IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

ARTHUR TRIMBLE, Administrator of the Estate of Donna Trimble, Deceased; and ARTHUR TRIMBLE, as an individual, Plaintiffs	:	
v.	:	NO. 98-01,720
WILLIAM R. BELTZ, M.D.; WILLIAM J. TODHUNTER, M.D.; SURGICAL ASSOCIATES OF WILLIAMSPORT, DIVINE PROVIDENCE HOSPITAL, t/d/b/a BREAST HEALTH CENTER and SUSQUEHANNA HEALTH SYSTEM, Defendants	:	

OPINION and ORDER

In this case the plaintiffs object to the New Matter of defendants Divine Providence Hospital and Susquehanna Health Systems, which contains boilerplate defenses and denials without facts to support them. We have formerly chastised these plaintiffs for stuffing complaints with unsubstantiated claims that amount to little more than "legal lard" weighing down the legal system.[1] We must now chastise the defendants for a similar maneuver: packing their new matter with denials, conclusions of law, and unsupported defenses. Defendants should not be permitted to clutter up their New Matter in this manner and when the plaintiff objects, the objection will be sustained.

[1] Trimble v. Beltz, Opinion issued 12 October 1999, p. 13.

DISCUSSION

In the case of Allen v. Lipson this court, sitting *en banc*, held that when pleading affirmative defenses in New Matter, defendants must plead material facts in support of each defense. 8 D. & C. 4th 390 (1990). This decision was based largely on the plain wording of Pa.R.Civ.P. No. 1019(a), which states, "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form." It was also based on our conclusion that the holding of Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), applies to affirmative defenses as well as to complaints.[2]

Certainly the New Matter paragraphs to which the plaintiffs are objecting in this case blatantly violate our Allen holding, for they set forth no material facts.[3] The Hospital and Health Systems attempt to avoid this obvious conclusion by advancing two arguments. First, they ask this court to revisit Allen, which we decline to do. Second, they argue that because the statements in paragraphs 88-93 of

---

[2] In Connor, the Pennsylvania Supreme Court held that a general allegation of negligence in a complaint allows a plaintiff to amend the complaint to specify additional acts of negligence that were not specifically pled in the original complaint–even after the statute of limitations has passed. To avoid such an unpleasant surprise at trial, the defendants should file a preliminary objection in the nature of a request for a more specific pleading.

[3] Paragraph 88 is a general allegation that the defendants committed no negligence. Paragraph 89 is a general allegation that there is no causal relationship to the alleged negligence and the plaintiffs' injuries. Paragraph 90 is a general allegation that the alleged negligence was not a substantial factor in causing the injuries. Paragraph 91 raises the affirmative defenses of comparative and contributory negligence. Paragraph 92 states that the defendant health care providers are not guarantors or warrantors of a cure. Paragraph 93 states that the alleged damages were caused or contributed to by persons or entities other than the defendants. Paragraph 94 raises the statute of limitations to the extent that evidence obtained during discovery or during trial may indicate that the plaintiffs' claims are time barred.

their New Matter are not required to be pled, they are not required to be pled with specific facts, either. We reject this argument for the following reasons.

To begin with, it appears that some of the paragraphs in the defendants' New Matter are not only unnecessary–they are actually prohibited. Rule 1030 states that in New Matter a party must plead all affirmative defenses and may also set forth "any other material facts which are not merely denials of the averments of the preceding pleading." Paragraphs 88, 89, 90, and 93 are not affirmative defenses; they are merely denials of the allegations in the complaint, which the defendants intend to use to defend the case.[4] Since they are not affirmative defenses nor do they contain additional material facts, they have no place in New Matter. They belong in the Answer to the complaint. As for paragraph 92, that is a conclusion of law, which has no place anywhere in the pleadings.

Even if the court were to consider the statements in paragraphs 88, 89, 90, and 93 to be affirmative defenses, they must still be stricken because they contain no supportive factual allegations. Once defendants elect to include such statements in New Matter, they are bound to follow the rules and back up the statements with specific material factual averments.

Paragraph 94, which raises the statute of limitations, is a true affirmative defense. However, it contains no factual allegations, and is merely an attempt to preserve this claim if facts later materialize to support it. We have frowned on similar hedging attempts by the plaintiffs, and this maneuver is no more palatable

---

[4] The court rejects the defendants' attempt to characterize them as failure to state a cause of action, because that affirmative defense is based on the legal insufficiency of the allegations in the complaint, rather than the factual accuracy of those allegations.

when performed by the defendants. To the extent that the defendants might discover information leading to a genuine defense of the statute of limitations bar, it is likely they would be permitted to amend their pleadings to include that affirmative defense, given the lenient rules governing amendments.[5]

Paragraph 91, which raises the affirmative defenses of contributory and comparative negligence, is one of those affirmative defenses which the rules explicitly state do not have to be pled. Pa.R.Civ.P. No. 1030(b).[6] For that reason, and for the sake of judicial consistency,[7] we hold that this paragraph need not be stricken.

Conclusion

In conclusion, we hold that defendants should refrain from including in their New Matter mere denials or conclusions of law. New Matter should be limited, as

---

[5] The court realizes Pa.R.Civ.P. 1032 states that all defenses not presented by preliminary objection, answer or reply will be waived with a few exceptions. However, Pennsylvania case law directs courts to liberally allow amendments to the pleadings unless they result in surprise that causes undue prejudice to the other party. Robinson Protective Alarm v. Bolger & Picker, 516 A.2d 299, 302 fn.6 (Pa. 1986). Such amendments would be especially favored when discovery yields information not previously available to a party.

[6] This is the only affirmative defense in the New Matter that the rules explicitly state does not need to be pled. As already explained, we reject the argument that statements in other paragraphs constitute the defense of failure to state a claim, which is also not required to be pled. Rule 1032(a).

[7] See Schliebener v. Williamsport Hospital, No. 94-00,776 (Lycoming County, January 25, 1996, Hon. Kenneth D. Brown.)

the rules state, to material facts that are not merely denials of the allegations in the complaint, and to affirmative defenses that include material facts upon which the defense is based.

O R D E R

AND NOW, this _____ day of April, 2000, for the reasons stated in the foregoing opinion, the plaintiffs' preliminary objection to the New Matter of Defendants Divine Providence Hospital and Susquehanna Health Systems is granted as to paragraphs 87-90 and 92-94, and those paragraphs are stricken. These defendants are given twenty days in which to file an amended New Matter in accordance with the court's holding. The preliminary objection is denied as to paragraph 91.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Clifford Rieders, Esq.
David Bahl, Esq.
Robert Seiferth, Esq.
Gary Weber, Esq., Lycoming Reporter