

ROSE M. RITTER, as Administrator of the Estate of ROBERT L. RITTER;	:	IN THE COURT OF COMMON PLEAS OF
ROSE M. RITTER, Individually,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 98-01,188
	:	
JOHN H. CHAPMAN, M.D.,	:	
EDWARD L. WOODS, M.D.,	:	
KEITH CHU, M.D.,	:	
CHRISTOPHER MALAFRONTI, PA-C,	:	
H. WILLIAM MAHAFFY, PA-C,	:	
PENN STATE GEISINGER CLINIC, and	:	
GEISINGER MEDICAL CENTER,	:	
Defendants	:	PRELIMINARY OBJECTIONS

**OPINION and ORDER**

This Opinion and Order are entered in disposition of Defendants’ Preliminary Objections to Plaintiffs’ Complaint.<sup>1</sup>

This is a medical malpractice case. According to the Complaint, Robert Ritter<sup>2</sup> was admitted to Geisinger Medical Center on September 5, 1996, with a diagnosis of unstable angina and underwent multiple procedures during the next several days. Mr. Ritter’s condition continued to deteriorate; he died on September 22, 1996. The autopsy report listed the cause of death as secondary to sepsis, renal failure and pulmonary emboli, noting massive necrosis of the visceral organs.

The Complaint contains sixteen counts against the individual and corporate defendants, including wrongful death and survival claims,<sup>3</sup> wherein Plaintiffs claim Defendants failed to provide reasonable health care by improperly performing medical procedures, failing to guard against certain adverse medical developments and failing to timely treat or respond to such developments. Plaintiffs include punitive damages in the relief they seek.

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<sup>1</sup> Plaintiffs filed a Praecipe for Writ of Summons July 31, 1998; the Complaint was filed October 7, 1999. Preliminary Objections were filed October 27, 1999. Argument was held February 2, 2000.

<sup>2</sup> Mr. Ritter’s age at time of death is not set forth in the Complaint. The Court notes that in a brief filed by Plaintiffs February 16, 1999, Plaintiffs state Mr. Ritter was 55 years old.

<sup>3</sup> The Complaint refers only to “plaintiffs’ decedent” and fails to aver Plaintiff Rose M. Ritter’s relationship to Mr. Ritter.

Defendants' Preliminary Objections take issue with virtually the entire Complaint. Defendants claim lack of specificity, lack of grounds to seek punitive damages, improper items of damages and no proper cause of action against Defendant Penn State Geisinger Clinic.<sup>4</sup>

To begin, paragraphs 58, 62, 66, 70 and 74 of the Complaint, including subparagraphs, must be stricken for lack of specificity. *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983). Defendants argue, and this Court agrees, that these paragraphs do little more than list the procedures performed and then baldly assert they were performed improperly, without averring any reason as to why they were done improperly.

Paragraphs 77 and 78 will be stricken for lack of specificity do to the use of the language "and others." Moreover, as acknowledged by Plaintiffs' counsel at argument, references are made to individuals who were not included in the preceding paragraphs of the Complaint. Paragraphs 79, 80 and 83-86 and 87.7 are stricken for the same reasons.

Paragraphs 88-94.7, comprising Count VIII against Defendant Penn State Geisinger Clinic on a corporate liability theory, were withdrawn by Plaintiffs. See "Plaintiff's [sic] Brief in Opposition to Defendants' Preliminary Objections," p. 12.<sup>5</sup>

Defendants' objections to paragraphs 96-99 are overruled. Defendants objected to these paragraphs as being conclusions of law, citing *Price v. Ross*, 489 A.2d 252 (Pa.Super. 1985), wherein the Superior Court quoted Goodrich Amram for the proposition that "[c]onclusions of law have no place in a pleading..." 2 Goodrich Amram 2d 137. However, "[w]hat would normally be a 'conclusion of law' may, in a particular pleading, be considered a material fact. For example, a plaintiff may aver that a defendant has a 'legal duty' to do a certain act..." 2 Goodrich Amram 2d (Procedural Rules Service

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<sup>4</sup> Defendant Geisinger Clinic, originally named in the caption, was removed by stipulation.

<sup>5</sup> This count was based on a theory of corporate liability against Penn State Geisinger Clinic. Defendants argued this count should be stricken as the duties imposed under *Thompson v. Nason Hospital*, 591 A.2d 703 (Pa. 1991) apply only to hospitals and health maintenance organizations (HMO's). See Preliminary Objections, paragraph 26. However, this Court recently held that, under the appropriate circumstances, the *Thompson* duties may be extended when a defendant organization performs the same or *similar* function as a hospital. *Haines v. Presbyterian Homes, Inc.*, Lycoming County

with Forms) §1019(a):8. Here, Plaintiffs contend these paragraphs are such allegations of fact. Brief in Opposition to Defendants' Preliminary Objections p. 11. Moreover, "[i]n the context of a negligence action, it is fundamental that a plaintiff establish the duty owed by a defendant, the breach of which might give rise to injuries alleged to be suffered by the plaintiff." 2 Goodrich Amram 2d (Procedural Rules Service with Forms) §1019(a):9. In the instant case, Plaintiffs must establish in their Complaint the duty they claim was owed by Defendant Geisinger Medical Center. Finally, "[c]onclusions of law in a pleading do not necessarily render it defective...and striking off a pleading which contains conclusions of law will not be justified in the absence of some showing of real prejudice from the inclusion." *Id.* at §1019(a):11. See also *Fromm v. Fromm, et al.*, 87 Dauph. 50 (1967); *Regal Adv. Assoc. v. Taft Broadcasting Co.*, 59 Luz.L.Reg. 45 (1968). No showing of prejudice has been demonstrated by Defendants in this case.

Paragraph 100 and its subparagraphs will be stricken for use of the term "and others" and also for the lack of specificity noted by the Court, *supra*, in striking paragraphs 58, 62, 66, 70 and 74 and subparagraphs.<sup>6</sup>

By agreement of counsel, subparagraphs 108.1, 108.2 and 108.3 (relating to the Wrongful Death claim) will be stricken.

Paragraph 108.6, claim loss of the ability to maintain and sustain a family relationship, will also be stricken. *Donmoyer v. Indeck*, Lycoming Co. No. 98-01,189 (Order of January 11, 2000, William S. Smith, P.J.).

The language in Paragraph 108.7 regarding "other valuables" and "other damages" must be stricken. *Connor, supra*.

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No. 99-00,348 (Opinion and Order September 24, 1999), relying upon *Shannon v. McNulty*, 718 A.2d 828 (Pa.Super. 1998).

<sup>6</sup> However, we reject Defendants' contention that Plaintiffs have impermissibly expanded the duties set forth under *Thompson, supra*. In *Thompson*, the complaint alleged that Mrs. Thompson's injuries were the direct and proximate result of the negligence of the hospital acting through its agents, servants and employees in failing to follow its rules relative to consultation and in failing to monitor her condition during treatment. Similar allegations were contained in a separate

Counts XII through XVI, wherein Plaintiffs seek punitive damages against the named individual Defendants, are stricken. “It is axiomatic...that a claim for punitive damages arises out of the underlying cause of action...absent a viable cause of action, an independent claim for damages cannot stand.” *Costa v. Roxborough Memorial Hospital*, 708 A.2d 490, 497 (Pa.Super. 1998). Here, the underlying claims against the individual Defendants were stricken for lack of specificity; accordingly, the punitive damages claims must be stricken as well. However, these claims are not stricken with prejudice, as requested by Defendants. It remains to be seen whether Plaintiffs can plead sufficient facts to support a claim for punitive damages.<sup>7</sup>

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count of the complaint as to a defendant doctor’s negligence. *Id.* at 705. Here, properly pled averments would be similarly proper in a claim of corporate liability.

<sup>7</sup> The Court notes Defendants have cited opinions in the Lycoming County cases of *Temple v. Susquehanna Health Systems*, Lycoming County No. 97-00,099 and *Trimble v. Beltz*, Lycoming County No. 98-01,720, in support of their claim that Plaintiffs have failed to plead a claim for punitive damages sufficient to meet the standard set by those opinions.

**ORDER**

*AND NOW*, this 13<sup>th</sup> day of March 2000, for the reasons set forth in the foregoing Opinion in regard to Preliminary Objections to the Complaint, it is ORDERED and DIRECTED as follows:

1. Paragraphs 58, 62, 66, 70 and 74, 77, 78 and 100, including subparagraphs, are stricken. Subparagraphs 108.1, 108.2 and 108.3 are stricken.
2. Paragraphs 88-94.7, Count VIII of the Complaint, are withdrawn by Plaintiffs.
3. The language in Paragraph 108.7 regarding “other valuables” and “other damages” is stricken.
4. Counts XII through XVI, the punitive damages claims, are stricken.

Plaintiffs shall file an Amended Complaint within 20 days of the date of this Order.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator  
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