

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MELVIN WENTZEL and MELINDA WENTZEL, Plaintiffs	: NO. 11 - 01,819 : : CIVIL ACTION - LAW
vs.	: : :
HOUSATONIC COMMUNITY COLLEGE, Defendant	: : Preliminary Objections

**OPINION AND ORDER**

Before the Court are preliminary objections filed by Defendant on December 15, 2011. Argument was heard March 19, 2012.

Plaintiffs have brought this action for invasion of privacy and conversion based on allegations that Defendant published and circulated a photograph of their infant twin daughters on billboards, their website, in newspaper advertisements, brochures and flyers, without Plaintiffs' knowledge or consent. In its preliminary objections, Defendant seeks to have the Complaint dismissed, contending the court lacks jurisdiction over its person as it is located in Connecticut and does not have any contacts with Pennsylvania which would subject it to such jurisdiction. Plaintiffs argue that the court has specific jurisdiction over Defendant, citing 42 Pa.C.S. Section 5322(a)(3), which allows the exercise of personal jurisdiction over a person "causing harm or tortious injury by an act or omission in this Commonwealth."

The Third Circuit has set forth a three-prong test to determine the applicability of Section 5322(a)(3):

First, the defendant must have committed an intentional tort. Second, the plaintiff must have felt the brunt of the harm caused by that tort in the forum, such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of the tort. Third, the defendant must have expressly aimed his tortious conduct at the forum, such that the forum can be said to be the focal point of the tortious activity.

Imo Industries, Inc. v. Kiekert AG, 155 F.3d 254, 256 (3<sup>rd</sup> Cir. 1998). In the instant case, the parties focus on the third prong: Defendant contends Plaintiffs have not met the third prong because their activity took place in Connecticut. Plaintiffs argue that this overlooks the initial

tortious act, the misappropriating of the photograph in the first instance, and that a letter from the Attorney General's office evidences that the photograph was taken from Plaintiffs' webpage. Plaintiffs cite CollegSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066 (9<sup>th</sup> Cir. 2011), for the proposition that such action, combined with proof that Defendant knew Plaintiffs were residents of Pennsylvania, is sufficient to bring the matter within the ambit of Section 5322(a)(3). While the court agrees with the reasoning of CollegSource, and therefore finds that taking the photograph from Plaintiffs' webpage while knowing Plaintiffs are residents of Pennsylvania subjects Defendant to this Commonwealth's jurisdiction, the Complaint contains no allegation to that effect. The preliminary objection will therefore be sustained, and Plaintiffs will be required to amend their complaint to make the necessary allegations.

**ORDER**

AND NOW, this 28<sup>th</sup> day of March 2012, for the foregoing reasons, Defendant's preliminary objections are hereby sustained. Plaintiff shall file an amended complaint within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Ryan Tira, Esq.  
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Hon. Dudley Anderson