

## LACKAWANNA JURIST

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** Monahan v. Reedy, 2020 WL 716704 (Lacka. Co. 2020)  
**DATE OF DECISION:** February 11, 2020  
**JUDGE:** Terrence R. Nealon

#### ATTORNEYS INVOLVED:

Malcolm L. MacGregor, Esquire, Counsel for Plaintiffs, Candice Monahan and Martin Monahan  
James A. Doherty, Jr., Esquire, Grace Doherty Hillebrand, Esquire, Counsel for Defendants,  
Gary L. Reedy, M.D., FACOG, and Physicians Health Alliance, Inc.  
Michael E. McGilvery, Esquire, Counsel for Defendant, Gary L. Reedy, M.D., FACOG  
Michael P. Perry, Esquire, Counsel for Defendants, Moses Taylor Hospital and Moses Taylor Foundation, Inc.

#### SUMMARY OF OPINION:

Plaintiffs asserted that the defendant-gynecologist negligently damaged the female-plaintiffs left ureter during surgery at the defendant-hospital, thereby obstructing her ureter and preventing the drainage of urine from the kidney to the bladder, and ultimately requiring the removal of her irreparably damaged kidney. In addition to that malpractice claim, plaintiffs also charged the hospital with corporate negligence for breaching its institutional duties to provide specific surgical privileges only to competent physicians and to adopt and enforce proper credentialing procedures to ensure quality care for patients. In support of their corporate liability allegations, plaintiffs produced the report of an expert who concluded that the hospital deviated from its institutional standard of care by: (1) having a doctor of dental surgery, rather than a medical doctor, serve as chair of the hospital's credentialing committee which was authorized to assess the gynecologist's proficiency to perform laparoscopy and cystoscopy; (2) allowing the gynecologist to provide letters of reference only from his medical partners in direct violation of the hospital's credentialing policy prohibiting such letters from an applicant's partner or associate; (3) failing to require the gynecologist to provide critical information concerning his training and experience with respect to his requested surgical privileges; (4) neglecting to investigate, or even demand explanatory information, regarding 16 prior malpractice lawsuits that had been filed against him and which raised concerns about his surgical ability; and (5) not questioning the gynecologist's representation on his privileges application that he completed 44 credits of audible continuing medical education on the same day. The hospital filed a motion *in limine* seeking to preclude that expert from testifying concerning (a) the original witness that the hospital had designated under Rule 4007.1(e) to testify about the gynecologist's credentialing, and (b) the hospital's credentialing actions which post-dated the laparoscopic surgery. The hospital initially produced the gynecologist's partner as the hospital's designated witness on the gynecologist's credentialing, but that witness testified that he was unaware of any hospital policies governing the credentialing of physicians or the renewal of their privileges. Plaintiffs' expert opined that the designated witness's ignorance of the relevant procedures, coupled with the hospital's failure to produce any such policies during discovery, further supported the conclusion that the hospital failed to implement and enforce proper credentialing protocols in compliance with its corporate duty of care. Therefore, the hospital's designation and production of that uninformed witness was relevant to the corporate negligence issues, and the hospital's motion seeking to bar that evidence was denied. However, inasmuch as the corporate liability claims related solely to the hospital's grant of surgical privileges to the gynecologist prior to the date of the laparoscopic surgery, the hospital's credentialing conduct after that date was deemed to be irrelevant and was precluded.

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** Wolff v. Taylor, 2020 WL 807350 (Lacka. Co. 2020)  
**DATE OF DECISION:** February 12, 2020  
**JUDGE:** Terrence R. Nealon

#### ATTORNEYS INVOLVED:

Joel M. Wolff, Esquire, Counsel for Plaintiffs  
Daniel E. Cummins, Esquire, Counsel for Defendants, Michael E. Taylor and Heather Lynn Ammann  
Gregory M. Moran, Esquire, Counsel for Defendant, Goodfellas Pizza

#### SUMMARY OF OPINION:

In this motor vehicle accident litigation in which plaintiff charged defendants with "negligence, carelessness and recklessness," defendants filed a preliminary objection in the nature of a demurrer to the recklessness averments on the basis that the allegations in the complaint "do not rise to the level of outrageous conduct required under Pennsylvania law to support a claim for reckless conduct." Defendants relied upon Vella v. Henderson, No. 873 Civ. 2019, Williamson, J. (Monroe Co. Oct. 30, 2019) which held that "[a]lthough the Complaint does not include a direct count for punitive damages, it does use the word 'recklessness' which is synonymous with a punitive damage request," and struck those allegations on the ground that they did not "rise to the level of intentional conduct which would allow Plaintiffs to seek punitive damages." Id. at pp. 3-4. However, in Archibald v. Kemble, 971 A.2d 513 (Pa. Super. 2009), *app. denied*, 605 Pa. 678, 989 A.2d 914 (2010), the Superior Court held that "recklessness is a condition of the mind that may be averred generally" pursuant to Pa.R.C.P. 1019(b) (stating that "conditions of mind may be averred generally."). Id. at 519. Following Archibald, trial courts have overruled preliminary objections challenging the lack of factual support for allegations of recklessness and claims for punitive damages since recklessness may be averred generally. See McMillan v. Vava, 2016 WL 5235189, at \*8 (Montg. Co. 2016); Dovle v. Dianna, 34 Pa. D. & C. 5th 1, 4-5 (North. Co. 2013); Rogers v. Thomas, 29 Pa. D. & C. 5th 544, 567-568 (Lacka. Co. 2013). The Vella decision cited by defendants did not even acknowledge, let alone discuss, Archibald and its decade old holding that recklessness may be averred generally in a pleading, nor does Vella reflect that the plaintiff in that case opposed the demurrer based upon Archibald. Since Vella is contrary to the precedential holding in Archibald, defendants' demurrer to plaintiff's recklessness allegations was overruled.

## ESTATES

### First Notice

**ESTATE OF GLADYS D. FOYTACK**, late of the City of Scranton, Lackawanna County, Pennsylvania (date of death: November 1, 2019) Executrix: Norma C. Kedulick, Attorneys: Needle Law, P.C., 240 Penn Avenue – Suite 202, Scranton, PA 18503. P. Timothy Kelly, Esquire.

**ESTATE OF ANTHONY FRANCHAK A/K/A ANTHONY FRANCHAK, JR.** late of Jermy, Lackawanna County, Pennsylvania (died February 12, 2020). Notice is hereby given that Letters Testamentary have been issued to Stephen Franchak, Executor of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to Jule Gaige, Attorney for the Estate, 615 Clay Avenue, Third Floor, Scranton, PA 18510. 570-350-5225.

**ESTATE OF STANLEY F. GRIGALUNAS, A/K/A STANLEY GRIGALUNAS**, of the Borough of Jessup, Pennsylvania (died March 10, 2020), Kellie A. Grigalunas, a/k/a Kellie Ann Grigalunas, Executrix, PAUL SOTAK, Attorney, 410 Jefferson Avenue, Scranton, Pennsylvania 18510. NOTICE IS HEREBY GIVEN THAT Letters Testamentary have been granted in the following Estate. All persons indebted to said estate are required to make payment, and those having claims or demands to present same without delay to the Executrix named.

**ESTATE OF MICHAEL P. JARROW**, late of Peckville, Pennsylvania, died on March 2, 2020. All persons having claims against the Estate shall present same to Executrix, Donna Taramelli, c/o Donald W. Jensen, Esquire, 538 Spruce Street, Suite 730, Scranton, Pennsylvania 18503.

NOTICE is hereby given that Letters of Administration have been granted in the **ESTATE OF MATTHEW MISCELLO**, late of Borough of Old Forge, Lackawanna County, who died March 24, 2020. All persons indebted to said Estate are requested to make payment and those having claims to present the same, without delay, to the Co-Administrators, Natalie Miscello and Matthew Miscello, Jr., and their Attorney, DAVID CHERUNDOLO, ESQUIRE, 410 JEFFERSON AVENUE, SCRANTON, PA 18510.

### Second Notice

**ESTATE OF RALPH C. ALTHOUSE**, file number 3520-00335, late of Carbondale, Lackawanna County, PA (Date of death: 2/10/2020). Jeffrey A. Levine was appointed Executor on March 20, 2020. Jeffrey A. Levine, Esquire, Herlands & Levine, 27 North Main Street, Suite 301, Carbondale, PA 18407.

**ESTATE OF MICHAEL J. DELFINO**, late of 11 Hendrick Lane, Carbondale, Lackawanna County, Pennsylvania (died February 21, 2020). Notice is hereby given that Letters Testamentary in the above Estate have been issued to JOSEPH J. CALABRO. Creditors shall present claims and debtors shall make payment to, JOSEPH J. CALABRO, or BENJAMIN S. SCHNESSEL, Esquire, Attorney for the Estate, 11-13 Park Place, Carbondale, PA 18407.

**ESTATE OF CONSTANCE J. MAGISTRO**, Moosic, Pennsylvania, (Died: February 1, 2020) Paul R. Mazzoni, Executor, Paul R. Mazzoni, Esquire, Attorney for the Estate, Suite 201 Bank Towers, 321 Spruce Street, Scranton, PA 18503.

**ESTATE OF MARY LOU M. NEWMAN**, Deceased, late of Scranton, Pennsylvania (died February 17, 2020). All persons indebted to said Estate are required to make payment, and those having claims or demands to present the same, without delay, to Patricia Lynn Whiteford, Executrix, c/o Attorney Joseph F. Gaughan, 300 Mulberry Street, Suite 303, Scranton, PA 18503.

Notice is hereby given that Letters of Administration have been granted to Doreen Ruggiero of 10 43<sup>rd</sup> Street, Fell Twp., PA 18407 in the **ESTATE OF RICHARD D. RUGGIERO**, late of Fell Twp., Lackawanna County, PA, who passed away September 9, 2019. All persons indebted to said Estate are requested to make payment and those having claims or demands to present the same without delay to the Administratrix named or to the attorney for said estate: Patrick A. Kane, Esq., 960 Scranton-Carbondale Hwy., Archbald, PA 18403.

**ESTATE OF PHYLLIS M. SILEO**, late Elmhurst Township, Lackawanna County, PA (died January 12, 2020). Letters of Administration having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Marilyn Woellmer, Administrator, 422 Dogwood Drive, South Abington Twp., PA 18411 or to William F. Dunstone, Esquire, of Oliver, Price & Rhoads, Attorney for the Estate, 1212 South Abington Road, PO Box 240, Clarks Summit, PA 18411.

**ESTATE OF NICHOLAS VITRIS**, late of the City of Scranton, PA died February 12, 2020, Administrator Samuel Vitris, Terrence V. Gallagher Attorney for the Estate, 416 Jefferson Avenue, Scranton, PA 18510. Notice is hereby given that Letters Administration C.T.A. have been granted. All persons indebted to the said estate are required to make payment, and those having claims or demands are to present the same without delay to the Administrator's name.

**ESTATE OF CHARLES P. WAGNER**, late of City of Carbondale, PA (died November 20, 2019) Scott P. Wagner Executor, Frederick M. Moase, Jr., Attorney for the Estate, Law Offices of Frederick M. Moase, Jr., 123 East Garfield Ave, Carbondale, PA 18407

### Third Notice

**ESTATE OF JAMES F. ANTONIO**, deceased, late of Eynon, Lackawanna County, Pennsylvania, died January 7, 2020. Letters Testamentary granted to Valerie J. Antonio. All persons indebted to said Estate are requested to make immediate payment and those having legal claims to present same without delay to Valerie J. Antonio or Frank A. Mazzeo, Jr., Esquire, 327 N. Washington Ave., Suite 506, Scranton, PA 18503.

**ESTATE OF NAOMI E. BODDIE**, late of the City of Scranton, Lackawanna County, PA, deceased. Letters Testamentary, in the above-named Estate having been granted to the undersigned, all persons indebted to the Estate are requested to make immediate payment and those having claims are directed to present the same without delay to the undersigned or her attorney within four (4) months from the date hereof and to file with the Clerk of the Court of Common Pleas of Lackawanna County, Orphans' Court Division, a particular statement of claim, duly verified by an affidavit setting forth an address within the county where notice may be given to claimant. Marie Camacho, Executrix, c/o Leeth & Gaglione, LLC, 513 Main Street, 2<sup>nd</sup> Floor, P.O. Box 150, Stroudsburg, PA 18360.

## LACKAWANNA JURIST

Notice is hereby given that Letters Testamentary have been granted to Monique O. Buttner, Executrix of the **ESTATE OF RICHARD PAZZALIA A/K/A RICHARD B. PAZZALIA**, late of Peckville, PA, who died on December 2, 2019. All persons indebted to the Estate are required to make payment and those having claims or demands are to present the same without delay to the Executrix or to Carl J. Poveromo, Esquire, Rinaldi & Poveromo, P.C., P.O. Box 826, Scranton, PA, 18501.

**ESTATE OF RONALD V. WETZEL**, late of Simpson, Pennsylvania (died December 24, 2019). Notice is hereby given that Letters of Administration on the above estate have been granted to Gary Bradley Wetzel, of Carbondale, PA and Brandon Keith Wetzel, of Simpson, PA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representatives named herein, or to Walter F. Casper, Jr., Esquire, C/O Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.