

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROSE NAGLE, a minor, by and through her parents	: NO. 11 - 00,271
Joanna and Thomas Nagle,	:
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	:
	:
THE WILLIAMSPORT HOSPITAL, THE WILLIAMS-	:
PORT HOSPITAL AND MEDICAL CENTER,	:
SUSQUEHANNA REGIONAL HEALTHCARE	:
ALLIANCE, SUSQUEHANNA HEALTH SYSTEM,	:
THOMAS J. MARTIN, M.D., DAVID E. YOUNG, M.D.,	:
MARY BETH O'HARA, D.O., CICYLY KNIGHT, R.N.,	:
CHERYL B. GIRIO, R.N., BETHANY MINIUM, R.N.,	:
CHERYL MOYER, R.N., LAURIE TATE, R.N.,	:
STACY R. SAUNDERS, R.N., TARA KOSER, R.N., and	:
KATHERINE A. SHIPE, N.E.,	: Second Motion for Partial
Defendants	: Summary Judgment

OPINION AND ORDER

Before the court is a motion for partial summary judgment filed by Defendants Williamsport Hospital, Williamsport Hospital and Medical Center, Susquehanna Regional Healthcare Alliance and Susquehanna Health System on February 1, 2013. Argument on the motion was heard April 1, 2013.

In their Complaint, Joanna and Thomas Nagle allege that the individually-named defendants failed to recognize the signs and symptoms of a strep infection which apparently developed shortly after Rose' birth and that, as a result of the failure to administer antibiotics in a timely fashion, Rose suffered a catastrophic brain injury. Plaintiffs also allege corporate negligence, asserting specifically that the failure of the doctors and nurses involved in Rose' care to recognize the signs and symptoms of infection demonstrates a pattern of failures which shows the hospital's failure to supervise and oversee its personnel to ensure the safety of all patients.¹ In the instant motion for partial summary judgment, Defendants contend that

¹ Based on the opinion of Plaintiffs' expert witness that administration of antibiotics had to have been undertaken within twelve hours after the onset of symptoms in order to have been effective in preventing or significantly improving Rose' condition, the court has limited discussion of the corporate negligence claim to that time period.

Plaintiffs have failed to produce (1) competent evidence of causation, (2) evidence of corporate negligence separate and apart from individual negligence, and (3) evidence of notice. These will be addressed seriatim.

First, Defendants allege Plaintiffs have failed to produce competent evidence of causation, arguing that their expert witness, Nurse Malleo, is not qualified to testify regarding the causation-related issues in this case. While this lack of expertise may prevent her from testifying regarding causation, the court finds the proffered testimony of the other experts sufficient on that issue. Simply because those other experts do not offer testimony specific to the issue of corporate negligence does not mean that their testimony which links the delay in diagnosis and treatment to the injury cannot be considered in that context. Defendants are thus not entitled to summary judgment on this basis.

Next, Defendants contend that Plaintiffs have failed to produce evidence of corporate negligence separate and apart from individual negligence, arguing that Nurse Malleo's opinion that the hospital was negligent is based on her opinion that the nursing staff was negligent *in this case only*. The court agrees with Defendants that a plaintiff must show more than that an employee of the hospital was negligent, *see, e.g. Edwards v. Brandywine Hospital*, 652 A.2d 1382 (Pa. Super. 1995), but does not agree with Defendants' interpretation of Nurse Malleo's opinion. Nurse Malleo notes certain nurses' deposition testimony that "they didn't necessarily follow the policies but instead did what they thought to be correct", stating that "this is not proper nursing care and evidences a failure of the hospital system to ensure that its staff were following the policies and procedures it has implemented." Nurse Malleo opined that "[t]he nursing staff did not monitor Rose's status appropriately", finding it "clearly evident in several of the depositions that the nursing staff at times chose not to comply with the appropriate Hospital policies and instead overlooked possible signs and symptoms of Rose's meningitis, which evidences a failure of the hospital system to train, supervise and oversee its staff and ensure compliance with its policies." This evidence speaks to more than just the instant case, and the court finds it sufficient to present the issue to a jury.

Although the Complaint may be read to include allegations of corporate negligence involving actions taken (or not taken) after that twelve hour window, Plaintiffs will not be able to pursue those claims at trial.

Finally, Defendants contend that Plaintiffs have failed to produce any evidence that the hospital had “actual or constructive notice of any alleged defect relative to any corporate negligence duty”. Such evidence, “that the hospital knew or should have known about the breach of duty that is harming its patients”, is required to pursue a claim of corporate negligence. Edwards, supra, at 1386. And, as Defendants argue, Plaintiffs have produced no evidence of actual notice that the nurses were not following hospital policies or procedures. Where the corporate negligence alleged is that of failing to properly oversee those who practice medicine within its walls, however, courts have imposed constructive notice “when the failure to receive actual notice is caused by the absence of supervision.” Whittington v. Episcopal Hospital, 768 A.2d 1144, 1154 (Pa. Super. 2001). See also Brodowski v. Ryave, 885 A.2d 1045 (Pa. Super. 2005), quoting Rauch v. Mike-Mayer, 783 A.2d 815, 828 (Pa. Super. 2001)(imposing constructive notice when the failure to receive actual notice is caused by the absence of supervision, and interpreting "failure to enforce adequate rules and policies" as an analog to "failure to provide adequate supervision."). In the instant case, as they have alleged the hospital’s failure to oversee the nurses, Plaintiffs are entitled to the imposition of constructive knowledge against the hospital. Therefore, summary judgment is not appropriate on this ground either.

ORDER

AND NOW, this 9th day of April 2013, for the foregoing reasons, the Second Motion for Partial Summary Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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