

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

ROBERT L. VOLLMER SR. and	: No. CV 24-00195
ROBIN A. VOLLMER,	:
ADMINISTRATORS OF THE ESTATE	:
OF MADDYX M. VOLLMER,	:
DECEASED,	:
Plaintiffs,	:
VS	: CIVIL ACTION
	:
GREGORY A. ZEITLER,	:
Defendant.	: Preliminary Objections

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**OPINION AND ORDER**

This matter came before the Court on May 14, 2024, for oral argument on Defendant’s Preliminary Objections to the Complaint, in the nature of a motion to strike. For the reasons more fully set forth below, those Preliminary Objections are granted in part, and denied in part.

**Background:**

Plaintiffs’ allege that Plaintiffs’ decedent died as a result of injuries sustained when Defendant, while operating a 2014 Ford F-150 truck, made an improper left hand turn immediately in front of Plaintiffs’ decedent, operating a 2003 Yamaha motorcycle. The Complaint refers to the left hand turn as “illegal,” makes reference to Defendant’s blood alcohol level as .04%, and makes an allegation that Defendant’s left-hand turn was undertaken in violation of “the laws, regulations, statutes, and ordinances of the Commonwealth of Pennsylvania and applicable Pennsylvania Motor Vehicle and Traffic Regulation provision.”

Defendant filed Preliminary Objections on March 11, 2024, which are now before the Court.

**Questions Presented:**

- I. Whether the reference to the word “illegal” at Paragraph 11 of the Complaint should be stricken.
- II. Whether Paragraph 13 of the Complaint, referring to Defendant’s consumption of alcohol, should be stricken.
- III. Whether Plaintiffs’ use of the words “reckless” or “recklessness” or “recklessly” should be stricken.

- IV. Whether Subparagraph 18(n) of the Complaint, referring to Defendant's consumption of alcohol, should be stricken.
- V. Whether Subparagraph 18(s) referring to Defendant's alleged violation of "the laws, regulations, statutes, and ordinances of the Commonwealth of Pennsylvania and applicable Pennsylvania Motor Vehicle and Traffic Regulation provisions" should be stricken.
- VI. Whether Plaintiffs' claims for punitive damages should be stricken.

**Answers to Questions Presented:**

- I. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's left-hand turn as "illegal."
- II. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.
- III. Plaintiffs' use of the words "reckless" or "recklessness" or "recklessly" will not be stricken.
- IV. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.
- V. Plaintiffs will be directed to file an Amended Complaint which alleges which particular statutes are the subject of Plaintiffs' claim that Defendant violated the laws of the Commonwealth of Pennsylvania.
- VI. Plaintiffs' claims for punitive damages will not be stricken, but Plaintiffs will be directed to file an Amended Complaint which pleads that claim in sufficient factual detail.

**Discussion:**

- I. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's left-hand turn as "illegal."

Plaintiffs contend that Defendant executed a left-hand turn in a negligent or reckless manner, which was the legal cause of injury and death to Plaintiffs' decedent. Nevertheless, it is not illegal to execute a left-hand turn. Thus, Plaintiff will be directed to file an Amended Complaint which does not refer to the turn in that manner.

- II. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.

Plaintiffs contend that Plaintiffs are entitled to plead and prove Defendant's .04% blood alcohol content. That is not the law. *Locke v. Claypool*, 627 A.2d 801, 803 (Pa. Super. Ct. 1993)(citing *Whyte v. Robinson*, 617 A.2d 380, 383 (Pa. Super. Ct. 1992)). Thus, Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.

III. Plaintiffs' use of the words "reckless" or "recklessness" or "recklessly" will not be stricken.

Defendant contends that the factual allegations set forth in the Complaint are insufficient to support a claim for punitive damages, and thus the words "reckless" or "recklessness" or "recklessly" should be stricken. While the factual allegations set forth in the Complaint may be insufficient, that is not the basis for fewer material allegations of fact, but for more.

IV. Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.

For the reasons more fully set forth in response to Question II, Plaintiffs will be directed to file an Amended Complaint which does not refer to Defendant's consumption of alcohol.

V. Plaintiffs will be directed to file an Amended Complaint which alleges which particular statutes are the subject of Plaintiffs' claim that Defendant violated the laws of the Commonwealth of Pennsylvania.

In the forty-one (41) years since our Supreme Court published its decision in the matter of *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983), defense counsel have filed many volumes of preliminary objections seeking to strike general allegations of negligence. Here, Plaintiffs understandably have pointed to Defendant's apparent violation of 75 Pa.C.S.A. § 3322. Regrettably, Plaintiffs chose to use the overbroad language of "the laws, regulations, statutes, and ordinances of the Commonwealth of Pennsylvania and applicable Pennsylvania Motor Vehicle and Traffic Regulation provisions." Plaintiffs will be directed to file an Amended Complaint which specifically identifies the statutes allegedly violated by the Defendant.

- VI. Plaintiffs' claims for punitive damages will not be stricken, but Plaintiffs will be directed to file an Amended Complaint which pleads that claim in sufficient factual detail.

Although Defendant's Preliminary Objections are stated in the "clothing" of a Motion to Strike, Defendant actually seeks a demurrer on the Plaintiff's claim for punitive damages:

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. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *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.*, 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985)); *Accord Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa. Super. Ct. 2023) ("Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief.")(quoting *Feingold v. Hendrzak*, 15 A.3d 937 (Pa. Super. Ct. 2011)).

The imposition of punitive damages is only available where the finder of fact concludes that the defendant's conduct was "malicious, wanton, willful, oppressive or exhibited a reckless indifference to the rights of others." *Jahanshahi v. Centura Development*

*Co., Inc.*, 816 A.2d 1179, 1180 (Pa. Super. Ct. 2003)(quoting *Johnson v. Hyundai Motor America*, 698 A.2d 631, 639 (Pa. Super. Ct. 1997)).

While the allegations set forth in the Complaint appear inadequate, the Court cannot conclude with certainty that the Plaintiffs will never prevail on their claim for punitive damages. Thus, Plaintiffs will be directed to file an Amended Complaint which supports that claim with material allegations of fact.

**AND NOW**, this 15<sup>th</sup> day of May, 2024, Defendant's Preliminary Objections to the Complaint are granted in part and denied in part, as follows:

1. Plaintiffs are directed to file an Amended Complaint within twenty (20) days of the date of filing of this Order;
2. The Amended Complaint will not refer to Defendant's left-hand turn as "illegal";
3. The Amended Complaint will not allege Defendant's consumption of alcohol;
4. The Amended Complaint will make specific reference to statutes allegedly violated by the Defendant;
5. The Amended Complaint will allege sufficient material allegations of fact in support of Plaintiffs' claim for punitive damages.

In all other respects, Defendant's Preliminary Objections to the Complaint are denied.

By the Court,

William P. Carlucci, Judge

WPC/aml

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