

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ELI SHAHEEN,
administrator of the estate of Val E. Cooper,

Plaintiff,

vs.

THE WILLIAMSPORT HOSPITAL, d/b/a
WILLIAMSPORT REGIONAL MEDICAL CENTER,
& UPMC SUSQUEHANNA,

Defendants.

: NO. 18-0188

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: CIVIL ACTION

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: *Three*

: *Preliminary Objections*

OPINION & ORDER

This matter concerns Eli Shaheen’s (“Plaintiff”) suit against The Williamsport Hospital and UPMC Susquehanna (“Defendants”) on behalf of Val Cooper (“Ms. Cooper”) who allegedly died from third degree burns resulting from Ms. Cooper’s use of a cigarette lighter while connected to supplemental oxygen.¹ Plaintiff claims that Defendants, and their agents, were negligent, careless and/or reckless for failing to appropriately supervise and attend to Ms. Cooper when they knew she was addicted to tobacco and suffering from dementia.² This Court heard argument on January 7, 2019 and reserved decision. This is the Court’s Opinion and Order on *Defendants’ Preliminary Objections*.

1. *Defendants’ First Preliminary Objection* is **SUSTAINED**. Pursuant to *Pennsylvania Rule of Civil Procedure* 1028(a)(3), Defendants argue that the counts in Plaintiff’s Third Amended Complaint (the “Complaint”) should be limited to the actions of occupational therapist Lauren Rauch, OTR/L, as no other staff personnel are identified

¹ Plaintiff’s Third Amended Complaint at 5 (hereinafter “Plaintiff’s Complaint”).

by name or otherwise distinguished in the Complaint. Relying on *Estate of Denmark ex rel. Hurst v. Williams*,³ Plaintiff argues that his references to “nursing staff, attending physicians and other attending personnel, acting within the course and scope of their employment as agents, ostensible agents, servants and/or employees of the Defendants” have been deemed sufficient averments in the medical malpractice arena.⁴ Plaintiff further argues that the facts averred in the Complaint provide sufficient context for his claims.⁵

The Court recently addressed this same preliminary objection in *Lutz v. The Williamsport Hospital*.⁶ However, unlike *Lutz*, the allegations at issue here are not temporally or spatially tethered. That is, the “context of the allegations of the amended complaint” does not provide clarity and allow the Court to rely on the factual averments in the Complaint to tether Plaintiff’s allegations.⁷ Plaintiff’s essential claim is that Ms. Cooper’s death was caused by the failure of the entire hospital—beginning at admittance⁸—to prevent Ms. Cooper from obtaining, or smuggling in, a cigarette lighter and smoking while connected to supplemental oxygen.⁹ During argument, Plaintiff admitted that his claims are not even limited to Ms. Cooper’s hospital room since Plaintiff contends that a physician who oversaw Ms. Cooper’s care plan would also be liable. The Court finds that the breadth of Plaintiff’s claims render the precedent cited in

² *Id.* at 4-7 (Plaintiff avers that Ms. Cooper’s admittances are due to her chronic obstructive pulmonary disease).

³ *Estate of Denmark ex rel. Hurst v. Williams*, 117 A.3d 300 (Pa. Super. Ct. 2015).

⁴ Plaintiff’s Brief in Support at 2-3 (hereinafter “Plaintiff’s Brief”); see, e.g., Plaintiff’s Complaint at 7.

⁵ Plaintiff’s Brief at 3.

⁶ *Lutz v. The Williamsport Hospital*, No. 18-0384, Opinion & Order on Defendant’s Preliminary Objections (Lyco. Com. Pl. Sept. 26, 2018).

⁷ *Williams*, 117 A.3d at 307; accord *Blair v. Mehta*, 67 Pa. D. & C. 4th 246, 254-55, 2004 WL 2491769 (Lyco. Com. Pl. June 10, 2004) (holding that subparagraphs in a few of the plaintiff’s allegation paragraphs were “sufficiently specific when read with the rest of the amended complaint”).

⁸ Plaintiff’s Complaint, ¶¶18-20.

Lutz not analogous—*Sokolsky v. Eidelman, Williams, and Breslin v. Mountain View Nursing Home, Inc.* The claims in *Sokolsky, Williams* and *Breslin* were tethered to surgeries or treatments of medical ailments.¹⁰ In the present case, the focus is on an inanimate object and its travels through the hospital. Allowing Plaintiff to broadly proclaim culpability of the entire hospital enters a plain beyond *Sokolsky* and its progeny. The Court will not entertain a fishing expedition. Plaintiff is required to amend his complaint to include general identifiers for those actors or agents Plaintiff believes are culpable.¹¹

2. *Defendants' Second Preliminary Objection* is **SUSTAINED IN PART.**

Pursuant to *Pennsylvania Rule of Civil Procedure* 1028(a)(2)-(3), Defendants argue that the Complaint's first and second counts, which assert claims of vicarious liability, negligence, and corporate negligence, include allegations which are "improper[ly] open-ended, factually unsupported and generalized averments of negligence."¹² Specifically, Defendants take issue with ¶46(a), (b), (e), (f), (g), and (h) as well as ¶40(a), (b), (h), (k), (o), (r), (s), and (t), and request that those portions of the Complaint be stricken.¹³

⁹ For example, Plaintiff's allegations can be read to apply to the janitorial staff as they entered and exited Ms. Cooper's hospital room during the scope of their employment with Defendants.

¹⁰ See *Sokolsky v. Eidelman*, 93 A.3d 858, 860-61, 865 (Pa. Super. Ct. 2014) (discussing how plaintiff's leg amputation spurred her to consult with attorneys in anticipation of pursuing a medical malpractice lawsuit and the facts surrounding the surgery); *Williams*, 117 A.3d at 302 (amended complaint alleged that the decedent's bladder was "severely lacerated" and gauze was left in his body during surgery after complications arose post-tracheotomy); *Breslin v. Mountain View Nursing Home, Inc.*, 171 A. 3d 818, 822, 828-29 (Pa. Super. Ct. 2017) (involving a nursing home's negligent treatment of the plaintiff which led to pressure ulcers developing in his ischial areas, sacral area, right foot, and left foot).

¹¹ The Court is not ordering exact identifiers, such as the "specific medical practitioner," just general qualifiers. See *Sokolsky*, 93 A.3d at 866 (noting that the trial court improperly required such specificity in plaintiff's complaint).

¹² Defendants' Preliminary Objections, ¶35.

¹³ *Id.*, ¶36.

Plaintiff argues that the Complaint is well pled and its factual allegations provide sufficient context for ¶40 and ¶46.¹⁴

As factual averments can provide context for later allegations,¹⁵ the Court disagrees with Defendants' position to the extent Defendants seek to require Plaintiff to reiterate factual averments amid his legal allegations. In this regard, the Complaint "is sufficiently clear to enable the defendant[s] to prepare [their] defense."¹⁶ However, ¶40(a)'s language of "including but not limited to" should be rectified as to remove the ambiguities associated with such a phrase. Similarly, the Court does agree that the following subparagraphs are not factually supported in the Complaint:

¶40(b) "failure to obtain adequate and necessary medical and other consultations."

¶40(t) "failure to properly conform to accepted standards of medical practice and care in the diagnosis [. . .]"

¶46(a) "failure to exercise reasonable care in [. . .] the granting of privileges to their medical staff."

The facts do not allege that consultations were necessary, that Ms. Cooper was improperly diagnosed, or that medical staff were improperly granted privileges. Therefore, Plaintiff is required to amend the Complaint to include factual support or remove those subparagraphs from Plaintiff's Fourth Amended Complaint.

3. Defendants' Third Preliminary Objection is SUSTAINED. Defendants argue that Plaintiff's claims for punitive damages in Counts I, II, III, and IV should be stricken because Plaintiff has failed to allege sufficient facts of willful, wanton, or

¹⁴ Plaintiff's Brief at 4-6.

¹⁵ *Williams*, 117 A.3d at 307.

¹⁶ *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006) (quoting *Ammlung v. City of Chester*, 302 A.2d 491, 498 n.36 (1973)) (internal quotation marks omitted).

reckless behavior.¹⁷ Defendants astutely note that just because Ms. Cooper was hospitalized on previous occasions an inference is still required for Plaintiff's claim that the corporate Defendants knew of her in such a manner that their later care was reckless.¹⁸ Conversely, Plaintiff argues that it has pled sufficient facts to support a claim that "Defendants showed a reckless indifference to Plaintiff's life during her admission and that said recklessness [directly resulted in] Plaintiff's death."¹⁹ Plaintiff believes that

the facts of this case demonstrate a series of complete failures by Defendants and Defendants' agents, starting with the admission of Plaintiff, at which time Defendant failed to secure dangerous objects including smoking paraphernalia, i.e. cigarette lighter, from Plaintiff, deceased. Defendants[] failures continued during the admission of Plaintiff, deceased, where the record demonstrates she repeatedly voiced her desire to smoke cigarettes, yet Defendants and/or Defendants' agents failed to ensure she did not have access to her lighter while connected to supplemental oxygen. Furthermore, Defendants failed to provide 1:1 care to Plaintiff, deceased, despite the fact that Plaintiff was noted as confused, demented, impulsive, and forgetful, among other qualities demonstrating the need for increased supervision and safety interventions.²⁰

For reasons discussed in *Lutz*, the Court agrees with Defendant.²¹ While Plaintiff's theory of the case presumes recklessness, the facts averred do not support a claim for punitive damages. Plaintiff's averments in the Complaint that reference "recklessness," or a variant thereof, are hereby stricken without prejudice: ¶4, ¶10, ¶¶33-34, ¶¶36-38, ¶40, ¶¶42-43, ¶46, and ¶¶48-49. Likewise, Plaintiff's *prayers for relief* in Counts I, II, III, and IV requesting "punitive damages" are stricken without prejudice. If discovery should reveal facts which would support a claim for punitive damages, Plaintiff may seek to amend the pleadings.

¹⁷ Defendants' Preliminary Objections, ¶¶47-75 (citing 40 P.S. § 1303.505(a)).

¹⁸ *Id.*, ¶60.

¹⁹ Plaintiff's Brief at 6.

²⁰ *Id.* at 5-6.

²¹ *Lutz*, No. 18-0384, Opinion & Order on Defendant's Preliminary Objections, at 6-9.

Plaintiff shall amend the Complaint within twenty (20) days of this opinion's date.

IT IS SO ORDERED this 22nd day of January 2019.

BY THE COURT:

Eric R. Linhardt, Judge

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