

Adams County Legal Journal

Vol. 53

April 5, 2012

No. 47, pp. 333-336

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about March 30, 2012, for the incorporation of HILLTOP COMMUNITY ASSOCIATION under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of community improvement together with any legal function of a corporation under Pennsylvania law. The initial registered office of the corporation is P.O. Box 117, Abbottstown, PA 17301.

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BECHTEL VS. DOUD ET AL

1. While amendments to pleadings are liberally granted in general, an amendment which introduces a new theory will not be permitted after the statute of limitations of that cause of action has expired.

2. The Pennsylvania Supreme Court has held that a right to punitive damages is not the subject of an action in and of itself, but rather a mere incident to a cause of action.

3. The amendment of an addendum clause to include a claim for punitive damages does not affect the pleadings at all and, consequently, does not assert a new cause of action or legal theory that might otherwise be precluded by the statute of limitations.

4. Pennsylvania case law makes clear that punitive damages are an extreme remedy available in only the most exceptional matters. Such damages are only appropriately awarded when the defendant has acted in an outrageous fashion due to either evil motive or reckless indifference to the rights of others.

5. Under Pennsylvania laws, recklessness requires more than showing a person had reason to know of facts, but unreasonably failed to appreciate the high degree of risk involved. Rather, an actor must have an actual appreciation of the risk of harm caused by his actions or failure to act before punitive damages are imposed.

6. Although the Court is sympathetic to Defendants' argument that efficient use of judicial resources mitigates in favor of denying the proposed amendment on the current record, as additional discovery will not support a claim for punitive damages, the Rules of Civil Procedure cannot be disregarded under the guise of judicial efficiency.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 07-S-1449, GLADYS R. BECHTEL VS. DAVID A.
DOUD, D.O., GETTYSBURG SURGICAL ASSOCIATES, INC.,
GETTYSBURG HOSPITAL, AND WELLSPAN HEALTH.

Donald L. Reihart, Esq., for Plaintiff

Michael D. Pipa, Esq., for Defendants

George, J., October 3, 2011

OPINION

This is a medical malpractice action which arises from treatment provided by Dr. David A. Doud ("Doud") to Gladys R. Bechtel ("Bechtel") on July 12, 2006. At that time, Doud performed a Stretta surgical procedure on Bechtel in an effort to treat gastroesophageal reflux disease.¹ Bechtel alleges, as a result of the procedure, she suffered an esophageal perforation that caused her significant

¹ According to the pleadings and briefs filed in this matter, the Stretta procedure involves the insertion of a radio frequency device down the patient's throat and into the esophagus. Once in the esophagus, needles are protracted which transmit energy to burn the esophagus lining and ultimately form scar tissue for purposes of tightening the junction between the esophagus and the stomach, thus reducing the amount of reflux.

medical complications requiring emergency treatment and lengthy hospitalization. Bechtel has subsequently filed a professional negligence claim against Doud that, in addition to alleging negligence, also includes a claim for failure to obtain Bechtel's informed consent prior to surgery. Gettysburg Surgical Associates, Inc. ("GSA") is joined in the Complaint under a theory of respondeat superior. Gettysburg Hospital/WellSpan Health ("Hospital") is joined under theories of respondeat superior and corporate negligence. Currently before the Court is Bechtel's Motion to Amend Complaint seeking to include claims of punitive damages against Doud and the Hospital.

Pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure, a party may amend a complaint either by filed consent of the adverse party or by leave of court. Pa. R. Civ. P. 1033. The decision of whether to grant or deny a motion to amend a complaint is within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. *Ferraro v. McCarthy-Pascuzzo*, 777 A.2d 1128, 1132 (Pa. Super. 2001). "Amendments are to be liberally permitted in order to allow full development of a party's theories and averments," except where surprise or prejudice will result to the other party. *Koresko v. Farley*, 844 A.2d 607, 618 (Pa. Cmwlth. 2004). Also, an amendment is properly refused where it is against a positive rule of law. *Capobianchi v. BIC Corp.*, 666 A.2d 344, 346 (Pa. Super. 1995) *appeal denied* 674 A.2d 1065 (Pa. 1996) (citation omitted).

"While amendments to pleadings are liberally granted in general, an amendment which introduces a new theory will not be permitted after the statute of limitations of that cause of action has expired." *Dept. of Transportation v. Pa. Industries for the Blind and Handicapped*, 886 A.2d 706, 715 (Pa. Cmwlth. 2005). On the other hand, 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." *Id.*

Although the statute of limitations on Bechtel's cause of action has expired, Bechtel's amendment seeks only to add requests for punitive damages. The Pennsylvania Supreme Court has held that a right to punitive damages is not the subject of an action in and of itself, but rather "a mere incident to a cause of action." *Hilbert v. Roth*, 149 A.2d 648, 652 (Pa. 1959). Thus, the amendment of an

addendum clause to include a claim for punitive damages does not affect the pleadings at all and, consequently, does not assert a new cause of action or legal theory that might otherwise be precluded by the statute of limitations. *Daley v. John Wanamaker, Inc.*, 464 A.2d 355, 361 (Pa. Super. 1983) (citation omitted).

While Doud concedes expiration of the statute of limitations is not an automatic bar to the requested amendment to add a claim for punitive damages, he suggests legal theories in the original Complaint cannot support a claim for punitive damages as a matter of law. Indeed, Pennsylvania case law “makes clear that punitive damages are an ‘extreme remedy’ available in only the most exceptional matters.” *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005) (citations omitted). Such damages are only appropriately awarded when the defendant has acted in an outrageous fashion due to either evil motive or reckless indifference to the rights of others. *Id.* (citation omitted). In determining the propriety of imposing punitive damages, the defendant’s state of the mind is critical. *Feld v. Merriam*, 485 A.2d 742, 748 (Pa. 1984). “The act, or the failure to act, must be intentional, reckless or malicious.” *Id.* Under Pennsylvania law, recklessness requires more than showing a person had reason to know of facts, but unreasonably failed to appreciate the high degree of risk involved. *Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1097 (Pa. 1985) (plurality opinion).² Rather, an actor must have an actual appreciation of the risk of harm caused by his actions or failure to act before punitive damages may be imposed. *Id.*

Instantly, Bechtel’s Complaint alleges Doud knew he did not have satisfactory experience to perform the Stretta procedure and that he should not have been performing the procedure on a patient with high risk factors, yet he proceeded with the surgery. Further, the Complaint alleges Doud continued with the procedure despite complications during the surgery which increased Bechtel’s risk. Bechtel’s informed consent claim alleges Doud did not advise her prior to surgery that he lacked the requisite experience to perform the procedure. In her claim of corporate negligence against the Hospital, Bechtel claims the Hospital knew Doud had inadequate training and

² Although the *Martin* decision was a plurality opinion, its discussion and analysis regarding punitive damages was approved and followed in *S.H.V. Cole, Inc. v. Continental Grain Co.*, 587 A.2d 702, 704 (Pa. 1991).

lacked the experience necessary to safely perform the procedure. Broadly read, these allegations, if true, permit a finding that Doud undertook surgery on a patient at a time he was aware that he was incapable, due to lack of knowledge or experience, to safely perform the procedure. Further, the pleadings, if true, support a finding that despite being aware Doud lacked such experience, the Hospital permitted Doud to perform the procedure. If proven at trial, these allegations are sufficient to support punitive damages.

In reaching this decision, the Court is mindful of the several Defendants' arguments that the factual record does not support such claims. Indeed, a review of the attachments to the numerous pleadings reveals a paucity of any evidence of conduct so outrageous as to demonstrate willful, wanton, or reckless conduct on the part of Doud or the Hospital. Nevertheless, discovery is not yet complete; therefore, the several Defendants' argument in this regard is premature.

Although the Court is sympathetic to Defendants' argument that efficient use of judicial resources mitigates in favor of denying the proposed amendment on the current record, as additional discovery will not support a claim for punitive damages, the Rules of Civil Procedure cannot be disregarded under the guise of judicial efficiency. Ultimately, if correct, the several Defendants' rights may be protected through dispositive pretrial motions. Until that time, however, Bechtel will be given the opportunity to secure a determination of her claims on their merits.

For the foregoing reasons, Plaintiff's Motion to Amend the Addendum Clause of Counts I, III, and V to add a claim of punitive damages is granted. To the extent Plaintiff requests to amend the factual allegations in her Complaint, as proposed by amendments designated in paragraph 96A through 96H of Plaintiff's Amended Brief in Support of Motion to Amend, Plaintiff's request is denied, as the allegations in the proposed paragraphs constitute either surplusage or allege new theories of liability beyond the statute of limitations.

ORDER

AND NOW, this 3rd day of October 2011, Plaintiff's Motion to Amend the Addendum Clause of Counts I, III, and V of the Complaint to add a claim of punitive damages is granted. In all other respects, Plaintiff's motion is denied.

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 SEAN DAVID BLAKE, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executor: Charles D. Blake, c/o Douglas H. Gent, Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF DALE R. GROVE, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrices: Marcia E. Brown, 295 Hickory Road, Littlestown, PA 17340; Linda A. Becker, 1871 Mummasburg Road, Gettysburg, PA 17325

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF ROBERT T. MILLER, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Robert T. Miller, Jr. and Amber D. Miller, 25 Harget Drive, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331

ESTATE OF JOSEPHINE R. O'BRIEN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Barbara A. Krebs, 1844 Liberty Road, Spring Grove, PA 17362

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF KAY I. CRAIG-McGIRR, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Thomas A. Brown, 215 Water Street, Fairfield, PA 17320

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF THELMA MARY IRWIN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Carol Ann Welte and Robert E. Irwin, Jr., c/o Craig A. Diehl, Esq., Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

Attorney: Craig A. Diehl, Esq., Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

ESTATE OF BARBARA JEAN LAFFER PLATT, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: John A. Latschar, 815 Taneytown Road, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF RICHARD H. SULLIVAN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Shirley J. Daron, 1694 Coon Rd., Aspers, PA 17304; Sharon K. Weidner, 1790 Coon Rd., Aspers, PA 17304

Attorney: Phillips & Phillips, 101 West Middle St., Gettysburg, PA 17325

ESTATE OF KATHLEEN M. ZEIGLER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Kermit P. Zeigler, 128 Possum Hollow Road, East Berlin, PA 17316

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

THIRD PUBLICATION**ESTATE OF DORIS NICHOLAS a/k/a DORIS B. NICHOLAS, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Martin A. Nicholas, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

