

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HEATHER L. CRESSLEY,	:	No. 05-02-027
Administrator of the Estate of	:	
JOSEPH H. CRESSLEY, DECEASED,	:	
and HEATHER L. CRESSLEY, in her	:	
right,	:	
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION – LAW
SUSQUEHANNA HEALTH SYSTEM,	:	
a corporation, individually and trading	:	
as DIVINE PROVIDENCE HOSPITAL	:	
and RENE R. RIGAL, M.D.,	:	
Defendants	:	Preliminary Objections to
	:	Plaintiff’s Amended Complaint

ORDER

AND NOW, this ____ day of December 2006, upon consideration of Defendants’ preliminary objections Plaintiff’s amended complaint, it is **ORDERED and DIRECTED** as follows:

1. The Court **DENIES** Defendants’ preliminary objection in the nature of a demurrer to Plaintiff’s corporate negligence claim. Initially, the Court notes that Defendants did not raise the assertion that Plaintiff failed to plead the notice element of a corporate negligence cause of action in their preliminary objections. Even if it had been properly raised, the Court would deny the demurrer because Plaintiff alleges notice or knowledge in paragraph 30 regarding the duty to select and retain only competent physicians. Although paragraph 30 is in the vicarious liability count, Plaintiff incorporated this paragraph in the corporate negligence count in paragraph 33. With respect to the other corporate negligence duties, knowledge by the nurse employees might be imputed to the hospital. See Welsh v. Bulger, 698 A.2d 581, 586 (Pa. 1997). With respect to the issue raised by the preliminary

objection, i.e., the inclusion of some allegations of vicarious liability within the corporate negligence claim, the Court finds that, although there may be a vicarious liability phrase here and there, Plaintiff sufficiently segregated the two causes of action for Defendants to answer the complaint.

2. With respect to the claims related to Judy Best and Marie Zurinski, the Court **GRANTS** Defendants' preliminary objections. The Court **DENIES** the preliminary objections to the claims related to Jenny Little.

3. The Court also **DENIES** Defendants' preliminary objection to the fact that some of the paragraphs of Plaintiff's complaint contain more than one allegation of fact. Although Defendants are correct that there are some such paragraphs and the Court does not endorse that aspect of Plaintiff's pleading, having Plaintiff re-plead the complaint solely to correct that problem serves only to further delay this case and dramatically increase the number of paragraphs contained in the complaint. Defendants would have to address all these facts regardless of whether they are separate paragraphs or co-mingled within a paragraph.

Defendants shall file an answer to Plaintiff's amended complaint within thirty (30) days of this Order.

By The Court,

Kenneth D. Brown, P.J.

cc: Brian Bluth, Esquire
Robert A. Cohen, Esquire
Cohen Legal Service LLC
205 Oak Heights Dr, Oakdale PA 15071
Work file