IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lori Sauers, Administratrix of the Estate of Michael Matson, Deceased,	:	
Appellant	:	
v.	:	No. 2407 C.D. 2006
Rack and Roll, Inc., Angela Dandrea, The City of Erie, Benjamin George a/k/a Ben George, Dustin Ras, Derrick Rudler, and Nathan Bielecki	:	Argued: October 9, 2007

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 16, 2008**

This is a wrongful death case that arose from a multi-vehicle automobile accident involving Michael Matson (Decedent), who had been driving a motor vehicle while under the influence of alcohol, and Nathan Bielecki (Bielecki), who had also been operating a motor vehicle while under the influence of alcohol. Decedent's Estate (Estate) filed an action against Bielecki and then filed a separate action against a number of different defendants. At issue in the present appeal brought by the Estate is the grant of summary judgment by the Court of Common Pleas of Erie County (trial court) as to three defendants, Benjamin George

(George), Angela Dandrea and Rack and Roll, Inc. There are two primary issues on appeal: (1) has the Estate produced sufficient evidence as to whether George provided alcohol to Bielecki so as to allow the case against George to proceed to a fact-finder at trial?;[1] and (2) has the Estate established that there was a legal duty owed by Rack and Roll, Inc. and its owner Dandrea (collectively referred to as Dandrea) to Decedent and, if so, did it produce sufficient evidence to establish a breach of that duty?

I

Preliminarily, we set out the applicable law before discussing the facts of the case. In order to sustain an action based on a negligence theory, a plaintiff must prove four elements: (1) the defendant owed a duty to plaintiff; (2) the defendant breached that duty; (3) the breach of duty was the proximate or legal cause of the injury; and (4) plaintiff suffered a loss or damage. Braxton v. Department of Transportation, 634 A.2d 1150, 1158 (Pa. Cmwlth. 1993). In such cases, "[s]ummary judgment is properly granted when 'there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.'" Jones v. Southeastern Pennsylvania Transportation Authority, 748 A.2d 1271, 1272 (Pa. Cmwlth. 2000) (quoting Pa. R.C.P. No. 1035.2(1)), affirmed, 565 Pa. 211, 772 A.2d 435 (2001). Summary judgment is also appropriate "if, after the completion of discovery relevant to the motion, including the production of expert reports, an

[1] The Estate frames the issue in this manner: "Whether The Trial Court Erred in Concluding That Plaintiff Had No Proof to Support the Allegation that Defendant, Benjamin George a/k/a Ben George Supplied the Alcohol That Was Consumed by Nathan Bielecki." (Estate's Br. at 5.)

adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa. R.C.P. No. 1025.2(2). [2]

II

On Monday, December 23, 2002, after drinking alcohol at two parties, each at a different location, Bielecki operated his motor vehicle while in an intoxicated state. He carried two passengers in his vehicle, Dustin Ras (Ras) and Derrick Rudler (Rudler). He was first involved in an accident with a parked vehicle. With the urging of his two passengers, Bielecki decided to flee from the scene. While driving away he was involved in a second accident, this time with a moving vehicle that was operated by Decedent. Decedent had also been consuming alcoholic beverages before the accident and had a .117 blood alcohol level at the time of the accident.

The accident occurred at the intersection of West 38th Street and Schaper Avenue in the City of Erie (City) in the early morning of December 24, 2005. On the northeast corner of this intersection is a tavern that is operated by defendant

[2] An appellate court's scope of review of an order granting summary judgment is plenary. Albright v. Abington Memorial Hospital, 548 Pa. 268, 280, 696 A.2d 1159, 1165 (1997). "'[A] proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense[.]'" Basile v. H & R Block, 777 A.2d 95, 100 (Pa. Super. 2001) (quoting McCarthy v. Dan Lapore & Sons Co., 724 A.2d 938, 940 (Pa. Super. 1998)), rev'd on other grounds, 894 A.2d 786 (Pa. Super. 2006), and 926 A.2d 493 (Pa. Super. 2007). If the plaintiff fails to contravene the defendant's claim with evidence raising a factual dispute as to that element, the defendant is entitled to entry of judgment as a matter of law. See Glenbrook Leasing Co. v. Beausang, 839 A.2d 437, 440-41 (Pa. Super. 2003).

Rack and Roll, Inc., which itself is owned by Dandrea.[3] The parking lot for Rack and Roll abuts both Schaper Avenue and 38th Street. There is no sidewalk on the parking lot, and cars typically park very closely to 38th Street, where a sidewalk would normally be found.

Although the City has an ordinance that normally requires sidewalks on property such as this one, Dandrea's use predates the ordinance and is not required to comply with the ordinance. The Ordinance itself provides that:

> On every street which now is or hereafter shall be laid out and opened to the public use in the City, it shall be the duty of the several owners of the lots or parcels of land abutting thereon, and they are hereby enjoined and required, at their own expense, to construct and maintain convenient sidewalks in front of and adjoining their respective lots or parcels of land, and to pave the same and keep in good faith and safe condition for the use of pedestrians. On every lot or parcel of land upon which a residence or other improvement is being constructed it shall be the concurrent duty of the contractor in charge of such construction to so construct such sidewalks as hereinbefore provided.

(City Ordinance § 903.01.)

Bielecki was traveling west on 38th Street at over 50 miles per hour – at least twenty miles per hour above the speed limit. Decedent was traveling south on Schaper Avenue. There was a stop sign on Schaper Avenue at the intersection of Schaper Avenue and 38th Street. Decedent stopped at the stop sign and was attempting to turn left onto 38th Street, so as to be traveling east on 38th Street.

[3] The trial court classifies Dandrea as the owner of the corporation.

Decedent proceeded to make his turn, which required him to first pass through the westbound lane of 38th Street before merging into the eastbound lane of 38th Street. While passing through the westbound lane, Decedent's vehicle was broadsided by Bielecki's vehicle. The crash inflicted fatal injuries on Decedent.

On the night of the accident, and prior to the accident, Bielecki had attended a party at a apartment leased by George and two others, Jess Anto and Chris Light. Of the three, only George was over 21 years of age. Uncontroverted evidence establishes that, on the night of the party, George attended a movie with his father. Afterwards, George drove to his parents' house, picked up his girlfriend, and returned to his apartment with his girlfriend at approximately 9:00 p.m.

Prior to George's return, a keg of beer was brought into the apartment, and a party began at the apartment. Testimony indicates that George was angry that the party was going on. Following his arrival, George began watching television in the living room of the apartment. At some point, between 11:00 p.m. and midnight, George learned of some damage that had occurred to the apartment, which prompted him to tell everyone present to leave. Thereafter, everyone except George's girlfriend proceeded to leave the apartment.

Subsequent to attending the party at George's apartment, Bielecki, Ras, Rudler and some others attended a second party at which they also consumed alcohol. Someone from the first party brought the keg of beer from that party to the second party. It was after their departure from the second party that Bielecki and his passengers became involved in the two automobile accidents, which

included the fatal accident involving the Decedent.

Decedent's Estate filed an action against Bielecki and then filed a separate action against a number of different defendants. The first case was brought by the Estate against Bielecki (at CCP Erie Docket Number 13316-2004) which was initiated by a Complaint on September 15, 2004. Bielecki filed an Answer in this case. At the time the Complaint was filed, the Estate was represented by a different attorney than now represents the Estate.

The Estate subsequently filed a second action (at CCP Erie Docket Number 14639-2004) against Rack and Roll, Inc., Dandrea, the City, George, Ras, and Rudler. Defendants Rack and Roll, Inc. and Dandrea filed a Complaint to Join Additional Defendant Bielecki. At various stages of the proceeding, each of the defendants, not a party to this appeal, have challenged the respective cases brought against him or her, and the trial court has dismissed all other defendants.[4] The one exception is Bielecki, who has not at any stage of the proceeding challenged the case against him.

At issue in the present appeal is the dismissal from the case of three defendants, Rack and Roll, Inc., Dandrea, and George following the trial court's grant of summary judgment in favor of each.[5] The Estate and Bielecki filed a joint

[4] On October 6, 2005, the trial court granted the preliminary objections of the City, Ras, and Rudler. On October 24, 2005, the remaining parties filed a joint motion to consolidate the cases at 13316-2004 and 14639-04, which the trial court granted on October 25, 2005.

[5] Rack and Roll, Inc. and Dandrea filed a joint motion for summary judgment and George filed his own motion for summary judgment.

motion for determination of finality as to the order granting summary judgment, which the trial court granted. The Estate then filed the present appeal.[6]

III

We initially address the Estate's arguments as to George first, that he provided some of the alcohol in question or that he is responsible under social host liability. We then address the Estate's arguments as to Dandrea, that she had a duty to maintain her parking lot in a manner that would have kept cars from parking immediately next to the street.

A

The Estate's argument as to George has two components. First, the Estate argues that George provided at least some of the alcohol in question that was consumed at the party. In making this argument, the Estate acknowledges that it has no direct evidence of his involvement, but that it instead is relying on circumstantial evidence. The Estate's circumstantial evidence is essentially that George was the only lessee of the apartment who was of legal age to purchase alcohol.

The second component of this argument is that, even if George had not provided the alcohol, he should be held liable under social host liability for

[6] George filed a Motion to Quash the Appeal, which this Court, by Judge Quigley, denied on February 16, 2007. The merits of the trial court's grant of summary judgment as to these three defendants is presently before the Court for disposition. The Estate does not challenge the trial court's dismissal of the defendants City, Ras and Rudler, which occurred at the preliminary objection stage.

knowingly and intentionally allowing it to be distributed to minors on premises under his control. In support of this argument, the Estate relies on Macleary v. Hines, 817 F.2d 1081 (3d Cir. 1987); Fassett v. Delta Kappa Epsilon (New York), 807 F.2d 1150 (3d Cir. 1986); and Alumni Ass'n v. Sullivan, 524 Pa. 356, 572 A.2d 1209 (1990).

In response, George argues that there is no evidence, circumstantial or direct, that he furnished beer to Bielecki and that the jury would have to impermissibly engage in pure speculation to decide the case against George. George argues that the party with the burden of proof must present at least sufficient evidence so that a jury would not have to engage in pure speculation or conjecture in order to allow a potential factual issue to go to the fact-finder.

"The right of a litigant to have the jury pass upon the facts is not to be foreclosed just because the judge believes that a reasonable man might properly find either way." Smith v. Bell Tel. Co., 397 Pa. 134, 139, 153 A.2d 477, 480 (1959). The party with a burden of proof may rely on circumstantial evidence to meet that burden. Id. However,

> the jury may not be permitted to reach its verdict merely on the basis of speculation or conjecture, . . . there must be evidence upon which logically its conclusion may be based. . . . Clearly this does not mean that the jury may not draw inferences based upon all the evidence and the jurors' own knowledge and experiences, for that is, of course, the very heart of the jury's function.

Id. at 138, 153 A.2d at 479 (citations omitted). "To prove possibility only or to leave the issue to surmise or conjecture is never sufficient to sustain a verdict."

Farnese v. Southeastern Pennsylvania Transportation Authority, 487 A.2d 887, 889 (Pa. Super. 1985).

In the present case, the Estate fails to present sufficient circumstantial evidence to move the issue out of the realm of pure speculation. George correctly identifies the crux of the Estate's argument as being, essentially, that it must have been George who provided the alcohol because he was the only resident of the apartment who was over the age of 21. George also correctly notes that the evidence does not establish that George planned the party, was aware of it, or was even present when the keg of beer was brought into the residence. George also correctly notes that there were some underage attendees at the party who acknowledged bringing bottles of alcohol to the party (although Bielecki testified that the only alcohol he drank was from the keg). Additionally, there is the possibility that the alcohol was illegally obtained by individuals using false identification cards, or that underage individuals were not asked to provide identification when it was purchased. The trial court correctly concluded that the record is devoid of any evidence that a fact finder could rely on to conclude that George had any part in providing the alcohol.

Additionally, although the Estate correctly cites to the Fassett, Macleary, and Sullivan cases as setting forth Pennsylvania law as to social host liability, that theory is not applicable to George under the facts of this case. Under social host liability, a person may be held liable for damages caused by an intoxicated minor to third parties if that person "'knowingly furnished' alcoholic beverages to a minor." Sullivan, 524 Pa. at 364, 572 A.2d at 1212. "Knowingly furnished" is not

limited to individuals who have "*physically handed* an alcoholic beverage to a minor," Id. at 364, 572 A.2d at 1212-13 (emphasis in original), but may include "individuals who had participated in the planning and the funding of social events where alcohol was consumed by minors" who were also "aware of the degree of consumption by the minors." Id. at 364, 572 A.2d at 1212. Phrased another way, "the social host [must have] intentionally and *substantially aided* and encouraged the consumption of alcohol by a minor guest . . . ." Macleary, 817 F.2d at 1084 (emphasis added) (quoted favorably in Sullivan, 524 Pa. at 364, 572 A.2d at 1212). Whether assistance was substantial is a qualitative evaluation of six factors drawn from the Restatement (Second) of Torts § 876(b):

> a. the nature of the act encouraged; b. the amount of assistance given by the defendant; c. the defendant's presence or absence at the time of the tort; d. the defendant's relation to the other tortfeasor; e. the defendant's state of mind; and f. the foreseeability of the harm that occurred.

Fassett, 807 F.2d at 1163 (citing Restatement (Second) of Torts § 876(b), comment d).[7]

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[7] As discussed by the Third Circuit:

> [I]t is not helpful to have liability turn merely on the labels given to particular actors. Characterizations of a defendant in terms of a furnisher, server, purchaser, deliverer, seller, or transporter of liquor, do little to assist the fact-finder in determining liability. Similarly, merely referring to a defendant as an owner or tenant of the premises where alcohol was consumed by a minor, gives little guidance to the informed judgment of the fact-finder.
>
> Fassett, 807 F.2d at 1164.

In the present case, examining the evidence in the light most favorable to the Estate, and making all reasonable inferences in favor of the Estate, we agree with the trial court that application of the case law, including the six factors discussed in Fassett, would not permit this case against George. First, there is no evidence that George "participated in the planning and funding" of the party, or that he was "aware of the consumption by the minors." Sullivan, 524 Pa. at 364, 572 A.2d at 1212. Moreover, there is no evidence that George was involved in furnishing the alcohol. Additionally, although George was present for part of the party, his presence alone is not sufficient to impose liability, particularly when coupled with the evidence that George had not been aware of the party before he arrived home, he did not attend the party but remained upstairs, and that the party ceased at his direction.

Accordingly, we conclude that the trial court appropriately dismissed the Estate's case against George.

B

The Estate also argues that Dandrea had a duty to maintain her parking lot in a manner that would have kept cars from parking immediately up against 38th Street.

In addressing this argument, we first discuss the applicable law. "[T]o maintain a negligence action, the plaintiff must show that the defendant had a duty 'to conform to a certain standard of conduct;' that the defendant breached that duty; that such breach caused the injury in question; and actual loss or damage."

Phillips v. Cricket Lighters, 576 Pa. 644, 658, 841 A.2d 1000, 1008 (2003) (quoting in part Morena v. South Hills Health Sys., 501 Pa. 634, 642 n.5, 462 A.2d 680, 684 n.5 (1983)), rev'd on other grounds, 584 Pa. 179, 883 A.2d 439 (2005); See also Braxton, 634 A.2d 1150, 1158 (setting forth the requirements to prove negligence). "[T]he primary [element] is whether the defendant owed a duty of care." Phillips, 576 Pa. at 658, 841 A.2d at 1008.

Determining whether a duty is owed generally requires a balancing of five factors: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution." Althaus v. Cohen, 562 Pa. 547, 553, 756 A.2d 1166, 1169 (2000).[8]

[8] Our Supreme Court drew guidance from the Legal Scholar Dean Prosser's discussion of the nebulous nature of the concept of duty:

> In determining the existence of a duty of care, it must be remembered that the concept of duty amounts to no more than "the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection" from the harm suffered. Leong v. Takasaki, 55 Haw. 398, 520 P.2d 758, 764 (1974). To give it any greater mystique would unduly hamper our system of jurisprudence in adjusting to the changing times. The late Dean Prosser expressed this view as follows:
>
> > These are shifting sands, and no fit foundation. There is a duty if the court says there is a duty; the law, like the Constitution, is what we make it. Duty is only a word with which we state our conclusion that there is or is not to be liability; it necessarily begs the essential question. When we find a duty, breach and damage, everything has been said. The word serves a useful purpose in directing attention to the obligation to be imposed upon the defendant, rather than the causal sequence of events; beyond that it serves none. In the decision whether or not there is a duty, many factors

(Continued…)

Pennsylvania Courts have also turned to Section 364 of the Restatement (Second) of Torts to assist in determining if a duty is owed:

> [a] possessor of land is subject to liability to others outside of the land for physical harm caused by a structure or other artificial condition on the land, which the possessor realizes or should realize will involve an unreasonable risk of such harm, if
>
> (a) the possessor has created the condition, or
>
> (b) the condition is created by a third person with the possessor's consent or acquiescence while the land is in his possession, or
>
> (c) the condition is created by a third person without the possessor's consent or acquiescence, but reasonable care is not taken to make the condition safe after the possessor knows or should know of it.

Restatement (Second) of Torts § 364. Cases applying this provision have focused on the foreseeability element for evaluating duty. McCarthy v. Ference, 358 Pa. 485, 58 A.2d 49 (1948) (adopting and applying the Restatement (First) of Torts § 364, which is substantively identical to § 364 in the Restatement (Second)); Braxton, 634 A.2d at 1158 (concluding that "the court has the prerogative to assume [what would normally be] a jury determination when . . . under "the facts

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> interplay: The hand of history, our ideas of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall. In the end the court will decide whether there is a duty on the basis of the mores of the community, "always keeping in mind the fact that we endeavor to make a rule in each case that will be practical and in keeping with the general understanding of mankind."

Sinn v. Burd, 486 Pa. 146, 164-65, 404 A.2d 672, 681-82 (1979) (quoting Prosser, *Palsgraf Revisited*, 52 Mich. L. Rev. 1, 14-15 (1953)).

[of the case], and the inferences which could reasonably be drawn from those facts, no reasonable person could conclude" that the harm suffered was foreseeable).

In the present case, we agree with the trial court that fair and reasonable persons would not find the injury sustained as being foreseeable. The focus of the allegations against Dandrea is on the absence of a sidewalk and how that absence played a factor in the automobile accident.[9] The critical fact here for purposes of foreseeability is that decedent was driving, and was not a pedestrian.

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[9] The Complaint in the action docketed at 14639 provides that:

> 25. The view of the intersection of Schaper Avenue and West 38th Street was obstructed for vehicles southbound on Schaper Avenue due to vehicles illegally parked on West 38th Street adjacent to Rack and Roll, Inc.'s parking lot and/or vehicles parked in Rack and Roll, Inc.'s parking lot in the area that should have had an established sidewalk with proper set-back area from the curb, on its property parallel to West 38th Street.

(Complaint ¶ 25.) The Estate frames Rack and Roll's liability in the following manner:

> (a) Causing a visual obstruction at the intersection of Schaper Avenue and West 38th Street by permitting patron's [sic] or other vehicles to be parked adjacent to its restaurant on 2040 West 38th Street and/or in the area that should have contained a properly constructed sidewalk;
>
> (b) Failing to prevent a visual obstruction at the intersection of Schaper Avenue and West 38th Street when it knew, or in the exercise of reasonable diligence, should have known that vehicles were parking adjacent to its restaurant on 2040 West 38th Street and/or in the area that should have contained a properly constructed sidewalk;
>
> (c) Failing to have sufficient parking places for its business, as required by local codes, including but not limited to Section 302 of the City of Erie Zoning Ordinance, thereby causing vehicles to park along West 38th Street and/or in the area that should have contained a sidewalk, resulting in a visual obstruction at the intersection of Schaper Avenue and West 38th Street;

(Continued…)

"[A] sidewalk is a portion of a public street or highway and that portion of it which is set apart more particularly for the use of pedestrians. The whole purpose of this separation of the highway into two parts is that there may be a place for reasonably safe passage by pedestrians along the public highway." City of Pittsburgh v. Reed, 74 Pa. Super. 444, 446 (Pa. Super. 1920). This articulation of the law is reflective of the purpose of sidewalks as is commonly understood outside the legal context. See, e.g., Webster's Third New International Dictionary 2113 (1986) (defining sidewalk as a "walk for foot passengers usu[ally] at the side of a street or roadway"). Pennsylvania law has long recognized duties of landowners to pedestrians involving sidewalks. Cf. Morse v. Chessman, 86 Pa. Super. 256, 258-59 (1925) (citing Spratt v. Reymer, 57 Pa. Super. 566 (1914) (noting that property owners who have an opening on the sidewalk to allow vehicular access to their property have a duty to take reasonable measures to protect pedestrians on the sidewalk)).

> (d) Failing to take approximate and necessary steps to correct and/or prevent the visual obstruction at the intersection of Schaper Avenue and West 38th Street;
>
> (e) Failing to maintain and establish a sidewalk as required by local codes, including but not limited to Section 903 of the City of Erie Code;
>
> (f) Failing to prevent patrons and/or others from parking illegally on West 38th Street and/or the area on which it should have maintained a sidewalk;
>
> (g) Failing to have in place a properly located sidewalk along West 38th Street upon its property.

(Complaint ¶ 28.) The Estate raises nearly identical claims against Dandrea individually. (Complaint ¶ 29.)

The Estate cites to no authority that makes a similar recognition of sidewalks and their impact on vehicular accidents. Given this understanding within both our law and common parlance as to the purpose of a sidewalk, it is of no surprise that the Field Supervisor for the City testified that the intent behind the Ordinance was to protect pedestrians. (Field Supervisor Patrick Behan Dep. at 36.) Moreover, the language of the Ordinance, itself, focuses on the construction of sidewalks "for the use of pedestrians." (City Ordinance § 903.01.)

Applied to the facts presented in this case, we simply cannot conclude that a reasonable person would find it foreseeable that the absence of a sidewalk would lead to automobile accidents. Foreseeability of injury as to pedestrians does not translate into foreseeability of injury for drivers. Accordingly, we find no error in the trial court's determination of this issue.[10]

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[10] Although the Estate does not specifically use the phrase "negligence per se," it refers to these Ordinance provisions seemingly to intimate such an argument. As the argument is not directly raised, to the extent the Estate meant to raise it, we deem it waived. Additionally, to the extent that the issue was properly raised, we conclude it offers no relief in the present case.

"The concept of '*negligence per se*' establishes the elements of duty and breach of duty where an individual violates an applicable statute, ordinance, or regulation designed to prevent a public harm." Mahan v. Am-Gard, Inc., 841 A.2d 1052, 1058 (Pa. Super. 2003). To establish a claim based on *negligence per se*, a plaintiff must meet four requirements:

> (1) The purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally; (2) The statute or regulation must clearly apply to the conduct of the defendant; (3) The defendant must violate the statute or regulation; (4) The violation of the statute or regulation must be the proximate cause of the plaintiff's injuries.

Id. at 1059 (quoting Wagner v. Anzon, Inc., 684 A.2d 570, 574 (Pa. Super. 1996)).

(Continued…)

In addition to the injury not being foreseeable, we note that the remaining four factors for evaluating whether a duty is owed similarly counsel against a finding of duty. Dandrea and Decedent had no relationship. The social utility of the operation of Rack and Roll, Inc. is not in question. The consequences of imposing a duty could be widespread and substantial, detrimentally impacting many businesses that, having been operating properly prior to the adoption of particular regulations, are grandfathered from having to comply with provisions implemented subsequently. Additionally, there is not a substantial public interest in resolving this matter -- as the testimony demonstrated, over a period of many years there was no indication of any accidents at this particular intersection.

For these reasons we conclude that the trial court correctly dismissed the Estate's case against Dandrea.[11]

In the present case, at least two of the requisites do not apply. First, it appears that Dandrea was not in violation of the Ordinance. The unrebutted testimony of the Field Supervisor from the City Engineering Department indicates that the Ordinance has not been applied to "areas within the city that do not have a sidewalk of portland cement concrete or maybe even any type of sidewalk, [because they] were grandfathered in before this ordinance was passed." (Field Supervisor Patrick Behan Dep. at 44.)

Second, even if Dandrea's lack of sidewalk was not grandfathered in, Decedent was not within the class of persons protected by the Ordinance. The Field Supervisor from the City Engineering Department indicated that the purpose of the sidewalk Ordinance was to protect pedestrians, and the Ordinance itself indicates that the sidewalks were to be "construct[ed] and maintain[ed] . . . in good faith and safe condition for the use of pedestrians." (City Ordinance § 903.01.)

[11] We call to mind our Supreme Court's discussion in Sinn that "the general theory upon which the common law is based is that there is a remedy for every wrong." Sinn, 486 Pa. at 165 n.13, 404 A.2d at 682 n.13 (quoting Throckmorton, *Damages for Fright*, 34 Harv. L. Rev. 260,

(Continued…)

IV

For these reasons, we affirm the trial court's order.

RENÉE COHN JUBELIRER, Judge

264 (1920-21)). Elimination of these two defendants from the case does not foreclose the Estate from any remedy since the case against Bielecki remains. Whether the case proves meritorious – whether the Estate is entitled to relief from Bielecki - is for subsequent determination.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lori Sauers, Administratrix of the Estate of Michael Matson, Deceased,	:	
Appellant	:	
v.	:	No. 2407 C.D. 2006
Rack and Roll, Inc., Angela Dandrea, The City of Erie, Benjamin George a/k/a Ben George, Dustin Ras, Derrick Rudler, and Nathan Bielecki	:	

O R D E R

NOW, January 16, 2008, the order of the Court of Common Pleas of Erie County in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge