

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN PRYOR, and : CIVIL ACTION
SEAN PRYOR :
 :
v. :
 :
MERCY CATHOLIC MEDICAL CENTER, et al. : NO. 99-0988

MEMORANDUM AND ORDER

HUTTON, J.

October 15, 1999

Presently before the Court are Defendants', Mercy Catholic Medical Center and Mercy Health System ("MCMC"), Motion to Dismiss and/or Strike (Docket No. 6). For the following reasons, the Defendants' Motion is **DENIED IN PART and GRANTED IN PART.**

I. BACKGROUND

The Plaintiff, Jean Pryor, alleges the following facts in her Amended Complaint. Plaintiff was employed as a technician in the Psychiatric Unit of Mercy Catholic Medical Center. Mercy Catholic hired Defendant Michael Dorfman, M.D. ("Dorfman") and assigned him to the same unit as Plaintiff. Plaintiff was instructed and directed by Dorfman in the performance of her job responsibilities. Plaintiff also received psychiatric care from Dorfman. During this period, Dorfman was subject to the supervision and control of Mercy Catholic Medical Center, Mercy Health System, and Mercy Psychiatry Associates.

During the course of Plaintiff's employment Dorfman made sexually explicit remarks, physically restrained Plaintiff, and preformed lewd sex acts in her presence. Plaintiff further alleges that Defendants MCMC had knowledge of said incidents, willfully discriminated against Plaintiff because of her gender, and engaged in retaliation because of her filing of administrative complaints. Plaintiff filed an Amended Complaint which contained eight counts: (1) a violation of 42 U.S.C. § 13981 -Count I, (2) a violation of the Pennsylvania Human Relations Act -Count II; (3) negligent and intentional infliction of emotional distress -Count III; (4) assault, battery, and trespass -Count IV; (5) loss of consortium -Count V; (6) a violation of 42 U.S.C. § 2000e -Count VI; (7) negligent supervision -Count VII; and (8) medical malpractice -Count VIII.\¹ Defendants MCMC move to strike the specific damages amount in Counts I and VI; to dismiss Counts III, VII and V; and to petition the Court to decline supplemental jurisdiction over the State malpractice claim.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R.

¹ Plaintiff's Complaint erroneously refers to Count VIII and Count VII. For the purposes of this Memorandum and Order, the Court will refer to said count correctly as Count VIII.

Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),² this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

² Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

III. DISCUSSION

A. Count I and VI

Counts I and VI of Plaintiff's Amended Complaint contain a demand for unliquidated damages "in an amount not less than \$300,0000.00." (See Pl.'s Am. Compl. ¶¶ 31(a), 56(a)). Defendants assert that such pleading is prohibited under Local Rule of Civil Procedure 5.1.1. While the court is inclined to agree with Defendants' position, it is unnecessary to decide this issue as Plaintiff has agreed to remove such specific demand. (See Pl.'s Resp. to Def.'s Mot. to Dismiss ¶ E). As such, the Court grants Defendants' motion to strike Plaintiff's \$300,000 request for unliquidated damages.\³

B. Count III and VII

Count III of Plaintiff's Amended Complaint alleges that Plaintiff suffered damages resulting from both negligent and intentional infliction of emotional distress. In addition, Count VII alleges that MCMC acted negligently in failing to supervise Dorfman.

³ As a technical matter, Plaintiff requests that the revision to the damages request be accomplished through a Second Amended Complaint. Such action is simply unnecessary as the court may modify the existing complaint pursuant to Fed. R. Civ. P. 12(f).

(1) Count III's Negligent Infliction of Emotional Distress Claim Is Barred By The Pennsylvania Workers' Compensation Act.

Count III of Plaintiff's Amended Complaint alleges both negligent and intentional infliction of emotional distress. While the personal animus exception to the Pennsylvania Workers' Compensation Act ("WCA")⁴ supports the possibility of a claim of intentional infliction of emotional distress, a negligent infliction claim is by its very terms excluded. The Superior Court of Pennsylvania has held that "the Workers Compensation Act will not bar an action for intentional infliction of emotional distress where the injury to the employee arose from harassment which was personal in nature and not part of the proper employer-employee relationship." Hoy v. Angelone, 691 A.2d 476, 482 (Pa. Super. Ct. 1997), aff'd 720 A.2d 745 (Pa. 1998). This conclusion is consistent with recent decisions in this District that also recognize the availability of an intentional infliction of emotional distress claim in the context of sexual harassment. See Wils v. Phillips, No. CIV.A.98-5752, 1999 WL 200674, at *6 (E.D.

⁴ Title 77 Section 411(1) of the Pennsylvania Statutes and Consolidated Statutes Annotated states as follows:

The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe[e] because of reasons personal to him, and not directed against him as an employe[e] or because of his employment. . .

77 Pa. Conn. Stat. § 411(1).

Pa. Apr. 8, 1999) (concluding that the WCA does not preempt plaintiff's intentional infliction of emotional distress claim in sexual harassment cases); see also Fieni v. Pocopson Home, No. 96-5343, 1997 WL 220280, at *6 (E.D. Pa. Apr. 29, 1997); Merritt v. Delaware River Port Auth., No. CIV.A.98-3313, 1999 WL 285900, at *8 n.6 (E.D. Pa. Apr. 20, 1999). However, negligence is not intentional and thus such an action for negligent infliction of emotional distress cannot be maintained by Plaintiff due to the WCA's exclusivity provision. See Fieni, 1997 WL 220280, at *6. As such, the Court must dismiss Count III to the extent that it asserts a claim of negligent infliction of emotional distress.

(2) Count III Does Not Fail to State a Claim of Intentional Infliction of Emotional Distress.

Defendants challenge the sufficiency of Plaintiff's claim of intentional infliction of emotional distress because the conduct does not rise to the level of outrageousness necessary to sustain a viable claim. (See Def.'s Mot. to Dismiss at 7). The Pennsylvania Supreme Court has recognized that "as a general rule, sexual harassment alone does not rise to the level of outrageousness necessary to make out a cause of action for the intentional infliction of emotional distress [T]he only instances . . . in the employment context is where an employer engaged in both sexual harassment and other retaliatory behavior against an employee." Hoy, 720 A.2d at 754 (quoting the Third

Circuit in Andrews v. City of Philadelphia, 895 F.2d 1469, 1487 (3d Cir. 1990)). Further, "cases which have found a sufficient basis for a cause of action . . . have had presented only the most egregious conduct." Id. In this matter, Plaintiff's claim is not limited to mere propositions or sexual innuendos, rather Plaintiff was subjected to physical force and the display of genitalia, fondling, and masturbation. (See Pl.'s Am. Compl. ¶ 17). Further, Plaintiff alleges she was retaliated against by MCMC for filing complaints with administrative agencies concerning said sexual assaults. (See Pl.'s Am. Compl. ¶ 28). Given these facts, the Court cannot say with certainty that the facts as presented cannot support a finding that said conduct was not sufficiently outrageous, especially in light of the allegation of retaliation. Other courts under similar circumstance have also reached this conclusion. See Merritt, 1999 WL 285900, at *8 (stating that when conduct is so outrageous as to offends all notions of decency the claim should survive); see also Wils, 1999 WL 200674, at *6. As discussed in the next section of this Memorandum, the harassment that Plaintiff experienced can reasonably be considered personal in nature. As such, dismissal of Plaintiff's intentional infliction of emotional distress claim must be denied.

(3) Count VII's Negligent Supervision Claim Is Not Barred By The Pennsylvania Workers' Compensation Act.

Defendants assert that Plaintiff's count claiming negligent supervision is barred by the exclusivity principle of the WCA.⁵ (See Def.'s Mot. to Dismiss at 4). However, Pennsylvania state law clearly contravenes this assertion. The Supreme Court of Pennsylvania has stated that "the spirit and intent of the Act [WCA] is not violated by permitting an employee injured by a co-worker for purely personal reasons to maintain a negligence action against his employer for any associated negligence in maintaining a safe workplace." Kohler v. McCrory Stores, 615 A.2d 27, 31 (Pa. 1992) (emphasis added); see also Merritt, 1999 WL 285900, at *6-7 (holding that a negligent supervision claim is not barred by the WCA). To set forth a valid claim against an employer, Plaintiff must assert that her injuries are not work-related because she was injured by a co-worker for purely personal reasons. See Kohler, 615 A.2d at 31.

Defendants suggest that because Defendant Dorfman's misconduct was alleged to have been perpetrated against Plaintiff and other staff members, that such conduct is the result of Plaintiff's position and thus work-related. (See Def.'s Mot. to

⁵ Title 77 Section 481(a) of the Pennsylvania Statutes and Consolidated Statutes Annotated states as follows:

The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees, his legal representatives, husband or wife, parents, dependants, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of injury. . . .

77 Pa. Conn. Stat. § 481(a).

Dismiss at 5). While Plaintiff does make some assertions that Dorfman's actions were directed at her and other staff members, Plaintiff also alleges specific instances of sexual assault. These instances include Dorfman's alleged exposure and fondling of his genitalia while physically restraining Plaintiff's ability to escape such assault. (See Pl.'s Am. Compl. ¶ 17). Clearly, such conduct could reasonably be concluded as purely personal in nature and not work-related. As such, the dismissal of Count VII is not proper.

C. Count V

Count V of Plaintiff's Amended Complaint requests loss of consortium for Plaintiff, Sean Pryor. Defendant asserts that such claims are barred by the exclusivity principal of the Pennsylvania Workers' Compensation Act.⁶ (See Def.'s Mot. to Dismiss at 10). However, loss of consortium claims that are derivative of claims which are not pre-empted are permitted. See Pierce v. Montgomery County Opportunity Bd., 884 F. Supp. 965, 979 (E.D. Pa. 1995) (holding that claims pre-empted by the WCA also pre-empt a loss of consortium claim). As such, dismissal is denied with respect to

⁶ Defendant also raises concerns that the exact basis for the loss of consortium claim is unclear and fails to incorporate the medical malpractice claim. Although the Court agrees that Plaintiff could have been more eloquent in its complaint, it must be remembered that Federal Court incorporates notice pleading. See Fed. R. Civ. P. 8(a)(1), 8(e). When reading Plaintiff's Amended Complaint, it is clear that Count V is intended to apply generally to all claims which would allow its application. Such a reading of the complaint presents no hardship upon the Defendant.

Count V, except for Plaintiff's claim for negligent infliction of emotional distress which is pre-empted.

D. Count VIII

Defendants assert that Plaintiff's medical malpractice claim should be dismissed without prejudice because the inclusion of such a claim in the context of Plaintiff's other counts would only serve to confuse the jury. (See Def.'s Mot. to Dismiss at 8).

Section 1367 states that the federal courts "shall have supplemental jurisdiction" over claims which are "part of the same case or controversy" as a claim which the Court exercises original jurisdiction. See 28 U.S.C. § 1367(a)(1994). There are three requirements for exercising supplemental jurisdiction. First, the federal claim must have sufficient substance to confer subject matter jurisdiction; second, the state and federal claims must derive from the common nucleus of operative facts; and third, Plaintiff must ordinarily expect to try all claims in one judicial proceeding. See Wils, 1999 WL 200674, at *7 (quoting United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966); Lyon v. Whisman, 45 F.3d 758, 760 (3d Cir. 1995)).

In this matter, Plaintiff satisfies the three requirements for supplemental jurisdiction. First, the federal claims under Count I and Count VI confer on this Court sufficient subject matter jurisdiction. Second, the Plaintiff's malpractice claim arises out of a common nucleus of operative facts. Third, Plaintiff normally would expect to try her claims together as it saves considerable litigation expense.

Although Plaintiff satisfies these requirements, the Court may still decline to exercise supplemental jurisdiction under Section 1367(c).\⁷ In this matter, the medical malpractice claim does not present any novel or complex issue of state law, nor does it predominate over Plaintiff's counts in which this Court has original jurisdiction. As this Court finds no exceptional circumstances warranting restraint in the exercise of supplemental jurisdiction, Defendants' request cannot be granted.

E. Plaintiff's Punitive Damage Request

Plaintiff requests punitive damages in connection with several negligence causes of action in her Amended Complaint. (See Pl.'s Am. Compl. at Count III, Count VII, VIII). As the Court has already determined that the negligent infliction of emotional distress claim is pre-empted by the WCA, only the remaining counts concerning negligent supervision (Count VII) and medical malpractice (Count VIII) must be considered.

⁷ Title 28 Section 1367© provides that:

The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if-

- (1) the claim raises a novel or complex issue of State law,
- (2) the claims substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

Under Pennsylvania Law, "[p]unitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct." Interact Accessories, Inc. v. Video Trade Int'l, Ltd., No. CIV.A.98-2430, 1999 WL 159883, at *3 (E.D. Pa. Mar. 22, 1999) (quoting Bannar v. Miller, 701 A.2d 232, 242 (Pa. Super. Ct. 1997)). As such, punitive damages are not available in matters involving simple negligence, however they are available in matters where "the actor knows, or has reason to know . . . of the facts which create a high degree of risk or physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to that risk." Interact, 1999 WL 159883, at *3.

Given that throughout Plaintiff's complaint she alleges that Defendants knew or should have know of the conduct in question, and yet failed to act, it cannot be said with certainty that the standard for punitive damages has not been met. It is simply too early in the proceedings to adequately make such a determination. As such, Defendants' request to strike the respective punitive damage demands cannot be granted.

An appropriate Order follows

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN PRYOR, and : CIVIL ACTION
SEAN PRYOR :
 :
v. :
 :
MERCY CATHOLIC MEDICAL CENTER, et al. : NO. 99-0988

O R D E R

AND NOW, this 15th day of October, 1999, upon consideration of the Defendants' Motion to Dismiss and/or Strike (Docket No. 6), and Plaintiff's response thereto (Docket No. 10), IT IS HEREBY ORDERED that:

(1) Defendants' Motion to Strike the specific demand for unliquidated damages is **GRANTED**. Pursuant to Fed. R. Civ. P. 12(f), the language "in an amount not less than \$300,000.00" is to be stricken from Paragraph 31(a) of Count I and Paragraph 56(a) of Count VI;

(2) Plaintiff's negligent infliction of emotional distress claim in Count III is **DISMISSED WITH PREJUDICE**;

(3) Defendants' Motion to Dismiss the intentional infliction of emotional distress claim in Count III is **DENIED**;

(4) Defendants' Motion to Dismiss the negligent supervision claim in Count VII is **DENIED**;

(5) Defendants' Motion to Dismiss the loss of consortium claim in Count V that is derivative of the negligent infliction of emotional distress cause of action is **GRANTED**;

(6) Defendants' Motion to petition the Court to decline supplemental jurisdiction over the medical malpractice claim in Count VIII is **DENIED**;\¹

(7) Defendants' Motion to strike certain claims for punitive damages in Plaintiff's Amended Complaint is **DENIED**; and

(8) Plaintiff's request for leave to file a Second Amended Complaint is **DENIED**.\²

BY THE COURT:

HERBERT J. HUTTON, J.

¹ Plaintiff's Amended Complaint erroneously refers to Count VIII as Count VII. This Order considers this error and correctly identifies the Count.

² Plaintiff's Second Amended Complaint seeks to correct minor errors already addressed in this Memorandum and Order. As such, its filing would only cause further confusion and delay between the parties and the Court.