

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS

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DEBRA NELSON and HOWARD NELSON h/w	:	CIVIL TRIAL DIVISION
Plaintiffs/Appellants	:	JUNE TERM, 2010
	:	No. 3471
v.	:	
	:	
DEBRA ROSEN, DDS,	:	
EDWARD S. ABRAMS, DMD,	:	Superior Court Docket No.
ENDODONTICS LIMITED, P.C., ERIC H.	:	EDA 2010
GONZALEZ, M.D., HOLY REDEEMER	:	
HOSPITAL AND MEDICAL CENTER, a/k/a	:	
AND d/b/a HOLY REDEEMER HEALTH	:	
SYSTEM	:	
Defendants/Appellees	:	

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Nelson Etal Vs Rosen Etal-OPFLD



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S. LONERGAN

OPINION

**PROCEDURAL HISTORY**

Plaintiffs appeal from the Order entered on October 7, 2010 granting the Preliminary Objections of Defendants, Edward S. Abrams, DMD and Endodontics Limited, PC and transferring this action from Philadelphia County to Montgomery County.

**FACTUAL BACKGROUND**

On September 1, 2009, Plaintiff Debra Nelson (hereinafter Plaintiff) presented to her general dentist, Defendant Dr. Debra Rosen (hereinafter Dr. Rosen) with complaints of having fallen in the bathtub and hit her chin causing her teeth to slam together. (Amended Complaint, pg.11). The fall caused one of Plaintiff's teeth to be pushed into her jaw. (Plaintiffs' Memo in Opposition to Defendants' Preliminary Objections, pg. 3).

On September 4, 2009, Plaintiff presented to her endodontist, Defendant Dr. Edward Abrams (hereinafter Dr. Abrams). Dr. Abrams banded two teeth together to allow healing and allow the damaged tooth to heal and to be put back into position. (Amended Complaint, pg.12). On September 22, 2009, Plaintiff presented to have her splint removed by Dr. Rosen, however Dr. Rosen noted an infection. (Id.). Dr. Rosen prescribed an oral antibiotic, which Plaintiff took. (Plaintiffs' Memo in Opposition to Defendants' Preliminary Objections, pg. 4). On November 9, 2009, Plaintiff presented to the emergency department at Holy Redeemer Hospital with a fever and abnormally fast heart rate and respirations. (Complaint, pg. 13). Plaintiff was evaluated in the emergency room by Defendant Dr. Eric Gonzalez, M.D. who performed an examination and documented her medical condition.

Seven (7) hours after initially arriving at the emergency room, the antibiotic Levaquin was administered to Plaintiff. (Id.). Nurse Mary Powell, R.N. recorded Plaintiff's symptoms and worsening medical condition. Dr. Chintina Suanlarm, M.D. examined Plaintiff and admitted her to Holy Redeemer Hospital under the service of Guy McElwain, M.D. (Id., pg.14).

On November 10, 2009, Plaintiff was seen by Dr. Thomas McGrath, who ordered further testing and thereafter transferred Plaintiff to ICU under the care of Dr. Dominick Galluzzo.

During hospitalization at Holy Redeemer Hospital, Plaintiff alleges that she required intensive care including intubation with mechanical ventilation, multiple intravenous antibiotics, catherizations, transfusions and a feeding tube. (Id.). On

November 13, 2009, Plaintiff was transported by ambulance to Holy Redeemer Hospital to the burn unit at Crozier Chester Medical Center. (Id.).

Plaintiff remained hospitalized for more than three (3) months. During her stay, Plaintiff underwent tracheostomy, laser cauterization of tracheostomy site granulation tissue, gastrostomy tube placement, and several wound debridements and multiple split-thickness skin grafts as a result of blistering skin lesions. (Id., pg. 16). Plaintiff contends that she suffered from complications of infection, impaired ambulation and dysphasia. (Id.).

On June 30, 2010 Plaintiffs instituted this action by filing their Writ of Summons. On August 5, 2010, Plaintiffs filed their Complaint alleging that the defendants were negligent in their diagnosis, treatment and care of Plaintiff. Plaintiff Howard Nelson also asserted a loss of consortium claim. Plaintiff included negligence claims against her dentist, Defendants Endodontics Limited, P.C. (Endodontics) and Edward Abrams (Abrams) and her medical providers, Holy Redeemer Hospital and Medical Center, Holy Redeemer Health System (Holy Redeemer) and Eric Gonzalez (Gonzalez) and Debra Rosen (Rosen). Plaintiffs filed an Amended Complaint on September 1, 2010.

On September 3, 2010, Defendants Abrams and Endodontics filed Preliminary Objections to Plaintiffs Amended Complaint (Control # 10090401) alleging, *inter alia*, that Philadelphia County is an improper venue for this action pursuant to Pa.R.C.P. 1006(a.1) and 1006(c)(2) because they are not health care providers and all treatment by health care providers was provided in Montgomery County.

On September 10, 2010, Plaintiffs discontinued their action against Defendant Rosen and Fornance Physician Services, Inc.

Plaintiffs filed their Response to the Preliminary Objections on September 23, 2010 arguing that Dr. Abrams is a medical care provider, who saw Plaintiff in his office in Philadelphia on September 4, 2009. This visit is sufficient to satisfy the rule of venue in medical professional liability cases as stated in Pa.R.C.P. 1006 (a.1) and (c)(2).

Defendants Abrams and Endodontics filed their Reply on October 5, 2010 reiterating that Dr. Abrams is not a medical care provider according to Pa.R.C.P. 1006(a.1) and 42 Pa.C.S.A. §5101.1. Therefore, because the case involves multiple defendants, and plaintiffs allege joint and several liabilities, the case should be transferred to the venue where the medical care providers rendered care according to Pa.R.C.P. 1006(c)(2).

By Order dated October 7, 2010, this Court transferred the matter to Montgomery County reserving all remaining preliminary objections for the transferee county.

On November 1, 2010, Plaintiffs filed their Notice of Appeal from the Order of October 7, 2010 and issued their Statement of Errors Complained of On Appeal pursuant to Pa.R.A.P. 1925.

The issues to be addressed on appeal are as follows:

1. Whether this Court erred in finding that Dr. Abrams was not a health care provider for purposes of Pa.R.C.P. 1006(a.1).
2. Whether this Court erred in finding that the proper venue for this case is Montgomery County and not Philadelphia County where all medical care from health care providers was rendered in Montgomery County.

#### **LEGAL ANALYSIS**

The standard of review in sustaining preliminary objections is that the Court must accept as true all well-pleaded material provided in the Plaintiff's Complaint and any reasonable inferences which may be drawn from those facts. *Reardon v. Allegheny*

*College*, 926 A.2d 477, 480 (Pa. Super. Ct. 2007). Preliminary objections are sustained only where they are clear from doubt. *Id.* It must appear that the law would not permit the plaintiff to recover based upon the facts averred in order for a case to be clear and free from doubt. *Id.*

Plaintiffs concede in the First Amended Complaint that this is a medical professional liability action as stated in the heading of the Amended Complaint, which means the action is controlled by the MCARE Act.

The Pennsylvania Medical Care Availability and Reduction of Error Act, 40 Pa. Stat. Ann. §§ 1303.101 - 1303-910, by its terms, applies only to medical professional liability actions against physicians, and not to other professional liability actions, or to actions against non-physician health care providers. *Freed v. Geisinger Med. Ctr.*, 601 Pa. 233, 251; 971 A.2d 1202 (2009).

Venue in a medical professional liability action is subject to Pennsylvania Rule of Civil Procedure 1006(a.1).

According to Pa.R.C.P. 1006(a.1):

*Except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.*

emphasis added.

Because this action involves allegations of joint and several liability against all Defendants, Rule 1006(c)(2) also applies. Rule 1006(c)(2) states:

*If the action to enforce a joint or joint and several liability against two or more defendants includes one or more medical professional liability claims, the action shall be brought in any county in which the venue may be laid against any defendant under subdivision (a.1).*

emphasis added.

A reading of 1006(a.1) and (c)(2) together shows that the proper venue for an action of medical professional liability where plaintiff is alleging joint and several liability is any county where venue is proper against any defendant that is a health care provider.

The explanatory notes of Rule 1006 states that 42 Pa.C.S.A. §5101.1(c) defines what entities constitute “health care provider.”

42 Pa.C.S.A. §5101.1 (c) defines what entities fall under the scope of health care provider:

*A primary health care center, a personal care home licensed by the Department of Public Welfare pursuant to the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code, or a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and an officer, employee or agent of any of them acting in the course and scope of employment.*

emphasis added.

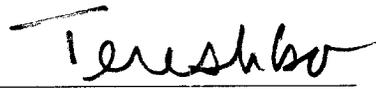
A review of the aforementioned statute does not include dentists or dental practice facilities in its definition of a health care provider. However, Defendants Holy Redeemer Health Systems (hospital) and Eric Gonzalez, M.D. (doctor) are specifically listed as individuals and entities that do constitute health care providers. Thus, all the alleged negligent medical treatment rendered to Plaintiff by health care providers was performed in Montgomery County. Pursuant to Pa.R.C.P. 1006(a.1) and (c)(2) venue is proper in Montgomery County.

**CONCLUSION**

For the foregoing reasons, this Court respectfully requests that its decision granting the Preliminary Objections of Defendants Edward S. Abrams, DMD and Endodontics Limited, PC, and transfer this action from Philadelphia County to Montgomery County be **AFFIRMED**.

**BY THE COURT:**

May 5, 2011  
Date:

  
ALLAN L. TERESHKO, J.

cc:  
Roberta Golden for Appellants  
John Farrell /Amalia Romanowicz for Appellees