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|---|---|---------------------------------|
| 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                              | : | 1925(a) OPINION                 |

**Date: August 16, 2000**

**OPINION IN SUPPORT OF THE ORDER OF MAY 26, 2000 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

This case involves Plaintiffs' Wrongful Death and Survival actions brought as a result of their decedent being accidentally shot and killed by one member of a deer hunting party, with whom their decedent was hunting. This Court's Order of May 26, 2000, sustained the Defendants' Preliminary Objections and dismissed the Complaint against all of the Defendants except Taylor Logue Kissell, the hunting party member who is alleged to have fired the fatal shot.

Under the facts asserted in the Complaint, this Court found Plaintiffs cannot maintain their claims against the other members of the hunting party, including the member who owned the land where the hunt occurred, because no duty was owed to Plaintiffs' decedent, the members of the hunting party nor the landowner.

In response to Plaintiffs' Concise Statement of Matters Complained of on Appeal, the Court first states that our Opinion and Order of May 26, 2000, is not appealable, pursuant to Pa. R.A.P. No. 341. No request was made by Plaintiffs to amend our Order as set forth in Rule 341(c).

With respect to the matters set forth in Plaintiffs' Concise Statement, the Court relies upon its Opinion of May 26, 2000, with one exception. The exception concerns the assertions Plaintiffs now make that Defendant James J. Steele, the property owner where the incident occurred, is liable under theories related to "business invitee or gratuitous licensee, etc. . . ." or "attractive nuisance." (*See*, paragraphs 2 and 3 of Statement of Matters Complained of on Appeal.) These allegations were not set forth in the Complaint. In the Complaint, in regard to liability arising from property ownership, Plaintiffs averred only that Defendant James J. Steele was negligent for allowing the hunt to take place on his property and failing to supervise the hunt in seventeen (17) specific ways. *See* Complaint par. 24. These allegations do not raise any recognizable legal duty based upon ownership of real property owed Plaintiffs' decedent by this individual Defendant as a landowner; any such duty would be a duty to warn of defects of the land, of which he knew or should have known. Further, the Recreation Use of Land and Water Act, as set forth in 68 P.S. §477.1, *et. seq.*, which extends immunity to landowners who make their land available for recreational purposes, would preclude such liability. Plaintiffs allege no facts which suggest the Recreation Use of Land and Water Act immunity does not

apply, and further pleads no facts which would establish that any dangerous condition of the real property contributed to the unfortunate incident.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator  
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