

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANN ENGLER MERTZ, Administratrix for : CV-21-00178
the Estate of SARAH JANE BROOKS, :
deceased, :
Plaintiff :
vs. :
NIPPENOSE VALLEY VILLAGE, INC.; :
JASMYN WINEY; and JOHN DOE 1-3 :
UNKNOWN DEFENDANTS, :
Defendants :

OPINION AND ORDER

AND NOW, this 21st day of November 2022, following argument on Defendants Nippenose Valley Village, Inc.'s and Jasmyn Winey's Preliminary Objections to Plaintiff's Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiff commenced this action by filing a Praecipe to Issue Writ of Summons on March 2, 2021, and filed a Complaint on March 22, 2022. The Complaint avers that Decedent was a resident at Defendant Nippenose Valley Village, Inc.'s skilled nursing facility ("Defendant Facility") from October 2, 2018 until August 27, 2020, and while there suffered numerous falls and medical emergencies due to Defendants' negligence. The Complaint contains five counts: Count One, raising claims of negligence; Count Two, Breach of Fiduciary Duty; Count Three, Unfair Trade Practices; Count Four, a survival statute action; and Count Five, a wrongful death claim. Count Two raises a claim against Defendant Nippenose Valley Village, Inc. only; the other counts name all Defendants. Counts One, Two and Four each contain averments that the conduct of the Defendants named in that count "was

intentional, outrageous, willful and wanton and exhibited a reckless indifference” to Decedent’s well-being, and “was such that an award of punitive damages is justified.”

PRELIMINARY OBJECTION

On April 5, 2022, Defendants Nippenose Valley Village, Inc. and Jasmyn Winey filed a Preliminary Objection to the Complaint in the nature of a motion to strike all claims for punitive damages. Defendants noted that in order to maintain claims for punitive damages, a party must plead factual allegations of not just “mere inadvertence, mistake, [or] error of judgment” but of “outrageous conduct, or conduct with evil motive or reckless indifference to the rights of others....”¹ Defendants argued that Plaintiff’s Complaint failed to satisfy this standard because its “boilerplate allegations... of corporate malfeasance” provided insufficient factual support for the contention that Defendants had exhibited intentional, malicious, or recklessly indifferent conduct. Specifically, Defendants argued that because Plaintiff alleges Decedent received inadequate care from individual agents and employees of Defendants, punitive damages are only appropriate if Plaintiff can show that Defendants “had actual knowledge of the wrongful conduct of [their agents and employees] and nevertheless allowed it to continue....” Defendants contend that the Complaint does not allege facts sufficient to make such a showing.

In response, Plaintiff first notes that Pennsylvania Courts have consistently found punitive damages appropriate for corporate negligence constituting

¹ Defendants cite *Chambers v. Montgomery*, 192 A.2d 355 (Pa. 1963) and *Field v. Philadelphia Electric Company*, 565 A.2d 1170, 1183 (Pa. Super. 1989) for these standards.

outrageous conduct in medical malpractice and nursing home cases.² Plaintiff argues that the Complaint contains many factual allegations supporting a finding of reckless and outrageous conduct, including:

- Decedent suffering three falls shortly after her admission to the Defendant Facility, the third of which required hospitalization;
- Decedent suffering approximately ten falls after her return to the Defendant Facility following that hospitalization, with one fall resulting in a fractured collar bone;
- Decedent experiencing "consistent and significant fluctuations of [Decedent's] blood sugar levels," including instances where the levels reached highs and lows which constituted medical emergencies;
- Decedent continually complaining of pain, weakness, and shortness of breath, and suffering a number of infections, requiring multiple hospitalizations.

The Complaint alleges that these issues were attributable to a number of failings on the part of Defendant, and contends that many of these issues were attributable to intentional understaffing, failure to maintain (or falsely maintaining) records relating to patient care, and failure to ensure adequate staffing and training to ensure that recurring issues (such as Decedent's numerous falls) did not continue. Plaintiff further contends that inspections of the Defendant Facility shortly before Decedent's admission put them on notice that many of these issues existed, and therefore Defendants' failure to address these issues went beyond mere negligence in light of their knowledge of the Facility's shortcomings.

ANALYSIS

² For instance, Plaintiff notes that in *Scampone v. Grane Healthcare Co.*, 11 A.3d 967 (Pa. Super. 2010), the Superior Court held that evidence of understaffing that persisted after complaints were made, alteration and falsification of records, and deplorable conditions could support a claim for punitive damages against the corporate defendants.

In ruling on preliminary objections in the nature of a demurrer, the Court must determine whether “on the facts averred, the law says with certainty that no recovery is possible,” and “[w]here a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.”³

The parties have correctly noted the standard for pleading punitive damages in Pennsylvania; under this standard, “a punitive damages claim must be supported by evidence to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk.”⁴ Thus, a demurrer to the preliminary damages claim is proper only if the Complaint does not contain allegations that, if proved, would allow a factfinder to conclude that Plaintiff had established the requirements of subjective appreciation of the risk of harm and a failure to act in conscious disregard of that risk.

The Court finds that Plaintiff’s Complaint contains sufficient facts to support her claim for punitive damages at this stage. The Complaint alleges that numerous issues of a similar nature occurred consistently over nearly two years while Decedent was a resident at the Defendant Facility, including reoccurring falls, blood sugar fluctuations and infections. Plaintiff’s allegations of corporate negligence are based on multiple theories that could support a finding that Defendants knew of, or were at least reckless regarding, the risks of harm to Decedent and yet took no (or insufficient) action to address those risks of harm. In particular, Plaintiff avers that the reoccurring issues were due to deliberate understaffing, a failure to train staff to

³ *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208-09 (Pa. Super. 2012).

⁴ *Hutchinson ex rel. Hutchinson v. Luddy*, 870 A.2d 766, 772 (Pa. 2005).

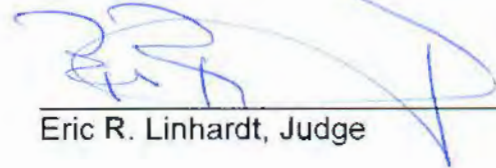
ensure known problems did not reoccur, and a failure to rectify issues that inspections of the Defendant Facility had recently revealed. If Plaintiff proves the facts as alleged in the Complaint, a jury could conclude, for instance, that Decedent's risk of falling was known and obvious, and that Defendants' failure to prevent her from falling over a dozen times went beyond mere negligence and constituted at least a reckless failure to prevent further falls through improved staffing, policy, or training.

ORDER

For the foregoing reasons, the Court **OVERRULES** Defendants' Preliminary Objection to Plaintiff's Complaint. Defendant shall file an Answer to Plaintiff's Complaint within twenty (20) days of this Opinion and Order.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

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