

Lawrence Law Journal

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August 8, 2022

No. 293

MARGEL
V.
NOGA AMBULANCE SERVICE, INC.

Owned and Published By
THE LAWRENCE COUNTY BAR ASSOCIATION

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Phone 724-656-2136

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Lawrence Law Journal

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Lawrence Law Journal

FAMILY MOTION COURT

Family Motion Court will be held on emergency basis only the following dates. Please contact Lisa Hazen, Assistant Court Administrator.
August 12, November 8 through 15.

LAWRENCE COUNTY BAR ASSOCIATION QUARTERLY MEETING

The Quarterly Meeting will be held on Wednesday, September 7, 2022.

Lunch will be served beginning at 11:30 a.m.

The meeting will begin at 12:00 noon

Faraone Brother's Banquet Hall, 1015 S. Mill St., New Castle.

Parking is across the street

RSVP must be made for the meeting so that proper seating and lunch can be arranged. RSVP 724-656-2136 by September 1st.

PBI CLE SEMINARS

The New Castle site capacity is six (6) individuals.
You **MUST** pre-register through PBI at 800-932-4637

Third Parties in Custody Cases

Wednesday, August 24

9:00 a.m. - 12:15 p.m.

3 substantive/0 ethics

\$249.00 standard

Ethics Refresher

Wednesday, August 31

9:00 a.m. - 12:20 p.m.

0 substantive/3 ethics

\$249.00 standard

The New Castle site capacity is six (6) individuals.
You **MUST** pre-register through PBI at 800-932-4637

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

FIRST PUBLICATION

Bartolomeo, Eleanor

Late of Ellport Borough, Lawrence County, Pennsylvania

Executor: Cheryl Ann Kameron, 310 Currie Lane, New Castle, PA 16101

Attorney: Matthew T. Mangino, 315 N. Mercer St., New Castle, PA 16101, 724-658-8535

Fair, Connor J.

Late of Ellwood City Borough, Lawrence County, Pennsylvania

Administrator: Albert S. Fair, 411 Florence Ave., New Castle, PA 16101

Attorney: Jason A. Medure, 713 Wilmington Ave., New Castle, PA 16101

Watkins, Thomas David

Late of New Castle, Lawrence County, Pennsylvania

Executor: Kristina L. Watkins

Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

SECOND PUBLICATION

DiCerbo, Ralph

Late of Ellwood City Borough, Lawrence County, Pennsylvania

Executrix: Lisa DiCerbo, 410 Worth Court, Cranberry Twp., PA 16066, 724-538-8632

Attorney: none

Kitzko, Daniel F.

Late of New Castle, Lawrence County, Pennsylvania

Administratrix: Laura DePietro, 1009 W. Clayton St., New Castle, PA 16102

Attorney: Louis M. Perrotta, Louis M. Perrotta, P.C., 229 S. Jefferson St., New Castle, PA 16101, (724) 658-9980

Kosciuszko, Jason A.

Late of Union Township, Lawrence County, Pennsylvania

Administrator: Vincent Tutino, 3031 Wilmington Rd., New Castle, PA 16105

Attorney: Jason A. Medure, 713 Wilmington

Ave., New Castle, PA 16101

Leonhardt, Robert Clair

Late of Wampum, Lawrence County, Pennsylvania

Executrix: Barbara Jane Leonhardt, 467 Darlington Rd., Wampum, PA 16157

Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, 724-658-7759

Littell, Donald J.

Late of Borough of Wampum, Lawrence County, Pennsylvania

Executor: Harold M. Littell, Nalli, Elias & Associates, PC, 150 Pleasant Dr., Suite 101, Aliquippa, PA 15001

Attorney: Jorden, P. Colalella, Nalli, Elias & Associates, PC, 150 Pleasant Dr., Suite 101, Aliquippa, PA 15001

Patterson, Josephine J.

a/k/a Patterson, Josephine DeEtta

Late of Slippery Rock Township, Lawrence County, Pennsylvania

Executors: Lee Etta Proudfoot, 60 High Oak Farm Lane, Pulaski, PA 16143 or Merri Lynn Drespling, 448 Big Run Rd., New Castle, PA 16101

Attorney: McNickle & Bonner, LLP, 209 West Pine St., Grove City, PA 16127-1595

Perkins, James A.

a/k/a Perkins, James Ashbrook

Late of New Wilmington, Lawrence County, Pennsylvania

Executor: Jane Perkins

Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

Roberts, Mary Jo

Late of New Castle, Lawrence County, Pennsylvania

Executor: Dave L. Roberts, 340 Sawmill Run Rd., Butler, PA 16001

Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, 724-658-7759

St. John, Helen

a/k/a St. John, Helen J.

Late of Ellwood City, Lawrence County, Pennsylvania

Co-Executrices: Janet E. Wiley, Ellwood City, PA & Gayle Fabritius, Beaver Falls, PA

Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

THIRD PUBLICATION

Bucci, Carmen N.

Late of Wampum, Lawrence County, Pennsylvania

Co-Executors: Mark A. Bucci, 618 Wayne Ave., Ellwood City, PA 16117 and Robert C. Bucci, 294 Wampum Mt. Air Rd., Enon Valley, PA 16120

Attorney: Ryan C. Long, Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Mora, William B.

Late of Borough of Ellwood City, Lawrence County, Pennsylvania

Executor: Michael J. Lubenski, 66 Spring Ave. Extension, Ellwood City, PA 16117

Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St., Ellwood City, PA 16117

Scalzo, George M.

Late of New Castle, Lawrence County, Pennsylvania

Administrator: Gary T. Scalzo, 8083 Puritan Dr., Unit C, Mentor, OH 44060

Attorney: John R. Seltzer, 713 Wilmington Ave., New Castle, PA 16101, P: 724-652-0821

Shearer, Shirley B.

a/k/a Shearer, Shirley Jean

Late of New Wilmington, Lawrence County, Pennsylvania

Executrix: Sheryl Dawn Ligo, 812 New Castle-Mercer Rd., Mercer, PA 16137

Attorney: William G. McConnell, Jr., McConnell Law Firm, LLC, P.O. Box 1777, Hermitage, PA 16148, (724) 308-6552

LEGAL NOTICE

NOTICE OF TRUST SETTLEMENT

Notice is hereby given regarding the Living Trust of LOUIS V. FRANZI, late of New Castle, Lawrence County, Pennsylvania, that all creditors and claimants of the decedent and his trust must promptly submit their claims to the following trustee: Rodney L. Franzi, 831 Park Harbour Drive, Youngstown, OH 44512. John M. Fray 604 Franklin Ave. Ellwood City, PA 16117

L.C.L.J. - August 1, 8 and 15, 2022

CERTIFICATE OF ORGANIZATION

Notice is hereby given that on July 20, 2022, a Certificate of Organization - Domestic Limited Liability Company was filed with the Commonwealth of Pennsylvania, Department

of State, Harrisburg, Pennsylvania for **B. SHAFER'S REALTY HOLDINGS, LLC**, which Limited Liability Company has been organized under the provisions of the Limited Liability Company Law of 1994, as amended.

Leymarie Clark Long, P.C.,
Ryan C. Long, Esquire
423 Sixth St.

Ellwood City, PA 16117

L.C.L.J. - August 8, 2022

LAWRENCE COUNTY COURT OF
COMMON PLEAS
NO. 10400 OF 2022

NOTICE OF ACTION TO QUIET TITLE

Matthew T. DeSalvo and Emily DeSalvo, husband and wife, vs. the Unknown Heirs of Levi R. Harding, Sr.

To: Unknown Heirs of Levi R. Harding Sr., action has been commenced to quiet title regarding vacant lots located along Halltown Road, Wampum, Pennsylvania 16157. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiffs. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Office of Lawyer Referral
Lawrence County Government Center
430 Court Street
New Castle, PA 16101
(724) 656-1921

Larry J. Puntureri, Esquire
Attorney for Plaintiffs
2102 Wilmington Rd.
New Castle, PA 16105
(724) 657-0555

L.C.L.J. - August 8, 2022

SHERIFF SALES

**Wednesday, September 14, 2022
at 10:00 AM**

By virtue of various Writs of Execution issued out of the Court of Common Pleas of Lawrence County, Pennsylvania, there will be exposed to sale by public auction at the Lawrence County Government Center, Commissioners Meeting Room, First Floor, 430 Court St., New Castle, PA 16101 at the above date and time, the following described real estate, subject to the following TERMS OF SALE:

The following terms shall be complied with for each sale or continuation thereof:

1. All bidders must identify themselves prior to submitting a bid. Attorneys of record shall be presumed to be bidding for their client(s). No bid may be withdrawn.
2. If the defendant intends to bid, prior to the bidding they must submit to the Sheriff satisfactory proof that they will be able to comply with the bid. No bids will be accepted in excess of the submitted proof.
3. At the request of the plaintiff, any sale may be continued, postponed or cancelled.
4. All bids must be paid in full. The successful bidder shall pay unto the Sheriff, by cash, certified or cashiers' check, 10% within one hour after the sale and the balance within 7 days thereafter. If terms of sale are not met within the required time period, the property will be resold at 12:00 noon on the Third business day following the payment deadline at the Lawrence County Sheriff's Office, Government Center, 430 Court Street, New Castle, PA at the expense and risk of the person to whom it was struck off, who in case of deficiency on such sale shall make good the same.
5. Prior to the delivery of the Sheriff's deed, a successful bidder may assign their bid to a third party, in which case the realty transfer taxes shall be paid as if the assignee were the original successful bidder.
6. If a Third Party is the successful bidder, a Schedule of Distribution will be filed by the Sheriff in the Prothonotary's Office on the Wednesday following the date of sale and that distribution will be made in accordance with the Schedule unless exceptions are filed within TEN days thereafter.
7. Anyone placing a bid should check with an attorney for legal advice. The property you are bidding upon may be subject to unpaid taxes,

liens or mortgages.

8. Any current & delinquent real estate taxes will be paid as part of the costs and before distribution to the plaintiff or any other party.

Sale No. 1

No. 10264-2021; The Huntington National Bank, Plaintiff vs. Lonnie D. Rieder; Raymond A. Rieder, Defendants. All that certain piece or parcel of land situate in the City of New Castle, County of Lawrence and Commonwealth of Pennsylvania, bounded and described as follow to wit: Being the same property conveyed to Lonnie D. Rieder and Raymond A. Rieder, wife and husband, who acquired title by virtue of a deed from John T. Malizia, unmarried, dated February 7, 2007, recorded February 12, 2007, at Document Number 2007-001589, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property Address: 121 East Garfield Avenue, New Castle, PA 16105. Parcel ID: #02-008300 (New Castle 2nd Ward). Judgment amount: \$59,073.82 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski LLC

Sale No. 2

No. 10998-2021; Select Portfolio Servicing, Inc., Plaintiff vs. Christopher J. Cook and Crystal M. Lenn, Defendants. All those two (2) certain pieces of ground situate, lying and being in the Fourth Ward of the City of New Castle, County of Lawrence and Commonwealth of Pennsylvania, being bounded and described as follows, to-wit: Beginning at a point of the Southerly line of Butler Avenue at a line of lands now or formerly of Peter Baldauf; thence along the Southerly line of Butler Avenue in an Easterly direction 87.50 feet to line of other lands now or formerly of Patsy J. Juliano; thence in a Southerly direction along line of other lands now or formerly of Patsy J. Juliano, 120.00 feet to a 15.00 foot alley; thence in a Westerly direction along the North Line of said 15.00 foot alley, 92.95 feet, more or less, to line of lands now or formerly of Peter Baldauf thence in a Northerly direction by line of lands now or formerly of Peter Baldauf, 120.40 feet, more or less to the Southerly line of Butler Avenue at the place of beginning. Being known as Lots Nos. 98 and 99 on Section 52 of the Official Survey of the City of New Castle. Being the same premises which Robert E. Gramsky, a married man, by Deed dated February 12, 2007 and recorded February 16, 2007 in Lawrence County as Instrument Number 2007-001765, granted and conveyed

unto Christopher J. Cook, a single man and Crystal M. Lenn, a single woman, in fee. Property Address: 1030 Butler Avenue, New Castle, PA 16101. Parcel ID: #04-117300 (New Castle 4th Ward). Judgment amount: \$68,616.05 plus interest, costs and attorney fees. Attorney: LOGS Legal Group

Sale No. 3

No. 10738-2020; U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of Citigroup Mortgage Loan Trust 2018-B, Plaintiff vs. Bernard Pagliaro and Betty Pagliaro, Defendants. All that certain piece, parcel or lot of land situate, lying and being in the North Beaver Township, County of Lawrence, Pennsylvania, being known and identified as Lot No. 8 in the Book Estates Plan of Lots, as recorded in Lawrence County Plot Book Volume 15, Page 64-a, being more particularly bounded and described as follows: Beginning at a point on the North line of Leeper Drive at the intersection of the Southeast corner of the parcel herein conveyed with the Southwest corner of Lot No. 9 in said Plan of Lots; thence North 01 degree 59 minutes 20 seconds East along the line dividing Lot Nos. 8 and 9 in said Plan of Lots a distance of 210, feet to a point; thence North 88 degrees 00 minutes 40 seconds West, 7 distance of 210.0 feet to a point on the East line of James Circle; thence South 01 degree 39 minutes 20 seconds West a distance of 195.0 feet to a point; thence along an arc to the left having a radius of 15 feet an arc distance of 23.56 feet to a point on the North line of Leeper Drive; thence along the North line of Leeper Drive South 88 degrees 00 minutes 40 seconds East a distance of 195.0 feet to a point, being the place of beginning. Under and subject to a 50-foot building line, a 15-foot public utility easement and a 15-foot drainage easement as more fully set forth in Lawrence County Plot Book Volume 15, Page 64-a. Being the same premises which Larry E. Macaluso and Pamela Macaluso, husband and wife; James Book and Lorraine M. Book, husband wife; Carl N. Ezzo and Janis M. Ezzo husband and wife, and John H. Davis and Diane B. Davis, husband and wife, by Deed dated July 23, 1990 and recorded July 24, 1990, in the Lawrence County Recorder of Deeds Office at Deed Book Volume 939 at Page 608, granted and conveyed unto Bernard Pagliaro and Betty Pagliaro, husband and wife. Property Address: 135 Leeper Drive, New Castle, PA 16102. Parcel ID: #26-099600 (North Beaver Township). Judgment amount: \$298,858.35

plus interest, costs and attorney fees. Attorney: Hladik, Onorato & Federman, LLP

Sale No. 5

No. 10214-2022; M&T Bank, Plaintiff vs. Ophelia Aldridge, Defendant. Improvements consist of a residential dwelling. Property Address: 414 Young Street, New Castle, PA 16101. Parcel ID: #02-028100 (New Castle 2nd Ward). Judgment amount: \$27,122.68 plus interest, costs and attorney fees. Attorney: KML Law Group

Sale No. 6

No. 10227-2022; The Huntington National Bank, Plaintiff vs. Frank J. Gorgacz, AKA Frank John Gorgacz; Kathleen M. Gorgacz, AKA Kathleen Marie Gorgacz, Defendants. All that certain piece or parcel of land situate in the Township of Shenango, County of Lawrence and Commonwealth of Pennsylvania, bounded and described as follow to wit: Being the same property conveyed to Frank John Gorgacz and Kathleen Marie Gorgacz, husband and wife, who acquired title by virtue of a deed from Matthew G. Dawson and Gretchen A. Dawson, dated June 12, 1989, recorded August 31, 1989, at Document ID 5869, and recorded in Book 898, Page 159, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property Address: 1430 Old Butler Road, New Castle, PA 16101. Parcel ID: #31-088700 (Shenango Township). Judgment amount: \$19,609.90 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski LLC

Sale No. 7

No. 10939-2021; Pennsylvania Housing Finance Agency, Plaintiff vs. Richard M. Heck, Defendant. All that certain lot or piece of ground situate in the Twp of Wilmington, City of Lawrence, and Cmwlth of PA. HET a dwg k/a. Property Address: 423 aka 694 Cottage Grove Road, New Castle, PA 16105. Parcel ID: #37-038800 (Wilmington Township). Judgment amount: \$54,928.99 plus interest, costs and attorney fees. Attorney: Vittti Law Group, Inc.

Sale No. 8

No. 10010-2020; PNC Bank, National Association, Plaintiff vs. Delores Boughter, Defendant. Improvements consist of a residential dwelling. Property Address: 3052 Boughter Drive, New Castle, PA 16101. Parcel ID: #31-037700 (Shenango Township). Judgment amount: \$64,148.05 plus interest,

costs and attorney fees. Attorney: KML Law Group

Sale No. 9

No. 10678-2021; Pennsylvania Housing Finance Agency, Plaintiff vs. Christopher P. Miller, Defendant. Lots 308 and 309 – Section 74 Official Survey of the City of New Castle. See Instrument: 2010-003886. Improvements thereon: a residential dwelling house as identified above. Property Address: 14 Mahoning Avenue, New Castle, PA 16102. Parcel ID: #07-015700 (7th Ward, City of New Castle). Judgment amount: \$35,913.39 plus interest, costs and attorney fees. Attorney: Purcell Krug & Haller

Sale No. 10

No. 10996-2021; Lakeview Loan Servicing, LLC, Plaintiff vs. Jordan Tooker, in her capacity as Heir of Colby K. Tooker, Deceased; Minor Defendant 1, in her capacity as Heir of Colby K. Tooker, Deceased; Unknown Heirs, Successors, Assigns, and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Colby K. Tooker, Deceased, Defendants. Improvements thereon: Residential Dwelling. Owner(s) of property situate in the Borough of Ellwood City, Lawrence County, Pennsylvania, being, Property Address: 510 Wood Street, Ellwood City, PA 16117. Parcel ID: #15-081100 (5th Ward Ellwood City Borough). Judgment amount: \$92,728.13 plus interest, costs and attorney fees. Attorney: Orleans PC

Sale No. 11

No. 10069-2022; U.S. Bank National Association, not in its individual capacity but solely as Trust of NRZ Pass-Through Trust XII, Plaintiff vs. Elyce M. O'Leary, as surviving heir of Edward J. O'Leary and Jeanne J. O'Leary, Deceased, Lauren Diane O'Leary, as surviving heir of Edward J. O'Leary and Jeanne J. O'Leary, Deceased, and unknown surviving heirs of Edward J. O'Leary, Deceased, Defendants. All that certain piece, parcel or lot of land situate, lying and being in the Second Ward, New Castle, Lawrence County, Pennsylvania, being known and designated as the West thirty four (34) feet of Lot numbered 369, all of Lot numbered 368 and the East one and two-tenths (1.2) feet of Lot numbered 367 in the North Highland Land Company Plan of Lots, a plot of which is of record in the Recorder's Office of Lawrence County, Pennsylvania, in Plot Book, Volume 3, Page 52, and being also known and designated as Lots numbered 230

and 231 in Section 1 of the Official Survey of the City of New Castle, as now constituted, and more fully bounded and described as follows, to-wit: beginning at a point on the South line of Englewood Avenue, at line of lands now or formerly of John Loudon et ux., which said point is one and two tenths (1.2) feet West of the East line of Lot numbered 367 in said plan of lots; thence eastwardly by the South line of Englewood Avenue as distance of seventy five and two tenths (75.2) feet to lands to lands now or formerly of John G. Lamoree; thence southwardly by lands now or formerly of John G. Lamoree a distance of one hundred thirty (130) feet to the North line of Lot numbered 424 in said plan of lots; thence westwardly by the North line of Lots numbered 424, 423, and 422 in said plan of lots a distance of seventy five and two tenths (75.2) feet to line of lands now or formerly of John Loudon et ux.; thence northwardly by line of lands now or formerly of John Loudon et ux. a distance of one hundred thirty (130) feet to a point, the place of beginning. Being the same premises which Edward J. McKibben and Gula A. McKibben, husband and wife, by Deed dated April 26, 1966 and recorded on April 27, 1966, in the Lawrence County Recorder of Deeds Office at Deed Book Volume C.A.D. 516 at Page 40, granted an conveyed unto Edward J. O'Leary and Jeanne J. O'Leary, husband and wife. The Said Jeanne J. O'Leary departed this life on or about March 7, 2019. The said Edward J. O'Leary departed this life on or about January 8, 2021. No estate has been raised, whereby operation of law, title vested in the interest of known heirs Elyce M. O'Leary, Lauren Diane O'Leary, and unknown surviving heirs of Edward J. O'Leary, Deceased. Property Address: 112 Englewood Avenue, New Castle, PA 16105. Parcel ID: #02-201000 (2nd Ward City of New Castle). Judgment amount: \$93,808.77 plus interest, costs and attorney fees. Attorney: Hladik, Onorato & Federman, LLP

Sale No. 12

No. 10103-2022: The Huntington National Bank, Plaintiff vs. Charles J. Cialella, Jr., Administrator of the Estate of Michael E. Cialella, Defendant. All that certain piece or parcel of land situate in the City of New Castle, County of Lawrence and Commonwealth of Pennsylvania, bounded and described as follow to wit: Being the same property conveyed to Michael E. Cialella, a single man who acquired title by virtue of a deed from Philip K. Stouffer and Jennifer M. Stouffer,

his wife, dated September 29, 2014, recorded September 30, 2014, at Document Number 2014-007928, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property Address: 522 Wildwood Avenue, New Castle, PA 16105. Parcel ID: #02-266300 (New Castle 2nd Ward). Judgment amount: \$59,293.02 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski LLC

Sale No. 14

No. 10173-2022: First National Bank of Pennsylvania, Successor by merger to First National Bank of Slippery Rock, Plaintiff vs. Shaun P. Cullen and Jamie L. Cullen, Defendants. All the right, title, interest and claim of Shun P. Cullen and Jamie L. Cullen, in and to the following described property: All that certain real estate situated in the Township of Wilmington, County of Lawrence and Commonwealth of Pennsylvania per Deed dated September 23, 2004, and recorded September 24, 2004 in the Office of the Recorder of Deeds, Lawrence County, Pennsylvania at Deed Book Volume 1977, Page 1. Having erected thereon a dwelling. Property Address: 1331 Fayette-New Wilmington Road, New Wilmington, PA 16142. Parcel ID: #37-079300 (Wilmington Township). Judgment amount: \$72,073.99 plus interest, costs and attorney fees. Attorney: David Raphael

Sale No. 15

No. 10367-2022; The Money Source, Inc., Plaintiff vs. Christopher M. Gierlach, Defendant. All that certain lot or piece of ground situate in the Township of Slippery Rock, County of Lawrence, and Commonwealth of Pennsylvania. Improvement: a Residential Dwelling. Property Address: 1630 Houk Rd, Portersville, Pennsylvania 16051. Parcel ID: #32-046413 (Slippery Rock Township). Judgment amount: \$162,097.54 plus interest, costs and attorney fees. Attorney: Powers Kirm, LLC

Sworn to and subscribed before me this 22nd day of July 2022

Perry L. Quahliero, Sheriff

L.C.L.J.: August 1, 8 and 15, 2022

Margel v. Noga Ambulance Service, Inc.**Health Insurance Portability and Accountability Act ("HIPAA")
- Respondeat Superior - Negligent Hiring - Outrageous Conduct -
Intentional Infliction of Emotional Distress - Punitive Damages**

There exists no private right of action for violations of HIPAA.

Where an employee gathers information while serving his employer, the employee is acting in the scope of his employment, and if the information is wrongfully used by the employee, the employer may be subject to liability under the doctrine of respondeat superior.

An action for negligent hiring, supervision and retention lies where an employer has actual or constructive knowledge of an employee's propensity to engage in the conduct complained of and the employer fails to adequately supervise the employee.

Conduct consisting of sexual harassment, such as sexual propositions, sexually suggestive pictures and physical touching does not constitute "extreme and outrageous conduct" sufficient to support claims for intentional infliction of emotional distress or punitive damages.

Preliminary Objections - Court of Common Pleas of Lawrence County, Pennsylvania, No. 10459 of 2021, C.A.

Edward M. Grant, attorney for Plaintiff

Joseph J. Bosick, attorney for Defendant

OPINION

MOTTO, P.J.

November 18, 2021

Before the Court for disposition are the Preliminary Objections to Plaintiff's First Amended Complaint filed on behalf of the defendants, Noga Ambulance Service, Inc. and Johnny William Douglas, which assert the following:

- I. Plaintiff's negligence claims contained in Counts I and VII of the First Amended Complaint are legally insufficient as there is no private right of action for violations of Health Insurance Portability and Accountability Act (hereinafter "HIPAA");
- II. Plaintiff's cause of action for respondeat superior contained within Count IV of the First Amended Complaint is legally insufficient as the tortious acts claimed therein occurred outside of the scope of the employment of Patterson and Douglas;
- III. Plaintiff's claim for negligent hiring set forth in Counts II and III of the First Amended Complaint are legally insufficient as it is unreasonable to aver Noga Ambulance Service, Inc., knew or should have known of their employees' conduct;

IV. Plaintiff's cause of action for intentional infliction of emotional distress contained in Count VIII of the First Amended Complaint is legally insufficient as the First Amended Complaint lacks any reference to outrageous conduct by Douglas; and

V. Plaintiff's claims for punitive damages contained in Counts I, II, III, IV, VII and VIII of the First Amended Complaint are legally insufficient as there are no facts alleged demonstrating Defendants' conduct was outrageous or caused by reckless indifference.

Plaintiff's First Amended Complaint avers the following facts: Defendant, Noga Ambulance Service, Inc. (hereinafter "Noga"), employed Defendants Joshua David Patterson (hereinafter "Patterson") and Johnny William Douglas (hereinafter "Douglas") as paramedics. On November 15, 2018, Plaintiff, who was 15-years old at the time, was a passenger in her sister's vehicle when they were involved in a motor vehicle accident. Noga was contacted to provide services at the scene of the accident. Plaintiff was evaluated by Patterson and Douglas, who were acting in their capacity as employees of Noga. At that time, Plaintiff provided Patterson and Douglas with health information to assist in treatment. Patterson and Douglas then saved Plaintiff's personal and contact information she provided to them during the evaluation.

Shortly thereafter, Patterson and Douglas used the aforementioned information to contact Plaintiff via social media, which included both individuals adding Plaintiff as a "Snapchat"¹ contact. Plaintiff further avers Patterson and Douglas previously used similar information to contact other patients. Patterson then began sending Plaintiff sexually suggestive messages, requests and nude photographs of himself via text message, social media or direct messaging. Patterson was aware Plaintiff was a minor at the time as one message as he stated, "IK [sic] your [sic] 15...what about it[?]" Patterson also requested Plaintiff send him sexually explicit or nude photographs. He asked Plaintiff if she wanted to have sex with him at his house and offered her a ride to his residence. Douglas contacted Plaintiff through social media, which included sending a "selfie"² photograph wearing what is believed to be a Noga Ambulance jacket while inside of a Noga ambulance.

On November 16, 2018, Plaintiff's father was made aware of those communications and contacted the police, which resulted in Patterson being criminally charged. He entered a guilty plea on two counts of Corruption of Minors in violation of 18 Pa.C.S.A. § 6301. Plaintiff feared potential retaliation from Patterson, so she moved from her father's residence and began residing with her uncle because Patterson was in possession of her contact information.

Plaintiff alleges Patterson engaged in similar conduct prior to this incident as he formed a long-term relationship with a previous patient. It is Plaintiff's

assertion Noga and Douglas were aware Patterson met his girlfriend from being a patient of Noga. According to Plaintiff, Noga and Douglas did not take any steps to remove Patterson from his employment despite knowing of his misconduct.

Plaintiff commenced this action on June 7, 2021, by filing a Complaint asserting claims of negligence, negligent hiring, recklessness in hiring and respondeat superior against Noga while alleging claims of negligence and intentional infliction of emotional distress against Patterson and Douglas. Defendants Noga and Douglas filed Preliminary Objections to Plaintiff's Complaint on July 23, 2021, which resulted in Plaintiff filing a First Amended Complaint on August 5, 2021. The First Amended Complaint asserts similar claims as those contained in the Complaint. Defendants Noga and Douglas responded by filing Preliminary Objections to Plaintiff's First Amended Complaint on August 13, 2021.

Noga and Douglas first assert Plaintiff's negligence claims contained in Counts I and VII of the First Amended Complaint are legally insufficient as there is no private right of action for violations of HIPAA.

A demurrer will only be sustained in cases where the complaint fails to set forth a valid cause of action. Lerner v. Lerner, 954 A.2d 1229, 1235 (Pa. Super. 2008) (citing McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219, 1221 (1993)). If a doubt exists regarding whether a demurrer should be sustained, the doubt must be resolved in favor of overruling the demurrer. R.W. v. Manzek, 585 Pa. 335, 351, 888 A.2d 740, 749 (2005) (citations omitted). Fact-based defenses are irrelevant when ruling on a preliminary objection in the nature of a demurrer. Werner v. Plater-Zyberk, 799 A.2d 776, 783 (Pa. Super. 2002) (citing Orner v. Mallick, 515 Pa. 132, 135, 527 A.2d 521, 523 (1987)). A trial court's review in ruling on preliminary objections is limited to examining the factual averments of the complaint to determine their legal sufficiency for stating a claim upon which relief may be granted. DeMary v. Latrobe Printing and Pub. Co., 762 A.2d 758, 761-762 (Pa. Super. 2000). "When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom." HRANEC Sheet Metal, Inc. v. Metalico Pittsburgh, Inc., 107 A.3d 114, 118 (Pa. Super. 2014) (quoting Richmond v. McHale, 35 A.3d 779, 783 (Pa. Super. 2012)).

A cause of action should only be dismissed when it is clear and free from doubt the pleader is unable to prove facts legally sufficient to establish the right to relief. Id. If there is any doubt as to whether a demurrer should be sustained, it must be resolved in favor of overruling the preliminary objections. Id. "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 objections in the nature of a demurrer to be rejected." County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402, 408 (Pa.

1985). The likelihood of proving those facts at trial is irrelevant as long as recovery is possible under any theory of law. Sunbeam Corp. v. Liberty Mut. Ins. Co., 781 A.2d 1189, 1192 (Pa. 2001).

In order to establish a claim for negligence, a plaintiff must prove the following elements: “(1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff.” Reeves v. Middletown Athletic Ass’n, 866 A.2d 1115, 1126 (Pa. Super. 2004) (citing Burman v. Golay & Co., Inc., 420 Pa. Super. 209, 616 A.2d 657 (1992)). It appears Plaintiff’s claims in Counts I and VII are, in part, asserting claims for negligence *per se* relating to violations of HIPAA. “The concept of negligence *per se* establishes both duty and the required breach of duty where an individual violates an applicable statute, ordinance or regulation designed to prevent a public harm[.]” Braxton v. Commonwealth Dept. of Transportation, 160 Pa. Cmwlth. 32, 45, 634 A.2d 1150, 1157 (1993). Negligence *per se* requires a showing the violation of the statute or ordinance caused the type of harm the statute was intended to avoid and the person injured was in the class the statute was intended to protect. McCloud v. McLaughlin, 837 A.2d 541, 545 (Pa. Super. 2003) (citation omitted). A party is liable for negligence *per se* if the following exits:

- (a) the intent of the enactment is exclusively or in part to protect an interest of the other as an individual; and
- (b) the interest invaded is one which the enactment is intended to protect; and
- (c) where the enactment is intended to protect an interest from a particular hazard, the invasion of the interests results from that hazard; and
- (d) the violation is a legal cause of the invasion, and the other has not so conducted himself as to disable himself from maintaining an action. Ennis v. Atkin, 354 Pa. 165, 169, 47 A.2d 217, 219 (1946).

There is no dispute HIPAA does not create a private right of action. Baum v. Keystone Mercy Health Plan, 826 F. Supp. 2d 718, 721 (E.D. Pa. 2011). While the Court in I.S. v. Washington University, 2011 WL 24333585 (E.D. MO 2011), stated it is possible HIPAA could be used to establish a negligence *per se* claim in state court, that is not the majority position concerning the ability to file a negligence claim based upon a violation of HIPAA. It is important to recognize HIPAA already has civil and criminal penalties for improper disclosures of medical information and filing state law negligence claims that rely on HIPAA would improperly circumvent HIPAA’s enforcement mechanism. Haywood v. Novartis Pharmaceuticals Corp., 298 F. Supp. 3d 1180, 1190 (N.D. IN 2018) (The Court held HIPAA does not create a duty or provide a statutory basis for the plaintiff’s negligence claim); Faber v. Ciox Health, LLC, 331 F. Supp. 3d 767, 779 (W.D. TN

2018) (There is no legislative mandate indicating a private right of action for a violation of HIPAA exists, even in the context of negligence *per se*, and HIPAA provides for penalties to be imposed by the Secretary of the Department of Health and Human Services). “Plaintiff cannot maintain a claim, whether it lies in negligence or otherwise, based upon a violation of HIPAA’s disclosure standards.” Davis v. Progressive Universal Insurance Company, 2020 WL 8813621 (E.D. OR 2020).

It appears to be well-established there can be no private right of action for a violation of HIPAA, which includes a claim for negligence or negligence *per se*. Even in the case cited by Plaintiff, Henise v. Sabol, 2010 WL 5534228 (M.D. PA 2010), the Court dismissed the plaintiff’s claims based upon violations of HIPAA. As such, all references to violations of HIPAA contained within Counts I and VII must be stricken as they are legally insufficient because there is no basis to permit private claims pursuant to HIPAA. If Plaintiff wishes to pursue sanctions for Defendants as it relates to HIPAA, it must be done through HIPAA’s regulatory scheme and not within a private claim for negligence.

Thus, Defendants’ first Preliminary Objection is sustained to the extent all references to HIPAA violations contained within Counts I and VII are dismissed, which includes striking those portions of Paragraphs 45.a. through g., and 83.a. through e. However, Plaintiff is permitted to pursue its claims for Defendants’ negligence in improperly releasing or using her personal or confidential information without her consent as averred in Counts I and VII.

Next, Defendant contends Plaintiff’s cause of action for respondeat superior contained within Count IV of the First Amended Complaint is legally insufficient as the tortious acts claimed therein occurred outside of the scope of the employment of Patterson and Douglas.

In alleging a claim based upon the doctrine of respondeat superior, a plaintiff is seeking recovery on the basis of vicarious liability. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 40 (Pa. Super. 2000). “An employer is vicariously liable for the wrongful acts of an employee if that act was committed during the course of and within the scope of employment.” Id. This includes intentional or criminal acts committed by the employee; however, if the act is done for personal reasons or in an outrageous manner, it is not done within the scope of employment. Id. (An employee shooting two individuals who had no connection to the employer was outside the scope of employment for purposes of vicarious liability). In order to establish an act was done within the scope of employment, a plaintiff must prove the following: “(1) the conduct was ‘of the kind and nature’ that [the employee] was ‘employed to perform;’ (2) the conduct occurred ‘substantially within the authorized time and space limits’ of [the employee’s] employment; and (3) the conduct was ‘actuated, at least in part, by a purpose to serve the

employer”. Bissett v. Verizon Wireless, 402 F.Supp.3d 487, 494 (M.D. Pa. 2019). Whether a person acted within the scope of employment is ordinarily a question for the jury. Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979).

In the current matter, Plaintiff is alleging Noga is liable under the doctrine of respondeat superior for the actions of Patterson and Douglas as it relates to obtaining and using information received from Plaintiff during their treatment of her on November 15, 2018. Noga asserts the conduct of Patterson and Douglas occurred outside of the scope of their employment. However, the information used to contact Plaintiff and Patterson utilized to send sexually explicit messages was obtained by them during their employment as paramedics while they were providing treatment to Plaintiff. As paramedics, Patterson and Douglas are required to obtain confidential information to render aid to their patients. This demonstrates the conduct of Patterson and Douglas was “actuated, at least in part, by a purpose to serve their employer”. More specifically, they were serving Noga as paramedics when they obtained the information eventually used to contact Plaintiff. As stated in Fitzgerald, whether a person is acting in the scope of his employment is a question generally reserved for a jury to decide. With that in mind, Plaintiff has alleged facts sufficient to permit this issue to be decided by a jury. Therefore, Defendants’ second Preliminary Objection in the nature of demurrer as it relates to Count IV of the First Amended Complaint is overruled. This does not preclude Noga from asserting this argument following the conclusion of discovery in a motion for summary judgment.

Defendant also contends Plaintiff’s claims for negligent hiring, retention and supervision set forth in Counts II and III of the First Amended Complaint are legally insufficient as it is unreasonable to aver Noga Ambulance Service, Inc., knew or should have known of their employees’ conduct.

“[A]n action for negligent hiring provides a remedy to injured third parties who would otherwise be foreclosed from recovery under the master-servant doctrine because the wrongful acts of employees in these cases are likely to be outside the scope of employment and not in furtherance of the master’s business.” Heller v. Patwil Homes, Inc., 713 A.2d 105, 107 (Pa. Super. 1998). This cause of action permits an employer to be held directly liable for the wrongful acts of its negligently hired employee. Id. A claim for negligent hiring imposes a duty upon an employer to exercise due care in selecting, supervising and controlling employees. R.A. ex rel. N.A. v. First Church of Christ, 748 A.2d 692, 697 (Pa. Super. 2000). “[U]nder Pennsylvania law, a plaintiff seeking to recover on a negligent hiring theory must show: (1) employer defendant knew or should have known of the propensity of the employee and (2) such employment creates a situation in which a third party may be harmed.” M.S. ex rel. Hall v. Susquehanna Township School Dist.,

43 F.Supp.3d 412, 432 (M.D. Pa. 2014) (citing Coath v. Jones, 419 A.2d 1249, 1250 (1980)). The plaintiff must demonstrate the defendant knew or should have known that a foreseeable harm would eventually befall the victim. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 44 (Pa. Super. 2000). The aforementioned standards not only apply to negligent hiring claims, but also for causes of action based upon negligent retention and supervision. Id.; Coath, 419 A.2d at 1250.

The Superior Court of Pennsylvania addressed whether a claim for negligent hiring was legally sufficient in Coath. In that case, the plaintiff's complaint averred Jones Electronic Service Company (hereinafter "Jones") hired an individual identified in the Court's Opinion as Kehoe and sent him to the plaintiff's house on several occasions solely on Jones' direction regarding Jones' business. Following the termination of his employment, Kehoe gained access to the plaintiff's home by representing he was there at Jones' request as the plaintiff did not have any notice Kehoe's employment was terminated. Kehoe proceeded to rape the plaintiff, who filed suit seeking to recover from Jones for negligent hiring. In her complaint, the plaintiff averred Jones continued to employ Kehoe even though Jones knew or, by the exercise of reasonable care, should have known of Kehoe's dangerous propensities to violence. Jones then filed preliminary objections asserting the plaintiff's claim for negligent hiring was legally insufficient. The trial court granted Jones' demurrer and dismissed the plaintiff's negligent hiring claim. The plaintiff subsequently appealed to the Superior Court.

The Coath Court first addressed whether an employer could be held liable as a result of hiring an employee who the employer knew, or should have known, had a propensity for violence. Id., 419 A.2d at 1250. The Court recognized "The issue has been met in a number of cases with the result that an employer may be negligent if he knew or should have known that his employee had a propensity for violence and such employment might create a situation where the violence would harm a third person." Id. An employer can be held liable for the failure to exercise reasonable care in determining an employee's propensity for violence. Id., (citing Dempsey v. Walso Bureau, Inc., 246 A.2d 418 (Pa. 1968)). The Coath Court concluded Jones could be found negligent if Kehoe was known to have the inclination to assault women or if Jones should have known that. Id. Thus, the Superior Court reversed the decision of the trial court to sustain Jones' demurrer concerning the claim of negligent hiring. Id.

In the case *sub judice*, Plaintiff's First Amended Complaint avers Noga had actual or constructive knowledge of Patterson and Douglas's propensity to act in manner making it likely they would engage in the conduct complained of by Plaintiff. Moreover, Plaintiff alleges Noga failed to adequately supervise those employees despite knowledge of their conduct. Plaintiff then sets forth Noga was aware Patterson engaged in similar conduct in the past as he met his girlfriend while she was a patient of Noga. According to

Plaintiff, Noga did not take appropriate steps to remove Patterson despite knowledge of his propensity to act in that manner. These allegations are similar to the allegations in Coath where the plaintiff asserted Jones was aware of Kehoe's propensity for violence. The Superior Court stated allegations of that nature are sufficient to overrule a preliminary objection for legal insufficiency.

When the First Amended Complaint is read as a whole and analyzed in light of the Court's decision in Coath, Plaintiff has stated sufficient facts to establish a legally sufficient claim for negligent hiring, supervision and retention. If Noga sought to have Plaintiff aver additional details as to the prior events which would have provided notice of their employees' propensity to act in the manner alleged by Plaintiff, it should have raised a preliminary objection for insufficient specificity in accordance with Pa.R.C.P. 1028(a)(3). Hence, Defendants' third Preliminary Objection for legal insufficiency concerning Counts II and III of the First Amended Complaint are overruled.

Defendants also argue Plaintiff's cause of action for intentional infliction of emotional distress contained in Count VIII of the First Amended Complaint is legally insufficient as it lacks any reference to extreme or outrageous conduct by Douglas.

The Pennsylvania Courts have adopted the approach taken by Restatement (Second) of Torts § 46, which states:

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. Bartanus v. Lis, 332 Pa. Super. 48, 480 A.2d 1178 (1984) (citing Restatement (Second) of Torts § 46).

The conduct to support recovery for intentional infliction of emotional distress must be so outrageous in character that it goes beyond all bounds of decency, and it has not been enough to demonstrate that the defendant acted with intent which is tortious or even criminal or with malice to a degree that would entitle the plaintiff to punitive damages for another tort. Toney v. Chester County Hosp., 961 A.2d 192, 202 (Pa. Super. 2008) (quoting Reardon v. Allegheny College, 926 A.2d 477, 488 (Pa. Super. 2007)). Comment D to Restatement (Second) of Torts § 46 states, in part, "Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim 'Outrageous!'"

In Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 527 A.2d 988 (1987), the appellants filed a complaint asserting, among other claims, a cause of action for intentional infliction of emotional distress against a cemetery concerning the burial of their infant son and daughter, who died after being born prematurely. The appellants' son passed away on June

30, 1981, and the daughter passed away on July 7, 1981. The appellants were referred to the cemetery by their rabbi and, upon speaking with a representative for the cemetery, were informed that the total cost for a burial plot was \$180.00 in the children's portion of the cemetery, which did not permit standing tombstones. The appellants purchased the gravesite and paid in full on the date of their infant son's funeral. The same was done when the appellants' daughter passed away.

The appellants soon became dissatisfied with the location of the burial plots as it was in a remote area of the cemetery and the ground became muddy when wet. They also wanted a standing headstone as they noticed there were adult graves with standing headstones. The appellants purchased a gravemarker from a monuments company. The cemetery then charged the appellants an additional fee of \$100.00 for perpetual care and \$43.00 for sodding the burial plots. Upon completion of the gravemarker, the monument company sent a card to the appellants informing them that the gravemarker had been installed. However, there was no marker on the children's grave-sites. The appellants contacted the cemetery and were informed there was an outstanding balance for the perpetual maintenance fee and the sodding and the marker had to be installed by an employee of the cemetery as the monument company only delivers the same. The appellants were upset, but offered to bring the necessary payment to the scheduled unveiling.

The cemetery rejected that arrangement and demanded payment prior to installation. The appellants then spoke with the owner of the cemetery, who stated he would investigate the matter. Three days later, the owner contacted the appellants and informed them the marker would be installed and they could proceed with their unveiling, but there would be no care or maintenance to the grave-sites unless the bill was paid. The unveiling took place as scheduled. As the appellants and their attendees were leaving the grave-sites, they were approached by the owner's wife, who expressed her condolences. She also reiterated there would be no care or maintenance unless the appellants paid the bill of \$143.00. The appellants presented their evidence at trial and the appellee filed for a compulsory nonsuit, which was granted by the trial court. On appeal, the Superior Court of Pennsylvania affirmed the opinion of the trial court and the Pennsylvania Supreme Court granted the appellants' petition for allowance of appeal.

The Kazatsky Court cited to section 46 of the Restatement and its commentary that explained the term extreme and outrageous conduct, which stated as follows:

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive

damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" *Id.*, 515 Pa. at 190-191, 527 A.2d at 991 (citing Restatement (Second) of Torts §46 commentary).

The law will not intervene in every case where someone's feelings are hurt by insults, threats, petty oppressions or rough language. *Id.*, 515 Pa. at 191, 527 A.2d at 992 (citing Restatement (Second) of Torts §46 commentary). The Court noted the appellants failed to present any evidence that the cemetery's conduct reached a level of outrageousness which would support recovery of damages as there was no expert testimony or evidence of any kind outside of the unsubstantiated averments of the appellants. *Id.* Moreover, Pennsylvania law follows the impact rule, "which barred recovery for fright, nervous shock or mental or emotional distress unless it was accompanied by a physical injury or impact upon the complaining party." *Id.*, 515 Pa. at 191-192, 527 A.2d at 992 (citations omitted).

However, a limited exception to the impact rule was created and physical impact was not a precondition for recovery where the plaintiff was in personal danger of physical impact from the negligent conduct of the defendant and actually feared physical impact. *Id.* (citing Niederman v. Brodsky, 436 Pa. 401, 261 A.2d 84 (1970)). That became known as the zone of danger theory. *Id.* That theory does not extend to close relatives who are not at the accident scene as the emotional distress is more of a result of the emotional makeup of the observer than from the nature of the defendants' actions. *Id.* (citing Mazzagatti v. Everingham, 512 Pa. 266, 516 A.2d 672 (1986)). The Kazatsky Court found that the concerns over proof of causation were unjustified in the area of a bystander recovery for emotional distress, but there are concerns regarding causation in the tort of intentional infliction of emotional distress. *Id.*

The Court then turned its attention to the term "outrageous" as set forth in the commentary to section 46 by stating, "The *Restatement* tells us that what is prohibited is conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' *Id.*, 515 Pa. at 195-196, 527 A.2d at 994 (quoting Restatement (Second) of Torts commentary).

In Hoy v. Angelone, 720 A.2d 745 (Pa. 1998), the Supreme Court of Pennsylvania held that defendant's conduct amounting to sexual

harassment did not meet the standard of “extreme and outrageous” conduct. The conduct consisted of vile language, sexual propositions, the posting of sexually suggestive pictures and physically touching the plaintiff. The Hoy Court noted that while the conduct was highly offensive and unacceptable, it did not meet the standard which would allow recovery, explaining the standard was higher than that which would allow recovery for punitive damages for another tort, and was reserved “for only the most clearly desperate and ultra extreme conduct”. Id., 720 A.2d at 754. The Hoy Court reviewed case law which found “extreme and outrageous” conduct as follows:

Cases which have found a sufficient basis for a cause of action of intentional infliction of emotional distress have had presented only the most egregious conduct. See *e.g.*, Papieves v. Lawrence, 437 Pa. 373, 263 A.2d 118 (1970)(defendant, after striking and killing plaintiff's son with automobile [sic], and after failing to notify authorities or seek medical assistance, buried body in a field where discovered two months later and returned to parents (recognizing but not adopting section 46)); Banyas v. Lower Bucks Hospital, 293 Pa.Super. 122, 437 A.2d 1236 (1981)(defendants intentionally fabricated records to suggest that plaintiff had killed a third party which led to plaintiff being indicted for homicide); Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265 (3d. Cir. 1979)(defendant's team physician released to press information that plaintiff was suffering from a fatal disease, when physician knew such information was false).

In the current case, Plaintiff alleges Douglas and Patterson arrived at the scene of a motor vehicle accident in which Plaintiff was injured during the scope of their employment. In providing treatment for Plaintiff, Patterson and Douglas obtained personal and contact information for Plaintiff, which they used to communicate with her via social media. At the time of the accident, Plaintiff was 15-years old. The First Amended Complaint alleges Douglas added Plaintiff as a contact on “Snapchat”, which Douglas used to send Plaintiff a “selfie” while inside of a Noga Ambulance and wearing a Noga jacket. There is no doubt Douglas’s actions in this matter were inappropriate in that he contacted Plaintiff, a minor, using information he obtained from her while rendering medical treatment. However, it does not rise to the level necessary to sustain a cause of action for intentional infliction of emotional distress. As the Hoy Court held, even conduct consisting of sexual harassment, such as sexual propositions, sexually suggestive pictures and physical touching, did not constitute extreme and outrageous conduct. Therefore, Plaintiff’s fourth Preliminary Objection in the nature of a demurrer is sustained and Count VIII is dismissed.

Defendants’ final Preliminary Objection argues Plaintiff’s claims for punitive damages contained in Counts I, II, III, IV, VII and VIII of the First Amended Complaint are legally insufficient as there are no facts alleged demonstrating

Defendants' conduct was outrageous or caused by reckless indifference.

Punitive damages are penal in nature, not compensatory, and are appropriate if the actor's conduct was malicious, willful, oppressive, or exhibited reckless indifference to the rights of others. Hart v. O'Malley, 781 A.2d 1211, 1217 (Pa. Super. 2001) (citing G.J.D. by G.J.D. v. Johnson, 552 Pa. 169, 713 A.2d 1127 (1998); Costa v. Roxborough Memorial Hospital, 708 A.2d 490 (Pa. Super. 1998)). The Court must determine whether the plaintiff has presented sufficient evidence from which a jury could reasonably conclude that the defendant acted outrageously or recklessly. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 419, 123 S.Ct. 1513, 1521 (2003) (citing Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088, 1098 (1985)). The Court must take into account the egregious conduct, the circumstances surrounding the conduct and the relationship between the parties. Rubin Quinn Moss Heaney & Patterson, P.C. v. Kennel, 832 F. Supp. 922, 936 (E.D. Pa. 1993) (citing Brooks ex rel. Stanton v. Astra Pharmaceutical Prods., Inc., 718 F.2d 553, 580 (3d Cir. 1983)).

While the conduct of Noga and Douglas as alleged by Plaintiff in the First Amended Complaint is actionable, there is nothing alleged to demonstrate either of those Defendants acted outrageously to a level permitting punitive damages to be awarded. Essentially, Plaintiff averred Douglas used her personal information to add her as a contact on "Snapchat", which Douglas then utilized to send her a "selfie". The act of sending a "selfie" is not outrageous or extreme to the extent it would require an award of punitive damages despite the "selfie" having been sent to a minor. Similarly, the allegations Noga did not take appropriate action to reprimand or supervise Patterson and Douglas despite knowledge of their propensity to act in that manner do not provide a sufficient basis for an award of punitive damages, despite being grounds for establishing legally sufficient claims against Noga. Thus, Defendants' fifth Preliminary Objection in the nature of a demurrer is sustained and all requests for punitive damages in Counts I, II, III, IV, VII and VIII of the First Amended Complaint are dismissed.

Based upon the foregoing, Defendants' Preliminary Objections are sustained in part and overruled in part. The Preliminary Objections are sustained to the extent all references to HIPAA violations, the claim for intentional infliction of emotion distress contained in Count VIII and all requests for punitive damages included in Counts I, II, III, IV, VII and VIII are stricken from the First Amended Complaint. All remaining portions of Defendants' Preliminary Objections are overruled.

Footnotes

¹ "Snapchat" is a multimedia message application commonly used on cell phones to send pictures, videos and messages.

² A "selfie" is "an image that includes oneself (often with another person or as part of a group) and is taken by oneself using a digital camera especially for posting on social media." www.

merriam-webster.com/dictionary/selfie.

ORDER OF COURT

AND NOW, this 18th day of November, 2021, this case being before the Court for disposition of the Preliminary Objections to Plaintiff's First Amended Complaint filed on behalf of the defendants, Noga Ambulance Service, Inc. and Johnny William Douglas, the Court having conducted a complete and thorough review of the record, in accordance with the Opinion of even date herewith, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Defendant's Preliminary Objection for legal insufficiency of Counts I and VII is SUSTAINED to the extent all references to violations of HIPAA are stricken. Specifically, Paragraphs 45.a. through f., are stricken in their entirety, and the phrase "...in violation of HIPAA" in Paragraph 45.g is stricken. Paragraph 83.a through e. are stricken in their entirety.
2. Defendant's Preliminary Objection for legal insufficiency of Count VI of the First Amended Complaint is OVERRULED.
3. Defendant's Preliminary Objection for legal insufficiency of Counts II and III of the First Amended Complaint is OVERRULED.
4. Defendant's Preliminary Objection for legal insufficiency of Count VIII of the First Amended Complaint is SUSTAINED and that Count is STRICKEN.
5. Defendant's Preliminary Objection for legal insufficiency of Plaintiff's requests for punitive damages in Counts I, II, III, IV, VII and VIII of the First Amended Complaint is SUSTAINED.
6. Defendant shall file an Answer to Plaintiff's First Amended Complaint within twenty (20) days from the date this Order of Court is docketed.
7. The Prothonotary is directed to serve a copy of this Order of Court and attached Opinion upon all counsel of record.

BY THE COURT:
Dominick Motto, P.J.
