

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,	:	
Defendant	:	PRELIMINARY OBJECTIONS

Date: June 22, 2005

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion is entered in relation to the Preliminary Objections of Defendants S.T and M.T., a minor, filed April 1, 2005 demurring to the Plaintiffs', R.T. and D.T. second amended complaint. In the second amended complaint, Plaintiffs assert a cause of action for personal injuries suffered by the minor Plaintiff when he allegedly was sexually molested by the minor Defendant.

A parent is liable for the tortuous conduct of his child when the act of the child is done as the agent of the parent or where the parent's negligence made 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. v. J.R.*, 826 A.2d 863, 873 (Pa. 2003). 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.

The second amended complaint sufficiently pleads a negligence cause of action against S.T. The second amended complaint asserts that S.T. had a duty to control the conduct of M.T. This duty arises out of S.T.'s alleged knowledge of the risk that M.T. may engage in sexual

misconduct with other minors. Reading the second amended complaint as a whole, the theory is as follows:

A victim of sexual abuse is predisposed to being a sexual perpetrator.

M.T. was the victim of sexual abuse.

Therefore, M.T. is predisposed to becoming a sexual perpetrator.

Under this theory, if S.T. knew that M.T. was a victim of sexual abuse, then he knew or should have known that there was a risk that M.T. would commit sexual misconduct with another minor. This knowledge would then create a duty to control M.T.'s behavior in this regard. The second amended complaint alleges in Paragraph 6 that, "After the aforementioned incident, the Defendant indicated that the sexual assault should never have happened and the Defendant should have advised Plaintiff of the fact that the minor-Defendant had been sexually assaulted." The alleged statements of S.T. may be viewed as an expression of his knowledge regarding the danger M.T. posed to other minors. They also may be viewed as an admission of a duty. Therefore, Plaintiffs have sufficiently pleaded a negligence cause of action against S.T.

With regard to Defendants' argument that *Commonwealth v. Dunkle*, 602 A.2d 830 (Pa. 1992), bars any claim based on an alleged predisposition to commit sexual misconduct due to prior sexual abuse, the court finds that it is not a sufficient basis to grant the preliminary objections. That argument is best reserved for a motion for summary judgment.

ORDER

Accordingly, it is Ordered and Directed that the Defendant's preliminary objections filed April 1, 2005 are DENIED.

BY THE COURT,

William S. Kieser, Judge

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