R. T., Parent and Natural	:	IN THE COURT OF COMMON PLEAS OF
Guardian of A. T., a Minor,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 04-01,513
	:	
S. T., Individually and as	:	
Parent and Natural Guardian of M. T.,	:	
a Minor	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: March 16, 2005

OPINION and ORDER

Before the court for determination are the Preliminary Objections of Defendants S. T. and M. T., a minor, filed December 1, 2004. The court will grant the preliminary objections.

Background

The above captioned matter was instituted with the filing of a writ of summons on September 13, 2004. Plaintiff R. T. as parent and natural guardian of A.T., a minor, filed a complaint on November 22, 2004. Defendants filed preliminary objections to the complaint on December 1, 2004. Plaintiffs filed an amended complaint on December 22, 2004. At argument on February 7, 2001, counsel stipulated the original preliminary objections were to be considered as filed against the amended complaint.

In the amended complaint, Plaintiffs have asserted negligence and battery claims against the Defendant S. T. The amended complaint, which incorporates the original complaint, alleges the following facts. Defendant S. T. is the parent and natural guardian of M. T., a minor. Plaintiff R. T. is the parent and natural of A. T., now age 12. On July 14, 1999,

M. T. sexually assaulted A. T. As a result of this assault, A. T. has had difficulty sleeping, suffered emotional distress, and a lack of confidence.

Plaintiffs allege that S. T. was negligent in failing to supervise M. T. when he knew or should have known M. T. would sexually assault A. T.; in failing to have in place appropriate safeguards to ensure that M. T. would not be with A. T. without adult supervision; in failing to warn that M. T. had been sexually abused and was predisposed to becoming a sexual predator; and in failing to have M. T. undergo psychological treatment after having been sexually abused.

The Plaintiffs' amended complaint also contends that S. T. had notice of M. T.'s propensity for sexual misconduct with other minors and that S. T. apologized after the incident for his inaction.

Defendants have asserted two preliminary objections. The first is that of a demurrer to the negligence claim. Defendants assert that the amended complaint fails to establish that S. T. had notice of M. T.'s alleged dangerous propensity. The second preliminary objection is that allegations concerning M. T.'s alleged sexual abuse and possible predisposition to becoming a sexual predator should be stricken as scandalous and impertinent matter. Defendants contend that such allegations have no relevancy to M. T.'s propensity to commit sexual misconduct.

Discussion

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 may 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***. (quoting ***The County of Allegheny v. The Commonwealth of Pennsylvania***, 490 A.2d 402, 408 (Pa. 1985)).

The parent-child relationship by itself does not render the parent liable for the tortuous conduct of the child. ***K.H. v. J.R***., 826 A.2d 863, 873 (Pa. 2003). However, "… the parents may be liable where the act of the child is done as the agent of the parents or where the negligence of the parents makes the injury possible." ***Condel v. Savo***, 39 A.2d 51, 52 (Pa. 1944). A parent has a duty to exercise reasonable care to control his child "… when a parent at the relevant time knows or should know of the need to exercise parental control and has the ability and opportunity to do so." ***K.H.,*** 826 A.2d at 874. A parent's liability for the acts of his child "…arises from failure to exercise the control which [he has] over [his] child, when [he knows], or in the exercise of due care should know, that injury to another is a natural and probable consequence …." ***Condel***, 39 A.2d at 53.

The issue raised by the demurrer is whether the Amended Complaint sufficiently pleads that S. T. knew or should have known of the need to exercise control over M. T. to prevent him

from sexually assaulting A. T. A parent knows or should know of the need to exercise control over his child when he knows of the child's propensity to engage in certain conduct. *See*, ***Condel***, 39 A.2d 51 (Allegations in complaint were sufficient to establish knowledge when it was averred that parents of other children complained to defendant parents about their son physically assaulting other children). The amended complaint fails to sufficiently allege that S. T. had such knowledge.

Paragraph 4 of the amended complaint alleges that S. T. "…apologized after the incident for his inaction." While this is a good start, it does not sufficiently support the inference that the apology was made because the father knew his son was going to act out sexually. Plaintiffs need to plead additional facts that would permit the conclusion to be drawn that S. T. knew or had reason to know of his need to control M. T. because of M. T.'s propensity to engage in sexual misconduct with other minors. Whether it be flushing out S. T.'s statement so as to indicate what he meant by it or alleging examples of M. T.'s conduct prior to this incident that S.T. was aware of, something more is needed to demonstrate M.T.'s propensity to engage in sexual misconduct and S.T.'s knowledge thereof.

Accordingly, the demurrer to the negligence claim is granted.

With respect to the second preliminary objection, the court finds the allegations regarding M.T. being the victim of sexual abuse and his alleged predisposition to sexually abuse other minors to be impertinent matter. A preliminary objection may be filed on the basis that the pleading includes scandalous and impertinent matter. Pa.R.C.P. 1028(a)(2). "To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof

of the cause of action." ***Common Cause/Pennsylvania v. Commonwealth***, 710 A.2d 108, 115 (Pa. Cmwlth. 1998), *aff'd*, 757 A.2d 367 (Pa. 2000).

In a general sense, the allegations of M. T. being the victim of sexual abuse are material to S. T.'s knowledge. If it is true that being the victim of sexual abuse predisposes one, such as M. T., to later commit sexual abuse and if S. T. had this knowledge, then it would be material to determining whether he was negligent in failing to control M. T.'s behavior. A close reading of the amended complaint does not disclose a specific allegations that M. T. was previously sexually abused and that such abuse predisposed him to sexually assaulting others. Nor does it specifically allege S. T. knew either M. T. had been sexually abused or that such victimization predisposed M. T. to assault others. Therefore, the allegations are not material under the present pleading and must be stricken. Although these assertions are somewhat referenced in the negligence allegations incorporated in the amended complaint (through paragraph 9 of the original complaint) they are not specifically pleaded. In order to permit a responsive pleading that admits or denies such allegations, these contentions must be specifically pled.

The Court must also recognize another problem that exists in relation to M.T.'s sexual abuse allegations. In ***Commonwealth v. Dunkle***, 602 A.2d 830, 831 (Pa. 1992), the Pennsylvania Supreme Court held that expert testimony regarding the typical behavior patterns exhibited by sexually abused children, referred to as Child Abuse Syndrome, was inadmissible. The Supreme Court so held because studies on the subject were unable to establish a common behavior pattern exhibited by victims of sexual abuse. As such, the Supreme Court stated that, "… the uniformity of behavior exhibited by sexually abused children [was] not 'sufficiently

established to have gained general acceptance in the particular field in which in belongs.'" ***Id***. at 834 (quoting ***Commonwealth v. Nazarovitch***, 436 A.2d 170, 172 (Pa. 1981)).

Dunkle dealt with this syndrome in relation to supporting the sex-abuse criminal charges brought against the defendant based upon the actions displayed by the child victim. Nevertheless, the ***Dunkle*** case places a significant hurdle in front of Plaintiffs. Although there appears to be some general acceptance by the community at large that a child who has been sexually abused becomes predisposed to sexually abusing others, this Court is not aware that Pennsylvania Courts have ever recognized that certain behaviors follow from being sexually abused. This means that Pennsylvania has not recognized that being the victim of sexual abuse predisposes a minor to commit sexual abuse. However, this is not to say that Plaintiffs cannot overcome this hurdle. It may be that a properly pleaded complaint will raise such an assertion. But such assertion to prevail will, need to be supported at trial by appropriate testimony that M. T. was in fact predisposed to sexually abuse another minor. Therefore, if the allegations regarding M. T. being the victim of sexual abuse and his alleged predisposition to becoming a sexual predator are properly raised, the Court strongly warns Plaintiffs to be prepared to present testimony to support the allegations and to meet a ***Frye*** challenge to this theory.[1]

Accordingly, the preliminary objections are granted.

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[1] The ***Frye*** test is an exclusionary rule of evidence that only applies when a party seeks to preclude novel scientific evidence from being introduced. ***M.C.M. v. Milton S. Hershey Med. Ctr.***, 834 A.2d 155, 1158-59 (Pa. Super. 2003), *app. denied*, 856 A.2d 834 (Pa. 2004). "Under ***Frye***, a party wishing to introduce such evidence must demonstrate to the trial court that the relevant scientific community has reached ***general acceptance*** of the principles and methodology employed by the expert witness before the trial court will allow the expert witness to testify regarding his conlusions." ***Ibid***. (emphasis in original). However, the ***Frye*** test does not require that the conclusions reached by the expert witness be generally accepted by the relevant scientific community. ***Cummings v. Rosa***, 846 A.2d 148, 151 (Pa. Super. 2004).

ORDER

It is hereby ORDERED that the Preliminary Objections of Defendants S. T. and M. T. , a minor, filed December 1, 2004 are GRANTED.

The demurrer to the negligence claim is granted. The amended complaint fails to sufficiently plead knowledge on the part of S.T. regarding his need to control his son's behavior.

The allegations regarding the minor defendant being a victim of sexual abuse and his alleged predisposition to committing sexual abuse are scandalous and impertinent matter. The allegations are stricken without prejudice. Plaintiffs may properly re-plead the allegations if supported by facts known or reasonably believed to be true.

Plaintiffs shall have twenty (20) days from notice of this Order to file a second amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Joseph F. Orso, III, Esquire
Bret J. Southard, Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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