

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

ELIZABETH WILSON : CIVIL ACTION  
: :  
v. : :  
: :  
CHESTNUT HILL HEALTHCARE, :  
CHESTNUT HILL REHABILITATION :  
HOSPITAL, and AETNA U.S. :  
HEALTHCARE : NO. 99-CV-1468

**MEMORANDUM**

Giles, C.J.

February\_\_\_\_, 2000

This is a personal injury/medical malpractice claim in which Elizabeth Wilson (“Wilson”), sues for damages arising from injuries she suffered while attempting to enter her daughter’s sports utility vehicle after discharge from Chestnut Hill Rehabilitation Hospital (“CHRH”). Wilson, who was eighty-eight (88) years old at the time, alleges that the negligence of the Defendants, CHRH’s and Chestnut Hill Healthcare’s (“CHH”), was a substantial factor in causing her injuries. Before the court is Defendants’ Joint Motion for Partial Summary Judgment on the counts of the Complaint asserted against them. For the reasons which follow, Defendants’ motion is granted.

**BACKGROUND**

**Procedural History**

On February 11, 1999, Wilson filed a Complaint in the Philadelphia Court of Common Pleas against defendants, CHH, CHRH, and Aetna U.S. Healthcare (“Aetna”). On March 24, 1999, Wilson’s action was removed to the U.S. District Court for the Eastern District

of Pennsylvania by Aetna pursuant to 28 U.S.C. § 1441(b). Wilson filed a Motion to Remand which was denied by this court in a June 8, 1999 Order. Subsequently, Wilson filed a Motion to Vacate the June 8, 1999 Order which was also denied by the court on June 24, 1999. Wilson then filed a Motion for Certification of the June 8, 1999 Order for Interlocutory Appeal arguing lack of jurisdiction. That motion was denied. On April 4, 1999, Wilson brought a separate action against Dr. Leonard Tananis (“Dr. Tananis”), her treating physician, by filing a Writ of Summons in the Court of Common Pleas of Philadelphia. Dr. Tananis removed the state action to federal court pursuant to 28 U.S.C. § 1332. Subsequently, Wilson filed her Complaint against Dr. Tananis. Because the allegations in the Tananis Complaint stem for the same occurrence as alleged in the Complaint against CHH, CHRH, and Aetna, Dr. Tananis filed a motion to consolidate the two actions. That motion was granted on December 1, 1999.<sup>1</sup>

### **Material Facts**

Wilson was transferred from CHH to CHRH on March 25, 1997 for rehabilitative care secondary to stroke. Dr. Tananis scheduled her for an April 12, 1997 discharge to a personal care facility, Springfield Residence (“Springfield”). However, because Springfield did not have a room available for her until April 14, 1997, CHRH elected to postpone Wilson’s discharge for two days to accommodate the anticipated Springfield admission. On the morning of April 14, 1997, Wilson’s daughter, Ann Glass (“Glass”), who had previously expressed disagreement with the planned April 12<sup>th</sup> discharge date, advised Chestnut Hill that she had decided that Wilson

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<sup>1</sup> On December 17, 1999, Aetna filed a Motion for Summary Judgment on the counts against it which was granted by this court on the grounds that Wilson failed to exhaust her administrative remedies before filing suit.

would not go to Springfield but that she would be going to her own apartment where Glass planned to help Wilson care for herself with the aid of home nurses. Aware of Glass' intended care plan, Dr. Tananis discharged Wilson that day to her daughter's care.

During Wilson's hospital stay, although vehicle transfer training was available to the family, and might have been capable of being adjusted to the type of vehicle used, it is undisputed that the family made no request for such training (See Naughton Dep. p. 85) (stating that hospital "would have trained [Wilson]" "[i]f the family brought the vehicle to us."). Further, on the date of discharge, April 14, 1997, Wilson's daughter, who came alone to pick up her mother, neither requested vehicle training nor informed CHRH of the type of vehicle that she planned to use to transport her mother home.

Although the Hospital's written policy stated that, upon discharge, a nurse should only accompany a patient to the exit, Wilson was escorted beyond the exit door in a wheelchair pushed by Theodorika Sandstrom ("Sandstrom"), a CHRH nurse, to Glass' Ford Explorer. That vehicle was parked immediately outside the main entrance of the hospital. While attempting to enter the Ford Explorer, Wilson fell to the ground and suffered a fractured ankle. The leg upon which she was temporarily balancing gave way as she was attempting to step up into the vehicle. Wilson attempted to access the vehicle without assistance from her daughter or the Chestnut Hill nurse.

Wilson asserts that the Defendants were negligent in: (a) discharging her to her home; (b) not providing her and her family vehicle transfer training; and (c) not physically assisting her into her daughter's sport's utility vehicle after her discharge from CHRH.

Defendants have moved for summary judgment regarding Wilson's claims contending that: (a)

they did not owe Wilson a duty of care beyond the front door of the hospital; (b) Wilson failed to adduce expert opinion as to causation relative to the alleged failure to train Wilson's family in how to safely assist her into the family sports utility vehicle; and (c) there is no evidence of extreme behavior on their part warranting the award of punitive damages, even if liability attached.

## **DISCUSSION**

### **Statement of Jurisdiction**

Wilson's claims against the Aetna defendant stemmed from Aetna's role as her Medicare provider and arose under the Medicare Act, 42 U.S.C. § 1395, et seq. This court had previously determined that federal question jurisdiction existed over that matter pursuant to 28 U.S.C. § 1331. The court now exercises supplemental jurisdiction over Wilson's state law claims pursuant to 28 U.S.C. § 1367, as to which it is agreed Pennsylvania law governs.

### **Analysis**

Summary judgment is proper when the moving party establishes that the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Once the moving party has met its burden, the nonmoving party must come forward with specific facts contradicting those set forth by the moving party, thereby showing that there is a genuine issue for trial. See

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

**I. Wilson Has Failed to Show that Chestnut Hill Breached a Duty Owed to Her Under a Theory of Medical Malpractice.**

Under Pennsylvania law, in order to establish a prima facie case of medical malpractice, a plaintiff must present an expert who will testify, to a reasonable degree of medical certainty, that the acts of a defendant deviated from the acceptable medical standards and that the deviation constituted a substantial factor in causing plaintiff's injuries. Mitzelfelt v. Kamrin, 526 Pa. 54, 61 (1990). An expert need not use "magic words" such as "substantial factor" when expressing her opinion to make a prima facie case. Welsh v. Burger, 548 Pa. 504, 514 (1997). Instead, the court must look at the substance of the expert's testimony to make this determination. Id.

In order to withstand summary judgment, Wilson must present evidence that: "(1) [Chestnut Hill] owed [her] a duty; (2) the [hospital] breached that duty; (3) the breach of duty was the proximate cause of, or substantial factor in, bringing about the harm suffered by [her]; and (4) the damages suffered by [her] were a direct result of that harm." Hoffman v. Brandywine Hosp., 443 Pa. Super. 245, 250 (1995).

Under Pennsylvania case law, a hospital's duties to its patients are classified into four general categories: (1) the duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) the duty to select and retain only competent physicians; (3) the duty to oversee all persons who practice medicine within its walls as to patient care; and (4) the duty to formulate, adopt, and enforce quality care for its patients. See Thompson v. Nason

Hosp., 527 Pa. 330, 339-40 (1991) (adopting corporate negligence doctrine as standard applicable to hospitals).

None of the aforementioned duties extends a hospital's medical responsibilities to post-discharge patients beyond the four walls of the hospital building. Wilson points to no Pennsylvania decision recognizing a theory of negligence on the part of the hospital for not rendering assistance to a discharge patient located outside the facility.

Wilson claims that the Defendants were medically negligent for not physically assisting her into her daughter's sports utility vehicle which was on hospital grounds but outside the hospital building. (Pl.'s Compl. ¶ 18(e)). However, CHRH's discharge policy is that: "[i]f the patient/resident is discharged other than by ambulance, a member of the nursing staff accompanies the patient/resident by wheelchair to the entrance of the hospital." (Chestnut Hill Hosp. Policies & Procedures Manual ¶ 5). The applicable law shows, as does the record evidence, that CHRH only owed Wilson a post-discharge duty of care up to the "entrance of the hospital." Therefore, in order for Wilson to prove CHRH was negligent, she must establish by expert opinion that CHRH's policy does not comport with acceptable care standards and that, consequently, a post-discharge duty of care extends beyond the four walls of the physical hospital.

Wilson's expert, Lorraine Buchannan, R.N. ("Buchannan"), opines only that CHRH was negligent in "[f]ail[ing] to ensure that the personnel assigned to accompany and assist Mrs. Wilson out of the hospital . . . had [an] appropriate knowledge [of] the safe transfer [methods]." (Letter from Lorraine Buchannan, R.N. to Gilbert B. Abramson, Esq. of 11/11/99 p. 2). Indeed, Buchannan renders an opinion that assumes that there already is a duty to transfer or

assist the patient into a vehicle located outside the hospital entrance rather than opining as to whether a hospital has a duty to physically transfer or assist a discharged patient outside the hospital and the source of said duty. (See Buchanan Letter at. 2) (presuming a duty to transfer, focusing solely on the training deemed necessary to accomplish it). This opinion is insufficient to withstand Defendants’ motion for summary judgment. It fails to address whether CHRH’s written policy to escort discharged patients to the entrance deviates from acceptable medical practices dictated by law or hospital community standards. Only if the policy was shown to be contrary could the court or a jury find that CHRH was actually under a duty to transfer and/or assist. Because Wilson has not established that CHRH’s policy “deviates from the acceptable medical standards,” she cannot make a prima facie case of medical negligence at trial. Therefore, summary judgment must be granted to the Defendants.

**II. Wilson Has Not Shown, and Cannot Show, that Chestnut Hill  
Was Negligent in Not Providing Family Training.**

Wilson alleges that the Defendants were negligent because they “[f]ail[ed] to . . . take reasonable precautions to assure that Plaintiff could be safely transported from CHRH’s custody to that of [her] family.” (Pl.’s Compl. ¶ 18(d)). This claim has been refined through Wilson’s expert to an opinion that the Defendants failed to provide Wilson’s family with “vehicle transfer” training. (Pl.’s Answer to Def.’s Mot. for Partial Summ. J. pp. 11-12). Defendants argue in opposition that Wilson’s experts have failed to offer any evidence that establishes a causal link between their alleged negligence and Wilson’s injuries. (Def.’s Mot. for Partial Summ. J. pp. 8-10). Specifically, Wilson’s expert opines that Wilson’s family should

have been trained to transfer Wilson into a car using a “sit and pivot” technique. Defendants argue that because the family picked Wilson up in a Ford Explorer, a vehicle which requires a passenger to step-up into it, this “sit and pivot” maneuver would not have been useful; therefore, there is no causal link between the alleged failure to train and Wilson’s injuries.

“[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). However, the moving party is not required to “support its motion with affidavits or other similar materials *negating* the opponent’s claim.” Id. (emphasis in original). Certainly, a district court may grant summary judgment “so long as whatever is before the . . . court demonstrates” the requisite absence of a genuine issue of material fact. Id.

Here, it is uncontested that Wilson’s family did not engage in safe vehicle transfer training because they did not make an appointment to do so,<sup>2</sup> and that the discharge plan, up until hours before discharge, was that Wilson was to be transferred to a nursing home rather than return to her apartment.<sup>3</sup> The legal question with regards to the training claim becomes: “Did Defendants act in accordance with acceptable hospital standards given the intended nursing home

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<sup>2</sup> (See, e.g., Catherine Gordon Dep. p. 38) (stating that no training was performed because the family did not make an appointment); (see also Naughton Dep. p. 85) (stating that he “would have trained” Wilson to get in and out her daughter’s vehicle “[i]f the family [had] brought the vehicle to us.”).

<sup>3</sup> (See, e.g., Pl.’s Answer to Def.’s Mot. for Partial Summ. J. p. 3-4) (explaining family’s decision to take Wilson to her home rather than to nursing home).

discharge plan?

It is undisputed that CHRH was providing therapy to Wilson based on the premise that she would be transferred to a nursing home facility, not back to her own apartment. (See e.g., Busch Dep. p. 22) (recalling that family felt Wilson was not ready for discharge so they decided to release Wilson to Springfield nursing home). Therefore, to establish that CHRH failed to meet applicable standards such that the court could find that Wilson was owed a legal duty, her expert must show that CHRH was obligated to: (a) require vehicle training for Wilson's family even though: (i) the plan was for Wilson to be transferred to the Springfield facility and (ii) the family chose not to avail itself of such training; and (b) train the family immediately upon being informed that Wilson was being taken home by her daughter in her personal vehicle as opposed to be transferred to a nursing home.

In order for expert testimony to be competent, it "must be based on evidence of record or reasonable inferences drawn therefrom; it cannot be based on mere conjecture or assumption." Mauger & Co. v. Workmen's Comp. Appeal Bd., 143 Pa. Commw. 198, 205 (1991) (citing Collins v. Hand, 431 Pa. 378, 390 (1968)). However, Wilson's expert opines that CHRH should have trained Wilson's family based on the erroneous assumption that the plan was always that Wilson was to be released to her home. (See Buchanan Letter at 2-3) (concluding that family assistance would be required for Wilson to complete daily tasks as if she was expected to be home). As such, the opinion does not show that the hospital was under a duty to: (a) mandate training when the family never availed itself of the opportunity to engage in the training; (b) train the family where the plan was to transfer Wilson to a nursing home and the family was not to carry out such transfer; (c) immediately require training where the patient or

family changes the care plan on the morning of the intended discharge; or (d) inquire about the type of vehicle that would be used to take a discharged patient home, under the circumstances.

Wilson's expert, Buchannan opines that Defendants were negligent in not teaching Wilson's family the "sit and pivot" maneuver. The "sit and pivot" is a loading technique in which (i) the patient, standing on the ground or a level surface, faces away from the vehicle she wishes to enter, (ii) uses gravity to sit down onto the passenger seat (by a controlled fall), and (iii) then has her legs pivoted around into a proper sitting position. (Buchannan Letter at 2). Given that Wilson's daughter drove a Ford Explorer to CHRH to take her mother home, Defendants argue that training in this maneuver would have been of no assistance since the height of the sports utility vehicle would have made it impossible for Wilson to "sit down onto" the passenger seat. (Def.'s Mot. for Partial Summ. J. pp. 8-10). Accordingly, Defendants argue, Wilson cannot show causation. (Id.). The court agrees.

The seat in the Explorer is approximately thirty-two (32) inches off the ground. (Def.'s Mot. for Partial Summ. J. Ex. I). Because the height of the seat would require stepping up to get into a position to sit in the vehicle, the "sit and pivot" technique, as explained by Wilson's expert, could not have been accomplished in this instance. Indeed, Buchannan does not attempt to explain how the "sit and pivot" could have been used with Wilson's daughter's sports utility vehicle. (See Buchannan Letter at 2) (referring to the vehicle as a "car").

Wilson contends that Defendants are not entitled to summary judgment because they fail to explain why "the 'sit and pivot' technique could not [have] be[en] used with a[n] [Explorer] if the nurse provide[d] personal assistance and/or a footstool to help [Wilson] with the added height." (Pl.'s Answer to Def.'s Mot. for Partial Summ. J. pp. 11). As stated previously,

Wilson's argument fails because it assumes that the hospital was under any duty to assist a patient physically outside the hospital facility, even where the family had been properly trained.

**III. Even Assuming Negligence and Causation, There is No Evidence to Support a Claim for Punitive Damages.**

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 (1997)). Punitive damages are only 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,” and not in matters involving simple negligence. Interact, 1999 WL 159883, at \*3.

An “essential fact” needed to support a claim for punitive damages is that the defendant’s conduct must have been outrageous. Brownawell v. Bryan, 40 Pa. D. & C.3d 604 (1985). Outrageous conduct is an “act done with a bad motive or with reckless indifference to the interests of others.” Focht v. Rabada, 217 Pa. Super. 35, 38 (1970) (citing comment (b) to § 908 of the Restatement of Torts). “Reckless indifference to the interests of others” means that “the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.” Evans v. Philadelphia Transp. Co., 418 Pa. 567, 574

(1965). Simply pleading outrageous conduct does not satisfy the requirement of stating facts which, if proven, would form a basis for a jury concluding that the conduct was such that an award for punitive damages was warranted. Brownawell, 40 Pa. D. & C.3d at 604.

Wilson has pled that her injuries were due to the Defendants' "negligence, carelessness, and recklessness." (Pl.'s Compl. ¶ 18). However, she has failed to allege any facts indicating that the Defendants' conduct was outrageous. Therefore, on the averments pleaded in this case the court cannot conclude that Wilson has established a prima facie case which would warrant a jury determination that defendant's conduct was so reckless and indifferent as to make it highly probable that harm suffered by Wilson was likely. Because Wilson's averments are insufficient to support the demand for punitive damages, summary judgment must be awarded to the Defendants.

An appropriate Order follows.

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 CHESTNUT HILL REHABILITATION :  
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 HEALTHCARE : NO. 99-CV-1468

**JUDGMENT**

AND NOW, this 17<sup>th</sup> day of February, 2000, upon consideration of Defendants' (Chestnut Hill Healthcare and Chestnut Hill Rehabilitation Hospital) Motion for Partial Summary Judgment, and the Plaintiff's response in opposition, for the reasons stated in the attached memorandum, it is hereby ORDERED that Defendants' motion is GRANTED.

BY THE COURT:

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JAMES T. GILES

C.J.

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to