

**IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION**

SCOTT V. MANTONE,	:	
	:	NO. 2018-C-0105
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	ASSIGNED TO:
JAMES W. LAUGHLIN, III, ET AL.,	:	Honorable J. Brian Johnson
	:	
Defendants	:	

ORDER

AND NOW, this ___ day of August, 2018, upon consideration of the Preliminary Objections To Plaintiff’s Complaint On Behalf Of Defendant Susan Peters filed May 2, 2018, after argument held July 31, 2018, and for the reasons set forth in the accompanying Memorandum Opinion;

IT IS ORDERED that said preliminary objections are **SUSTAINED** and Defendant Susan Peters is hereby **DISMISSED** from the above-captioned case.

BY THE COURT:

J. Brian Johnson, J.

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SCOTT V. MANTONE,	:	
	:	NO. 2018-C-0105
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	ASSIGNED TO:
JAMES W. LAUGHLIN, III, ET AL.,	:	Honorable J. Brian Johnson
	:	
Defendants	:	

Appearances:

Vincent J. Bonaventura, Jr., Esquire
For Plaintiff, Scott V. Mantone

Steven T. Williams, Esquire
For Defendant, Susan Peters

MEMORANDUM OPINION

J. Brian Johnson, Judge

I. INTRODUCTION

Before the Court for consideration are the Preliminary Objections To Plaintiff's Complaint On Behalf Of Defendant Susan Peters filed May 2, 2018. Argument was held on July 31, 2018.

This case arises out of an assault that took place when Defendant, James W. Laughlin, III ("Defendant Laughlin"), allegedly violently assaulted Plaintiff, Scott V. Mantone ("Plaintiff"), within Defendant Allentown Smoke Shop's premises when Defendant Laughlin, unprovoked, jumped from his chair, grabbed a whiskey bottle off of a shelf and smashed it over Plaintiff's head repeatedly, allegedly causing serious bodily injury to Plaintiff. Defendant Susan Peters ("Defendant Peters") is the wife of Defendant Laughlin.

II. ISSUE PRESENTED

- A. WHETHER UNDER THE FACTS OF THIS CASE, PENNSYLVANIA LAW RECOGNIZES A CAUSE OF ACTION AGAINST DEFENDANT SUSAN PETERS FOR THE ACTIONS OF HER HUSBAND?

III. DISCUSSION

- A. WHETHER UNDER THE FACTS OF THIS CASE, PENNSYLVANIA LAW RECOGNIZES A CAUSE OF ACTION AGAINST DEFENDANT SUSAN PETERS FOR THE ACTIONS OF HER HUSBAND?

It appears that Plaintiff is attempting to assert a cause of action against Defendant Peters for the alleged failure of Defendant Peters to “re-establish [Defendant Laughlin’s] mental and physical stability.” The Complaint alleges that Defendant Peters was “astutely and intimately aware that Defendant, James W. Laughlin, III, stopped taking his medication and fully recognized and realized the dangers that could occur due to her husband’s inability to recognize or understand the nature of his actions, and potentially negligent conduct.” Further, the Complaint alleges that Defendant Peters knew that Defendant Laughlin had violent propensities. In essence, it appears that Plaintiff is attempting to hold Defendant Peters liable for the actions of her husband because she knew Defendant Laughlin was not taking his psychiatric medications at the time of the incident, did nothing to assist him in an effort toward recommencing the medication protocol, and knew that he has been violent in the past.

To establish a viable cause of action in negligence, the Plaintiff must prove the following elements: (1) a duty or obligation, recognized by law, requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks; (2) a failure on the person’s part to conform to the standard required, i.e., a breach of duty; (3) a reasonably close causal connection between the conduct and the resulting injury or damage; and (4) actual loss or damage resulting to the interests of another. Ney v. Axelrod, 723 A.2d 719 (Pa. Super. 1999).

In Wenrick, the Supreme Court held "[b]efore a person may be subject to liability for failing to act in a given situation, it must be established that the person has a duty to act; if no care is due, it is meaningless to assert that a person failed to act with due care." Wenrick v. Schloemann-Siemag Aktiengesellschaft, 564 A.2d 1244 (PA. 1989).

There is no duty to control the conduct of a third person as to prevent him from causing physical harm to another unless a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or a special relation exists between the actor and the other which gives to the other a right to protection. *See* Restatement (Second) of Torts, § 315. The following special relations give rise to a duty to act affirmatively to protect another: (1) a common carrier is under a duty to its passengers to take reasonable action; (2) an innkeeper is under a similar duty to his guests; (3) a possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation; and (4) one who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other. *See* Restatement (Second) of Torts, § 314(A); *see also* T.A., Individually and B.A. and H.A., Minors, by their guardian Meryl Kramer v. Eugene Allen, 669 A.2d 360 (Pa. Super. 1995).

Additionally, "for harm resulting to a third person from the tortious conduct of another, a person is liable if he orders or induces such conduct, knowing of the conditions under which the act is done or intending the consequences which ensue, or knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person." *See*

Restatement (Second) of Torts, §876. Further, the Restatement requires both an intent to act and an affirmative act. Jefferis v. Commonwealth, 537 A.2d 355 (Pa. Super. 1988).

In the case at bar, Plaintiff seeks to hold Defendant Peters liable for the actions of her husband that occurred off the residential premises. As noted above, in order to establish a viable cause of action in negligence, the Plaintiff must first prove that there is a duty or obligation, recognized by law, requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks.

Assuming, *arguendo*, that the Court accepts the facts contained in the Complaint as true for purposes of the preliminary objections, Plaintiff has not pled any facts that would be recognized as creating or establishing a legal duty on the part of Defendant Peters to foresee and prevent her husband from the activity that occurred at the Smoke Shop (i.e., striking the Plaintiff with a bottle).¹ It is not enough that Defendant Peters allegedly knew that Defendant Laughlin had stopped taking his medicine or that she allegedly knew of the prior dangerous acts and propensities. If Plaintiff's assertion is taken to its logical conclusion, then every wife whose husband is involved in a DUI accident would be liable if the wife knew that her husband had a drinking problem.

The Complaint does not allege any type of "special relationship" that would exist under Section 315 of the Restatement (Second) of Torts, or that Defendant Peters was acting in concert with, or providing substantial assistance to, her husband in accomplishing the assault against the Plaintiff as required by Restatement (Second) of Torts, §876.

¹ See Community Federal Savings & Loan Ass'n v. Luckenbach, 261 A.2d 327 (Pa. 1970) ("a husband is not responsible for the tortious acts of his wife committed outside his presence and without his actual or implied consent or direction").

Additionally, although the Plaintiff has alleged some sort of agency and/or servant relationship for the "various capacities including, but not limited to, the ownership of the aforementioned premises", there are no factual allegations to support this assertion.² Furthermore, there are no allegations that Defendant Laughlin was acting as the agent, servant, workman and/or employee of Defendant Peters when he assaulted the Plaintiff, or that Defendant Peters aided, provided assistance or acted in concert with Defendant Laughlin in the assault on the Plaintiff.

Plaintiff cannot simply allege that Defendant Peters was negligent without some basis in the law. Defendant Peters did not owe a "duty" to the Plaintiff as there is no common law tort, Restatement, or statute in support of a cause of action for negligence against Defendant Peters for injuries sustained off the residence premises under the circumstances in this case.

Thus, Plaintiff has failed to plead a viable cause of action against Defendant Peters and accordingly, Defendant Peters shall be dismissed from the case.

IV. CONCLUSION

For the foregoing reasons, the Preliminary Objections To Plaintiff's Complaint On Behalf Of Defendant Susan Peters filed May 2, 2018 are **SUSTAINED** and Defendant Susan Peters is hereby **DISMISSED** from the above-captioned case.

DATE: _____

J. Brian Johnson, J.

² A servant is an agent whose physical conduct in the performance of the service is controlled or is subject to the right of control by the master; that is, a master controls not only the results of the work, but the manner in which the work is to be performed." Juarbe v. City of Philadelphia, 431 A.2d at 1073 (Pa. Super 1981).