

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAMIE L. RITTER,	:	DOCKET NO. 14-02653
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	
MARLENE M. MAKOS,	:	
Defendants	:	PRELIMINARY OBJECTIONS

OPINION AND ORDER

Before the Court are preliminary objections filed by Defendant, Marlene M. Makos, to Plaintiff Jamie L. Ritter’s second amended complaint.¹ Makos demurs to the second amended complaint asserting that Ritter cannot recover any damages as a matter of law. Ritter is the mother of a minor who was injured in a motor vehicle collision on October 14, 2012. Ritter was driving her daughter in the maternal grandmother’s vehicle. The Defendant collided into the front end of the vehicle operated by Ritter allegedly causing serious, severe, permanent and disabling injuries to her minor daughter. Ritter herself sustained no permanent physical injuries.

When reviewing preliminary objections in the nature of a demurrer, the court must “accept as true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts.” Thierfelder v. Wolfert, 52 A.3d 1251, 1253 (Pa. 2012), *citing*, Stilp v. Commonwealth, 940 A.2d 1227, 1232 n.9 (Pa. 2007). In deciding a demurrer the face of the complaint must indicate that the “claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.” Melon

¹ The pertinent procedural background follows. Ritter commenced this action by Writ of Summons filed on October 14, 2014. A Praecipe to Reinstate Writ of Summons was filed on November 5, 2014, December 3, 2014, December 24, 2014, January 22, 2015, February 19, 2015, and March 17, 2015. A motion for an alternate method of service was filed on February 9, 2015 and granted by Order dated February 19, 2015. A motion to consolidate was filed in Case No. 14-02656 on April 2, 2015. On April 17, 2015, Defendant filed a Praecipe for a Rule to File complaint and the Rule was issued the same date. An answer to a motion to consolidate was filed on April 23, 2015. Ritter filed a complaint on May 5, 2015. On June 8, 2015, Makos filed preliminary objections. On June 23, 2015, Ritter filed a first amended complaint. On June 30, 2015, Makos filed preliminary objections to the first amended complaint. On June 14, 2015, Ritter filed a second amended complaint. On July 20, 2015, Makos filed preliminary objections to the second amended complaint.

Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994) (citations omitted). “Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are **clear and free from doubt.**” Bower v. Bower, 611 A.2d 181, 182 (Pa. 1992)(emphasis added). "Under Pennsylvania law personal injury to a minor gives rise to two separate and distinct causes of action, one the parents claim for medical expenses and loss of the minor's services during minority, the other the minor's claim for pain and suffering and for losses after minority." Hathi v. Krewstown Park Apartments, 385 Pa. Super. 613, 616, 561 A.2d 1261, 1262 (Pa. Super. 1989)(citations omitted).

The Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1722, precludes double recovery of certain damages. 75 Pa.C.S. § 1722 provides the following.

In any action for damages against a tortfeasor, or in any uninsured or underinsured motorist proceeding, arising out of the maintenance or use of a motor vehicle, **a person who is eligible to receive benefits under the coverages** set forth in this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719 (relating to coordination of benefits) **shall be precluded from recovering the amount of benefits paid or payable under this subchapter**, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719. 75 Pa.C.S. § 1722 (emphasis added).

Makos filed preliminary objections contending that Ritter has no claim in her own right as a parent because all recoverable damages and injuries were sustained by the minor child only and are already being litigated in Lycoming Case No. 14-02,656 in a claim brought on behalf of the minor child. In addition, Makos contends that Ritter cannot recover the damages sought because the minor did not die in the motor vehicle collision. Makos also contends that Ritter cannot recover health care expenses and related costs from the date of injury until the child reaches the age of 18 because the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§1701 *et. seq.*, (MVFRL) and regulations limit and define the scope of recovery. Makos contends that, to the extent the MVFRL allows recovery for medical care, it is only

permissible in the action brought on behalf of the child, not a parent. As such, Makos contends that Ritter has failed to state a claim upon which relief may be granted and seeks dismissal with prejudice. Makos cites only Section 1722 of the MVFRL and provides no case citations in support of its objections.

The Court concludes that Makos has not cited any specific provision of law or fact which establishes that Ritter cannot recover her claims in her own right as a matter of law. Ritter has filed a claim, separate from that of her minor child, for damages for the injured child's health care expenses from the time of injury to the date that the child reaches 18 years of age and for the pecuniary value of any services that this child would have provided to her mother during minority if the child had not been injured. A parent's claim for such damages is separate and distinct from that of the minor child. Hathi, *supra*, 561 A.2d at 1262. Section 1722 of the MVFRL does not on its face preclude an award of such damages to the parent. 75 Pa.C.S. § 1722. Rather it precludes a person eligible for coverage from double recovery from collateral sources. Id. As such, Makos has not established that on the face of the complaint, Ritter cannot recover in her own right as a matter of law.

Accordingly, the Court enters the following Order.

ORDER

AND NOW this 5th day of November, 2015, it is ORDERED and DIRECTED as follows.

The demurrers are SUSTAINED in part and OVERRULED in part as follows.

1. The demurrers are SUSTAINED to the extent, if any, that Ritter seeks to recover compensation for health care expenses and related costs which are recoverable by the guardian for the minor child in the litigation commenced at Lycoming County docket No. 14-02656.
2. The demurrers are OVERRULED as to any claims Ritter seeks in her own right as to the pecuniary value of any services that the child would have provided to Ritter during minority if the child had not been injured.
3. The demurrers are OVERRULED as to the health care expenses and related costs for the care and needs of the minor child from the time that his injuries were sustained until the minor reaches the age of 18 that are not recovered by the minor child through the guardian at case no 14-02656. Lycoming County docket No. 14-02656.
4. Defendant shall file an Answer within twenty (20) days.

BY THE COURT,

November 5, 2015

Date

Richard A. Gray, J.

c: Charles Rado, Esq. for Plaintiff, Jamie L. Ritter
Joseph R. Musto, Esq. for Defendant, Marlene M. Makos
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