

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

T.G., a Minor, by his Parent and Natural Guardian	:	
KERRIE KETTNER, and KERRIE KETTNER,	:	DOCKET NO. 11-01,321
Plaintiffs,	:	
	:	CIVIL ACTION
vs.	:	
	:	
TRANSCO, INC., TRANSCO RAILWAY PRODUCTS,	:	
INC., SAMANTHA CLEMENS, LYCOMING-CLINTON	:	
COUNTIES COMMISSION FOR COMMUNITY	:	MOTION FOR
ACTION (STEP), INC.,	:	SUMMARY JUDGMENT
Defendants.	:	

\* \* \* \* \*

T.G., a Minor, by his Parent and Natural Guardian	:	
KERRIE KETTNER, and KERRIE KETTNER,	:	DOCKET NO. 11-01,321
Plaintiffs,	:	
	:	CIVIL ACTION
vs.	:	
	:	
TRANSCO, INC., TRANSCO RAILWAY	:	
PRODUCTS INC., and SAMANTHA CLEMENS,	:	
Defendants.	:	

**OPINION AND ORDER**

This matter comes before the Court on a motion for summary judgment filed by Defendant Lycoming-Clinton Counties Commission for Community Action (STEP), Inc. (Defendant STEP or STEP), on November 13, 2012. Upon review of the pleadings, the Court agrees that Defendant STEP is entitled to summary judgment as a matter of law.

In this matter, Plaintiff T.G. (Plaintiff child or child) was injured while under the care of his babysitter, Defendant Samantha Clemens (Ms. Clemens); specifically, Plaintiff child was injured by a large object, presumably a train wheel or axle assembly, while on Defendant Transco, Inc.'s premises on Trenton Avenue, Williamsport, Lycoming County, Pennsylvania. Amd. Compl., ¶¶ 1-2. Plaintiff child, through his mother Kerrie Kettner (Plaintiff mother or mother), lodged an action in negligence against Defendant STEP for failing to properly supervise

Plaintiff child. *Id.*, Ct. V, ¶¶ 50-55. Plaintiff child bases his negligence claim upon the fact that STEP assisted mother in obtaining a subsidy from Department of Welfare to pay for the babysitting services provided by Ms. Clemens.

On November 13, 2012, Defendant STEP filed a motion for summary judgment based upon Plaintiff child's failure to establish STEP's duty to child. The pleadings in this matter were closed on November 27, 2012. *See* Pls.' Reply to Def. STEP's New Mtr. On December 17, 2012, Plaintiffs responded to STEP's motion.<sup>1</sup> In Plaintiffs' response, Plaintiffs argued that Defendant's motion was not ripe because a deposition of a corporate designee of STEP had not yet been completed. This Court granted two continuance motions (by Orders dated December 3, 2012, and February 8, 2013) so that this deposition could be conducted. On February 20, 2013, Patricia Jenkins, a representative of STEP involved in the Child Care Information Services department of the organization, was produced for deposition. *See* Jenkins Dep. On March 12, 2013, after Ms. Jenkins' deposition was completed, the Court held oral argument on Defendant STEP's motion for summary judgment; also on that date, Defendant STEP filed a Reply Brief, specifically addressing Ms. Jenkins' deposition. The Court finds this matter ripe for review.

In its motion for summary judgment, Defendant STEP argues that it owed no duty to Plaintiff child, and, therefore, it is entitled to summary judgment pursuant to Pa. R.C.P. 1035.2(2); that portion of the summary judgment rule provides that a party may move for summary judgment at the close of the relevant proceedings:

if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

---

<sup>1</sup> The Court notes that this response is entitled "Plaintiffs, Answer to Defendant Nina Sandor's Motion for Summary Judgment." However, the attached brief avers facts and case law relevant to the instant proceeding.

*Id.* It has long been held that if a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011) (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)). Instantly, Defendant STEP argues that Plaintiff child did not provide evidence of facts essential to prove that STEP owed a duty to child, a fact essential to child's negligence action against the agency. *See Sharpe v. St. Luke's Hosp.*, 821 A.2d 1215, 1218 (Pa. 2003) (providing that the elements of negligence include duty, breach, causation, and damages). After review, the Court finds that Plaintiff child failed to produce evidence of facts essential to proving Defendant STEP's duty to child, and, based upon this lack essential evidence, Defendant STEP is entitled judgment as a matter of law.

In order to establish a claim in negligence against Defendant STEP, Plaintiff child must demonstrate that: 1) STEP owed child a duty of care, 2) STEP breached this duty of care, 3) the breach caused injury to child, and 4) child suffered actual damages as a result of the breach. *See Sharpe v. St. Luke's Hosp.*, 821 A.2d 1215, 1218 (Pa. 2003) (referencing *Martin v. Evans*, 711 A.2d 458, 461 (Pa. 1998)). In *Wenrick v. Schloemann-Siemag Aktiengesellschaft*, 564 A.2d 1244 (Pa. 1989), our Supreme Court provided:

[b]efore a person may be subject to liability for failing to act in a given situation, it must be established that the person has a duty to act; *if no care is due, it is meaningless to assert that a person failed to act with due care.*

*Id.* at 1248 (emphasis added). The concept of an individual owing a duty to another is rooted in public policy. *Sharpe*, 821 A.2d at 1219. Whether a duty should be imposed involves balancing:

(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm

incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

*Sharpe*, 821 A.2d at 1219. Whether a duty exists is purely a question of law and is for this Court to decide. *Id.* With these standards in mind, the Court turns to the case at bar.

In this instance, Plaintiffs argue that Defendant STEP owed a duty to Plaintiff child because Ms. Clemens was on a babysitter referral list provided to Plaintiff mother from STEP. Pls. Mot. Summ. J. Ans., ¶ 38-44. Plaintiffs argue that STEP should have investigated Ms. Clemens' qualifications before placing her on the STEP referral list; Plaintiffs provide that this investigation should have included: 1) performing a criminal background check on Ms. Clemens, 2) inquiring as to whether Ms. Clemens had prior babysitting experiences, and 3) determining if any other minor children were previously injured while in Ms. Clemens' care. Pls. Mot. Summ. J. Ans. Memo., pg. 4. Plaintiffs submit that STEP breached its duty of care to Plaintiff child and that the agency should be held liable for this breach. The Court does not agree.

The Court does not agree with Plaintiffs because the facts underlying Plaintiffs' arguments are not supported by the record. Defendant STEP *did not* provide a referral list of babysitters to Plaintiff mother for her to choose from; instead, Plaintiff mother, herself, provided Ms. Clemens' name to STEP. Kettner Dep., pgs. 48-49, lns. 25-14<sup>2</sup>; Jenkins Dep., pg. 8, lns. 15-19; *Id.*, pg. 15, lns. 6-10. Plaintiff mother both worked and was acquainted with Ms. Clemens

---

<sup>2</sup> Ms. Kettner provided in her deposition:

Q. Now, at the time you completed the application in June of 2008, did you list Samantha Clemens there at the bottom as the actual child care provider?

A. Yes.

Q. So at the time you completed the application, was Samantha Clemens already working as a babysitter for you?

A. No, sir.

Q. How did you come to get her as your child care provider then in June?

A. We spoke about it.

Q. Can you just explain that?

A. We spoke about it. I asked her and she said that she would be able to do it.

Kettner Dep., pgs. 48-49, lns. 25-14.

since 2001, approximately seven (7) years prior to STEP's involvement with the parties in June 2008. Kettner Dep., pg. 14, Ins. 19-24; *Id.*, pg. 15, Ins. 5-8, 15-20; *Id.*, pg. 16, Ins. 8-11. Additionally, when Plaintiff mother filled out her subsidy application, mother listed Ms. Clemens' cell phone number as mother's cell phone number on the subsidy application because mother did not have a phone and Ms. Clemens had the ability to reach mother. Kettner Dep., pg. 48, Ins. 9-24. Based upon these facts, it is clear from the parties' deposition that Plaintiff mother provided Ms. Clemens' name to STEP and that STEP did not provide a referral list to mother. Also, the Court notes that, under the subsidy program at issue, Defendant STEP is not responsible for performing background checks on the care providers listed by parents on their applications; the Commonwealth performs these checks. Jenkins Dep., pg. 8, Ins. 20-23.

Based upon *Wenrick*, the *Sharpe* factors, and the pleadings in this matter, the Court finds that Plaintiff child failed to provide facts essential to establish a duty of care running between Defendant STEP and child. As the record stands, STEP had no knowledge of Ms. Clemens or her babysitting abilities (or lack thereof) when mother submitted Ms. Clemens name to the agency. The only relationship between Defendant STEP and Ms. Clemens is STEP's payment to Ms. Clemens for her babysitting services. Jenkins Dep., pg. 18, Ins. 10-14. The only relationship STEP has with any party was its processing of Plaintiff mother's subsidy application and paying Ms. Clemens for her babysitting services. *Id.* Based upon these facts outlining the relationship between the parties and the actions that STEP actually took in regards to Ms. Clemens and the subsidy application, Plaintiff child failed to provide sufficient facts essential to prove that STEP owed a duty to child. Therefore, Defendant STEP is entitled to judgment as a matter of law as to Count V of the Amended Complaint.<sup>3</sup>

---

<sup>3</sup> As a result of this ruling, Plaintiff mother's claim against Defendant STEP also fails. *See* Amd. Compl., Ct. VII, ¶¶ 64-66.

The Court enters the following Order.

**ORDER**

AND NOW, this 27<sup>th</sup> day of March, 2013, following oral argument on Defendant STEP's Motion for Summary Judgment filed November 13, 2012, and for the reasons stated above, Defendant STEP's motion is GRANTED. Count V of the Amended Complaint is DISMISSED, and Count VII of the Amended Complaint is DISMISSED as to Defendant STEP. Furthermore, Defendant STEP is DISMISSED from the above-captioned matter. The caption is hereby AMENDED as provided above.

BY THE COURT,

\_\_\_\_\_  
Date

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

cc: William T. Lawson, III, Esq. – Counsel for Plaintiffs  
1420 Walnut Street, Suite 1000, Philadelphia, PA 19102-4015  
Michael F. Frisbie, Esq. – Counsel for Defendants Transco  
3701 Corporate Center Parkway, Suite 100, Center Valley, PA 18034  
Richard W. Yost, Esq. – Counsel for Defendant STEP  
Two Penn Center Plaza, Suite 610, 1500 John F. Kennedy Boulevard  
Philadelphia, PA 19102  
Gary L. Weber, Esq. – Lycoming County Reporter