

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AMANDA WERTZ and GINA CAMPANA,	:	NO. 12 – 02,811
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
SUSQUEHANNA GASTROENTEROLOGY	:	
ASSOCIATES, LTD, SUSQUEHANNA	:	
ENDOSCOPY CENTER, LLC and	:	
JEFFREY GOLDSMITH, M.D.,	:	
Defendants	:	Preliminary Objections

**OPINION AND ORDER**

Before the Court are preliminary objections to Plaintiffs' Amended Complaint, filed by Defendant Goldsmith on May 9, 2013. Argument was heard August 21, 2013

Both plaintiffs are registered nurses who were hired by Defendants Susquehanna. Defendant Goldsmith was their immediate supervisor although he was an independent contractor for Susquehanna and not their employee. Plaintiffs allege that Defendant Goldsmith created a sexually hostile work environment through his comments and actions, and that although such were reported to Susquehanna, Susquehanna failed to take action to stop the harassment. Plaintiffs allege emotional distress and physical injury, and have brought claims against Susquehanna and Goldsmith for violation of Title VII of the Civil Rights Act and the Pennsylvania Human Relations Act, as well as claims for intentional infliction of emotional distress against Goldsmith. In his preliminary objections to the statutory claims, Goldsmith argues that Plaintiffs have failed to exhaust statutory remedies and that such remedies cannot be sought from individual supervisors, and in his objections to the claims for intentional infliction of emotional distress, Goldsmith argues that the pleadings fail to allege sufficient facts upon which to base the claims. At argument, Plaintiffs conceded that the statutory remedies lie against only Susquehanna and therefore, Counts 5, 11 and 12 will be dismissed without further discussion. Only the intentional infliction of emotional distress claims will be addressed.

First, Defendant Goldsmith argues that Plaintiffs fail to allege sufficient facts to support the claims, contending that they must allege and prove retaliatory behavior on his part in

addition to any other alleged harassing conduct. The court does not agree. In Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998), the Pennsylvania Supreme Court specifically rejected such an argument, holding that “consideration of retaliation in the context of a claim for the intentional infliction of emotional distress is one of a number of factors to be used in assessing such a claim. By regarding retaliation as a weighty factor, but not a mandated factor, we allow for the rare case in which a victim of sexual harassment is subjected to blatantly abhorrent conduct, but in which no retaliatory action is taken.” Here, while Goldsmith may not have taken the retaliatory action himself (both Plaintiffs were terminated from their positions after making their complaints), the court finds the allegations against him sufficiently outrageous to support the claims.

Second, Defendant Goldsmith argues that Plaintiff Wertz has failed to allege “some physical injury or some medically-identifiable effect of the emotional distress”, and that such is required by Catheart v. Keene Industrial Insulation, 471 A.2d 493, 508 (Pa. Super. 1984). In Catheart, however, the Court was addressing the requirements to prove a claim of *negligent* infliction of emotional distress. The requirements to prove a claim of *intentional* infliction of emotional distress were addressed by the Pennsylvania Supreme Court in Kazatsky v. King David Memorial Park, 527 A.2d 988, 995 (Pa. 1987), wherein the Court held that “if section 46 of the Restatement [intentional infliction of emotional distress] is to be accepted in this Commonwealth, at the very least, existence of the alleged emotional distress must be supported by competent medical evidence”. Thus, physical injury is not required as long as a plaintiff can establish an alleged mental injury by competent medical evidence. In the instant case, Plaintiff Wertz has alleged simply that she “suffered physical and mental injuries”.<sup>1</sup> While Plaintiff Wertz need not allege a physical injury, if she is going to do so she must allege it with sufficient specificity to allow Defendant Goldsmith to prepare a defense. The court agrees with Defendant that the allegation here is insufficiently specific. So too for the allegation of “mental injuries”. Since Plaintiff Wertz must prove such injury by competent medical evidence, she should certainly be able to allege her injuries more specifically based on that evidence.

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<sup>1</sup> Amended Complaint, Paragraph 41.

**ORDER**

AND NOW, this 27<sup>th</sup> day of August 2013, for the foregoing reasons, the preliminary objections are sustained in part and overruled in part. Counts 5, 11 and 12 are hereby DISMISSED. Plaintiff Wertz shall file an Amended Complaint within twenty (20) days of this date in which she sets forth in Count 6 the specific injuries she contends were the result of Defendant Goldsmith's conduct.

BY THE COURT,

Dudley N. Anderson, Judge

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