

TAMMY LYNN COLEMAN,	:	IN THE COURT OF COMMON PLEAS OF
Individually and as Parent and Maternal	:	LYCOMING COUNTY, PENNSYLVANIA
Guardian of Chase Coleman, minor child	:	
And Madeline Coleman, minor child, and	:	
TAMMY LYNN COLEMAN as	:	
Administratrix of the Estate of Darren	:	CIVIL ACTION - LAW
W. Coleman, deceased,	:	
Plaintiff	:	
	:	
vs.	:	NO. 99-01,665
	:	
TAYLOR LOGUE KISSELL;	:	
JOE LOGUE; ERIC ROBERT MARTIN;	:	
RICHARD F. MARTIN; CRAIG WILSON	:	
KISSELL; CODY GEORGE KISSELL;	:	
JAMES JOSEPH STEELE; ROBERT	:	
CRAIG MARTIN and DAVID E. YEAGLE,;	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: May 26, 2000

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Plaintiffs filed a Complaint against members of a hunting party for damages sustained when decedent was shot and killed by one of the hunters. Defendants filed Preliminary Objections.

HELD: Objections sustained. Plaintiffs failed to establish that the Defendants (other than the hunter who fired the shot) owed a duty to the decedent. The activity of hunting in itself imposed no duty to protect others and the mere association of members was insufficient to impose liability.

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**OPINION and ORDER**

The matters presently before the Court are the Preliminary Objections filed by Defendants in the above captioned matter to the Complaint of Plaintiff Tammy Lynn Coleman, which she brings individually, on behalf of her minor children, and as Administratrix of the Estate of Darren Coleman, deceased.

The Complaint alleges that on December 1, 1998, the decedent and Defendants were deer hunting on Defendant Steele's property in Cascade Township, Lycoming County. The hunters divided into two teams: Defendants Steele, Craig Kissell, Richard Martin and Craig Martin were the drivers, while Defendants Logue, Yeagle, Cody Kissell, Taylor Kissell, Eric Martin and the decedent were the watchers. Defendant Logue positioned the watchers. Around noon, Eric Martin spotted a deer and shot at it. Defendant Taylor Kissell, age 18, then saw the deer and fired four shots at it as it ran in a westerly direction, walking as he shot. One of the shots fired by Taylor Kissell struck the decedent, who was discovered at the base of a tree. The decedent was pronounced dead at the scene.

Plaintiffs claim all members of the hunting party are liable for their resulting damages, for a variety of acts (or more appropriately, for various circumstances of failing to act) such as failing to properly supervise and control the hunt, failing to ensure all weapons were zeroed in for accuracy, failing to ensure each defendant was properly trained to use his weapon and had been qualified with it, failing to ensure that each member of the hunting party was "emotionally mature enough to handle a fire arm [sic] and not become excited upon seeing a deer" (Complaint paragraph 22f), failing to ensure no member of the hunting party had used drugs or alcohol in the preceding 24 hours, failing to limit the number of shots one hunter could fire at a single deer, failing to comply with Pennsylvania hunting safety rules and failing to maintain communication with the other hunters. This list is not complete - the allegations are fully set forth as subparagraphs under the various Counts in the Complaint, with some variation as related to the individual Defendants.

Preliminary Objections have been filed on behalf of all Defendants with the exception of Taylor Logue Kissell, regarding the major issue presented: whether Plaintiffs have failed to affirmatively plead a duty owed by them to the decedent. Defendants rely upon the case of *Johnson v. Johnson*, 600 A.2d 965 (Pa.Super. 1991). In that case, the action also arose from a hunting accident and involved a hunting club. Two days prior, the senior club members conducted a safety meeting. On the day of the accident, a drive was conducted. During the drive, the decedent's nephew, a minor, fired two shots. One of the shots fatally wounded the decedent. Plaintiff subsequently filed a complaint in which she sought judgment against the individual members of the drive for failing to adequately control and supervise the nephew. *Id.* at 967. Defendant argued they owed no duty to protect the decedent from harm or to control the actions of the nephew. The trial court granted summary judgment in favor of all co-defendants (except the nephew's father<sup>1</sup>).

Instantly, Plaintiffs first claim *Johnson* is distinguishable because of the procedural posture: *Johnson* was decided on a motion for summary judgment after all of the evidence was in, while in this case Defendants have not yet answered the Complaint. However, in *Johnson*, the Superior Court found as follows:

While we agree with appellant that the testimony given in support of each motion for summary judgment is inadequate to prove absence of material fact, *we affirm the order of the trial court granting summary judgment because appellant has not alleged a cause of action upon which relief can be granted.*

*Id.* at 967 (emphasis supplied). The Court further stated “it is axiomatic that we may affirm the summary judgment if it was proper for any reason.” *Id.* at 969. The Court then considered

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<sup>1</sup> The Court reasoned that a parent had a duty to control the actions of his child.

whether plaintiff/appellant had established that defendants/appellees owed a duty to the decedent, which is recognized at law, and concluded she had not. The Court determined that defendants/appellees owed no duty to the decedent under the Restatement (Second) of Torts, case law or the Pennsylvania Games and Wildlife Code:

While Section 308<sup>2</sup> advances a general principle regarding the type of conduct which will support a finding of negligence, appellant must still establish that the appellees owed a duty to her decedent, which is recognized at law...

In the case *sub judice*, appellant suggests that we find that appellees owed a duty to Van Johnson to protect him from potential harm caused by any member of the hunting group. We disagree. Appellant is not alleging that appellees acted in a negligent manner. Rather she alleges that they failed to act when they were obligated to do so. The activity of hunting, in itself, cannot suffice to impose a duty upon each hunter to protect others solely because it is inherently dangerous. The mere association of members in this instance is also insufficient to impose liability.

*Johnson* at 970 (citations omitted). Therefore, although the Superior Court was asked to determine whether summary judgment was appropriate, the Court clearly considered the identical issue which is raised in the case before this Court, and affirmed the trial court's granting of summary judgment because they concluded no duty was owed to the decedent. Accordingly, *Johnson* is applicable to the instant case.

Plaintiffs also attempt to distinguish *Johnson* by claiming that in that case, the hunt was organized and

...not a group of individuals who were willy-nilly traipsing across the countryside, acting or firing their weapons at their individual whim...Unlike Johnson, wherein the Appellant did not allege that the Appellees acted in a negligent manner, in the instant matter, the Plaintiff has alleged that each and every individual acted negligently. This was a team hunt. As a team, each member has

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<sup>2</sup> Restatement (Second) of Torts §308 (1965).

certain obligations and duties to every other member of the team in order to accomplish the same goal. Absent any indication that any individual member disassociated himself from the team prior to the incident in question, each and every individual of that team has a duty and obligation to know exactly how the drive is conducted, what precautions must be taken to insure each member of the team's safety is not jeopardized by another member of that team...

Plaintiffs' Brief pp. 3-4. Plaintiffs' argument must fail. It is true that in *Johnson*, the Court stated that plaintiff did not allege defendants acted in a negligent manner. *Id.* at 3. However, the Court continued: "Rather, she alleges that they failed to act when they were obligated to do so." *Ibid.* The failure to act is exactly what Plaintiffs in this case aver makes Defendants liable. Further, Plaintiffs allege no fact whatsoever from which it can be inferred that any hunting team member acted negligently, nor undertook any action which created a duty upon the member to anticipate or prevent a negligent act by another member. Neither is there any basis in Pennsylvania law for imposing vicarious liability for the actions of other group members in the absence of a principal/agent, master/servant-employer/employee or partnership relationship.<sup>3</sup>

It is the opinion of this Court that *Johnson* controls the issue before us. Consequently, we must find Plaintiffs have not established that eight (8) of the Defendants, excepting Taylor Kissell, had a duty to the decedent, and their claims against these Defendants must fail.

Defendants also objected to the lack of specific material facts regarding the alleged negligence, pursuant to *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983). We agree Plaintiffs must more specifically plead the necessary facts to set forth the

claims against the remaining Defendant. Plaintiffs will be allowed to file an Amended Complaint.

Plaintiffs' claim in Count V for "other financial losses" suffered as a result of decedent's death and the claim in Count VI "such other damages" that are permissible in a wrongful death action are also objectionable under the *Connor* decision and must be stricken. Plaintiffs are directed to replead these claims.

Finally, Count V of the Complaint demands damages for "Decedent's loss to retirement and social security income." Complaint par. 27(c). These demands are not recoverable in a survival action and must be stricken.

**ORDER**

**AND NOW**, this 26<sup>th</sup> day of May 2000, the Preliminary Objections of Defendants Joe Logue, Eric Robert Martin, Richard F. Martin, Craig Wilson Kissell, Cody George Kissell, James Joseph Steele, Robert Craig Martin, and David E. Yeagle are sustained. The Complaint against these eight (8) Defendants is **HEREBY DISMISSED**.

Paragraphs 22(a-r), 22(p), 22(q), 23(r), 23(aa), 22(ab), 27(c), 27(d), and 30(d) of the Complaint are stricken. Plaintiffs shall file an Amended Complaint within twenty (20) days of the date of this Order.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator

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<sup>3</sup> Plaintiffs also attempt to distinguish *Johnson* as being an "organized" hunt, while the hunt at issue was conducted "willy-nilly." Conversely, Plaintiffs aver that this was a team hunt, as was the hunt in *Johnson*.

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