

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KELLY AMOS, individually and parent and legal guardian of NAAYA AMOS, a minor, Plaintiff	: NO. 12 – 00,125
vs.	: : : CIVIL ACTION - LAW
RIVER VALLEY REGIONAL YMCA, WILLIAMSPORT BRANCH, SUZANNE COMPTON, RONNA PRINCE and SHAWN LONER, Defendants	: : : : Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections filed by Defendants on February 22, 2012. Argument on the objections was heard April 17, 2012.

Based on allegations that her minor daughter was physically and emotionally abused by another child while both were enrolled in Defendant YMCA’s after-school childcare program, Plaintiff has brought claims of negligence, negligent infliction of emotional distress and breach of fiduciary duty against Defendant YMCA and several employees. In their preliminary objections, Defendants demur to the claims of negligent infliction of emotional distress and breach of fiduciary duty, contending that Plaintiff has failed to state a cause of action to support either claim.

Plaintiff asserts in her Complaint that Defendants owed the minor Plaintiff a fiduciary duty because they were daycare providers for her and she had reposed a special confidence in them to act in her interest. In opposition to Defendants’ contention that they owed no fiduciary duty to the minor Plaintiff, Plaintiff cites Vicky M. v. Northeastern Educational Intermediate Unit, 689 F. Supp. 2d 721 (M.D. Pa. 2009), which found a fiduciary relationship between a teacher and a

special-needs student. After careful review of that case, as well as other authority on the matter, the court agrees with Defendants that the caregiver-child relationship in this matter does not give rise to a fiduciary duty.

The Vicky M. Court noted that under Pennsylvania law, a fiduciary relationship “is not confined to any specific association of the parties” and will be found to exist “when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or on the other, weakness, dependence, or trust, justifiably reposed”. *Id.* at . After stating “the basic duties which arise from the teacher-student relationship are a duty to supervise, a duty to exercise good judgment, and a duty to instruct as to correct procedures”, and “[t]here is no question that Defendant Wzorek and the Minor-Plaintiffs were in a teacher-student relationship”, the court denied Defendant Wzorek’s motion for summary judgment on the basis that there was sufficient evidence to create a question of material fact on the “breach of that relationship”. *Id.* at . The duties which arise from the teacher-student relationship cited by the Vicky M. Court were gleaned from a case in which the plaintiff sued for negligence, however, not a breach of fiduciary duty. Botdorf v. Waltz, 369 A.2d 332 (Pa. Super. 1976). Further, another aspect of the fiduciary relationship, that of personal gain or advantage, was not explored.

In addition to the disparity in position of the parties, our Supreme Court has also focused on what this court believes can be described as the purpose of the relationship. For example, in In re Estate of Scott, 316 A.2d 883, 885 (Pa. 1974)(emphasis added), the Court recognized that the essence of a confidential relationship is “trust and reliance on one side, and a corresponding opportunity to abuse that trust *for personal gain* on the other.” In Young v. Kaye, 279 A.2d 759,

763 (Pa. 1971)(emphasis added), the Court stated: “The party in whom the trust and confidence are reposed must act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other's detriment *and his own advantage*.” See also Basile v. H & R Block, 777 A.2d 95, 103 (Pa. Super. 2001)(“So long as the requisite disparity is established between the parties positions in the relationship, and the inferior party places primary trust *in the other's counsel*, a confidential relationship may be established.”)(emphasis added). Thus it appears there must be some financial purpose to the relationship such that the party in the superior position might unfairly use the disparity in position and the trust reposed in him to provide himself with some advantage or gain at the other’s expense.

In the instant case, although Plaintiff may have trusted Defendants to provide safe and supervised care of the minor Plaintiff, and although it might be said that Defendants were in a stronger position than the minor Plaintiff, there was no financial purpose to the trust placed in Defendants by Plaintiff. Even were Defendants to abuse that trust by failing to provide safe and supervised care, it would provide no financial advantage or gain to Defendants. Therefore, the court believes Defendants had no fiduciary duty to Plaintiff and the claim for breach of that duty cannot be sustained¹

Defendants object to Plaintiff’s claim for negligent infliction of emotional distress on the basis that Plaintiff was neither in a zone of danger nor witnessed injury to a close family member. Plaintiff admits both of these facts but nevertheless seeks to support this claim based on her contention that Defendants

¹ While recognizing that the District Court’s decision in Vicky M. v. Northeastern Educational Intermediate Unit, 689 F. Supp. 2d 721 (M.D. Pa. 2009), might support a conclusion to the contrary, since this court is not bound by that decision and does not agree with its reasoning, it chooses not to follow its holding.

had a fiduciary duty to her, citing Toney v. Chester County Hospital, 961 A.2d 192 (Pa. Super. 2008). Since the court has concluded that there was no fiduciary duty, however, Plaintiff's claim for negligent infliction of emotional distress also cannot be sustained.

Finally, Defendants object to the minor Plaintiff's claim for negligent infliction of emotional distress on the basis that she seeks identical damages through her claim for negligence. Defendants have offered no authority for the proposition that one cannot seek the same damages by way of alternative claims, however, and indeed quite to the contrary, Pennsylvania Rule of Civil Procedure 1020 allows for pleading causes of action "in the alternative", Pa.R.C.P. 1020(c), and Rule 1021 allows for demanding "[r]elief in the alternative." Pa.R.C.P. 1021(a). This objection will therefore be overruled.

ORDER

AND NOW, this 19th day of April 2012, for the foregoing reasons, Defendants' preliminary objections are hereby sustained in part and overruled in part. Count II of the Complaint is hereby stricken as to Plaintiff Kelly Amos, individually. Count IV of the Complaint is hereby stricken in its entirety.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joshua Cochran, Esq.
Robert Seiferth, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson