

**IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA**

ALDEN J. EVANS, SR.,	: No. CV 20-0879
Plaintiff	:
VS	:
	:
NATHALIE LAVALLEE, M.D.;	: Civil action, Law
TIMOTHY PASTORE, M.D.; KRISTIN	:
ADKINS, CRNA; THE WILLIAMSPORT	:
HOSPITAL; THE WILLIAMSPORT	:
HOSPITAL d/b/a WILLIAMSPORT	:
REGIONAL MEDICAL CENTER;	:
UPMC SUSQUEHANNA f/k/a	:
SUSQUEHANNA HEALTH SYSTEM	:
and ANESTHESIA ASSOCIATES OF	:
WILLIAMSPORT, INC.,	: Preliminary objections
Defendants	:

OPINION

On December 19, 2022, this matter came before the Court for oral argument on Plaintiff’s Preliminary Objections, or in the alternative, Motion to Strike, to the Amended Answer and New Matter, filed on November 15, 2022, by Defendants Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc. That New Matter can be summarized as denying liability for Evans’ injuries, and asserting that the legal cause of those injuries was the acts or omissions of others. Preliminary objections challenging the sufficiency of a pleading are ordinarily filed in the early stages of litigation. In this matter, the parties have completed discovery, and have exchanged expert reports. In fact, Defendants Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., have incorporated the contents of their expert reports into their New Matter, by reference. Further, this matter has been scheduled for a jury trial in January, 2023. Thus, the question presented to the Court is whether these Defendants should be required to re-plead their New Matter within the weeks immediately preceding jury selection, which would likely result in the pleadings being closed, after trial. For the reasons more fully set forth herein, the Preliminary Objections will be dismissed.

Background

The facts of this matter were thoroughly reviewed by the Honorable Ryan M. Tira in his Opinion filed December 3, 2020. The matter arose out of a surgical procedure which occurred on October 30, 2019. Defendant, Dr. Lavallee, failed to announce that she was about to use Bovie cautery. She also failed to turn off oxygen for at least 60 seconds prior to its use. When she began use of the Bovie cautery, a fire ignited resulting in severe burns and other injuries to the Plaintiff. All other Defendants have settled with the Plaintiff, and only Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., remain.

On January 19, 2021, Plaintiff filed Preliminary Objections to the New Matter filed by Movants on January 14, 2021. Plaintiff cited the *en banc* decision of this Court in the matter of *Allen v. Lipson*, 8 D. & C. 4th 390 (1990), and attached both a copy of the Opinion and Order of the Honorable Clinton W. Smith, P.J. in the matter of *Trimble v. Beltz, et. al.*, Lycoming County docket 98-01,720, and the Opinion and Order dated August 5, 2004, of the Honorable William S. Kieser, in the matter of *Adams v. Beyer, et. al.*, Lycoming County docket 01-01,767. Simply stated, Plaintiff asserted that Movant's original New Matter lacked the material facts required by Rules 1019(a) and 1030 of the Pennsylvania Rules of Civil Procedure. By stipulation filed February 16, 2021, the parties agreed that Defendants Pastore and Anesthesia Associates of Williamsport, Inc. could file an Amended New Matter, through sixty (60) days prior to the close of discovery.

A scheduling Order was filed on February 24, 2021, and later amended by Order filed December 10, 2021. The scheduling Order filed to December 10, 2021, provided a cut-off for completion of discovery of January 10, 2021, and the exchange of expert reports thereafter. Long after the deadline for completion of discovery, Defendants Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., filed a Motion (and an Amended Motion) seeking leave of Court to amend their Answer and New Matter, and to assert cross claims. The issue presented to the Court in that Amended Motion was whether the proposed Amended New Matter and the cross claims would cause prejudice to the Plaintiff.

After briefing and oral argument, the Court determined that there would be little prejudice to the Plaintiff from permitting the filing of affirmative defenses which were raised long ago, but stricken by stipulation. With regard to Movants' request to file tardy

cross claims, the Amended Motion to Amend was denied. Defendants Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., then filed an Amended New Matter, without cross claims. Plaintiff filed another round of Preliminary Objections, asserting that the Amended New Matter still lacks the material facts required by Rules 1019(a) and 1030 of the Pennsylvania Rules of Civil Procedure.

Discussion

This Court is obligated to “liberally construe” the Rules of Civil Procedure “to secure the just, speedy and inexpensive determination of every action,” and “may disregard any error or defect of procedure which does not affect the substantial rights of the parties,” to that end. Pa.R.C.P. 126. In reviewing preliminary objections, “[a]ll well-pled facts in the complaint, *and reasonable inferences arising from those facts*, are accepted as true. However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted.” *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Commw. Ct. 2013) (quoting *Wilson v. Marrow*, 917 A.2d 357, 361 n. 3 (Pa. Cmwlth.2007) (*emphasis added*). “... [A] motion to strike should be overruled unless a party can affirmatively show prejudice. *Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D.&C.2d 784, 788 (Pa. Com. Pl. 1976).

“The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.”¹⁶ Pa.R.C.P. § 1019(a). “The purpose of this rule is to require the plaintiff to disclose the material facts sufficient to enable the adverse party to prepare the case.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Commw. Ct. 2007). “Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, ‘it must also formulate the issues by summarizing those facts essential to support the claim.’” *Wetzel*, 74 A.3d at 356–57 (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super.1992). “The lower court has broad discretion in determining the amount of detail that must be averred since the standard of pleading set forth in Rule 1019(a) is incapable of precise measurement.” *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963). In sum, for this Court to grant Evans’ Preliminary Objections, Evans must have affirmatively shown that Dr. Pastore did not disclose sufficient material facts in their New Matter to enable Plaintiff to prepare his case.

Plaintiff's argument centers on the fact that Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., incorporated by reference the contents of their expert reports into their Amended New Matter, rather than re-tying the contents of the reports into the pleading. Specifically, Plaintiff claims that "[m]erely attaching and referencing a document does not come close to satisfying the pleadings standard in Pennsylvania."

Rule 1019(a) is intended to require that each pleading contain sufficient material facts to enable the adverse party to prepare their case, and to prevent surprise. Since at least the date of receipt of their expert reports, Plaintiff has had actual written notice of the precise legal position of the remaining Defendants. Requiring Defendants Timothy Pastore M.D. and Anesthesia Associates of Williamsport, Inc., to re-type the contents of their expert reports into a third Amended New Matter, filed a week or two before trial, would fly in the face of both the letter and spirit of Pa.R.C.P. 126, and would not further "the just, speedy and inexpensive determination" of this matter.

And now, this 21st day of December, 2022, Plaintiff's Preliminary Objections to the Amended Answer and New Matter of Defendants Timothy Pastore, M.D. and Anesthesia Associates of Williamsport, Inc., are dismissed. Plaintiff is directed to file a Reply to that Amended New Matter within twenty (20) days of the date of filing of this Order.

By The Court,

William P. Carlucci, Judge

cc: Brian J. Bluth, Esquire
Clifford A. Rieders, Esquire/
Sean P. Gingerrich, Esquire
John R. Hill, Esquire

WPC/TSR