson, a 2001 case before this Court, where Defendants filed Preliminary Objections to Plaintiffs' claims for punitive damages in an action involving injuries sustained when the Plaintiffs' and Defendants' vehicles collided. Relying on SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (1991)<sup>[1]</sup>, this Court did not strike Plaintiffs' claim for punitive damages in Kellogg v. Peterson, on the filing of Preliminary Objections reasoning that from the nature of the allegations set forth in their Complaint, the Plaintiffs laid the foundation for permissible inferences that could lead to the award of punitive damages, especially in light of the anticipated production of evidence describing the state of the dump truck's tires and inadequate brakes that could, but not necessarily, lead to a conclusion that one or both Defendants exhibited a state of mind of reckless indifference towards others on the road. Unlike the Plaintiffs in Kellogg v. Peterson, the Plaintiffs in the case at bar failed to present allegations of negligence supported by factual foundations that would reasonably lead this Court to infer that Defendants acted with a state of mind that would rise to the level of evil motive or reckless indifference.

#### ORDER OF COURT

And now this 3rd day of February, 2003, upon review of the Preliminary Objections to Plaintiffs' Amended Complaint filed on behalf of each of the above-captioned Defendants, review of the Briefs filed by all parties in connection with said Preliminary Objections, and after Oral Argument, it is hereby ordered as follows:

As to Defendant Timothy Patrick Walsh, M.D.:

1. The language "gross negligence," "wantonness," and all claims for punitive damages in Plaintiffs' Amended Complaint are STRICKEN with prejudice.

2. Paragraph 29 of Plaintiffs' Amended Complaint is STRICKEN with prejudice.

As to Keith E. Senecal, M.D. & Cumberland Valley Emergency Associates:

Plaintiffs' claim for punitive damages against Defendants Keith E. Senecal, M.D. and Cumberland Valley Emergency Associates, and all underlying allegations of "recklessness" and "gross negligence" are hereby STRICKEN from Plaintiffs' Amended Complaint, with prejudice.

As to Chambersburg Hospital, a/k/a Summit Health System:

1. Paragraphs 29 and 73(k), (l), and (r) of Plaintiffs' Amended Complaint are STRICKEN with prejudice.

2. Defendant Chambersburg Hospital's Motion to Strike Paragraph 30 is DENIED.

3. Plaintiffs' claim for punitive damages against Defendant Chambersburg Hospital, a/k/a Summit Health System, and all underlying allegations of "recklessness" and "gross negligence" are hereby STRICKEN from Plaintiffs' Amended Complaint, with prejudice.

As to Mark Frederick Yurek, M.D.:

1. The "catchall" language "For example," "other losses and expenses, including," and "including" is STRICKEN from Paragraphs 26, 33, and 35 respectively, of Plaintiffs' Amended Complaint.

2. Plaintiffs' claim for punitive damages against Defendant Mark Frederick Yurek, M.D., and all underlying allegations of "recklessness" and "gross negligence" are hereby STRICKEN from Plaintiffs' Amended Complaint, with prejudice.

As to Peter Jon Wei Fang, M.D., & Chambersburg Imaging Associates, P.C.:

1. The agency relationship referred to in Plaintiffs' Amended Complaint relates only to Defendant Fang's employment with the Chambersburg Hospital; no other claims of agency are permitted.

2. Plaintiffs' claim for punitive damages against Defendant Peter Jon Wei Fang, M.D. and Chambersburg Imaging Associates, P.C., and all underlying allegations of "recklessness" and "gross negligence" are hereby STRICKEN from Plaintiffs' Amended Complaint, with prejudice.

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<sup>[1]</sup>"The trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause. . ."