

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 24, 2009

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RE: Bell-Isler, et. al. v. Mid-Atlantic Management, LLC, et. al.
C.A. No. 08C-11-024-ESB
Letter Opinion

Date Submitted: June 11, 2009

Dear Counsel:

This is my decision on the defendants' motion to dismiss certain counts of the plaintiffs' complaint in this case involving allegations of medical negligence at a nursing home.¹ This case arose out of the death of 77-year-old Jessie Lee Thomas. Thomas was a patient at the Delmar Nursing and Rehabilitation Center. He suffocated after his tracheotomy tube became dislodged. Thomas had 12 children. They raised claims in their complaint against the defendants pursuant to the Wrongful Death Statute.² The plaintiffs allege that they suffered mental anguish as a result of their father's death. The plaintiffs do not allege

¹ The defendants also seek to dismiss the plaintiffs' claims for punitive damages. The plaintiffs concede that they have no claims for punitive damages under the Wrongful Death Statute. Therefore, I have not addressed this matter.

² 10 Del.C § 3722 and § 3724.

that they suffered any physical injuries along with their mental anguish. The plaintiffs also claim that the defendants owed a fiduciary duty to their father and breached it. The defendants are the administrator and nursing director of the Delmar nursing home and one entity related to the Delmar nursing home.³ The defendants argue that (1) the plaintiffs' claims of mental anguish must be dismissed because the plaintiffs do not allege that they also suffered physical injuries along with their mental anguish; and (2) the defendants, as health care providers, did not owe a fiduciary duty to the plaintiffs' father.

Standard of Review

A motion to dismiss requires the Court to determine “whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”⁴ When deciding a motion to dismiss, the Court accepts as true all well-pleaded allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff.⁵ “Where allegations are merely conclusory, however, (i.e., without specific allegations of fact to support them) they may be deemed insufficient to withstand a motion to dismiss.”⁶

Mental Anguish

The plaintiffs raised claims pursuant to 10 Del.C. § 3724, which states, in

³ Delmar Nursing and Rehabilitation Center is the trade name for Mid-Atlantic Management, LLC. The other non-individual defendant is Mid-Atlantic of Delmar, LLC.

⁴ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁵ *Rammunno v. Crawley*, 705 A.2d 1029 (Del. 1998).

⁶ *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

applicable part, the following:

(a) An action under this subchapter shall be for the benefit of the spouse, parent, child and siblings of the deceased person.

...

(d) In fixing the amount of damages to be awarded under this subchapter, the court or jury shall consider all the facts and circumstances and from them fix the award at such sum as will fairly compensate for the injury resulting from the death. In determining the amount of the award the court or jury may consider the following:

...

(5) Mental anguish resulting from such death to the surviving spouse and next-of-kin of such deceased person.

The defendants argue that the plaintiffs' claims for mental anguish fail to state a claim for which relief may be granted because the plaintiffs do not allege that they also suffered physical injuries along with their mental anguish. Their argument is based on the Superior Court's holding in *Roberts v. Delmarva Power and Light*.⁷ *Roberts* is, in turn, based largely on the Supreme Court's holding in *Mergenthaler v. Asbestos Corp. Of America*.⁸

In *Mergenthaler* the Supreme Court stated:

"In any claim for mental anguish, whether it arises from witnessing the ailments of another or from the claimant's own apprehension, an essential element of the claim is that the claimant have a present physical injury."⁹

The three reasons commonly cited for making a distinction between a claim for mental anguish resulting in physical injury and a claim for mental anguish not resulting in physical

⁷ 2009 WL 222985 (Del. Super. Jan. 30, 2009).

⁸ 480 A.2d 647 (Del. 1984).

⁹ *Id.* at 651.

injury are as follows:

1. Emotional disturbance which is not so serious as to have physical consequences is normally in the realm of the trivial. It is likely to be so temporary, so evanescent, and so relatively harmless, that the task of compensating for it would undoubtedly burden the Courts and defendants.
2. In the absence of the guarantee of genuineness provided by resulting bodily harm, such emotional disturbance is too easily feigned, depending as it must, very largely upon the subjective testimony of the plaintiff; and to allow recovery would open too wide a door for false claimants.
3. Where a defendant has been merely negligent, his fault is not so great that the liability should be imposed for a purely mental disturbance.¹⁰

This distinction and the reasons for it have been widely criticized.¹¹ *Mergenthaler* did not involve claims for mental anguish made pursuant to the Wrongful Death Statute. It also did not analyze the physical injury requirement. *Mergenthaler* merely repeated what has been the law in Delaware for certain kinds of tort claims since at least 1927.¹² The contribution of *Roberts* to this body of law was to expand *Mergenthaler's* holding to, and engraft it upon, the Wrongful Death Statute even though the Wrongful Death Statute by its unambiguous language does not require a claim for mental anguish to include a present physical injury. The Superior Court in *Roberts* reasoned that *Mergenthaler's* holding was

¹⁰ *Cosgrove v. Beymer*, 244 F. Supp. 824, 825-26 (D. Del. 1965).

¹¹ Barry J. Koopmann, Note, *A Rule of Which Procrustes Would Be Proud: An Analysis of the Physical Injury Requirement in Negligent Infliction of Emotional Distress Claims Under Iowa Law*, 51 Drake L. Rev. 361 (2003).

¹² *Boyle v. Chandler*, 138 A. 273 (Del. Super. 1927).

so broad that it had to apply to all claims for mental anguish regardless of the origin and nature of the claim and that the legislature, by failing to define mental anguish, had adopted the common law definition of mental anguish.¹³

I have concluded that *Roberts* is incorrect because it imposes a requirement not set forth in the plain language of the Wrongful Death Statute.¹⁴ “The goal of statutory construction is to determine and give effect to legislative intent.”¹⁵ If the statute is unambiguous, “there is no need for judicial interpretation, and the plain meaning of the statutory language controls.”¹⁶ With an ambiguous statute “the Court must rely upon its methods of statutory interpretation and construction to arrive at what the legislature meant.”¹⁷ A statute is ambiguous if it is “reasonably susceptible of different conclusions or interpretations.”¹⁸ The Court must then construe the statute “in a way that will promote its

¹³ *Roberts*, 2009 WL 222985, at *9, rehearing denied, C.A. No. 05C-09-015 (Del. Super. May 6, 2009).

¹⁴ Another Superior Court Judge, The Honorable Richard R. Cooch, has also concluded that *Roberts* was wrongly decided. See *Spencer v. Goodill*, 2009 WL 3823217 (Del. Super. Nov. 13, 2009).

¹⁵ *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007) (quoting *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999)).

¹⁶ *Lawhorn v. New Castle County*, 2006 WL 1174009, at *2 (Del. Super. May 1, 2006) (citing *Eliason*, 733 A.2d at 946).

¹⁷ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

¹⁸ *Newtowne Village Service Corp. v. Newtowne Rd. Development Co., Inc.*, 772 A.2d 172, 175 (Del. 2001).

apparent purpose and harmonize it with any other statutes within the statutory scheme.”¹⁹

The statute must be read as a whole “in a manner that avoids absurd results.”²⁰

The applicable section of the Wrongful Death Statute, 10 Del.C. § 3724(d)(5), states that in determining the amount of the award the Court or jury may consider the following:

Mental anguish resulting from such death to the surviving spouse and next-of-kin of such deceased person.

There is nothing ambiguous about this language. The legislature clearly stated that the amount of the award may include consideration of the mental anguish of the surviving spouse and next-of-kin of the deceased person. Mental anguish is not defined in the statute, but it is commonly understood to mean a highly unpleasant mental reaction, such as anguish, grief, humiliation or fury that results from another person’s conduct.²¹ The Superior Court in *Roberts* essentially rewrote § 3724(d)(5) to read as follows:

Mental anguish resulting from such death to the surviving spouse and next-of-kin of such deceased person, *provided that such mental anguish is accompanied by a present physical injury.*

Had the legislature wanted to draft the Wrongful Death Statute to include a physical injury requirement, then it certainly could have done so. It did not do so. Moreover, it is not logical to conclude that the legislature, by its silence, wished to adopt a common law rule that

¹⁹ *LeVan*, 940 A.2d at 933 (quoting *Eliason*, 733 A.2d at 946).

²⁰ *Ingram v. Thorpe*, 747 A.2d 545, 547 (Del. 2000).

²¹ Black’s Law Dictionary 563 (8th Ed. 2004).

would severely limit a claim for mental anguish that the legislature has created and expanded.²² However, it is certainly logical to conclude that because the legislature did not include a physical injury requirement in the language of the Wrongful Death Statute that it did not intend to impose a physical injury requirement on a claim for mental anguish made pursuant to the Wrongful Death Statute.

Breach of Fiduciary Duty

The plaintiffs allege that the defendants owed a fiduciary duty to their father. This is based on the fact that the plaintiffs' father was dependant on the defendants for his health care. The defendants argue that, as health care providers, the only duties they owed to the plaintiffs' father are those imposed upon a health care provider. I agree with the defendants. The Supreme Court has stated, when discussing the relationship between an insurer and insured, that:

“The concept of a fiduciary relationship, which derives from the law of trusts, is more aptly applied in legal relationships where the interests of the fiduciary and the beneficiary incline toward a common goal and in which the fiduciary is required to pursue solely the interests of the beneficiary in the property.”²³

The nature of the relationship between the plaintiffs' father and the defendants was patient and health care provider, respectively. While the common goal of the parties may well have been to provide the plaintiffs' father with health care, the standard by which that

²² *Spencer v. Goodill*, 2009 WL 3823217, at *4 (Del. Super. Nov. 13, 2009) citing John E. Babiarz, Jr., *A New Wrong Death Act for Delaware*, Del. Lawyer 20, Note 11 (Fall 1982).

²³ *Corrado Bros., Inc. v. Twin City Fire Ins. Co.*, 562 A.2d 1188, 1192 (Del. 1989).

health care is to be judged is set forth in Delaware's Medical Negligence Statute.²⁴

Conclusion

The defendants' motion to dismiss (1) the plaintiffs' claims for mental anguish is denied, and (2) the plaintiffs' claim for breach of fiduciary duty is granted.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

²⁴ 18 Del.C. §§ 6801-6865.