

Adams County Legal Journal

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PUBLIC NOTICE TO
BRITTNEY NICHOLE HAUF AND
MICHAEL LYNN HINKLE, SR.

In Re: Adoption of Jessiah Lee Hauf, A Minor

A petition has been filed asking the Court to put an end to all rights you have as a parent to your child, Jessiah Lee Hauf. A Termination of Parental Rights Hearing has been scheduled for May 20, 2022, at 9:00 a.m., in Court Room No. 6006, of the York County Judicial Center, 45 North George Street, York, Pennsylvania, to terminate your parental rights to Jessiah Lee Hauf (DOB: August 12, 2018), whose Father is Michael Lynn Hinkle, Sr. and whose Mother is Brittney Nichole Hauf. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

ATTORNEY CONNECTION/
YCBA MODEST MEANS
137 East Market Street
York, Pennsylvania 17401
717-854-8755
<http://www.yorkbar.com/?page=YCBAFindEsq>

If you cannot afford an attorney, an attorney may be appointed by the court at no cost to you if you qualify. Contact the following office for instructions and forms to complete and file.

Clerk of the Orphans' Court
York County Judicial Center
45 North George Street
York, Pennsylvania 17401
717-771-9288

<http://yorkcountypa.gov/components/jdownloads/send/100-adopt-forms/824-packet-for-court-appted-counsel-and-financial-affidavit.html>

Martin Miller, Esq.
Solicitor for York County Offices of
Children, Youth & Families

A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative

or between the adoptive parent and the birth relative. An agency or anyone representing the parties in an adoption shall provide notification to a prospective adoptive parent, a birth parent and a child who can be reasonably expected to understand that a prospective adoptive parent and a birth relative of a child have the option to enter into a voluntary agreement for the continuing contact or communication. See 23 Pa.C.S.A Section 2731, et seq.

3/18, 3/25, & 4/1

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name D & P WELDING AND FABRICATION LLC, 8 Springwood Trail, Adams County, Fairfield, PA 17320 has been filed in the Department of State at Harrisburg, Pa file date 03/7/2022 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the party who is the party to the registration is David J. Riley, 8 Springwood Trail, Fairfield, PA 17320.

3/18

STEVEN R. FRYE AND MARCIA HARMON, HUSBAND
AND WIFE, VS. WELLSPAN HEALTH; THE GETTYSBURG
HOSPITAL, D/B/A WELLSPAN GETTYSBURG HOSPITAL;
WELLSPAN MEDICAL GROUP; CHARLES T. MCBETH, P.A.;
CHRISTOPHER SPEWOCK, M.D.; LUCAS M. SHELDON,
M.D.; GRANT SORKIN, M.D.; AND JOHN DOE 1-3.

1. *Lamp* and its progeny require a plaintiff to make a good-faith effort in diligently and timely serving process on a defendant. Whether a defendant presents a factual dispute as to whether a plaintiff fulfilled this duty, the plaintiff carries an evidentiary burden to demonstrate that she met her good-faith mandate.

2. [P]ursuant to *McCreesh*, a trial court should not punish a plaintiff by dismissing her complaint to where she is able to establish that her improper but diligent attempts at service resulted in the defendant receiving actual notice of the commencement of the action, unless the plaintiff's failure to serve process properly evidenced an intent to stall the judicial machinery or otherwise prejudice the defendant.

3. [I]t becomes necessary for this Court to consider whether the Plaintiffs in this matter have carried their evidentiary burden of proving they made a good-faith effort to ensure that notice of commencement of the action was served upon Dr. Sheldon, or, in the alternative, whether Dr. Sheldon received actual notice of commencement of the action despite technical errors in service.

4. Unquestionably, Plaintiffs did not properly service Dr. Sheldon in compliance with the Pennsylvania Rules of Civil Procedure until approximately nine-and-a-half months had passed since the expiration of the applicable statute of limitations. A hospital is not a physician's "office" or "usual place of business" when the physician did not have a proprietary or managerial interest in the hospital, did not admit patients to the hospital, and did not maintain an office at the hospital. The initial consideration therefore must address whether a plaintiff's service of an initial pleading at an address believed to be proper by the plaintiff but which is ultimately a wrong address is sufficient to evidence a good-faith attempt by the plaintiff. Under the particular facts of this case, I find that it is not.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2020-SU-1116, STEVEN R. FRYE AND
MARCIA HARMON, HUSBAND AND WIFE, VS. WELLSPAN
HEALTH; THE GETTYSBURG HOSPITAL, D/B/A WELLSPAN
GETTYSBURG HOSPITAL; WELLSPAN MEDICAL GROUP;
CHARLES T. MCBETH, P.A.; CHRISTOPHER SPEWOCK, M.D.;
LUCAS M. SHELDON, M.D.; GRANT SORKIN, M.D.; AND
JOHN DOE 1-3.

Steven G. Wigrizer, Esquire, Mary T. Gidaro Esquire, and Jason S.
Weiss, Esquire, Attorneys for Plaintiffs

Christopher A. Stump, Esquire, and Erin M. Redding, Esquire,
Attorneys for Defendants

Robin B. Snyder, Esquire, Attorney for Defendant Sheldon

George, P. J., February 4, 2022

OPINION

The issue under consideration in this case involves application of the rule announced by the Pennsylvania Supreme Court in the seminal case of *Lamp v. Heyman*, 366 A.2d 882 (Pa. 1976), as subsequently clarified by *Farinacci v. Beaver County Industrial Development Authority*, 511 A.2d 757 (Pa. 1986); *McCreesh v. City of Philadelphia*, 888 A.2d 664 (Pa. 2005); and, most recently, *Gussom v. Teagle*, 247 A.3d 1046 (Pa. 2021). For the reasons set forth below, the Preliminary Objections of Defendant Lucas M. Sheldon, M.D. (“Dr. Sheldon”) are sustained.

In *Lamp*, the Supreme Court curbed abuse by plaintiffs who technically complied with the service requirements of the Rules of Civil Procedure but simultaneously undermined the purpose of the statute of limitations by initiating a civil action prior to expiration of the statute of limitations and continually re-issuing the writ/complaint after the statute had run without ever serving the defendant with notice that the civil action had been commenced against them. The *Lamp* court cautioned that commencement of a civil action pursuant to the Rules of Civil Procedure is only effective to stay the statute of limitations “if the plaintiff then refrains from a course of conduct which serves to stall in its tracks legal machinery...just set in motion.” *Lamp*, 366 A.2d at 889. More succinctly, “*Lamp* requires plaintiffs to act diligently to meet their good-faith requirement to effectuate service of process upon defendants so as not to undermine the policies underlying the statute of limitations.” *Gussom*, 247 A.3d at 1056.

In *Farinacci*, the court reaffirmed the *Lamp* requirement of a good-faith effort in effectuating notice of commencement of an action on an opposing party as a prerequisite to preserving the statute of limitations. See *Farinacci*, 511 A.2d at 759. In doing so, the court recognized that negligence on the part of the plaintiff’s counsel in failing to take the necessary steps to effectuate service of the writ evidenced a lack of good faith in complying with the service requirements of the Rules of Civil Procedure. See *Id.* at 759–60. Thus, the *Farinacci* court clarified that where a *Lamp* issue is raised, the plaintiffs carry an evidentiary burden of proving a good-faith effort on their part to ensure that notice of commencement of the action was served on defendants. See *Id.* at 759. The court further clarified that the evidentiary burden of proving good faith was not met where

notice of commencement of the action was improperly served, regardless of whether the failure was a result of either negligent or intentional conduct. See *Id.* at 758–60.

Appellate and trial courts have struggled with the *Lamp/Farinacci* principles. Some courts required strict compliance with the Rules of Civil Procedure related to service of process in order to satisfy the good-faith requirement, while others applied a more liberal approach excusing procedurally defective service where the defendant had actual notice of commencement of litigation and was not otherwise prejudiced. Compare *Teamann v. Zafris*, 811 A.2d 52 (Pa. Commw. 2002), with *Leidich v. Franklin*, 575 A.2d 914 (Pa. Super. 1990).

In *McCreesh*, the Supreme Court sought to clarify these differing lines of cases. In a majority opinion authored by Justice Baer, the Court explained that where a defendant has actual notice of commencement of the litigation, dismissal of the action is only proper when plaintiffs have demonstrated an intent to stall the judicial machinery or where plaintiffs' failure to comply with the Rules of Civil Procedure has prejudiced the defendant. *McCreesh*, 888 A.2d at 674. In doing so, the majority expressly noted their ruling did not extend *Lamp/Farinacci* to require a showing of prejudice before dismissal of the litigation in instances where actual notice was not provided. *Id.* at 674 n.20.

Most recently, in *Gussom*, the Supreme Court once again had the opportunity to revisit *Lamp*. The plaintiff in *Gussom* filed a complaint within the two-year statute of limitations for negligence. See 42 Pa.C.S. § 5524(2) (setting a two-year statute of limitations for actions to recover damages caused by an actor's wrongful neglect). The plaintiff attempted to serve the complaint at a Pennsylvania address but subsequently learned the defendant had moved to the Commonwealth of Virginia. Despite this new information, the plaintiff took no further action until approximately four months after the filing of the complaint, and nearly a month after the statute of limitations had expired, when the plaintiff filed a praecipe to reinstate her complaint. The defendant filed preliminary objections seeking dismissal of the action on the basis of *Lamp* and its progeny. The defendant argued that the plaintiff's limited attempt at service was indicative of a lack of a good-faith effort to properly effectuate service. The plaintiff, on the other hand, cited *McCreesh* for the rule that technical mistakes by a plaintiff in complying with the service requirements of

the Rules of Civil Procedure may be excused unless the defendant can prove the plaintiff's intent to stall the judicial machinery or actual prejudice to the defendant. After thorough review of the history of *Lamp* and its progeny, a majority of the Court, in an opinion once again authored by Justice Baer, summarized the status of the law in this area as follows:

In sum, *Lamp* and its progeny require a plaintiff to make a good-faith effort in diligently and timely serving process on a defendant. When a defendant presents a factual dispute as to whether a plaintiff fulfilled this duty, the plaintiff carries an evidentiary burden to demonstrate that she met her good-faith mandate. If a plaintiff presents credible evidence that she made this attempted service, then she fulfills her requirement to prove good faith. If a plaintiff does not present such evidence, then she has failed to satisfy her evidentiary burden, regardless of whether her actions (or inaction), were intentional, unintentional, or otherwise. However, pursuant to *McCreesh*, a trial court should not punish a plaintiff by dismissing her complaint to where she is able to establish that her improper but diligent attempts at service resulted in the defendant receiving actual notice of the commencement of the action, unless the plaintiff's failure to serve process properly evidenced an intent to stall the judicial machinery or otherwise prejudice the defendant.

Gussom, 247 A.3d at 1057.

With this direction as a guide, it becomes necessary for this Court to consider whether the Plaintiffs in this matter have carried their evidentiary burden of proving they made a good-faith effort to ensure that notice of commencement of the action was served upon Dr. Sheldon, or, in the alternative, whether Dr. Sheldon received actual notice of commencement of the action despite technical errors in service. Additionally, if such actual notice was provided to Dr. Sheldon, the Court must consider whether the Plaintiffs' failure to properly serve process was a result of Plaintiffs' intent to stall the judicial machinery or otherwise prejudiced the Defendant.

The current professional liability action alleges a failure on the part of treating physicians to diagnose a spinal epidural abscess,

which allegedly caused devastating injuries to the Plaintiff, Steven Frye (“Frye”).¹ The history of the litigation began in November 2018 when Frye had a spinal stimulator placed in his thoracic spine to address chronic pain.² On December 27, 2018, at approximately 7:00 a.m., Frye began to experience severe back pain. He presented to the Emergency Department at Gettysburg Hospital at approximately 10:25 a.m. Physician Assistant Charles McBeth (“P.A. McBeth”) was assigned to evaluate Frye. Dr. Stefan Rosenbach (“Dr. Rosenbach”) was assigned as the attending physician in the Gettysburg Hospital Emergency Department. After evaluation by P.A. McBeth, Frye was authorized to be discharged at approximately 2:08 p.m.

Subsequently, Frye’s condition worsened to the extent he was unable to leave Gettysburg Hospital, and he was readmitted at 3:04 p.m. P.A. McBeth directed an MRI for the lumbar spine to be performed and consulted with an attending physician, Dr. Christopher Spewock (“Dr. Spewock”). Following the consultation, P.A. McBeth contacted York Neurosurgery. In the interim, at 6:28 p.m., Dr. Sheldon interpreted the MRI of Frye’s lumbar spine as unremarkable. Ultimately, P.A. McBeth spoke with Dr. Grant Sorkin (“Dr. Sorkin”) of WellSpan Neurosurgery, who recommended a thoracic MRI be obtained. The thoracic MRI was interpreted by Dr. Sheldon at 10:07 p.m. to reveal a spinal cord compression. Thereafter, Frye was transferred to York Hospital, where it was determined that he suffered from a spinal epidural abscess; at approximately 3:00 a.m., Frye was transferred to the operating room for a laminectomy and decompression of his spinal cord.

Frye currently suffers from paraplegia due to the spinal abscess related to the spinal stimulator. He has initiated this action alleging the delay and improper diagnosis caused his subsequent paralysis. The civil action names Gettysburg Hospital d/b/a WellSpan Gettysburg Hospital and a number of other corporate entities under a theory of respondeat superior. Additionally, his suit joins P.A. McBeth, Dr. Spewock, Dr. Rosenbach, Dr. Sheldon, and Dr. Sorkin individually.

¹ The Complaint also includes a cause of action for loss of consortium by Marcia Harmon, Frye’s spouse, against all Defendants.

² In addressing the Preliminary Objections, the Court will accept all allegations in the Complaint, and reasonable inferences therefrom, as being true. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985).

The Complaint was filed on December 22, 2020, approximately five days prior to the expiration of the statute of limitations.³ On January 13, 2021, the Adams County Sheriff's Office served Gettysburg Hospital by handing a copy of the Complaint to the manager at the hospital address. Additionally, personnel from the Sheriff's Office made proper service on the individual Defendants, with the exception of Dr. Sheldon, by handing a copy of the Complaint to the hospital manager at the Gettysburg Hospital address. The sheriff's return also indicated a copy of the Complaint was left at Gettysburg Hospital for Dr. Sheldon. On January 19, 2021, service was properly effectuated on the remaining corporate Defendants.

On February 4, 2021, the law offices of Saxton & Stump entered their appearance on behalf of all Defendants with the exception of Dr. Sheldon. Concurrently therewith, on behalf of all Defendants with the exception of Dr. Sheldon, Preliminary Objections were filed to the Complaint. Service of the Entry of Appearance and Preliminary Objections were made on Frye's counsel and Dr. Sheldon⁴ in compliance with Pa.R.Civ.P. 440 (relating to service of legal papers other than original process). On February 23, 2021, Plaintiffs filed a Response in Opposition to the Preliminary Objections. On March 3, 2021, this Court filed an Order scheduling argument on the Preliminary Objections for March 17, 2021. The face of the Order identified Dr. Sheldon as a *pro se* Defendant, and notice pursuant to Pa.R.Civ.P. 236 (relating to notice by the Prothonotary of entry of order) was provided to counsel of record. Notice to Dr. Sheldon was also attempted at the hospital address. By Order filed April 9, 2021, this Court ruled on the Preliminary Objections, and once again notice of the Order was provided to all parties in compliance with Pa.R.Civ.P. 236 with notice to Dr. Sheldon mailed to the hospital. The Order noted Dr. Sheldon as a *pro se* Defendant.

On April 27, 2021, Plaintiffs' counsel and counsel for all Defendants with the exception of Dr. Sheldon entered a Stipulation

³ *Murray v. Univ. of Pa. Hosp.*, 490 A.2d 839, 840 (Pa. Super. 1985) (statute of limitations for a professional negligence action for "causing injury to another's person" is two years).

⁴ Unless otherwise specified, all references hereinafter to service on Dr. Sheldon relate to service being made at the address of Gettysburg Hospital, which is represented in the original Complaint to be a location where Dr. Sheldon maintained an office for the practice of medicine. The reference does not imply Dr. Sheldon actually received the document or otherwise had notice of the same.

to Discontinue the action as to two of the corporate Defendants. The Stipulation lacked any indication of involvement by Dr. Sheldon. The subsequent Certificate of Service indicated that a filed copy of the Stipulation was provided by the law office of Saxton & Stump to Plaintiffs' counsel and Dr. Sheldon individually at Gettysburg Hospital's address. On May 24, 2021, a copy of the Order of Court ruling upon the Preliminary Objections was returned to the Prothonotary's Office by the U.S. Postal Service as unserved on Dr. Sheldon. Perhaps in recognition of Dr. Sheldon's nonparticipation in the previously filed Stipulation to Discontinue the action against some corporate Defendants, on May 26, 2021, a Motion was filed with the Court seeking leave from the Court to discontinue the action against several of the Defendants. The Motion, filed by the represented Defendants, indicated an inability to make contact with Dr. Sheldon and Dr. Sheldon's lack of response to activities surrounding the litigation. By Order dated May 27, 2021, the Court granted voluntary leave to discontinue the litigation against several of the corporate Defendants. Once again, Rule 236 notice was provided to counsel of record and Dr. Sheldon at the address represented in the Complaint. On June 24, 2021, an Answer with New Matter was filed on behalf of all Defendants with the exception of Dr. Sheldon. Plaintiffs filed a Response to the New Matter on August 16, 2021 accompanied by a Certificate of Service, which recognized Dr. Sheldon was not represented. In addition to docket activity, Frye's deposition was held on September 13, 2021, at which time neither Dr. Sheldon nor counsel on his behalf was present.

On October 7, 2021, counsel, unaffiliated with the other Defendants' counsel, entered an appearance on behalf of Dr. Sheldon and filed the Preliminary Objections currently before the Court. The Preliminary Objections are accompanied by an affidavit from Dr. Sheldon claiming that he has never maintained offices at Gettysburg Hospital or the address listed in Plaintiffs' Complaint. Dr. Sheldon further represents that he was working as an independent contractor with Virtual Radiology and has never been employed by any of the corporate Defendants. He alleges he never received a copy of the Complaint or authorized anyone to accept service on his behalf. Rather, he claims to have learned of the lawsuit on September 30, 2021 when alerted to the same by the insurance carrier for Virtual Radiology. Dr. Sheldon further indicates he has never resided in the state of Pennsylvania. On

October 20, 2021, Plaintiffs filed a Praecipe to Reinstate the Complaint and properly effectuated out-of-state service by serving the reissued Complaint on Dr. Sheldon at the offices of Advanced Radiology Services, P.C., in Grand Rapids, Michigan.

Following the filing of the current Preliminary Objections, the Court scheduled an evidentiary hearing on the disputed facts and argument for November 3, 2021. Hearing and argument were subsequently continued until November 12, 2021 due to the unavailability of counsel. At that time, neither party elected to present testimony or evidence other than the affidavit of Dr. Sheldon and a copy of an email exchange between counsel.

Unquestionably, Plaintiffs did not properly serve Dr. Sheldon in compliance with the Pennsylvania Rules of Civil Procedure until approximately nine-and-a-half months had passed since expiration of the applicable statute of limitations. A hospital is not a physician's "office" or "usual place of business" when the physician did not have a proprietary or managerial interest in the hospital, did not admit patients to the hospital, and did not maintain an office at the hospital. *Collins v. Park*, 621 A.2d 996, 998 (Pa. Super. 1993). The initial consideration therefore must address whether a plaintiff's service of an initial pleading at an address believed to be proper by the plaintiff but which is ultimately a wrong address is sufficient to evidence a good-faith attempt by the plaintiff. Under the particular facts of this case, I find that it is not.

Initially, I note the Complaint alleges that Dr. Sheldon is a licensed physician maintaining an office for the practice of medicine at Gettysburg Hospital. Plaintiffs' Complaint ¶ 21.⁵ The Rules of Civil Procedure require such an allegation to be made to the best of the pleading party's "knowledge, information and belief, formed after an inquiry reasonable under the circumstances." Pa.R.Civ.P. 1023.1(c). Certainly, what constitutes a reasonable inquiry depends on many factors including how much time for investigation was available to the signer, whether the signer had to rely on a client for information as to the facts underlying the allegations, whether the pleading was based upon a plausible view of the law, and whether the

⁵ Inexplicably, the Complaint filed of record with the Adams County Prothonotary's Office does not include executed verifications, *see* Pa.R.Civ.P. 1024 (requiring verification of pleadings), yet copies of the Complaint attached to the various subsequent pleadings as well as the reissued Complaint contained signed verifications.

signer depended on information from other members of the bar. Pa.R.Civ.P. 1023.1 Explanatory Comment.

In the instant matter, there are discrepancies in the Complaint concerning the level of detail relating to other individual Defendants as compared to Dr. Sheldon. More specifically, while the Complaint specifically identifies a professional link between the corporate Defendants and all individual Defendants other than Dr. Sheldon, the same information is absent as it relates to Dr. Sheldon. For instance, Paragraph 67 of the Complaint cites WellSpan Health's website for the proposition that Dr. Sorkin works for WellSpan Neurosurgery. The Complaint actually carries with it a snapshot of the website displaying a portrait of Dr. Sorkin. The same is true with P.A. McBeth, Dr. Spewock, and Dr. Rosenbach.⁶ Although this distinction in the Complaint's level of detail as it relates to the individual Defendants is by no means conclusive, it certainly raises curiosity as to why WellSpan's website, and therefore Plaintiffs' Complaint, does not have such a definitive reference to Dr. Sheldon. Certainly, it raises a question as to whether reasonable diligence was pursued in the determination of Dr. Sheldon's relationship with the corporate defendants and the related exercise of good faith in ensuring service of Dr. Sheldon at a proper address.⁷

Additionally, other than an allegation in the Complaint as to Dr. Sheldon's address, the record is absent as to any factual basis to conclude that Plaintiffs' belief as to Dr. Sheldon's employment, although erroneous, was reasonable. The various claims in the Complaint that Dr. Sheldon provided a review and consulted on MRI results are insufficient to establish the same. *See Collins*, 621 A.2d at 997–98 (service at former place of employment was insufficient). In essence, Plaintiffs put forth an erroneous allegation in the Complaint as to Dr. Sheldon's employment address without any further explanation as to how that determination was made. Therefore, they ask the Court to find that the bald allegation in the Complaint is sufficient to establish a good-faith effort at service when, in reality, Dr. Sheldon was nei-

⁶ See Plaintiffs' Complaint ¶ 69. Although the Complaint carries a snapshot of the WellSpan website identifying Dr. Spewock as an employee, the website apparently does not carry his portrait.

⁷ However, by engaging in the foregoing analysis, the Court does not mean to impute misconduct to any counsel. This discussion is only meant to resolve the question of whether service was proper in the instant matter.

ther employed nor maintained an office at that address. Unfortunately for Plaintiffs, this Court cannot find the same, without more, to constitute good faith. A contrary result essentially would vitiate *Lamp* and its progeny by permitting unscrupulous plaintiffs to indefinitely toll the statute of limitations without notice to a defendant by serving a complaint at an erroneous address. It appears that the better practice is to interpret *Lamp's* good-faith requirement as applying to all aspects of the service of process including consideration of both the means by which service is effectuated and the location where service is made.⁸

Plaintiffs' initial error in effectuating proper service is aggravated by Dr. Sheldon's lack of participation in the litigation during the ten months that followed the improper service. Despite active participation in the litigation by all other Defendants for approximately 10 months, there is no activity by Dr. Sheldon in answering the Complaint, in proceedings held by the Court, in stipulations presented by counsel, and in discovery during this period of time. Any suggestion that the same is not unusual in medical malpractice litigation is contrary to this Court's experience and knowledge as detail is often heightened in litigation such as this. Indeed, heightened attention to professional liability actions in general, and medical malpractice actions in particular, have caused the Pennsylvania Supreme Court to dedicate dozens of procedural rules to such actions. *See* Pa.R.Civ.P. 1042.1 et seq.

In sum, the question before the Court is relatively simple: did Plaintiffs make a good faith effort to serve Dr. Sheldon pursuant to *Lamp* and its progeny when they failed to serve Dr. Sheldon in compliance with Pennsylvania Rule of Civil Procedure 402? Despite being given the opportunity to do so, Plaintiffs have not carried the evidentiary burden of presenting credible evidence to demonstrate

⁸ Plaintiffs' counsel notes in their Brief that they assumed the return of service on Dr. Sheldon was valid as the Complaint was accepted by the hospital. In this regard, the sheriff's return of service indicates service was made upon Dr. Sheldon "by handing a true and attested copy to a [manager], adult-in-charge at the time of service, and ma[king] known the contents thereof." Despite diligent research, this writer has not discovered any authority for the proposition that leaving a copy of original process at a location is sufficient to end a *Lamp* inquiry. To the contrary, Pennsylvania case law implies the same is not a controlling consideration. *Collins*, 621 A.2d at 997-98 (service at improper office address defective even though accepted).

they acted in good faith.⁹ As Plaintiffs have failed to present any such evidence, they have failed to satisfy their evidentiary burden regardless of whether their error was intentional, unintentional, or otherwise.

However, pursuant to *McCreesh*, *supra*, it is necessary to determine whether Plaintiffs' improper attempt at service gave Dr. Sheldon actual notice of the commencement of the action. In this regard, Plaintiffs once again presented no evidence of actual knowledge on the part of Dr. Sheldon but rather pointed to representations made by Dr. Sheldon in his affidavit.¹⁰ Plaintiffs note that Dr. Sheldon's affidavit references specific paragraphs in the Complaint, which is allegedly indicative of his knowledge of the Complaint. Plaintiffs also argue that the affidavit is vague as to certain matters, which they interpret to imply "that [Dr. Sheldon] was aware that service of the Complaint was accepted on his behalf." Plaintiffs' argument is neither legally nor factually persuasive.

Initially, the conclusion that references in Dr. Sheldon's affidavit to specific paragraphs in the Complaint constitute evidence of knowledge of the Complaint is nonsensical. Undoubtedly, Dr. Sheldon has knowledge of the allegations in the Complaint as he filed the current Preliminary Objections, which pre-date his affidavit. It is difficult to fathom any scenario where a party can challenge a pleading of which they are unaware. The critical inquiry is not **whether** Dr. Sheldon became aware of the litigation but rather **when** Dr. Sheldon gained such knowledge. Plaintiffs have presented no factual evidence on this issue. Dr. Sheldon, however, clarified his initial affidavit to reflect receipt of the Complaint from his insurance carrier on September 30, 2021. The clarifying affidavit is accompanied by copies of email messages from the insurance carrier that corroborate Dr. Sheldon's claim. The claim in Dr. Sheldon's affidavit is further corroborated by the timing of his Preliminary Objections, which were filed on October 7, 2021. There is simply no evidence of record, either real or circumstantial, that supports a finding that Dr. Sheldon had knowledge of the allegations in the Complaint until

⁹ As mentioned, the Court scheduled an evidentiary hearing at which Plaintiffs did not present any evidence. Interestingly, in their Brief, Plaintiffs spend significant argument pointing to gaps in Dr. Sheldon's presentation without offering any factual basis for their assumption that Dr. Sheldon maintained an office at Gettysburg Hospital.

¹⁰ The affidavit is dated October 1, 2021.

approximately a week prior to the filing of the Preliminary Objections.¹¹ As there is no evidence of Dr. Sheldon having actual notice of the Complaint until approximately ten months after the expiration of the statute of limitations, no further discussion of this issue is warranted.

In sum, “[p]roper service is a prerequisite to the court’s jurisdiction over the person of a defendant.” **Collins**, 621 A.2d at 997. Plaintiffs did not serve Dr. Sheldon in compliance with the Pennsylvania Rules of Civil Procedure until October 21, 2021. Although the cause of action was initiated on December 22, 2020, five days prior to expiration of the applicable statute of limitations, the Complaint was not reissued, nor were any further steps to effectuate proper service taken by Plaintiffs, until October 21, 2021. Plaintiffs have not presented credible evidence that they made a good-faith effort to serve process on Dr. Sheldon, nor have Plaintiffs provided credible evidence that Dr. Sheldon received actual notice of commencement of the action until approximately ten months following expiration of the statute of limitations. As such, the Preliminary Objections will be granted.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 4th day of February, 2022, it is hereby Ordered that the Preliminary Objections of Defendant Lucas M. Sheldon, M.D., to Plaintiffs’ Complaint are granted. The Complaint against Dr. Sheldon is stricken. As it is clear that the applicable statute of limitations has expired, the allegations against Dr. Sheldon are dismissed with prejudice and the caption is corrected to remove Dr. Sheldon as a party in this matter.

¹¹ Plaintiffs have made a half-hearted argument that Dr. Sheldon’s insurance carrier had early knowledge of the complaint due to an exchange of emails between the remaining Defendants’ counsel and another attorney. The substance of the email exchange, however, indicates that the recipient forwarded the information to the insurance carrier and never received any information in return. There is no evidence the insurance carrier ever did anything with the information. In addition to this obvious gap in persuasive value, Pennsylvania case law is clear that service of a complaint on a party’s insurance carrier is not the equivalent of actual service on the defendant. See *Cahill v. Schults*, 643 A.2d 121, 125 (Pa. Super. 1994); *Ferrara v. Hoover*, 636 A.2d 1151, 1153 (Pa. Super. 1994). Moreover, the exchange at issue occurred in March/April 2021, three to four months after expiration of the statute of limitations.



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ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF ELIZABETH B. BUCHER, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Esq., Hartman & Yannetti, Inc. Law Office, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOLORES L. CRANE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Richard T. Crane, Jr. and Maryellyn Crane, c/o Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF MARTHA EVELYN GARON a/k/a MARTHA E. GARON, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Judith L. Whitlow, 10 Deep Powder Trail, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF GLADYS E. JOHNSON a/k/a GLADYS ETHEL JOHNSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Joanna J. Dudley, 8413 Wellington Lane, Harrisburg, NC 28075

Attorney: Dennis M. Twigg, Esq., Hoffman, Comfort, Offutt, Scott & Halstad, LLP, 24 North Court Street, Westminster, MD 21157

ESTATE OF MARY LOU JOHNSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Rose Ann McCleaf, 595 Cranberry Road, Aspers, PA 17304

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DONALD H. KLUNK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Kevin T. Klunk, Theresa F. Klunk, and Rebecca A. Wood, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF JO'ANN FRANCES LEHMAN a/k/a JO'ANN F. LEHMAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Co-Administrators: Phillip A. Lehman and Mona Martin, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF PAUL C. MOSCHETTE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Sharon E. Heagy, c/o James R. Clark, Esq., Law Office of James Clark, 277 Millwood Road, Lancaster, PA 17603

Attorney: James R. Clark, Esq., Law Office of James Clark, 277 Millwood Road, Lancaster, PA 17603

ESTATE OF LONNY SCHRADER a/k/a LONNY P. SCHRADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Susan E. Stott, c/o David A. Baric, Esq., Baric Scherer LLC, 19 West South Street, Carlisle, PA 17013

Attorney: David A. Baric, Esq., Baric Scherer LLC, 19 West South Street, Carlisle, PA 17013

ESTATE OF EVELYN B. SHARRER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Richard R. Sharrer and Daniel A. Sharrer, c/o Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF KENNETH L. SHINDLEDECKER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Richard M. Dracha, 531 Dietz Road, Ellittsburg, PA 17024; Jenny K. Simpson, 199 Plank Road, Gettysburg, PA 17325

Attorney: Puhl & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY C. THOMPSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Joyce D. Hobbs, 5 Utz Drive, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF FRANK R. WILLHEIM, SR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Gail H. Merlo and Wells Fargo Bank, N.A., c/o Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin PA 17316

SECOND PUBLICATION**ESTATE OF MERLE E. BIEVENOUR, SR., DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: Merle E. Bievenour, Jr. and Gail S. Bievenour, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin PA 17316

ESTATE OF VERA L. COFFEY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Duane A. Keeney, 58 North Street, McSherrystown, PA 17344

Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 529 Carlisle Street, Hanover, PA 17331

ESTATE OF RUTH A. CROOK, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Eric D. Markle, c/o Rachel L. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Rachel L. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

SECOND PUBLICATION CONTINUED**ESTATE OF JOSEPH A. FEAGA, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Keith P. Feaga, 41 Bryan Court, Gettysburg, PA 17325; Stephen A. Feaga, 248 Vincent Drive, McSherrystown, PA 17344

Attorney: Bernard A. Yannetti, Esq., Hartman & Yannetti, Inc. Law Office, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VALERIE A. FISHER, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Nathan F. Bortner, c/o Jessica F. Greene, Esq., Walters & Galloway, PLLC 54 East Main Street, Mechanicsburg, PA 17055

Attorney: Jessica F. Greene, Esq., Walters & Galloway, PLLC 54 East Main Street, Mechanicsburg, PA 17055

ESTATE OF LUCIENNE FRANK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: William E. Frank, 5599 Hanover Road, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF MARY CATHERINE GROFT a/k/a MARY C. GROFT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: David J. Groft and Margaret A. Lawrence, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF KENNETH L. HARTLAUB, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Michelle L. Rineman, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF HELEN LOUISE MAITLAND, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Tedd A. Maitland, 1280 Herr's Ridge Road, Gettysburg, PA 17325; Eric W. Maitland, 427 Baltimore Street, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THOMAS ARTHUR MERKEL a/k/a THOMAS A. MERKEL, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Lawrence R. Woltz, Jr., 240 Speelman Klinger Road, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CARL H. NACE a/k/a CARL HENRY NACE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Ellen Marie Shenk, 610 Fox Hollow Court, Spring Grove, PA 17362

ESTATE OF DELORES B. SHAFFER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Mark B. Shaffer, 147 Elmwood Avenue, Hanover, PA 17331

Attorney: Thomas E. Miller, Esq., Law Office of Thomas E. Miller, Esquire LLC, 249 York Street, Hanover, PA 17331

ESTATE OF CONNIE L. SIBERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Vicki M. Worley, 1009 Shafer Drive, Hanover, PA 17331; Steven A. Sibert, 670 Hunterstown Hampton Road, New Oxford, PA 17350

Attorney: Matthew L. Guthrie, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF RAY E. SIBERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Vicki M. Worley, 1009 Shafer Drive, Hanover, PA 17331; Steven A. Sibert, 670 Hunterstown Hampton Road, New Oxford, PA 17350

Attorney: Matthew L. Guthrie, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF CARROLL C. SLOTHOUR, JR., DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Malcolm F. Slothour, 7383 Lincoln Highway, Abbottstown, PA 17301

Attorney: Thomas R. Nell, Esq., 130 W. King Street, Box 1019, East Berlin, PA 17316

ESTATE OF CAROLYN T. WEAVER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Gregory G. Weaver, 259 Prospect Street, Westfield, NJ 07090; Brenda L. Deardorff, 2075 Old Carlisle Road, Aspers, PA 17304

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF JEFFREY L. BAMBERGER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Tamara A. Bittle, 115 Irishtown Road, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF FRANCES H. BOYER a/k/a FRANCES JUNE BOYER, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Donna L. Roth, 65 Ridge Avenue, Biglerville, PA 17307

Attorney: Robert L. McQuaide, Esq., Barley Snyder, 123 Baltimore Street, Suite 101, Gettysburg, PA 17325

ESTATE OF JAMES E. BRYANT, JR., DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Jodi A. Plank, 1040 Pine Grove Road, Hanover, PA 17331

Attorney: Bernard A. Yannetti, Esq., Hartman & Yannetti, Inc. Law Office, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF STEVE M. BUSSEY, SR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Steve M. Bussey, Jr., 132 Lake Meade Drive, East Berlin, PA 17316; Scott Bussey, 512 York Street, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Esq., Hartman & Yannetti, Inc. Law Office, 126 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION CONTINUED**ESTATE OF PATRICIA V. GARDNER,
DEC'D**

Late of Tyrone Township, Adams
County, Pennsylvania

Co-Executrices: Eva M. Gardner, 2776
Oxford Road, New Oxford, PA
17350; Annette S. Wilt, 192 Piney
Hall Road, Airville, PA 17302

Attorney: Robert E. Campbell, Esq.,
Salzmann Hughes, P.C., 112 Baltimore
Street, Gettysburg, PA 17325

**ESTATE OF CLAIR RICHARD HARTMAN
a/k/a C. RICHARD HARTMAN, DEC'D**

Late of the Borough of Arendtsville,
Adams County, Pennsylvania

Executor: William E. Hartman, 5056
Curtis Road, Hemlock, NY 14466

Attorney: Teeter Law Office, 108 West
Middle Street, Gettysburg, PA
17325

**ESTATE OF SAMUEL H. HELSLEY,
DEC'D**

Late of Butler Township, Adams
County, Pennsylvania

Administratrix: Beth H. Groninger, 101
Schoolfield Drive, Carlisle, PA
17013

Attorney: Robert E. Campbell, Esq.,
Salzmann Hughes, P.C., 112
Baltimore Street, Gettysburg, PA
17325

ESTATE OF BLAINE F. SHOVER, DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executrix: Chelsea A. Shover, c/o
Nancy H. Meyers, Esq., Salzmann
Hughes, P.C., 79 St. Paul Drive,
Chambersburg, PA 17201

Attorney: Nancy H. Meyers, Esq.,
Salzmann Hughes, P.C., 79 St. Paul
Drive, Chambersburg, PA 17201

**ESTATE OF HELEN E. WILKINSON,
DEC'D**

Late of Butler Township, Adams
County, Pennsylvania

Co-Executors: Linda L. Wilkinson,
2008 Table Rock Road, Biglerville,
PA 17307; William D. Wilkinson II,
1999 Table Rock Road, Biglerville,
PA 17307

Attorney: Bernard A. Yannetti, Esq.,
Hartman & Yannetti, Inc. Law Office,
126 Baltimore Street, Gettysburg,
PA 17325

**ESTATE OF TED SCOTT WILLIAMS,
DEC'D**

Late of Mount Joy Township, Adams
County, Pennsylvania

Todd Michael Williams, 36 Maple
Street, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234
Baltimore Street, Gettysburg, PA
17325

**ESTATE OF SANDRA LEE WOOD,
DEC'D**

Late of Mount Pleasant Township,
Adams County, Pennsylvania

Robert N. Wood, 3765 Carlisle Pike,
New Oxford, PA 17350

Attorney: David K. James, III, Esq., 234
Baltimore Street, Gettysburg, PA
17325