

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

TODD BARTLEY and MICHELLE	:	No. CV-23-01364
BARTLEY, husband and wife, JOHN	:	
DOE and JANE DOE, and COLONIAL	:	
RADIO GROUP OF WILLIAMSPORT,	:	
LLC,	:	
Plaintiffs,	:	
	:	
VS	:	CIVIL ACTION - LAW
	:	
JAMES A. WEBB, JR., MORGAN AIR	:	
INC., d/b/a WEBB WEEKLY,	:	
and DERRICK DIXON,	:	
Defendants.	:	Motion to Strike Third Amended Complaint

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**OPINION AND ORDER**

This matter came before the Court on March 28, 2025, for argument on Defendants’ (James Webb, Jr., and Webb Weekly) Preliminary Objections to Plaintiff’s Second Amended Complaint, filed January 23, 2025, and Motion to Strike Plaintiff’s Third Amended Complaint, filed February 13, 2025, and Defendant’s (Derrick Dixon) Motion to Strike Plaintiff’s Third Amended Complaint, filed March 20, 2025. Because both motions are functionally identical, the Court will address both motions in the following Opinion and Order. For the reasons more fully set forth below, the two motions to strike are denied and the Preliminary Objections (filed January 23, 2025) are granted in part.

**I. BACKGROUND**

Plaintiffs Todd and Michelle Bartley, John and Jane Doe, and Colonial Radio Group, LLC commenced this action by Writ of Summons on December 8, 2023, against Defendants James A. Webb, Jr., Webb Weekly, and Derrick Dixon. Plaintiffs subsequently filed their Complaint on June 13, 2024. The Defendants filed numerous preliminary objections, which resulted in the Opinion and Order of the Honorable Eric R. Linhardt, dated December 26, 2024. Judge Linhardt Ordered Plaintiffs to file an amended complaint “within (20) days after entry of this Order, in accordance with the Opinion above.” Justifiably, Defendants contend in the Preliminary Objections filed January 23, 2025, that the Second Amended Complaint does not meet the requirements of the Order of December 26, 2024. Plaintiffs filed a Third

Amended Complaint, and Defendants subsequently filed the aforementioned motions to strike Third Amended Complaint.

**2. QUESTIONS PRESENTED**

- A. WHETHER PLAINTIFFS' THIRD AMENDED COMPLAINT SHOULD BE STRICKEN IN ITS ENTIRETY, BECAUSE THE FILING OF THE THIRD AMENDED COMPLAINT DID NOT COMPLY WITH PA. R. CIV. P. 1028.
- B. WHETHER THE CAPTION OF PLAINTIFF'S THIRD AMENDED COMPLAINT COMPLIES WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE CONCERNING UNKNOWN DEFENDANTS AND MINORS.
- C. WHETHER THE COURT SHOULD ENTER A DEMURRER TO THE CLAIMS ASSERTED IN PLAINTIFFS' THIRD AMENDED COMPLAINT.

**3. BRIEF ANSWERS**

- A. PLAINTIFFS' THIRD AMENDED COMPLAINT WILL NOT BE STRICKEN IN ITS ENTIRETY, BUT PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.
- B. FOR VARIOUS REASONS, INCLUDING THE FACT THAT THE CAPTION OF PLAINTIFFS' THIRD AMENDED COMPLAINT DOES NOT COMPLY WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE CONCERNING UNKNOWN DEFENDANTS AND MINORS, PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.
- C. THE COURT WILL NOT ENTER A DEMURRER TO THE CLAIMS ASSERTED IN PLAINTIFFS' THIRD AMENDED COMPLAINT, BUT PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.

**4. DISCUSSION**

- A. PLAINTIFFS' THIRD AMENDED COMPLAINT WILL NOT BE STRICKEN IN ITS ENTIRETY, BUT PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.

Rule 1028(c)(1) provides that “[a] party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.” PA. R. CIV. P. 1028(C). Plaintiffs filed the Third Amended Complaint within twenty days after the Preliminary Objections to Plaintiffs’ Second Amended Complaint (file-stamped January 23, 2025). Thus, there is little basis for the Motions to Strike.

Presumably, the Court should simply dismiss the Motions to Strike, and direct the Defendants to respond to Plaintiffs’ Third Amended Complaint. In doing so, Defendants would almost certainly reassert the claims asserted in the Preliminary Objections to the Second Amended Complaint, which are equally as meritorious as asserted to the Third. The Court is mindful of the admonition contained in Pa. R. Civ. P. 126, which provides that “[t]he court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties.” PA. R. CIV. P. 126(A).

With Rule 126 firmly in mind, the Court will consider the objections raised in Defendants’ (James Webb, Jr., and Webb Weekly) Preliminary Objections to Plaintiff’s Second Amended Complaint, filed January 23, 2025.

**B. FOR VARIOUS REASONS, INCLUDING THE FACT THAT THE CAPTION OF PLAINTIFFS’ THIRD AMENDED COMPLAINT DOES NOT COMPLY WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE CONCERNING UNKNOWN DEFENDANTS AND MINORS, PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.**

This is not a proper matter for claims against “John Doe” or “Jane Doe” pursuant to Pa. R. Civ. P. 2005, since there are no plaintiffs or defendants whose identity is unknown to the Plaintiffs. Counsel for Plaintiffs advised the Court that the unnamed parties are the children of the Plaintiffs. As such, they should be listed by their initials, and their claims asserted by their parents, listed in the caption as their Guardians, all as required by Pa. R. Civ. P. 2028.

C. THE COURT WILL NOT ENTER A DEMURRER TO THE CLAIMS ASSERTED IN PLAINTIFFS' THIRD AMENDED COMPLAINT, BUT PLAINTIFFS WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.

The settled law of this Commonwealth is that demurrers 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.*, 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985)), *abrogated on other grounds*.

The Court does not have a sufficient basis upon which to conclude that Plaintiffs cannot state any claim upon which relief can be granted. That fact notwithstanding, the Second

(and Third) Amended Complaint leaves much to be desired. Pa. R. Civ. P. 1019(a) requires that Plaintiffs state “[t]he material facts on which a cause of action or defense is based...in a concise and summary form.” PA. R. CIV. P. 1019(A). For the most part, the claims asserted by Plaintiffs at Paragraphs 11 through 26 of their Second Amended Complaint filed January 14, 2025, are little more than rumor, claiming misdeeds by unnamed persons who may or may not be necessary parties to this litigation. Paragraphs 17, 18, and 19 constitute impertinent matter, absent a clear allegation that the listed statements were made by one of the Defendants. If Plaintiffs claim that the Defendants made false accusations about Plaintiffs which were the legal cause of damage, Defendants are entitled to know the material facts upon which those claims are based. In the alternative, if the false statements were made by others, Defendants are entitled to know why Plaintiffs contend that Defendants are liable for those statements.

### **ORDER**

**AND NOW**, this 3<sup>rd</sup> day of April, 2025, for the reasons more fully set forth above, it is hereby **ORDERED and DIRECTED** as follows:

1. Plaintiffs are directed to file a Fourth Amended Complaint within twenty (20) days of the date of filing of this Order, which fully complies with the Opinion and Order of the Honorable Eric R. Linhardt, dated December 26, 2024.
2. Plaintiffs’ Fourth Amended Complaint will not list “John Doe or “Jane Doe” Plaintiffs, but may assert claims on behalf of minors who will be identified in the manner required by Pa. R. Civ. P. 2028.
3. Plaintiffs’ Fourth Amended Complaint will clearly identify all persons or entities known to Plaintiffs who they claim made the statements described at Paragraphs 11 through 26 of the Second Amended Complaint filed January 14, 2025, such that Defendants may determine if they are necessary parties to this litigation.
4. Plaintiffs’ Fourth Amended Complaint will be free of any scandalous or impertinent matter.

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5. The allegations contained in Plaintiffs' Fourth Amended Complaint will state "[t]he material facts on which a cause of action or defense is based...in a concise and summary form" in the manner required by Pa. R. Civ. P. 1019(a).
6. In all other respects, Defendants' Preliminary Objections and Motions to Strike are denied.

By the Court,

William P. Carlucci, Judge

WPC/aml

cc: Gregory A. Stapp, Esquire  
David F. Wilk, Esquire, and Blake C. Marks, Esquire  
Christian A. Lovecchio, Esquire