IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ANTOINETTE STOUT,	:	
	:	C.A. No. K12C-02-011 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
CFT AMBULANCE SERVICE INC., a Delaware corporation, and JASON YAICH,	:	
	:	
	:	
Defendant.	:	

Submitted: October 28, 2013
Decided: November 6, 2013

ORDER

Upon Defendants' Motion *in Limine* to Exclude Evidence of Plaintiff Arguing Negligence in Failure to Ensure Use of Seat Belt. *Granted.*
Upon Defendants' Motion *in Limine* to Exclude Any Evidence of Defendant Being Negligent for Permitting Plaintiff to Ride in the Back of the Ambulance. *Denied.*

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware; attorney for Plaintiff.

Michael J. Logullo, Esquire of Heckler & Frabizzio, Wilmington, Delaware; attorney for Defendants.

WITHAM, R.J.

Presently before the Court are two motions *in limine* filed by the defendants in this negligence action. The background of the case, as well as the Court's disposition as to each motion, is set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

This is a negligence action arising from injuries suffered by Plaintiff Antoinette Stout (hereinafter "Stout") while Stout was a passenger in the back of an ambulance owned by Defendant CFT Ambulance Service, Inc. (hereinafter "CFT") and driven by Defendant Jason Yaich (hereinafter "Yaich") (collectively "the Defendants"). Yaich was employed by CFT at the time Stout suffered her injuries. EMT Jay Sowinski (hereinafter "Sowinski") was employed by CFT as an ambulance attendant at the time of Stout's injuries, but is not an individually named defendant. Stout contends that Sowinski's negligence may be imputed to CFT by operation of *respondeat superior*.

Stout's complaint alleges that on or about February 19, 2010 Stout was a passenger in a CFT ambulance driven by Yaich and attended to by Sowinski. Stout's daughter was being transported from Christiana Hospital to Stout's home. The ambulance was in a non-emergency mode at the time. Stout was seated in the rear of the ambulance on the right passenger-side bench by her daughter, who was strapped to a bed. Sowinski was seated behind Yaich.

Stout claims that Yaich slammed on the ambulance's brakes without warning, causing Stout to be thrown forward into medical equipment, injuring her leg and face. Yaich continued driving after Stout was injured. Stout claims that Sowinski helped her up and suggested she put on a seatbelt. The parties dispute whether the bench

where Stout was sitting was equipped with seatbelts; Stout claims that after her fall, a search of her seat revealed that there were no seatbelts in that area, while Sowinski and Yaich both assert that the location where Stout was sitting was equipped with a seatbelt. Stout alleges that Yaich's negligent driving was the proximate cause of her injuries.

In his deposition, Sowinski stated that CFT had a "standing protocol" that a patient's family members were not allowed to sit in the back of the ambulance in order to ensure their safety, and were directed to sit in the front of the ambulance because it was safer. Sowinski informed Stout that it would be safer if she sat in the front, but Stout insisted on sitting by her daughter so that Stout could provide her daughter medical treatment if needed. After Stout continued to insist on sitting near her daughter, Sowinski allowed Stout to sit in the back.

The Defendants have filed two motions *in limine*. First, the Defendants move to exclude any evidence of failure to ensure that Stout was seat belted at the time of the accident. Second, the Defendants move to exclude any evidence of the defendants being negligent for permitting Stout to ride in the back of the ambulance.

DISCUSSION

I. Defendants' Motion to exclude any evidence of failure to ensure that Stout was seat belted at the time of the accident

The parties dispute whether or not the location where Stout was seated in the ambulance was equipped with seatbelts. The Defendants argue that 21 *Del. C.* § 4802(i) precludes Stout from using the Defendants' failure to ensure she was seat

belted at the time of the accident as evidence of the Defendants' negligence.[1] Stout responds that § 4802(i) only precludes using failure to use seatbelts as evidence of comparative or contributory negligence.

Section 4802(i) provides in pertinent part :

> Failure to wear or use an occupant protection system shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim adjudication arising out of any motor vehicle accident, *nor shall failure to wear or use an occupant protection system be admissible as evidence in the trial of any civil action or insurance claim adjudication*.[2]

This Court, in construing identical language contained in Delaware's statute on the admissibility of failure to use child restraints,[3] has found that the above-emphasized language is a "blanket prohibition against the submission of such evidence in any civil case," and not just a prohibition against using failure to use child restraints to prove comparative or contributory negligence.[4] This logic applies to the identical language of § 4802(i); the statute's general prohibition against the admissibility of

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[1] The Defendants also argue that because Stout has failed to establish that Yaich violated a statute by failing to ensure that Stout was wearing a seatbelt, Stout should be precluded from arguing that such failure rises to the level of negligence. The Defendants fail to provide any case law to support this argument, and Stout correctly observes that failure to establish a statutory violation does not preclude a plaintiff from arguing negligence based on common law duties of care. This argument is without merit and will not be discussed further.

[2] 21 *Del. C.* § 4802(i) (emphasis added).

[3] *See* 21 *Del. C.* 4803(d).

[4] *See Moffett v. Zitfogel*, 1990 WL 123068, at *2 (Del. Super. Ct. Aug. 1, 1990).

failure to use seatbelts in "any civil action" does not limit itself to a particular evidentiary use nor a particular party. Stout is arguing that the Defendants were negligent for failing to ensure that Stout was aware of the availability of seatbelts and for failing to reasonably ensure that Stout was safely restrained prior to the operation of the vehicle–i.e., that her own failure to use a seatbelt was the product of the Defendants' negligence. Accordingly, to the extent that Stout is seeking to link her failure to use a seat belt to the Defendants' alleged negligence, such use is excluded pursuant to § 4802(i).[5]

Assuming *arguendo* that § 4802(i) does not prohibit Stout's use of her own failure to use a seatbelt against the Defendants, the Court fails to see how such evidence would be relevant based on the facts of this case. It is true that Delaware recognizes a duty of care owed by drivers of motor vehicles to their passengers.[6] The law also recognizes that a defendant may have an affirmative duty to act if there is a legally significant special relationship between the parties.[7] However, Stout fails to establish how this precedent gives rise to a specific duty on the part of the Defendants to ensure that Stout's seatbelt was securely fastened before Yaich began driving the ambulance–particularly when Stout insisted on sitting in the back of the ambulance

[5] Delaware recognizes a limited exception for admitting failure to use seatbelts to disprove proximate causation in products liability cases alleging defective vehicle design. *See Gen. Motors Corp. v. Wolhar*, 686 A.2d 170, 176 (Del. 1996). This exception is not implicated in the case *sub judice*.

[6] *Pipher v. Parsell*, 930 A.2d 890, 892-93 (Del. 2007) (citing *Harris v. Carter*, 582 A.2d 222, 235 (Del. Ch. 1990)).

[7] *Price v. E. I. DuPont Nemours & Co.*, 26 A.3d 162, 167 (Del. 2011).

after Sowinski told her it was safer to sit in the front of the ambulance.

Based on the foregoing, the Defendant's first motion *in limine* is **GRANTED.** Stout is precluded from arguing that the Defendants were negligent in failing to ensure she was wearing a seatbelt at the time of her accident. However, the above-cited precedent may have imposed a limited duty on Yaich and Sowinski to warn Stout that there were no seatbelts available for her to use, in which case the existence or non-existence of seatbelts where Stout was seated is relevant. Thus, the Court's granting of this motion does not preclude Stout from arguing that Yaich or Sowinski was negligent in failing to warn her of the lack of seatbelts in the back of the ambulance.

II. Defendants' motion to exclude any evidence of Defendants being negligent for permitting the plaintiff to ride in the back of the ambulance

The Defendants contend that Stout should be precluded from arguing that the Defendants were negligent in permitting Stout to ride in the back of the ambulance because Stout has failed to provide an expert report that the Defendants violated the standard of care for an EMT or ambulance provider. The Defendants further argue that the "standing protocol" referred to by Sowinski is an internal CFT policy that does not establish a standard of care under this Court's decision in *Brown v. Dover Downs, Inc.*[8]

Stout argues that the Defendants are attempting to disguise a dispositive motion

[8] 2011 WL 3907536, at *6-7 (Del. Super. Ct. Aug. 30, 2011) (finding that innkeepers did not owe affirmative duty to guests to provide bathmats in hotel room showers even though the defendant-hotel had implemented an internal policy requiring bathmats in every room).

as a motion *in limine* by seeking to prevent Stout from presenting her claim. The Court agrees. This motion is not directed toward any particular form of evidence. Rather, the Defendants are trying to prevent Stout from raising any argument in support of her negligence claim. Further, the Defendants' argument is meritless: this a negligent driving case, not a medical negligence case, therefore no affidavit of merit is needed.[9] Additionally, *Brown* is inapposite here because that case involved an innkeeper's duty of care, which is not implicated here. This motion is overly broad and without merit, and must be **DENIED.**

CONCLUSION

The Defendants' motion *in limine* to exclude evidence of the Defendants' failure to ensure that Stout was using her seatbelt is **GRANTED.** The Defendant's motion *in limine* to exclude any evidence that the Defendants were negligent in permitting Stout to ride in the back of the ambulance is **DENIED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

[9] *See* 18 *Del. C.* § 6853.