

NORMAN E. JOHNSON, Plaintiff vs. ANGELA HAAS, M.D.; WILLIAM KEENAN, M.D.; JEFFREY VERZELLA, M.D.; AJAY KOSHEY, M.D.; KIM POORMAN, NURSE; and JOYCE FAIRFAX, NURSE, Defendants	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : NO. 02-01,253 : : CIVIL ACTION - LAW : : : : PRELIMINARY OBJECTIONS
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Date: January 10, 2003

OPINION and ORDER

Before the Court are the Preliminary Objections filed November 19, 2002, by Defendants Angela Haas, M.D., William Keenan, M.D., Jeffrey Verzella, M.D., and Ajay Koshey, M.D (hereafter Defendants). Plaintiff, Norman E. Johnson, had filed a Second Amended Complaint (the Complaint) on November 6, 2002. The present Preliminary Objections were in response to that Amended Complaint.

The issue before the Court is whether Plaintiff has pleaded facts in the Complaint that could establish a medical malpractice claim against the Defendants. Defendants contend that Plaintiff has not pleaded facts that could establish such a cause of action entitling Plaintiff to relief. Defendants argue that Plaintiff has failed to plead facts that state an act or omission by Defendants that would give rise to a cause of action for medical malpractice. Defendants also argue that the facts pleaded in the Complaint do not give rise to a claim for attorney fees or punitive damages.

Plaintiff responds by arguing that the Complaint does state a cause of action that would entitle him to relief. Plaintiff argues that the Complaint alleges that he has suffered

a substantial and permanent injury, that the treatment rendered by the physicians he saw did not alleviate the pain or remedy the situation, and that for four months he was denied access to adequate medical professionals that could have rendered him effective treatment. Plaintiff argues that the facts pleaded in his Complaint demonstrate a claim for medical malpractice against the Defendants.

A preliminary objection, in the nature of a demurrer, should only be granted when it is clear from the facts pleaded that the party has failed to state a claim upon which relief can be granted. *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1185, 1191 (Pa. 2001). The reviewing court in making such a determination “is confined to the content of the complaint.” *In re Adoption of S.P.T.*, 783 A.2d 779, 781 (Pa. Super. 2001). “The court may not consider factual matters; no testimony or other evidence outside the complaint may be adduced and the court may not address the merits of matter represented in the complaint.” *Ibid.* The court must admit as true all well pleaded material, relevant facts and any inferences fairly deducible from those facts. *Willet v. Pennsylvania Med. Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997). “If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.” *Ibid.*

After reviewing the allegations in the Second Amended Complaint, it is clear that Plaintiff has not pleaded facts that could establish a cause of action for medical negligence against the named defendants. In order to establish a medical negligence claim, a plaintiff must prove (1) that the defendant owed the plaintiff a duty; (2) the defendant breached that duty; (3) the breach of duty was the proximate cause in bringing about the harm suffered; and (4) the

damages suffered by the plaintiff resulted directly from that harm. *Mitzelfelt v. Hamrin*, 584 A.2d 888, 891 (Pa. 1990); *Rauch v. Mike-Mayer*, 783 A.2d 815, 824 (Pa. Super. 2001); *Gregorio v. Zeluck*, 678 A.2d 810, 813 (Pa. Super. 1996). The claims against Defendants Haas and Keenan can be disposed of easily. The Complaint contains no factual allegations against Defendants Haas and Kennan stating the actions or inactions they took concerning the medical treatment of Plaintiff. The only mention of Defendants Haas and Keenan is that both were doctors at the Lycoming County Prison. Thus, the Complaint contains no medical malpractice claim against Defendants Haas or Kennan.

As to the claim against Defendant Verzella, the facts pleaded, while more extensive than those against Haas and Keenan, are not sufficient to make out a claim of medical negligence. The Complaint alleges that Defendant Verzella examined Plaintiff, and that during this examination it was discovered that the ear canal was bleeding. Plaintiff further states in the Complaint that Defendant Verzella “treated the injury” despite not being an ear, nose, and throat physician with the specialized skill or knowledge to properly treat an ear injury. These facts, if proven would not entitle Plaintiff to relief.

The Complaint is bereft of facts that state the nature of the treatment Defendant Verzella provided Plaintiff, that such treatment was inappropriate, or negligent in its rendition. The Complaint lacks facts regarding the circumstances of the examination and the knowledge of Defendant Verzella regarding Plaintiff’s medical condition and history. There are also no factual allegations concerning the conduct of the examination itself. All of these facts would be necessary to plead that the conduct of Defendant Verzella fell below the standard of care. These facts would also be necessary to plead that the actions or inactions of Defendant Verzella

were the proximate cause of Plaintiff's hearing loss or increased the risk that Plaintiff could suffer a hearing loss. As the Complaint stands, the facts alleged against Defendant Verzella do not state a claim of medical malpractice against him.

The claim against Defendant Koshey suffers from similar factual deficiencies. The Complaint alleges that Defendant Koshey examined Plaintiff. Following this examination, Defendant Koshey treated Plaintiff by prescribing Motrin for the pain. These factual allegations against Defendant Koshey, if true, would not establish a claim for medical negligence. The Complaint is devoid of facts regarding the circumstances of the examination and the knowledge possessed by Defendant Koshey concerning Plaintiff's medical condition and history. There are no factual allegations in the Complaint regarding the conduct of the examination itself nor that the treatment rendered was inappropriate.

No facts have been pleaded that would provide a way to determine whether the prescribing of the Motrin fell below the standard of care. There are no facts asserted from which a trier of fact could determine whether the prescribing of Motrin was the proximate cause or increased the risk of hearing loss. The missing factual allegations would also shed light onto whether Defendant Koshey should have done something else in the way of treatment; the failure of which caused Plaintiff's hearing loss or increased his risk of hearing loss. As the factual allegations in the Complaint stand, they do not state a claim for medical negligence against Defendant Koshey that would entitle Plaintiff to relief.

In conclusion, Plaintiff has not pleaded factual allegations against the Defendants, which if true, that would establish a claim for medical negligence. Therefore,

Defendants' Preliminary Objections as to the legal sufficiency of the Second Amended Complaint are granted.¹

ORDER

It is hereby ORDERED that the Preliminary Objection filed November 19, 2002, by Defendants Angela Haas, M.D., William Keenan, M.D., Jeffrey Verzella, M.D., and Ajay Koshey, M.D., is granted. The claims against Defendants Angela Haas, M.D., William Keenan, M.D., Jeffrey Verzella, M.D., and Ajay Koshey, M.D. are dismissed.

BY THE COURT:

William S. Kieser, Judge

cc: Robin E. Read, Esquire
Gary L. Weber, Esquire
Norman E. Johnson – ES-6785
SCI Smithfield; P. O. Box 999; Huntingdon, PA 16652
Judges
Christian J. Kalas, Esquire

¹ The Court need not decide the issues raised by the Defendants concerning the issues of attorney fees and punitive damages since the Court granted the preliminary objection in the nature of a demurrer and dismissed the claims against the Defendants.