

CATHY J. MORRISON and ROY	:	IN THE COURT OF COMMON PLEAS OF
WALDMAN, as Parents and Natural	:	LYCOMING COUNTY, PENNSYLVANIA
Guardians of KATE LYNN MORRISON,	:	
a minor,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 02-01,009
	:	
THE WILLIAMSPORT HOSPITAL AND	:	
MEDICAL CENTER, SUSQUEHANNA	:	
HEALTH SYSTEM, INC., TIMOTHY M.	:	
HEILMAN, M.D. and HORACIO MIGUEL	:	
AGUEROS, M.D.,	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: January 14, 2003

MEMORANDUM OPINION and ORDER

Before the Court for determination are the Preliminary Objections of all the Defendants, which were filed on October 30, 2002. Argument was held on January 2, 2003 following briefing of the preliminary objections by each party.

The Complaint, which was filed on October 8, 2002, is a medical malpractice claim in which Plaintiffs seek to recover damages on behalf of their minor child, Kate Lynn Morrison, who was born with severe neurological deficits on May 10, 1996. The neurological deficits are allegedly the result improper medical care rendered by the named defendants just before or after the time of her birth.

In their first preliminary objection, Defendants seek to demur or strike the claims asserted for punitive damages. After reviewing the entire Complaint, the Court is satisfied that at this stage the claims for punitive damages are appropriately pleaded. The only exception in that regard is the allegations contained in paragraphs 49 and 52 that assert liability

against Defendants, Doctors Heilman and Agueros, for punitive damages based upon various wrongful conduct including “gross negligence.” Gross negligence is not a permissible standard upon which to assert punitive damages. *See*, 40 P.S. §1301.8-A(b). Accordingly, the reference to gross negligence in those paragraphs will be stricken.

Defendants’ second preliminary objection seeks a more specific pleading because of the reference in paragraphs 56 and 57 of the Complaint to “unidentified nurses, nursing staff, administrative staff and employees” and “physicians, medical staff and nurses.” The Court agrees that those pleadings are not sufficiently specific. The allegations must be more specifically pleaded so as to advise Defendants as to the appropriate identity or means of identifying those individuals whom Plaintiffs believe acted inappropriately.

Defendants’ third preliminary objection is a motion to strike various general allegations of negligence. The Court believes that Plaintiffs have not used the appropriate language in all of the pleadings regarding the alleged acts of negligence. For the most part, the complaint clearly asserts specific acts of negligence such as would allow Defendants to answer the allegations without confusion. Nevertheless, some of Plaintiffs’ pleadings, which will be referred to in the Order, do assert general allegations that may permit Plaintiffs to inappropriately amend their pleadings at a later stage in the case if not stricken or repleaded. Accordingly, the following Order will be entered under the doctrine of *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983)

ORDER

It is ORDERED and DIRECTED as follows:

1. The term “gross negligence” is hereby stricken from paragraphs 49 and 52 of the Complaint.
2. Paragraphs 56 and 57 of the Complaint are stricken to the extent that they refer to unidentified “nurses, nursing staff, administrative staff and employees” and also to unspecified “physicians, medical staff and nurses.”
3. The following subparagraphs of the Complaint are hereby stricken due to lack of specificity and generality of pleading: In paragraphs 48 and 51, the sub-paragraphs (mm), (qq), (ss), (tt), (uu), (vv), (ccc), (ddd), (fff); in paragraph 56, the sub-paragraphs (a), (b), (c), (f), (j), (k), (l), (p), (q), (r), (s), (t), (y); in paragraph 63, the sub-paragraphs (a)(ii), (a)(iii), (a)(iv), (v); in paragraph 67, the sub-paragraph (c).
4. The word “negligently” is stricken from the sub-paragraph (bbb) of paragraphs 41 and 51. However, the Court notes that to any extent the Complaint would be interpreted as asserting a separate cause of action through sub-paragraph (bbb) of paragraphs 48 and 51 for the tort of negligent misrepresentation the demur is sustained; the Court regards this allegation, as pleaded, as being in support of an act of negligence and/or willful, wanton conduct, or reckless indifference.

5. Plaintiffs shall have a period of twenty days from notice of filing of this Order in which to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: David Bahl, Esquire/Richard Schluter, Esquire
Joseph P. Lenahan, Esquire/Anthony L. Sallavanti, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)