

WANDA P. LITTLE, Plaintiff vs. HURON INSURANCE COMPANY, a/k/a, HARLEYSVILLE INSURANCE COMPANY, Defendant	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : : NO. 03-00,994 : : : PRELIMINARY OBJECTIONS
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Date: November 6, 2003

OPINION and ORDER

Before the Court for determination are the Preliminary Objections of Defendants Casey Wayne Engle, Barbra H. Merk, and Daniel L. Merk (“Merks”) filed August 18, 2003 and the Preliminary Objections of Defendant Huron Insurance Company, a/k/a, Harleysville Insurance Company (“Huron”) filed September 12, 2003. The case *sub judice* arises out of a motor vehicle accident that occurred on June 26, 2001. Plaintiff Wanda P. Little (“Little”) filed a Complaint on June 25, 2003 alleging that she has suffered significant physical injuries as the result of the accident and that those injuries were the result of Casey Engle’s negligent operation of his motor vehicle.

In response to the Complaint, Defendants filed the Preliminary Objections that are presently before the Court. The Preliminary Objections of Merks contain a motion to strike several paragraphs of the Complaint and a demurrer to the averment that Barbra and Daniel Merk are liable for the alleged negligent driving of their son, Casey. The Preliminary Objections of Huron joined in and incorporated by reference Merks’ preliminary objections. In between the filing of Defendants’ Preliminary Objections, Little filed an Amended Complaint

on September 8, 2003. Defendants have not filed preliminary objections that specifically address the Amended Complaint.

The Court must deny the preliminary objections filed by Merks and Huron. Prior to 1991, if an amended complaint was filed before the preliminary objections were argued and decided by a court, a party did not have to file new preliminary objections, but could “order down the original objection for argument as well as the amendment” if the amended complaint did not address the issues raised in the initial preliminary objections. Pa. R.C.P. 1017, Explanatory Comment 1991; *see also, Koenig v. Int’l Bhd. Of Boilermakers*, 426 A.2d 635, 639 (Pa. Super. 1980); *Advance Bldg. Servs. v. F & M Schaeffer Brewing Co.*, 384 A.2d 931, 933 (Pa. Super. 1978). The 1991 amendments to Pa. R.C.P. 1028 changed this practice.

A party may file an amended complaint as a matter of course within twenty days of service of the preliminary objections. Pa. R.C.P. 1028(c)(1). If the plaintiff does file an amended complaint within the twenty days, then the preliminary objections “to the original pleading shall be deemed moot.” *Ibid.* If a party has objections to the amended complaint, then he must file new preliminary objections to that pleading. Pa. R.C.P. 1028(f).

At first glance, it would appear that the Defendants would need to file new preliminary objections. Little filed an Amended Complaint within the twenty-days of the date the Merks’ Preliminary Objections were filed. Usually, this action would have rendered the preliminary objections filed by all Defendants moot. However, Little did not file the Amended Complaint within twenty days of service of the preliminary objections.

Despite this, the Court concludes that the twenty-day window had not shut. This is because the time limit did not begin to run until Little was served with a copy of the filed

preliminary objections. Copies of legal papers other than original process may be served on a party by mail. Pa.R.C.P. 440(a)(2). Service is deemed complete upon mailing. Pa. R.C.P. 440(b). Preliminary objections can be filed by mail, but the document is not filed until the appropriate officer receives it. Pa.R.C.P. 205.1. The Certificate of Service attached to Merks' Preliminary Objections states that a copy of the Preliminary Objections was mailed to Little on August 15, 2003. Merks' Preliminary Objections were filed on August 18, 2003. The Amended Complaint was filed September 8, 2003. The Scheduling Order setting the date for argument on the preliminary objections and the briefing schedule was signed on August 22, 2003 and filed August 26, 2003. The Prothonotary's Office mailed the Order and a filed copy of the Preliminary Objections to Little on August 26, 2003.

The Court reaches the conclusion that the time period does not begin to run until a filed copy is mailed to Little because to hold otherwise would create an anomaly in the Rules of Civil Procedure. If service of the unfilled preliminary objections was deemed complete upon the mailing, then an illogical result may occur. It is conceivable that preliminary objections could be served and subsequently filed after twenty days have passed because of some problem with the mail. It would be an odd result to require a plaintiff to take action on preliminary objections in order to meet the twenty-day requirement when the preliminary objections have not been officially filed. In the present case, the Amended Complaint was filed within twenty days of when the preliminary objections would have been filed and copies mailed out. As such, the filing of the Amended Complaint within the twenty-day window mooted all preliminary objections to the original Complaint.

Therefore, the Preliminary Objections before the Court are denied. If the Amended Complaint is deficient, then the Defendants should file new preliminary objections to the Amended Complaint.

ORDER

It is hereby ORDERED that the Preliminary Objections of Defendants Casey Wayne Engle, Barbra H. Merk, and Daniel L. Merk filed August 18, 2003 are denied.

It is also hereby ORDERED that the Preliminary Objections of Defendant Huron Insurance Company, a/k/a, Harleysville Insurance Company (Huron) filed September 12, 2003 are denied.

BY THE COURT:

William S. Kieser, Judge

cc: Paul T. Grater, Esquire
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Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)