

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

KAREN G. HUDSON, Individually : CIVIL ACTION
and as Mother and Natural :
Guardian of COREY HUDSON :
 :
v. :
 :
 :
BRANDYWINE HOSPITAL, :
et al. : NO. 99-CV-4262

M E M O R A N D U M

Padova, J.

December 16, 1999

Corey Hudson ("Corey"), through his mother Karen Hudson, has filed this lawsuit alleging that Defendants Brandywine Hospital ("Brandywine"), Modena Fire and Hose Company ("Modena"), Thomas Amico ("Amico"), Leo Scaccia, III ("Scaccia"), and Chester County Department of Emergency Services ("County") negligently provided substandard emergency medical treatment when he suffered an asthma attack. As a result of Defendants' negligence, Corey suffered permanent brain damage. Karen Hudson, in Count V of the Amended Complaint, individually alleges claims of intentional and negligent infliction of emotional distress against Defendants Dr. Robert Satriale ("Satriale") and Brandywine (on a theory of respondeat superior liability) for allegedly encouraging her to prematurely discontinue Corey's life support and refusing to answer her questions about the extent of Corey's likely brain damage and rehabilitation potential.

Having granted Plaintiffs' Motion to Amend the Complaint by Order dated December 16, 1999, the Court will treat Defendants' Motions to Dismiss as applying to the Amended Complaint. For the reasons that follow, the Court will grant Defendant County's Motion, deny Defendants Brandywine, Amico, and Scaccia's Motion, and grant in part and deny in part Defendant Satriale's Motion.

A. Standard of Review

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle him to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3rd Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

B. Defendant County's Motion to Dismiss Count IV

Defendant County moves to dismiss Count IV which alleges that the County negligently failed to comply with its own standards for responding to and initiating emergency vehicle transportation services and failed to timely dispatch its ambulance upon Plaintiffs' request.

The Pennsylvania Political Subdivision Tort Claims Act ("Act"), 42 Pa. Cons. Stat. Ann. § 8541, exempts local agencies from liability for damages for any injuries caused by acts of the agency or its employees. 42 Pa. Cons. Stat. Ann. § 8541 (West 1999). Counties are local agencies under the Act. Robey v. Chester County, 946 F. Supp. 333, 338 (E.D.Pa. 1996). Injured

parties may recover in tort from a local agency only if (1) damages would be otherwise recoverable under common law or statute; (2) the injury was caused by the negligent act of the local agency or an employee acting within the scope of his official duties; and (3) the negligent act of the local agency falls within one of eight enumerated categories. 42 Pa. Cons. Stat. Ann. § 8542 (West 1999); Swartz v. Hilltown Township Volunteer Fire Co., 721 A.2d 819, 820-21 (Pa. Commw. Ct. 1998).

One of these categories of liability is vehicle liability. 42 Pa. Cons. Stat. Ann. § 8542(b)(1) (West 1999). The Act allows local agencies to be held liable for "the operation of any motor vehicle in the possession or control of the local agency." Id. Pennsylvania courts, however, interpret the word "operation" narrowly to include only the act of driving the vehicle. Love v. City of Philadelphia, 543 A.2d 531, 533 (Pa. 1988); Swartz, 721 A.2d at 821; City of Pittsburgh v. Jodzis, 607 A.2d 339, 351 (Pa. Commw. Ct. 1992). The control over municipal vehicles exercised by dispatchers in sending out, directing, and communicating orders to the vehicles does not constitute 'operation' of the vehicle under the Act. Jodzis, 607 A.2d at 351.

The circumstances of this case are analogous to those present in Keesev v. Longwood Volunteer Fire Co., Inc., 601 A.2d 921, 924 (Pa. Commw. Ct. 1992). In Keesev, a driver sued the county and the local fire department for damages when a fire

truck collided with his car. Keeseey, 601 A.2d at 922. The driver alleged that just before the accident occurred, the county dispatcher failed to communicate an order from the fire chief to slow down the truck. Id. While assuming that the accident would have been avoided had the order been communicated and followed, the court nevertheless decided that the county could not be held liable in tort for the plaintiff's injuries because it did not actually operate the vehicle even though it had control of the vehicle through its dispatchers. Id. at 924.

In the Amended Complaint, Plaintiffs have alleged only that County, through its agents, controlled the dispatch and routing of the emergency vehicles.¹ Because the Act does not allow tort

¹The Amended Complaint reads as follows:

41. The Defendant Chester [County], through its agents, employees, and/or volunteers, was negligent in that it:

- a. failed to comply with its own standards for responding to and initiating emergency vehicle transportation services;
- b. failed to respond to repeated requests for assistance after initiating the original dispatch;
- c. failed to provide timely dispatch of ambulance or emergency vehicle services when repeatedly requested to do so;
- d. failed to timely re-initiate requests for dispatch of ambulance or emergency vehicle services when repeatedly requested to do so;
- e. each of the above allegations of negligence involve actions or inactions while having control of the dispatch and routing of emergency vehicles within its jurisdiction as contemplated by 42 Pa. C.S.A. § 8542(b) and as such Defendant Chester [County] is not immune from liability pursuant to the Pennsylvania Political Subdivision Tort Claims Act; ...

(Am. Compl. ¶ 41.)

liability to be predicated on mere control over a vehicle, Count IV of the Amended Complaint fails to state a claim upon which relief may be granted. For this reason, the Court grants County's Motion and dismisses Count IV with prejudice.

C. Defendant Satriale's Motion to Dismiss Count V

Defendant Satriale moves to dismiss Count V, filed by Plaintiff Karen Hudson, which alleges both negligent and intentional infliction of emotional distress.

1. Negligent Infliction of Emotional Distress

Pennsylvania courts have adopted the Restatement definition of the tort of negligent infliction of emotional distress.

Armstrong v. Paoli Mem'l Hosp., 633 A.2d 605, 608 (Pa. Super. Ct. 1993); Crivellaro v. Pennsylvania Power & Light Co., 491 A.2d 207, 209 (Pa. Super. Ct. 1985); Banyas v. Lower Bucks Hosp., 437 A.2d 1236, 1238 (Pa. Super. Ct. 1981). Restatement (Second)

Torts section 436 provides:

(1) If the actor's conduct is negligent as violating a duty of care designed to protect another from a fright or other emotional disturbance which the actor should recognize as involving an unreasonable risk of bodily harm, the fact that the harm results solely through the internal operation of the fright or other emotional disturbance does not protect the actor from liability.

(2) If the actor's conduct is negligent as creating an unreasonable risk of causing bodily harm to another otherwise than by subjecting him to fright, shock, or other similar and immediate emotional disturbance, the fact that such harm results solely from the internal operation of fright or other emotional disturbance does not protect the actor from liability.

Restatement (Second) Torts § 436 (1965).

Tort liability for the negligent infliction of emotional distress requires that the plaintiff sustain, as a result of the defendant's negligence, some physical injury in addition to or caused by the emotional disturbance. Restatement (Second) Torts § 436A (1965); Armstrong, 633 A.2d at 609; Wall v. Fisher, 565 A.2d 498, 502 (Pa. Super. Ct. 1990); Banyas, 437 A.2d at 1239 (Pa. Super. Ct. 1981).

Temporary conditions such as fright, nervous shock, nausea, grief, rage, and humiliation, even when accompanied by physical symptoms, do not constitute compensable injuries because such conditions do not amount to substantial bodily harm. See Restatement (Second) Torts § 436 A cmt. c (1965). However, long continued nausea or headaches, repeated hysterical attacks, or mental aberration are compensable injuries because they are chronic physical illnesses that manifest emotional suffering. Id.; cf. Armstrong, 633 A.2d at 609 (finding allegations of loss of continence, depression, nightmares, and insomnia sufficient to sustain a cause of action for negligent infliction of emotional distress); Crivellaro, 491 A.2d at 210 (averments of headaches, shaking, hyperventilation, nightmares, lack of bowel control, and muscle tightening); Love v. Cramer, 606 A.2d 1175, 1179 (Pa. Super. Ct. 1992)(allegations of severe depression, nightmares, stress and anxiety requiring psychological treatment, and ongoing physical injury).

The Amended Complaint merely alleges that Plaintiff Karen Hudson has suffered in the past and will continue to suffer in the future "severe anxiety, mental anguish, and emotional distress." (Am. Compl. ¶ 49.) Because she has not pled the existence of any actual physical injury that resulted from her emotional disturbance, she fails to state a cause of action for negligent infliction of emotional distress. Accordingly, the Court grants Defendant Satriale's Motion as to this claim.

2. Intentional Infliction of Emotional Distress

Defendant Satriale argues that Plaintiff Karen Hudson's claim for intentional infliction of emotional distress fails because: (1) Plaintiff has not alleged that her emotional distress is confirmed by expert medical opinion; and (2) Defendant Satriale's behavior cannot reasonably be regarded as extreme and outrageous.

Defendant Satriale's first argument that the claim should be dismissed because Plaintiff Karen Hudson has failed to produce expert medical confirmation of the severity of her emotional distress is clearly without merit. While it is true that courts require plaintiffs to provide expert medical confirmation of the claimed injury, such proof is required at the level of a summary judgment motion, Tuman v. Genesis Assoc., 935 F. Supp. 1375, 1393 (E.D.Pa. 1996); or at trial, Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 995 (Pa. 1987); not at the early stage of a motion to dismiss where all of the plaintiffs' allegations

must be taken as true, see ALA Inc., 29 F.3d at 859. The allegation in the Amended Complaint that Karen Hudson suffered emotional distress as a result of Satriale's tortious conduct, (Am. Compl. ¶ 49), is sufficient at this time to support her cause of action.

Pennsylvania courts recognize the tort of intentional infliction of emotional distress and have adopted section 46 of the Restatement (Second) of Torts. Wisiniowski v. Johns-Manville Corp., 812 F.2d 81, 85 (3rd Cir. 1987)(citing Banyas v. Lower Bucks Hosp., 437 A.2d 1236 (Pa. Super. Ct. 1981)). That section provides in part:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

Restatement (Second) of Torts § 46 (1965). To be actionable, the conduct must be extreme and outrageous, be intentional or reckless, and cause severe emotional distress. Wisiniowski, 812 F.2d at 85.

The Restatement further provides:

Liability has been found only where the conduct has been so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Restatement of Torts (Second) § 46 cmt. d (1965); Hoffman v.

Mem'l Osteopathic Hosp., 492 A.2d 1382, 1386 (Pa. Super. Ct. 1985). The level of outrageousness required is comparable and possibly higher than that required to support an award of punitive damages. Wisiniowski, 812 F.2d at 86 n.3.

As the basis for this claim for intentional infliction of emotional distress, Plaintiff Karen Hudson alleges that Defendant Satriale behaved wantonly and wilfully in encouraging her to terminate Corey's life support system by leading her to believe that Corey could not be rehabilitated and would remain in a vegetative state. Plaintiff further alleges that Defendant Satriale refused to answer her questions about the length of Corey's oxygen deprivation or to provide a medical basis by which she could evaluate the extent of Corey's permanent brain injuries and likelihood for rehabilitation. (Am. Compl. ¶¶ 43-48.)

The Court finds that these allegations adequately state a cause of action for intentional infliction of emotional distress under the standard outlined in the Restatement (Second) of Torts section 46. Accordingly, the Court denies Defendant Satriale's Motion as to this claim.

In summary, the Court dismisses Count V only insofar as it alleges a claim for negligent infliction of emotional distress. Plaintiff Karen Hudson may proceed on her claim for intentional infliction of emotional distress.

D. Defendants Satriale, Brandywine, Amico and Scaccia's Motions to Dismiss Plaintiffs' Claim for Punitive

Damages

Defendants Satriale, Brandywine, Amico, and Scaccia move to dismiss Plaintiffs' request for punitive damages. Punitive damages are an element of damages arising out of an initial cause of action for compensatory damages. Halstead v. Motorcycle Safety Foundation Inc., No. 99-CV-2199, 1999 WL 921136, at *7 (E.D.Pa. Oct. 8, 1999). Punitive damages may be awarded for conduct that is outrageous because of the defendant's evil motive or his reckless indifference to other's rights. Id.; Smith v. Renault, 564 A.2d 188, 193 (Pa. Super. Ct. 1989). See also McDaniel v. Merck, 533 A.2d 436, 447 (Pa. Super. Ct.), appeal denied, 551 A.2d 216 (Pa. 1988)(requiring that the defendant's conduct be malicious, wanton, willful, reckless or oppressive). However, plaintiffs may not receive punitive damages for misconduct that constitutes ordinary negligence such as inadvertence, mistake, or errors of judgment. Merck, 533 A.2d at 447.

Plaintiffs must allege in their complaint facts that demonstrate the requisite state of mind of malice, vindictiveness or wanton disregard. Fallowfield Development Corp. v. Strunk, Civ. A. Nos. 89-8633, 90-4431, 1991 WL 280264, at *2 (E.D.Pa. Dec. 30, 1991); Merck, 533 A.2d at 448. The Amended Complaint alleges that Defendants' conduct was grossly negligent and either intentional, willful, malicious or reckless. (Am. Compl. ¶¶ 32,

35, 49.) Under the liberal notice pleading requirements of the Federal Rules of Civil Procedure, see Fed.R.Civ.P. 8(a), these allegations adequately support a request for punitive damages. For this reason, the Court denies Defendants' Motions to dismiss Plaintiffs' claim for punitive damages.

An appropriate order follows.

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O R D E R

AND NOW, this day of December, 1999, upon consideration of Defendants Brandywine Hospital, Thomas M. Amico, and Leo Scaccia III's Motion to Dismiss (Doc. No. 7), Defendant Chester County Department of Emergency Services' Motion to Dismiss (Doc. No. 4), Defendant Robert O. Satriale's Motion to Dismiss (Doc. No. 11), Plaintiffs' Response thereto (Doc. No. 14), and Defendant Satriale's Response thereto (Doc. No. 15), **IT IS HEREBY ORDERED** that:

1. Defendant Chester County's Motion is **GRANTED** and Count IV of the Amended Complaint is **DISMISSED** with prejudice;
2. Defendants Brandywine Hospital, Thomas M. Amico, and Leo Scaccia III's Motion is **DENIED**;
3. Defendant Robert O. Satriale's Motion is **GRANTED** in part and **DENIED** in part. Count V insofar as it alleges negligent infliction of emotional distress is **DISMISSED** with prejudice.

BY THE COURT:

John R. Padova, J.