IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JESSICA STIDFOLE, Individually, and as Administratrix of the Estate of W.N.,	: No. CV 23-00944
Plaintiff,	:
VS	: CIVIL ACTION
MARSHA ANN NAHRA, M.D.; ALEXA MILLS, M.D.; ANGELA HUGGLER, M.D.; AUTUMN SHREE HILL, CNM; GEISINGER MEDICAL CENTER; GEISINGER CLINIC; UPMC WILLIAMSPORT; UPMC SUSQUEHANNA; SUSQUEHANNA PHYSICIAN SERVICES; and, BUCKTAIL MEDICAL CENTER,	:
Defendants.	: Preliminary Objections

OPINION AND ORDER

This matter came before the Court on January 11, 2024, for oral argument on Preliminary Objections in the nature of a motion to strike and a demurrer, to the Second Amended Complaint (hereinafter the "Complaint"), filed by Defendants Angela Huggler, M.D. and Autumn Shree Hill, CNM, and UPMC Williamsport, and UPMC Susquehanna, and Susquehanna Physician Services (hereinafter collectively the "UPMC Defendants"). For the reasons more fully set forth below, those Preliminary Objections are denied.

I. Background

Plaintiff's Complaint alleges that the Defendants participated in the medical care of the Plaintiff with regard to a high risk pregnancy. The Complaint alleges that one or more of the UPMC Defendants treated and improperly discharged the Plaintiff on both September 6 and September 11, 2021, when her physical condition, and that of her unborn child, required that the child be immediately surgically delivered. The Complaint alleges that, as a result of those failures, Plaintiff suffered a sudden onset of abdominal pain and vaginal bleeding in the early morning hours of September 12, 2021, was taken by ambulance to Bucktail Medical Center, and then transferred to UPMC Williamsport. Plaintiff's child was surgically delivered at UPMC Williamsport. The surgeon noted "Uterine rupture at the

anterior lower uterine segment. Other conditions: fetus and placenta completely extruded from the uterus." The Complaint alleges that the child died on September 16, 2021. The immediate cause of death was respiratory failure and neonatal encephalopathy.

The Preliminary Objections filed by the UPMC Defendants assert two (2) claims. First, Defendants demurrer to Plaintiff's claim for punitive damages. Second, Defendants demurrer to Plaintiff's claim for the Negligent Infliction of Emotional Distress.

II. Questions Presented:

A. Whether the Court should strike or enter a demurrer to Plaintiff's claims against the UPMC Defendants for punitive damages.

B. Whether the Court should strike or enter a demurrer to Plaintiff's claim at Count XV for the Negligent Infliction of Emotional Distress.

III. Brief Answer:

A. The Court will not strike or enter a demurrer to Plaintiff's claims against the UPMC Defendants for punitive damages, based upon the fact that Plaintiff has repeatedly alleged that the conduct of the UPMC Defendants was undertaken with reckless indifference, and with knowing disregard of a known risk.

B. The Court will not strike or enter a demurrer to Plaintiff's claim at Count XV for the Negligent Infliction of Emotional Distress, based upon the fact that Plaintiff has alleged facts which suggest that her emotional distress was "reasonably foreseeable" under the three-factor test announced in *Sinn v. Burd,* 486 Pa. 146, 404 A.2d 672 (Pa. 1979).

IV. Discussion:

A. The Court will not strike or enter a demurrer to Plaintiff's claims against the UPMC Defendants for punitive damages, because Plaintiff has sufficiently alleged that the UPMC Defendants acted with reckless indifference, and with knowing disregard of a known risk.

The settled law of this Commonwealth is that preliminary objections in the nature of a demurrer are not favored.

> A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart,* 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein,* 395 Pa. 173, 149 A.2d 110

(1959); *March v. Banus,* 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia,* 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust,* 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra.*

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.,* 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.,* 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra; London v. Kingsley,* 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker,* 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board,* 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also Schott v. Westinghouse Electric Corp., supra,* 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 374 Pa. Super. 522, 524–25, 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth,* 507 Pa. 360, 372, 490 A.2d 402, 408 (Pa. 1985)).

Plaintiff's claim for punitive damages is governed by 40 P.S. Section 1303.505:

(a) Award.--Punitive damages may be awarded for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the health care provider's act, the nature and extent of the harm to the patient that the health care provider caused or intended to cause and the wealth of the health care provider.
(b) Gross negligence.--A showing of gross negligence is insufficient to support an award of punitive damages.
(c) Vicarious liability.--Punitive damages shall not be awarded against a health care provider who is only vicariously liable for the actions of its agent that caused the injury unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages.
(d) Total amount of damages.--Except in cases alleging intentional misconduct, punitive damages against an individual physician shall not exceed 200% of the compensatory damages awarded. Punitive damages, when awarded, shall not be less than $100,000 unless a lower verdict amount is returned by the trier of fact.
(e) Allocation.--Upon the entry of a verdict including an award of punitive damages, the punitive damages portion of the award shall be allocated as follows:

(1) 75% shall be paid to the prevailing party; and
(2) 25% shall be paid to the Medical Care Availability and Reduction of Error Fund.

Under the clear language of Section 1303.505, Plaintiff cannot obtain an award of punitive damages unless Plaintiff establishes that Defendants' conduct was either willful or wanton, or undertaken with reckless indifference to Plaintiff's rights.

> Reckless indifference to the interests of others", or as it is sometimes referred to, "wanton misconduct", means that "the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.

Weston v. Northampton Personal Care, Inc., 2013 Pa.Super. 14, 62 A.3d 947, 961 (Pa. Super. Ct. 2013), (quoting *Smith v. Brown*, 283 Pa.Super. 116, 423 A.2d 743, 745 (Pa. Super. Ct. 1980)). *Accord Bannar v. Miller*, 701 A.2d 232, 242 (Pa. Super. Ct. 1997), *appeal denied*, 555 Pa. 706, 723 A.2d 1024 (Pa. 1998).

As a practical matter, the medical negligence cases where an award of punitive damages is warranted are rare. At trial, it is the role of the Court to determine whether the plaintiff has presented sufficient evidence from which the jury could reasonably conclude that the defendant acted outrageously. If not, Plaintiff's claim for punitive damages should not be submitted to the jury. *Slappo v. J's Development Associates, Inc.*, 2002 Pa.Super. 18, 791 A.2d 409, 417 (Pa. Super. Ct. 2002), citing *Martin v. Johns-Manville Corp.,* 508 Pa. 154, 494 A.2d 1088, 1098 (Pa. 1985).

The strength of Plaintiff's claims of outrageous conduct is not, however, the question presented to the Court in preliminary objections. Rather, the Court need only determine whether, *on the face of the Complaint,* Plaintiff has alleged wanton conduct. *See Stroud v. Abington Memorial Hospital,* 546 F.Supp. 238, 256-258 (E.D. Pa. 2008), citing *Hutchinson ex. rel. Hutchinson v. Luddy,* 582 Pa. 114, 870 A.2d 766, 771-772 (Pa. 2005).

The Court has reviewed the allegations in the Second Amended Complaint, in some detail. At paragraphs 49.12, 49.13, 49.17, 57.16, 57.17, 57.22, 65.18, 65.19, 65.20, 65.31, 65.32, 65.33, 73.18, 73.19, 73.20, 73.25, 73.26, 85.15, and 110.14, Plaintiff alleged that one or more of the Defendants either knowingly or recklessly disregarded a known risk to the Plaintiff. In the view of the Court, those allegations are sufficient, at this early stage of the litigation.

B. The Court will not strike or enter a demurrer to Plaintiff's claim at Count XV for the Negligent Infliction of Emotional Distress, based upon the fact that Plaintiff has alleged facts which support the contention that her emotional distress was "reasonably foreseeable" under the three-factor test announced in *Sinn v. Burd,* 486 Pa. 146, 404 A.2d 672 (Pa. 1979).

Prior to 1970, the settled law of this Commonwealth was that a plaintiff could not recover in tort for any emotional damage, absent some physical impact. That so called "impact rule" was abandoned in *Niederman v. Brodsky*, 436 Pa. 401, 261 A.2d 84 (Pa. 1970), where our Supreme Court concluded that a plaintiff could recover for emotional damage if they were within the "zone of danger," even if no actual impact took place. Within less than ten years, our Supreme Court departed from the "zone of danger" test, in the matter of *Sinn v. Burd,* 486 Pa. 146, 404 A.2d 672 (Pa. 1979). In that matter, the trial court sustained defendant's demurer to a claim for damages for emotional distress by a mother who saw a vehicle strike and kill her daughter. The mother was outside of the "zone of danger" of physical injury. A heavily divided Supreme Court reversed, with only three justices subscribing to the Opinion of the Court. Within that opinion, the Court cited with approval to the three-factor test of foreseeability adopted by the Supreme Court of California in the matter of *Dillon v. Legg*, 69 Cal.Rptr. at 80, 441 P.2d at 920, as follows:

> (1) Whether plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.

Sinn v. Burd, 486 Pa. 146, 170-171, 404 A.2d 672, 685 (Pa. 1979).

In the matter of *Gulick v. Chia S. Shu, M.D., P.C.*, 618 F.Supp. 481, 483 (M.D. Pa. 1985), the Court considered a claim by a father for emotional distress, where father did not observe the physician's conduct. While the Court recognized the three-factor test adopted in *Sinn*, the Court relied upon the decision in *Hoffner v. Hodge,* 47 Pa. Cmwlth. 277, 407 A.2d 940 (Pa. Commw. Ct. 1979), to support its conclusion that a father could not recover

damages for the negligent infliction of emotional distress where he did not personally observe the incident.

More recently, in the matter of *Toney v. Chester County Hospital*, 614 Pa. 98, 36 A.3d 83 (Pa. 2011), an evenly divided Pennsylvania Supreme Court affirmed a decision of our Superior Court, suggesting that Pennsylvania will recognize a cause of action for negligent infliction of emotional distress, where the defendant was in a pre-existing "special relationship" with the plaintiff. Plaintiff here claims such a relationship.

With regard to the particular facts alleged in the Complaint, the Court is persuaded by the scholarly opinion of Judge Knight in the matter of *Guffey v. Geisinger Medical Center et al.*, 1999 WL 34786603 (Snyder-Union Cnty. 1999). In that matter, Judge Knight relied upon the decision in *Turner v. Medical Center, Beaver, PA., Inc.,* 454 Pa.Super. 645, 686 A.2d 830 (Pa. Super. Ct. 1996), to support her conclusion that plaintiff parents stated a claim for negligent infliction of emotion distress where they allege that they were physically present in the delivery room when their triplets were born, and that plaintiffs observed the children suffocate and die. Judge Knight noted that plaintiffs identified a "discrete and identifiable traumatic event," which they personally observed.

Much like the facts in *Turner* and *Guffey,* Plaintiff here alleges that she was present in the delivery room, and personally perceived the "discrete and identifiable traumatic event." Plaintiff also claims a pre-existing special relationship, consistent with the holding in *Toney v. Chester County Hospital*, 614 Pa. 98, 36 A.3d 83 (Pa. 2011). The UPMC Defendants seek to draw a distinction in this matter, because Plaintiff's claim of negligence is largely based upon her claim that Defendants negligently discharged her from the hospital on September 6 and September 11, 2021. Whether that distinction results in a material difference remains to be seen. For present purposes, it is sufficient for the Court to conclude that Plaintiff has pled sufficient facts to support a claim for negligent infliction of emotional distress, both under the three-factor test adopted in *Sinn v. Burd,* 486 Pa. 146, 170-171, 404 A.2d 672, 685 (Pa. 1979), and under the "pre-existing special relationship" test discussed in *Toney v. Chester County Hospital*, 614 Pa. 98, 36 A.3d 83 (Pa. 2011).

AND NOW, this 23rd day of January, 2024, Defendant's Preliminary Objections to the Second Amended Complaint are denied, and the UPMC Defendants are directed to file an Answer within twenty (20) days of the date of filing of this Order.

By the Court,

William P. Carlucci, Judge

WPC/aml

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