

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SUSAN CONTI,	:	NO. 10 – 01,161
Plaintiff	:	
vs.	:	CIVIL ACTION - LAW
	:	
WHITE DEER RUN, INC., WHITE DEER RUN OF	:	
WILLIAMSPORT and CRC HEALTH GROUP, INC.,	:	
Defendants	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendants' Motion for Summary Judgment, filed September 30, 2011. Argument was held December 8, 2011.

Plaintiff lost her employment as a licensed practical nurse at Susque View due to a positive drug test result. After the matter was reported to the Pennsylvania Bureau of Professional and Occupational Affairs, Plaintiff sought and underwent an evaluation at Defendant White Deer Run of Williamsport in order that she might participate in the Bureau's Voluntary Recovery Program. The records relating to the evaluation were lost, but, according to Plaintiff's complaint, she was continually told the evaluation would be forthcoming, until her participation in the Voluntary Recovery Program was no longer possible. Eventually, Plaintiff agreed to a Consent Order, which included the indefinite suspension of her license. Plaintiff is seeking damages for lost income, embarrassment and humiliation on the basis of Defendants' alleged negligence.

In the instant motion for summary judgment, Defendants contend Plaintiff has failed to produce evidence showing that the loss of records was the legal cause of her injury. Defendants argue that the Consent Order caused Plaintiff to

lose her license, not the lost evaluation. This argument overlooks the fact that had the evaluation been provided to the Bureau, however, Plaintiff may not have been in a position where entering the consent Order was necessary. Plaintiff contends that had the evaluation been forwarded in a timely fashion, she would have been able to enter and complete the Voluntary Recovery Program, and her license would not have been suspended, indicating that a witness will testify to such. The Court agrees this scenario, if proven, would provide the required “legal cause”.¹

Unfortunately, although Plaintiff’s counsel has represented in argument that he does plan to call such a witness, the response required by Pa.R.C.P. 1035.3 has not been filed and such evidence is not at this time “of record”. Therefore, before ruling on the motion, pursuant to Rule 1035.3(c), the Court will allow Plaintiff ten (10) days to supplement the record to include an Affidavit from such witness, which speaks to the likelihood that Plaintiff would have been admitted to and successfully completed the Voluntary Recovery Program had the performed evaluation been forwarded to the Bureau in a timely fashion. The witness must consider that during that evaluation, when asked if she considered herself to have a problem with drugs, Plaintiff replied “absolutely not”, since such evidence is of record.² See Exhibit “C” to Defendant’s Motion for Summary Judgment, page 8. Once the Affidavit is filed with the Court and a copy provided to defense counsel, defense counsel is requested to notify the Court within ten (10) days whether he wishes to further supplement the record (with perhaps a deposition of the proposed witness) or whether the Court can rule on the motion

¹ The Court declines the invitation by defense counsel to limit liability in this case by declaring a lack of proximate cause on the grounds of social or economic desirability.

without further evidence. Any further supplementation of the record by defense counsel should be filed within thirty (30) days of the filing date of the Affidavit.

ORDER

AND NOW, this 9th day of December 2011, for the foregoing reasons, ruling on the motion for summary judgment is hereby deferred pending the filing of further documentation.

BY THE COURT,

Dudley N. Anderson, Judge

cc: R. Thom Rosamilia, Esq.
241 West Main Street, Lock Haven, PA 17745
Robert Seiferth, Esq.
1500 Sycamore Road, Suite 340, Montoursville, PA 17754
Gary Weber, Esq.

² The Court has asked that such be considered as in his brief in support of his motion, defense counsel implies that Plaintiff's denial of a problem would have negatively impacted her possible admission to the program.

Hon. Dudley Anderson