

MS EMILY J. FIRTH, in her own right	:	IN THE COURT OF COMMON PLEAS OF
individually and on behalf of her husband,	:	LYCOMING COUNTY, PENNSYLVANIA
Mr. William Clarke Firth, Deceased,	:	
and as guardian ad litem on behalf of all	:	
persons entitled to share in the damages,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 05-00,686
	:	
MUNCY VALLEY HOSPITAL, also d.b.a	:	CIVIL ACTION
SUSQUEHANNA HEALTH SYSTEM,	:	
DAVID KAHLER, M.D.; and	:	
MARK D. BEYER, D.O.,	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: December 29, 2005

MEMORANDUM OPINION AND ORDER

Before the court for disposition are the preliminary objections of Defendants, Muncy Valley Hospital and Susquehanna Health System filed June 16, 2005 and the preliminary objections of Defendants, David Kahler, M.D. and Mark D. Beyer, D.O., filed on June 22, 2005. Argument was held on October 5, 2005.

This case was initiated by the filing of a Praecipe for Issuance of a Writ of Summons by Plaintiff on April 13, 2005 with Plaintiff being indicated as follows: “Ms. Emily J. Firth, in her own right individually and on behalf of her husband, Mr. William Clark Firth, deceased, and as trustee ad litem on behalf of all persons entitled to share in the damages, Plaintiffs.” Subsequently, the Prothonotary issued a writ addressed to the named defendants but captioned Plaintiff only as “Ms. Emily J. Firth”. The writ was properly and timely served on the defendants. Subsequently, in response to a rule to file complaint filed by the defendants Plaintiff filed a complaint with the named Plaintiff being the same as captioned on the Praecipe for Issuance of a Writ of Summons.

The complaint was filed on July 11, 2005. The complaint asserts wrongful death and survival clauses of action against the defendants as well as a claim for emotional distress to Emily J. Firth, individually. The action is based upon the alleged negligent care rendered to William Clark Firth, deceased husband of Emily J. Firth, by the defendants in April 2003, immediately prior to his death which occurred on April 24, 2003.

The preliminary objections of the Defendants initially challenge the propriety of the manner in which suit was initiated, specifically asserting that the Writ of Summons identified the Plaintiff only as "Ms. Emily J. Firth". It is asserted Emily J. Firth has no capacity to institute a wrongful death or survival action individually nor on behalf of others. Muncy Valley Hospital and Susquehanna Health System withdrew this preliminary objection at argument. The Defendants, Dr. Kahler and Dr. Beyer, have pursued that preliminary objection.

The court finds Defendants' first preliminary objection as to the status of Emily J. Firth to be without merit. In applying 40 Pa.C.S. Section 3373, 42 Pa.C.S. Section 8301 and 8302 as well as Pennsylvania Rule of Civil Procedure 2202, the court finds that the action was appropriately initiated, specifically as captioned in the Praecipe filed by the plaintiff. It appears to the court that the omission of the full caption on the Writ of Summons was an administrative error by an officer of the court and can not be attributed to be the fault of any kind on the part of Plaintiff. The caption on the writ was an action over which Plaintiff had little, if any, control. Plaintiff has also exercised good faith in seeing that the writ was appropriately served, that the complaint was promptly prepared and served and she has also filed certificates of merit. This court can not envision that any prejudice has occurred to the Defendants. This seems to be particularly true since when served with writ it is this courts understanding and belief, that the

Defendants were also served with the Plaintiff's Praecipe which obviously contained the correct caption.

The remaining preliminary objections of the Defendants, however, have merit and it will be necessary for the Plaintiff to file an amended complaint. First we will address those filed on behalf of Muncy Valley Hospital and Susquehanna Health System. Their fifth preliminary objection demurs to the emotional distress claims. Plaintiff at argument has withdrawn those claims and that preliminary objection will be granted. The same applies to their sixth preliminary objection in the nature of a motion to strike the claim for emotional distress damages. Their seventh preliminary objection is in the nature of a motion to strike or in the alternative a motion for more specific pleading. The court agrees that this objection raises appropriate deficiencies in the manner in which the complaint was pled. The same applies to the eighth preliminary objection. Their ninth preliminary objection is in the "nature of a failure of a pleading to conform to law" which asserts that the Plaintiff is asserting claim for both negligence and corporate liability. The court agrees that those are separate claims and need to be pled in separate counts. Accordingly, their ninth preliminary objection will also be granted.

The preliminary objections of Dr. Kahler and Dr. Beyer consist of preliminary objections to Count I of the complaint which sets forth the negligent infliction of a motion to distress claims and also seeking a more specific pleading as would relate to paragraph 33 of the complaint. As noted in relation to the claims of the hospital, there are insufficient facts alleged as to warrant the pursuit of a claim for emotional distress and therefore that preliminary objection and the nature of a motion of demurrer is also to be granted. Finally, the court agrees

that paragraph 33 needs to be more specifically pled.

Accordingly, the following order:

ORDER

The preliminary objections of the Defendants, Muncy Valley Hospital and Susquehanna Health System, filed June 16, 2005, are DENIED as to preliminary objections 1, 2, 3, and 4, which object to the manner and mode in which the complaint was filed by the captioned Plaintiff. The motions to strike and for more specific pleading set forth in preliminary objections 7, 8, and 9 are GRANTED.

The preliminary objections of Defendants, David Kahler, M.D. and Mark D. Beyer, D.O., filed June 22, 2005 seeking a motion to strike for failure to state a claim upon which relief can be granted because of the manner and name in which the suit was initiated are DENIED. The preliminary objections seeking a more specific pleading to the allegations of the complaint in paragraph 33 are GRANTED.

The preliminary objections of all defendants to the claims for negligent infliction of emotional distress are GRANTED and those claims are stricken.

Plaintiff shall have a period of twenty (20) days from the notice of the entry of this order in which to file an amended complaint.

BY THE COURT,

William S. Kieser, Judge

cc: Bonnie L. Kift, Esquire-121 St. Clair Circle, Ligonier, PA 15658
John C. Conti, Esquire-Two PPG Place, Suite 400, Pittsburgh, PA 15222
David R. Bahl, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)