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| JEREMIAH W. SULLIVAN, | : | IN THE COURT OF COMMON PLEAS OF |
| | : | LYCOMING COUNTY, PENNSYLVANIA |
| Plaintiff | : | |
| | : | |
| vs. | : | NO. 02-02,265 |
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| U.S. AIRWAYS, INCORPORATED, a Delaware Corporation, CHAUTAUQUA AIRLINES, a New York Corporation, and DIANE ODEN, Individually, and as an Employee of Defendant Chautauqua, | : | |
| Defendants | : | MOTION FOR SUMMARY JUDGMENT |

***Date: April 8, 2004***

***OPINION and ORDER***

Before the Court for determination is Motion for Partial Summary Judgment of Defendants Chautauqua Airlines, Inc. and Diane Oden filed December 1, 2003. The Motion seeks to dismiss Plaintiff Jeremiah Sullivan's (Sullivan) claims that as a result of the Defendants' harassing and intentional actions they negligently caused him to suffer a stroke and intentionally inflicted emotional distress upon him. The Court will grant the motion and dismiss those aspects of Sullivan's claims.

This case arises out of an incident that occurred on December 16, 2001. Chautauqua is engaged in the commercial airline business. On the date in question, Chautauqua was operating Flight 4238 from Williamsport to Pittsburgh. Sullivan was a passenger on Flight 4238. Diane Oden was a flight attendant on that flight. During the flight, Sullivan conducted himself in a quiet and polite manner without incident. The flight landed at Pittsburgh National Airport. While the aircraft was taxiing to the terminal, Sullivan unfastened his seatbelt. Oden instructed Sullivan to re-fasten his seatbelt.

Sullivan alleges that he fastened his seatbelt in response to the initial request. Sullivan contends that this was not the end of the incident but that Oden again yelled down the plane, "fasten your seatbelt … fasten your seatbelt … the man in Row 9, fasten your seatbelt." Sullivan asserts that on the way out of the aircraft, he politely told Oden that he only had to be told once to fasten his seatbelt. According to Sullivan, Oden then jumped in front of him blocking the exit. She then grabbed Sullivan and pushed him back into the plane. While doing this, she yelled for the pilot to call security.

Sullivan asserts that Oden then ran down the stairs and into the terminal yelling for someone to call security. Upon entering the terminal, Sullivan contends that he saw Oden at the gate yelling to the gate attendants to call security. At some point, Marvin Hunt, a shift supervisor for Chautauqua Airlines, arrived and talked to Sullivan. Sullivan asserts that Hunt determined that Sullivan did nothing wrong and no further action was necessary.

Sullivan subsequently suffered a stroke on April 13, 2003. As a result of the stroke Sullivan claims to have sustained personal injuries. Sullivan also asserts that he suffers injuries from emotional distress as a result of Defendants' intentional actions.

In the Motion for Summary Judgment, the Defendants raise two arguments. The first is that Sullivan cannot recover for the stroke he suffered on December 13, 2003 because he has failed to establish a causal link between it and the alleged incident. The second is that Sullivan's intentional infliction of emotional distress claim in Count III of the Complaint should be dismissed because he did not seek medical treatment for the emotional distress allegedly caused by the incident and has failed to produce expert medical testimony to support the claim that he suffered severe emotional distress.

In response, Sullivan argues that he should be allowed the opportunity to prove that his stroke was caused by the incident. He argues that expert testimony is not required to prove the causal relationship because every person knows that a stroke may be caused by extreme stress. Sullivan asserts that he has and will testify that he suffered extreme stress as a result of the incident. With regard to his intentional infliction of emotional distress claim, Sullivan argues that his failure to seek medical treatment for his emotional distress does not bar his claim. Sullivan contends that he has in fact suffered physical manifestations of the emotional distress including prolonged headaches, upset stomach, involuntary muscle tension, physical pain, and nervousness. Sullivan further asserts that his treating physicians are available as witnesses to support this contention.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." ***Rauch v. Mike-Mayer***, 783 A.2d 815, 821 (Pa. Super. 2001); ***Godlewski v. Pars Mfg. Co.***, 597 A.2d 106, 107 (Pa. Super. 1991). The movant has the burden of proving that there are no genuine issues of material fact. ***Rauch***, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record " 'in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.'" ***Godlewski***, 597 A.2d at 107 (quoting ***Hower v. Whitmak Assoc.***, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that "are free and clear from doubt" and any

"doubt must be resolved against the moving party." ***Garcia v. Savage***, 586 A.2d 1375, 1377 (Pa. Super. 1991).

The Court will first address the causation issue regarding the stroke. "The law is well settled that expert testimony is not necessary when the cause of the injury is clear and where the subject matter is within the experience and comprehension of lay jurors." ***Montgomery v. Bazaz-Segal***, 798 A.2d 742, 752 (Pa. 2002). Expert testimony is not required where the injury is the natural and probable result of the accident, ***Lattaze v. Silverstrini***, 448 A.2d 605, 608 (Pa. Super. 1982), or where the event and the injury are " 'so closely connected and so readily apparent that a layperson could diagnose (except by guessing) the causal connection.'' ***Smith v. German***, 253 A.2d 107, 109 (quoting ***Florig v. Sears, Roebuck & Co.***, 130 A.2d 945 (Pa. 1957)). However, if the causal relationship is not obvious, then expert testimony is required to establish the causal relationship. ***Ibid***.

Sullivan may not obtain recovery for the stroke he suffered without expert testimony , which establishes the causal connection between the stroke and the alleged incident. Even if the Court was to recognize Sullivan's contention that everyone knows that extreme stress could cause a stroke, there are other factors that could cause a stroke. For instance, high blood pressure, alcohol or drug abuse, smoking, diabetic, increased cholesterol, age, gender, and genetics are all risk factors for a stroke. There is no testimony that states what actually caused the stroke, and there may be no definitive answer. However, a qualified medical expert would be able to parse through the possible causes and give an opinion to a reasonable degree of medical certainty. As such, without expert testimony, Sullivan has failed to produce evidence that would establish a causal connection between the stroke and the alleged incident.

The Court will now turn to the issue regarding Sullivan's intentional infliction of emotional distress claim. The tort of intentional infliction of emotional distress has been described as follows: "One who by extreme and outrageous conduct intentionally causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily injury to the other results from it, for such bodily harm."[1] ***Paves v. Corson***, 765 A.2d 1128, 1134 (Pa. Super. 2000), *aff'd in part and rev'd in part*, 801 A.2d 546 (Pa. 2002); Restatement (Second) Torts §46(1) (1965). Even when a plaintiff can show that a defendant's conduct is outrageous, the plaintiff must still prove through expert medical testimony that he actually suffered the claimed distress. ***Ibid***.; ***Paves***, 765 A.2d at 1134. "Where no such testimony is presented, and where the record reflects that the plaintiff[] did not seek medical assistance as a result of the alleged tortious conduct, there can be no recovery for intentional infliction of emotional distress." ***Paves***, 765 A.2d at 1134 (Plaintiff failed to establish a claim for intentional infliction of emotional distress when she did not present expert testimony to establish that her anxiety and depression were caused by the alleged deception and disposal of her property by her children.), *see also*, ***Kazatsky v. King David Memorial Park***, 527 A.2d 988 (Pa. 1987) (Plaintiffs failed to establish a clam for intentional infliction of emotional distress arising from alleged failure to maintain grave of their infant son and demand for additional payments because they failed to produce expert medical testimony regarding their emotional distress and did not seek medical assistance for said distress.)..

[1] The Supreme Court of Pennsylvania has not adopted §46(1)'s expression of intentional infliction of emotional distress as the law in the Commonwealth. ***Hoy v. Angelone***, 720 A.2d 745, 753 n. 10 (Pa. 1998); ***Kazatsky v. King David Memorial Park***, 527 A.2d 988 (Pa. 1987). However, the Superior Court has implicitly recognized the tort as defined by §46(1) in ***Hunger v. Grand Central Sanitation***, 670 A.2d 173 (Pa. Super. 1996); ***Field v. Philadelphia Elec. Co.***, 565 A.2d 1170 (Pa. Super. 1989); and ***Bratanus v. Lis***, 480 A.2d 1178 (Pa. Super 1989).

Sullivan's intentional infliction of emotional distress claim set forth in Count III of the Complaint must be dismissed. Sullivan has failed to produce expert testimony to substantiate that he suffered severe emotional distress. Also, there is no evidence that Sullivan sought medical treatment for his alleged emotional distress. Moreover, Sullivan admitted in his deposition testimony that he did not. Deposition of Jeremiah Sullivan, at 34 (November 11, 2003). Therefore, Sullivan has not produced evidence sufficient to establish severe emotional distress and his intentional infliction of emotional distress claim must fail.

Sullivan's assertion that his treating physicians are available to testify regarding his emotional distress and physical manifestations thereof does not relieve him of the burden of producing expert testimony on this issue. A Scheduling Order issued by this Court dated March 4, 2003 set August 15, 2003 as the cut off date for submission of Sullivan's expert reports. An Order was issued on October 27, 2003 extending the completion date of depositions to November 15, 2003 and dispositive motions to November 30, 2003. No extension of the expert report deadline was sought or granted. The time for submission of expert reports has passed without Sullivan producing any expert testimony concerning his emotional distress. Consequently, Sullivan has failed to meet his burden regarding his intentional infliction of emotional distress claim.

Accordingly, the Defendants' Motion for Summary Judgment is granted.

***O R D E R***

It is hereby ORDERED that Motion for Partial Summary Judgment of Defendants Chautauqua Airlines, Inc. and Diane Oden filed December 1, 2003 is GRANTED.

Sullivan may not seek recovery for the stroke he suffered on December 13, 2003.

Sullivan's intentional infliction of emotional distress claim set forth in Count III of the Complaint is dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Benjamin E. Landon, Esquire
David F. Wilk, Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)