



abdominal pain. Around 9:00 that night, Joyce Blair, Brenda's mother, took Brenda to the Williamsport Hospital's emergency room. At 11:45 p.m., Dr. Simms examined Brenda and ordered blood studies. He diagnosed her with acute abdominal pain. He discharged Brenda at 1:40 a.m. after proscribing her Levsinex and advising her to increase her fluids and follow up with her family physician.

At 6:00 a.m. on June 20, 2001, the Williamsport Hospital called Brenda and informed her that she had an elevated white blood count. At 8:15 a.m. that day, Brenda went back to the emergency room because her abdominal pain had worsened. She complained of increasing lower abdominal pain, vomiting, and diarrhea. Dr. Datta examined Brenda. The examination revealed that Brenda's abdomen was tender and no bowel sounds were present. Dr. Datta ordered an IV, labs, an abdominal and pelvic CT scan, and intravenous IV Toradol and Droperidol. The lab work indicated an elevated white blood count, elevated segs, and decreased lymphs. The pelvic CT scan showed posterior pelvic fluid and inflammatory changes. Dr. Datta consulted Dr. Mehta. Dr. Mehta requested that Brenda be brought to her office at the hospital.

Dr. Mehta's examination of Brenda found that Brenda had a significant amount of abdominal pain and generalized tenderness. Brenda also complained of continued nausea. Dr. Mehta's impression was moderate to severe abdominal and pelvic pain with unknown etiology. Dr. Mehta decided to perform a laparoscopy on Brenda. At 1:36 p.m. on June 20, 2001, Brenda was admitted to the Williamsport Hospital. At 6:35 p.m., Dr. Mehta performed the laparoscopy. The pelvic organs including tubes, ovaries, and uterus were found to be

normal. There was a lot of small bowel distension caused by gas making it impossible to view the appendix.

Following the laparoscopy, Brenda received pain medication at 9:00 and 11:00 p.m. Early in the morning on the 21<sup>st</sup>, Brenda was given additional pain medication and had lab work done. The lab work indicated that her white blood count was elevated, but not as high as before, and decreased segs. Brenda received pain medication at 9:30 a.m. and again at 2:30 p.m. Dr. Mehta ordered additional blood work at 4:00 p.m. It showed a slight decrease in white blood count, but it was still elevated. Dr. Mehta concluded that Brenda should be discharged. Dr. Mehta wrote prescriptions for antibiotics and pain medication. Brenda was discharged shortly thereafter, despite being in significant pain.

Brenda's pain continued while she was at home. She remained in bed and could not eat. On June 24, 2001, Brenda called the Williamsport Hospital emergency room to see if anything could be done for the gas pain she was experiencing. She was advised to take Gas X. Brenda took the Gas X, but it did not relieve her pain.

On June 25, 2001, Brenda called Dr. Mehta's office complaining of a lot of gas and significant abdominal pain. Brenda was instructed to take a dose of a laxative that day and use as needed the next day. Joyce Blair purchased the laxative for Brenda and Brenda took some of it. After ingesting the laxative, Brenda experienced severe pain and her condition worsened to the point of delirium.

On June 27, 2001, an ambulance transported Brenda to the Williamsport Hospital emergency room. She arrived at 5:20 a.m. An emergency room physician examined her. She had an elevated pulse and respiratory rate. Brenda's abdomen was distended and

tender. Brenda was pale, cool, and clammy with mottling of her arms and legs. Her blood pressure had dropped, and she had an elevated white blood count. A CT scan of the abdomen showed a significantly distended stomach with air in the small bowel. The stool was positive for blood.

Brenda was admitted to the intensive care unit at 11:24 a.m. At 3:20 p.m. she underwent abdominal exploratory surgery. The surgical exploration revealed total necrosis of the small bowel with additional ischemic damage to the right colon and transverse colon. The surgeon stopped midway through the surgery to discuss Brenda's condition with her family. Brenda's abdomen was closed and she was returned to the Critical Care Unit at 4:45 p.m.

On June 28, 2001, at 2:00 a.m., nursing personnel contacted Brenda's family because her condition had deteriorated. Brenda died at the Williamsport Hospital on June 28, 2001 at 2:33 a.m. On June 29, 2001, an autopsy was performed that concluded the cause of death was complications of fulminant inflammatory bowel disease including mesenteric thrombophlebitis with bowel infarction.

The first Preliminary Objection Simms and Datta raise is a demurrer to Plaintiffs' negligent infliction of emotional distress claim. They contend that Plaintiffs have failed to plead facts necessary to establish the cause of action. Specifically, Simms and Datta argue that Plaintiffs did not witness an identifiable traumatic event and that they did not recognize that the conduct of Simms and Datta was negligent at the time their treatment was occurring.

The second Preliminary Objection is a Motion to Dismiss the Claim for Punitive Damages. Simms and Datta argue that the conduct alleged by Plaintiffs in the Amended

Complaint does not rise to the level of outrageousness that would warrant punitive damages. They assert that mere negligence or even gross negligence is insufficient to make out a claim for punitive damages. Simms and Datta argue that the allegations in the Amended Complaint are of ordinary negligence and as such do not rise to level of outrageousness required for an award of punitive damages.

In response, Plaintiffs argue that the Amended Complaint sets forth the necessary facts to establish claims for negligent infliction of emotional distress and punitive damages. Plaintiffs assert that they have alleged that they observed a traumatic event and were concerned about the inappropriate care rendered Brenda Blair. Plaintiffs contend that they witnessed the deteriorating condition of Brenda and her eventual death. They also contend that when they witnessed the inappropriate medical care Brenda received they were suspicious of its inadequacy.

Addressing the Preliminary Objection to the punitive damages claim, Plaintiffs have withdrawn their request for punitive damages against Datta. Plaintiffs' Brief in Opposition to Preliminary Objections of Defendants Aaron D. Simms, M.D. and Buphinder S. Datta, M.D. to Plaintiffs' Amended Complaint, *Blair v. Mehta*, No. 03-00,0954 at 7, n.3 (Lycoming Cty. 2003). The Preliminary Objection to the punitive damages claim will be granted in this respect and that claim against Datta will be stricken. However, Plaintiffs argue that the conduct of Simms was outrageous and warrants an award of punitive damages. Plaintiffs contend that the Amended Complaint sets forth facts that demonstrate how Simms acted recklessly in treating Brenda. Plaintiffs assert in the Amended Complaint that Simms failed to attend to Brenda for three hours. They also allege that when he did treat her Simms

only ordered blood work and discharged Brenda without waiting for the test results despite knowing her symptoms, which indicated that she was seriously ill, and that she was in extreme pain. Plaintiffs argue that Simms acted recklessly in treating Brenda by disregarding her symptoms and pain.

A preliminary objection, in the nature of a demurrer, should only be granted when it is clear from the facts 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.*

**Negligent Infliction of Emotional Distress**

“The basis of recovery for a claim of negligent infliction of emotional distress is the traumatic impact of viewing the negligent injury of a close relative.” *Love v. Cramer*, 606 A.2d 1175, 1177 (Pa. Super. 1992). To establish a claim for negligent infliction of emotional distress, the plaintiff must show that:

- (1) he was located near the scene of the accident as contrasted with one who was a distance away from it;

(2) the shock resulted from a direct emotional impact upon the plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence; and

(3) the plaintiff and the victim were closely related as contrasted with an absence of any relationship or the presence of only a distant relationship.

*Sinn v. Burd*, 404 A.2d 672, 685 (Pa. 1979); *Love*, 606 A.2d at 1177. The plaintiff must experience a sensory and contemporaneous observation of a discrete and identifiable traumatic event to trigger recovery. *Love*, 606 A.2d at 177. While the plaintiff does not have to know at the time that the alleged conduct, which injured his relative, was negligent, he must be aware at the time that something was wrong or lacking. *McElwee v. Leber*, 57 Pa. D. & C. 4<sup>th</sup> 378, 396 (Lycoming Cty. 2002). The plaintiff must also suffer physical injury in the form of physical manifestations of the emotional distress as a result of witnessing the harm to the close relative. *See, Love*, 606 A.2d at 1177.

The demurrer to the negligent infliction of emotional distress claim will be granted in part and denied in part. A fair reading of the Amended Complaint illustrates two events that Plaintiffs allege trigger recovery – the deterioration of Brenda’s medical condition and her death. It is unclear from the Amended Complaint who if any of the Plaintiffs observed the death of Brenda and how they made that observation. There are no factual allegations that establish this. As such, the demurrer is granted as to this theory.

As to the deteriorating condition theory, the demurrer is granted only to Joseph Blair’s claim. The Amended Complaint has pleaded that Joyce Blair and Catherine Winnie were present and observed the medical care rendered by Simms and Datta to Brenda Blair on June 19 and June 20, 2001. The Amended Complaint has also pleaded that at the time this care

was given they were suspicious and concerned about said care. Further, the Amended Complaint alleges that they observed the deterioration of Brenda's condition and her distress and pain from June 21, 2001 through June 27, 2001. Joyce Blair and Catherine Winnie have pleaded a cause of action for negligent infliction of emotional distress against Simms and Datta.

Joseph Blair has failed to plead a negligent infliction of emotional distress cause of action. The Amended Complaint does not allege that he was aware that there was something wrong with the treatment given to his daughter. The Amended Complaint does allege that he expressed concern to Drs. Simms, Datta, and Mehta, but it does not say when that concern was expressed so as to indicate that he was aware that there was something wrong with the medical care while Simms and Datta were administering it. As such, Joseph Blair has failed to state a cause of action for negligent infliction of emotional distress against Simms and Datta.

### **Punitive Damages**

The Court will now address the motion to dismiss the punitive damages claim against Simms. "Punitive damages may be awarded for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others." 40 P.S. §1303.505(a). The purposes of punitive damages are to punish a defendant for his outrageous conduct and to deter others from engaging in similar conduct. *Judge Tech. Servs. v. Clancy*, 813 A.2d 879, 888 (Pa. Super. 2002). Punitive damages will not be awarded for ordinary negligence or even gross negligence. *Slappo v. J's Dev. Assoc. Inc.*, 791 A.2d 409, 417 (Pa. Super. 2002).



Punitive damages are permitted only in cases of outrageous behavior. For purposes of punitive damages, outrageous behavior is conduct that shows an evil motive or reckless indifference to the rights of others. *Slappo*, 791 A.2d at 417. An individual acts recklessly when the “ ‘actor knows, or has reason to know, ... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or fail to act, in conscious disregard of, or indifference to, that risk.’ ” *Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1097 (Pa. 1985) (quoting Restatement (Second) Torts §500, comment a (1965)).

In their totality the allegations as to Dr. Simms assert he discharged Brenda Blair without waiting for test results disregarding her symptomatology and without regard to the risk she was suffering from the conditions which caused her death of which he knew or should have known. The Court cannot hold that as a matter of law the allegations made by the Plaintiffs against Simms are insufficient to warrant an award of punitive damages. Such a holding would be premature. The pleadings sufficiently state Dr. Simms’ treatment was rendered with reckless indifference to the rights of Brenda Blair. The issue as to whether Simms’ alleged conduct and treatment was in disregard of a known risk and was so blatant as to justify the importance of punitive damages must be resolved by the trier of fact or by other appropriate motions, such as summary judgment. Therefore, the Preliminary Objections will be granted in part and denied in part.

Accordingly, the Preliminary Objections are granted in part and denied in part.

**ORDER**

It is hereby ORDERED that the Preliminary Objections of Defendants Aaron D. Simms, M.D. and Buphinder S. Datta, M.D. filed November 19, 2003 are GRANTED IN PART and DENIED IN PART.

The demurrer to Joyce Blair and Catherine Winnie's negligent infliction of emotional distress claim against Drs. Simms and Datta in Count V of the Amended Complaint based on their witnessing of Brenda Blair's death is GRANTED and the claim is DISMISSED in this respect.

The demurrer to Joseph Blair's negligent infliction of emotional distress claim against Drs. Simms and Datta in Count V of the Amended Complaint is GRANTED and the claim DISMISSED.

The Motion to Dismiss the Punitive Damages' claim against Dr. Datta in Count XIII of the Amended Complaint is GRANTED and the claim DISMISSED. Paragraph 147.7 is stricken from the Amended Complaint.

The demurrer to Joyce Blair and Catherine Winnie's negligent infliction of emotional distress claim against Drs. Simms and Datta in Count V of the Amended Complaint based on their witnessing the deterioration of Brenda Blair's medical condition is DENIED.

The demurrer to Plaintiffs' punitive damage claim against Dr. Simms is DENIED.

Plaintiffs shall have twenty days (20) after notice of this Order in which to file an Amended Complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Alan S. Baum, Esquire  
300 Four PPG Place, Pittsburgh, PA 15222-5404  
Mark T. Perry, Esquire  
300 Bank Towers, 321 Spruce Street; Scranton, PA 18503  
Clifford A. Rieders, Esquire/C. Scott Waters, Esquire  
David R. Bahl, Esquire/Brian J. Bluth, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)