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|--------------------------------|---|---------------------------------|
| KEVIN L. RICHARDS and COLETTE  | : | IN THE COURT OF COMMON PLEAS OF |
| RICHARDS, parents and natural  | : | LYCOMING COUNTY, PENNSYLVANIA   |
| guardians of MALORI and MONICA | : |                                 |
| RICHARDS, both minors          | : |                                 |
| Plaintiffs                     | : |                                 |
|                                | : |                                 |
| vs.                            | : | NO. 02-02,182                   |
|                                | : |                                 |
| PIATT TOWNSHIP,                | : |                                 |
| Defendant                      | : | 1925(a) OPINION                 |

*Date: March 17, 2004*

**OPINION IN SUPPORT OF THE ORDER OF DECEMBER 11, 2003 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant, Piatt Township has appealed this Court’s Opinion and Order of December 11, 2003, which denied in part and granted in part Plaintiffs’ Motion for Judgment on the Pleadings filed February 21, 2003. This is a Declaratory Judgment action in which Plaintiffs seek a declaration regarding the ability of the two minor plaintiffs to assert personal injury claims against Defendant Piatt Township arising out of an automobile accident that occurred on a Piatt Township road on January 2, 2000. At issue is the sufficiency of the notice given to Piatt Township under 42 Pa. C.S.A. §5522, which generally requires that parties give notice of their anticipated claims for personal injury or property damage against a township within six months of the date of the incident.

The Motion for Judgment on the Pleadings specifically asked this Court to address two issues. The first was whether the six-month notice requirement applied to the minor Monica Richards or did her minority toll the notice requirement until she reached her majority. The second was whether the June 26, 2000 letter sent to Defendant Piatt Township provided sufficient notice under 42 Pa. C.S.A. §5522 as to the claims of Malori Richards. This

Court held that the minority of Monica Richards did not toll the six-month notice requirement. This Court also held the notice given to the Township on behalf of Malori Richards was sufficient to give constructive notice of the accident to the Township. Therefore, the Motion for Judgment on the Pleadings as to the sufficiency of the notice relating to Malori Richards was granted.

On January 5, 2004, this Court issued an Order in compliance with Pa.R.A.P. 1925(b) directing Defendant to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the Order. Defendant filed the Statement of Matters on January 16, 2004. Upon reviewing the Statement of Matters, the Court concludes that its Opinion and Order of December 11, 2003 should be affirmed and the appeal dismissed.

In deciding a motion for judgment on the pleadings, a court may only consider the pleadings and documents that are properly attached to the pleadings. *Casner v. American Federation of State, County, and Municipal Employees*, 685 A.2d 865, 869 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. *Felli v. Dep't of Transp.*, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. *Ibid.*; *Casner*, 658 A.2d at 869.

In its Statement of Matters, Defendant argues that the basis of the Court's December 11, 2003 Opinion and Order was improper because the Complaint did not allege that Defendant had constructive notice under §5522(a)(3)(iii). In essence, Defendant is arguing

that the Court went beyond the pleadings in rendering its decision on the Motion for Judgment on the Pleadings. The Court does not view the Complaint so narrowly. A fair reading of the allegations in the Complaint is that the June 26, 2000 letter provided Defendant with notice of Malori Richards' anticipated claims, as required by §5522. Specifically, the Complaint alleged, "By letter dated June 26, 2000, Plaintiffs gave notice to Defendant in accordance with the requirements of 42 Pa.C.S.A. §5522."

A government unit is given notice of an anticipated civil action against it in two ways under §5522. The first is when it receives, within six months of the date of the incident, a written statement setting forth the name and residence address of the person to whom the cause of action has accrued; the name and residence address of the person injured; the date and hour of the accident; the approximate location where the accident occurred; and the name and residence or office address of any attending physician. 42 Pa.C.S.A. §5522(a)(1)(i)-(v). The second is if the government unit had actual or constructive notice of the incident or condition giving rise to the claim. 42 Pa.C.S.A. §5522(a)(3)(iii).

The Court did not go beyond the pleadings when it partially granted the Motion for Judgment on the Pleadings. The Complaint alleged compliance with the notice requirements of §5552. The Complaint did not limit its allegation of compliance with the notice requirement to either the written statement method or the actual/constructive notice method. Therefore, it was permissible for the Court to grant judgment on the pleadings with

respect to Malori Richards' claims on the basis that the Defendants had constructive knowledge of her claims.<sup>1</sup>

Furthermore, concluding that the Defendant did not have notice of Malori Richards' claims would be contrary to the policies underlying §5522. The six-month notice requirement is not meant to “ ‘erect an artificial and insurmountable barrier against honest claimants.’” *Rohrbach v. Harrisburg*, 45 Pa. D. & C. 3d 233, 235 (Dauphin Cty. 1987) (quoting *Zack v. Borough of Saxonburg*, 126 A.2d 753 (Pa. 1956)). The notice requirement of §5522 is to be used by the government unit as a shield, not a sword. *Yurechko v. Allegheny County*, 243 A.2d 372, 377 (Pa. 1967). Permitting the Plaintiffs to pursue Malori Richards' claims is the proper result in this case.

Accordingly, the Commonwealth Court should deny the appeal and affirm the Opinion and Order of this Court dated December 11, 2003.

BY THE COURT:

William S. Kieser, Judge

cc: David Knaur, Esquire  
411A East Main Street; Mechanicsburg, PA 17055  
Joseph Musto, Esquire  
Christopher M. Williams, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)

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<sup>1</sup> The Court readopts and reasserts the reasons set forth in its December 11, 2003 Opinion and Order which support the conclusion that the Defendant had constructive knowledge of Malori Richards' claims.