

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GRANT J. MEYERS and KATHY L. MEYERS,	:	
Plaintiffs	:	DOCKET NO. 11-01166
	:	
vs.	:	CIVIL ACTION –
	:	MEDICAL
PATRICK J. CAREY, D.O.; PRAFUL K. TILVA, M.D.;	:	PROFESSIONAL
WEST BRANCH ORTHOPAEDICS & SPORTS	:	LIABILITY ACTION
MEDICINE, INC.; SUSQUEHANNA REGIONAL	:	
HEALTHCARE ALLIANCE, INC.; SUSQUEHANNA	:	
REGIONAL HEALTHCARE ALLIANCE t/d/b/a	:	PRELIMINARY
SUSQUEHANNA HEALTH and DIVINE PROVIDENCE	:	OBJECTIONS
HOSPITAL,	:	
Defendants	:	

**OPINION AND ORDER**

AND NOW, this 24<sup>th</sup> day of April, 2012, following oral argument on Plaintiffs’ Preliminary Objections to New Matter of Defendant Praful K. Tilva, M.D., it is hereby ORDERED and DIRECTED that Plaintiffs’ objections are SUSTAINED in part and OVERRULED in part. In particular, Plaintiffs’ objections to paragraphs 58 through 69 and paragraphs 71 through 74 are SUSTAINED and Plaintiffs’ objection to paragraph 70 is OVERRULED. Defendant Tilva shall file a second amended new matter within twenty (20) days in accordance with this Court’s ruling.

**I. Procedural Background**

On December 19, 2011, Defendant Praful K. Tilva, M.D., filed an Answer and New Matter to the Plaintiffs’ Complaint. On January 6, 2012, Plaintiffs filed Preliminary Objections to New Matter of Defendant Praful K. Tilva, M.D. Plaintiffs objected to all of the paragraphs in Defendant Tilva’s new matter with the exception of paragraph 57. This Court scheduled argument on Plaintiffs’ objections for March 26, 2012. Defendant Tilva requested a continuance of that argument; this Court granted this request on March 26, 2012 and continued the argument

to April 10, 2012. On April 9, 2012, Defendant Tilva filed an Answer and Amended New Matter to the Plaintiffs' Complaint. At the time set for oral argument, Plaintiffs' counsel stated that Defendant Tilva's amended new matter did not alleviate Plaintiffs' preliminary objections and that Plaintiffs' objections to the amended new matter were identical to Plaintiffs' objections to the original new matter. This Court heard oral argument on Plaintiffs' objections as the objections pertained to Defendant Tilva's amended new matter.

## **II. Legal Standard**

Two rules of civil procedure govern Plaintiffs preliminary objections in this case: Pa.R.C.P. 1019 and Pa.R.C.P. 1030. This Court must read these rules together to come to a resolution regarding the sufficiency of Defendant Tilva's amended new matter. *See Allen v. Lipson*, 8 Pa. D. & C. 4th 390, 391 (Lyc. Co. 1990) (en banc). Rule 1030 requires that all affirmative defenses, other than assumption of the risk, comparative negligence and contributory negligence, be plead as new matter. *Id.* The rule also provides that any material facts that are not mere denials may be plead as new matter. *Id.* In addition, Rule 1019 provides that a party should plead the material facts on which a defense is based in a concise and summary form. Pa.R.C.P. 1019(a). Therefore, it has long been held in this county that defendants must plead the material facts on which their affirmative defenses are based in their new matter. *Allen*, 8 Pa. D. & C. 4th at 391. In particular, this Court agrees with Judge Brown's concurring opinion in *Allen* that provides: "[t]o allow a party in defense to engage in non-factual pleading by simply asserting a defense does not help define the real issues of a case or put the opposing party on notice of the claims (defenses) which will be actually litigated." 8 Pa. D. & C. 4th at 396.

### **III. Preliminary Objections**

This Court finds that Plaintiffs' objections to Defendant Tilva's paragraphs 58, 59, 65, 66, 68, 69, 71, 72, 73, and 74 are SUSTAINED. In *Allen*, this Court held that defendants must plead material facts in support of each affirmative defense plead in new matter. 8 Pa. D. & C. 4th at 391. This Court based its decision on the holding of our Supreme Court in *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983); in *Allen*, this Court held that *Connor* applies to affirmative defenses in new matter and to complaints. 8 Pa. D. & C. 4th at 391. In each of Defendant Tilva's above-cited paragraphs, Defendant merely alleges affirmative defenses through the use of boilerplate language. These paragraphs do not contain any material facts on which the affirmative defenses are based upon. This Court will not accept affirmative defenses in new matter without the support of material facts. Therefore, this Court SUSTAINS Plaintiffs' objections to paragraphs 58, 59, 65, 66, 68, 69, 71, 72, 73, and 74.

This Court finds that Plaintiffs' objections to Defendant's assertion of assumption of the risk (paragraph 60) and comparative negligence (paragraph 67) are SUSTAINED. This Court notes that although assumption of the risk and comparative negligence do not need to be pleaded by Defendant Tilva in the new matter and, by operation of law, the defenses are in this case, these paragraphs are struck based solely upon Defendant Tilva's failure to plead the material facts on which these defenses are based. Therefore, this Court SUSTAINS Plaintiffs' objections to paragraphs 60 and 67.

This Court finds that Plaintiffs' objections to Defendant's assertion of defenses under the Health Care Services Malpractice Act and the MCARE Act are SUSTAINED. In *Thurman v. Jones*, No. 02-00518 (Lyc. Co. 2002), this Court addressed the applicability of these two acts in medical malpractice actions. In *Jones*, this Court addressed Plaintiffs' preliminary objections to

Defendant Jones' assertion of the applicability of the Health Care Services Malpractice Act and the MCARE Act in Defendant's new matter. In granting Plaintiffs' objections, this Court held:

[w]ith the exception of the sections pertaining to the statute of repose (which are not specifically cited in Defendant Jones' New Matter), the court does not believe these statutes contain affirmative defenses. The cited sections [in paragraph 98] deal with limits on recovery. They have nothing to do with establishing liability or lack thereof. Therefore, they are not affirmative defenses and should not be plead as new matter.

*Id.* at 2.

Similarly, in this case, Defendant Tilva raised the applicability of the acts in paragraph 61; Defendant then cited to the Healthcare Services Malpractice Act as a limit on Plaintiffs' recovery. As in *Jones*, this Court believes that the cited sections are not affirmative defenses and should not be plead in new matter. In paragraphs 63 and 64, Defendant cites to the Healthcare Services Malpractice Act and alleges a lack of contract between the parties. However, as previously held by this Court in *Thurman*, these acts do not contain affirmative defenses and should not be plead in new matter. Additionally, this Court notes that the Health Care Services Malpractice Act was repealed in its entirety on March 20, 2002. See 40 P.S. §§ 1301.101, *et seq.* Therefore, Plaintiffs' objections to paragraphs 61, 62, 63, and 64 are SUSTAINED.

This Court finds that Plaintiffs' objection to Defendant's assertion of the statute of limitations defense (paragraph 70) is OVERRULED. In *Thurman*, this Court held that in order to raise the statute of limitations as a defense, defendants must plead the material facts on which the defense is based in a concise and summary form. *Id.* at 1. In raising this defense, Defendant Tilva provided facts that support the defense; in particular, Defendant Tilva alleged that Plaintiffs challenge treatment of December 23, 2008 but waited until July 8, 2011 to initiate the present action. Therefore, this Court OVERRULES Plaintiffs' objection to paragraph 70.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

cc: Clifford A. Rieders, Esquire  
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