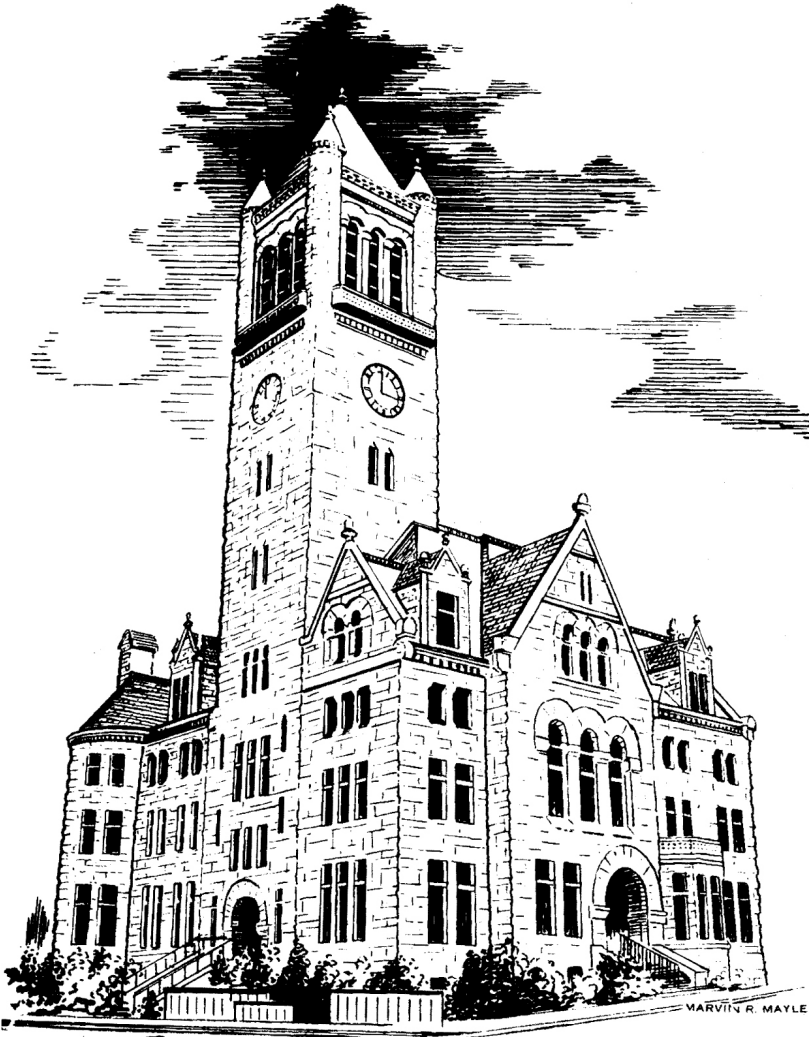


FAYETTE LEGAL JOURNAL

VOL. 79

JULY 16, 2016

NO. 29



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 2 West Main Street, Suite 711, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Crossland and Melinda Deal Dellarose

Associate Editor: Emilie J. Cupp

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Anne N. John

Vice-President:

President Elect: John M. Purcell

Secretary: Bernard C. John

Treasurer: Vincent J. Roskovensky, II

Past President: Ewing D. Newcomer

Executive Director: Marianne Miele

Directors

Gary N. Altman

Joseph I. Brodak

Davina D. Burd

Melinda D. Dellarose

Robert R. Harper, Jr.

James Higinbotham, Jr.

Carolyn W. Maricondi

William M. Martin

Wendy L. O'Brien

Ellen R. Terry

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

PETER J. BENEDICT, JR., of Bullskin Township, Fayette County, PA (3)

Executors:

Peter J. Benedict, III

221 Mount Pleasant Road
Scottsdale, PA 15683

Rebecca Lynn Kovalchick

215 Hopwood-Fairchance Road
Uniontown, PA 15401

c/o 450 West Main Street
Mount Pleasant, PA 15666

Attorney: Milton V. Munk, Jr.

JAMES BOYD, A/K/A JAMES W. BOYD, late of Georges Township, Fayette County, PA (3)

Personal Representative: Joanne L. Boyd

c/o George, Port & George
92 East Main Street

Uniontown, PA 15401

Attorney: Joseph M. George, Sr.

MARY GENE CRAMER, A/K/A MARY G. CRAMER, late of Fairchance Borough, Fayette County, PA (3)

Executrix: Lucinda Lee Boudreau

c/o 51 East South Street
Uniontown, PA 15401

Attorney: Webster & Webster

MARY ANN KORDELLA, late of Menallen Township, Fayette County, PA (3)

Executor: David A. Kordella

c/o Davis & Davis
107 East Main Street
Uniontown, PA

Attorney: James T. Davis

HELEN PARKER, late of Uniontown, Fayette County, PA (3)

Executors: Christopher Scott Parker, Sr.
and Brad Parker

c/o 96 East Main Street
Uniontown, PA 15401

Attorney: Simon B. John

JAMES PEFFER, late of North Union Township, Fayette County, PA (3)

Personal Representative: Roberta Crossland
c/o Robert A. Gordon, Esquire

99 East Main Street
Uniontown, PA 15401

Attorney: Robert A. Gordon

MARY SHEPPO, late of Masontown Borough, Fayette County, PA (3)

Executrix: Helyn Stevens

529 N. Water Street
Masontown, PA 15461

c/o 98 Main Street
Smithfield, PA 15478

Attorney: Douglas S. Sholtis

Second Publication

WARREN M. EARLY, late of Uniontown, Fayette County, PA (2)

Co-Executors: Alan W. Early and
Richard W. Early

57 Oakland Avenue
Uniontown, PA 15401

c/o P.O. Box 125
Brownfield, PA 15416

Attorney: Rae Lynn Regula

EDITH M. GOODING, late of Masontown, Fayette County, PA (2)

Personal Representative: Patricia J. Wingard
c/o Watson Mundorff Brooks & Sepic, LLP

720 Vanderbilt Road
Connellsville, PA 15425

Attorney: Charles Watson

JULIA M. SIMON, late of Franklin Township,
Fayette County, PA (2)

Executrix: Sarah Mae Simon
c/o 45 East Main Street, Suite 500
Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

Jeannette, PA 15644
c/o 314 Porter Avenue, Suite C
Scottdale, PA 15683

Attorney: David G. Petonic

First Publication

**DARLENE MILDRED GOLDSMITH, A/K/
A DARLENE M. GOLDSMITH, A/K/A
DARLENE GOLDSMITH**, late

of Uniontown, Fayette County, PA (1)

Administratrix: Joyce M. Lewis
P. O. Box 603506

Cleveland, OH 44103
c/o 2 West Main Street, Suite 517
Uniontown, PA 15401

Attorney: Emilie J. Cupp

ALVA C. JOHNSON, late of Upper Tyrone
Township, Fayette County, PA (1)

Executor: Lester F. Johnson
4017A Francis Street
West Mifflin, PA 15122
c/o 314 Porter Avenue, Suite C
Scottdale, PA 15683

Attorney: David G. Petonic

**MARY RIZER, A/K/A/ MARY C.
RIZER**, late of Nicholson Township, Fayette
County, PA (1)

Executor: Paul E. Rizer
404 East Cross Avenue
Masontown, PA 15461
c/o P.O. Box 430
Smithfield, PA 15478

Attorney: Robert Eugene Grimm

**DOLORES M. WARDEGA, A/K/A
DOLORES MAE WARDEGA, A/K/A
DOLORES WARDEGA**, late of Upper Tyrone
Township, Fayette County, PA (1)

Co-Executors:
Philip W. Wardega
502 Adele Court
Pittsburgh, PA 15229
Stephen F. Wardega
610 Sellers Avenue

LEGAL NOTICES

NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on June 29, 2016, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is J & W HOLDINGS, LLC having an address of 108 Concord Place, Uniontown, Pennsylvania 15401.

James E. Higinbotham, Jr., Esq.
HIGINBOTHAM LAW OFFICES
45 East Main Street, Suite 500
Uniontown, PA 15401
Telephone: 724-437-2800

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 877 of 2016 G.D.

COMPLAINT IN MORTGAGE
FORECLOSURE

**First Federal Savings & Loan Association of
Greene County, a corporation,
Plaintiff,**
v.

**ESTATE OF ELIZABETH A. STEWART,
Deceased, RACHEL E. STEWART, Heir of
the Estate of ELIZABETH A. STEWART,
deceased, RACHEL E. STEWART, and all
known and unknown heirs, successors,
assigns and all those claiming any right, title
or interest of, from or under ELIZABETH A.
STEWART, deceased,**

Defendants.

TO: ALL KNOWN AND UNKNOWN HEIRS,
SUCCESSORS ASSIGNS, and ALL
PERSONS, FIRMS or ASSOCIATIONS

CLAIMING ANY RIGHT, TITLE OR INTEREST FROM OR UNDER ELIZABETH A. STEWART, DECEASED.

You have been named as Defendant in a civil action instituted by First Federal Savings & Loan Association of Greene County, a corporation, against you in this Court. This mortgage foreclosure action has been instituted to foreclose upon property located at 451 Braddock Avenue, Uniontown, PA 15401, Tax Map No. 38-11-0065, and proceed to Sheriff's Sale for failure to make payments under the terms of a mortgage contract.

NOTICE

You have been sued in court. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
100 South Street
P.O. Box 186 Harrisburg, PA 17108
1-800-692-7375

Anne N. John, Esquire
Attorney for Plaintiff
PA ID Number 38961
96 East Main Street
Uniontown, PA 15401
(724) 438-8560

SHERIFF'S SALE

Date of Sale: August 11, 2016

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, August 11, 2016, at 10:30 a.m. in the Hallway outside the Sheriff's Office at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold.

James Custer
Sheriff Of Fayette County

Anne N. John, Esquire
Attorney at Law

No. 460 of 2016 GD
No. 169 of 2016 ED

**FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF GREENE COUNTY, a
corporation,**

**Plaintiff,
vs.**

**JOHN J. SPRINGER and STEPHANIE C.
SPRINGER,**

Defendants.

ALL that certain tract of land situate partly in Franklin Township and partly in Dunbar Township, Fayette County, Pennsylvania, bounded and described as follows:

BEING the same property conveyed to John J. Springer and Stephanie C. Springer, his wife, by deed of Donald E. Krepps and Carolyn F. Krepps, his wife, by deed dated November 25, 1997 which deed is of record in the Office of the Recorder of Deeds of Fayette County, Pennsylvania, in Record Book Volume 1998, page 299.

UPON which is erected a single-family ranch brick dwelling known locally as 52 Springer Hill Road, Vanderbilt, PA 15486.

Fayette County Tax Assessment Map
Nos.: 13-14-0008 and 09-10-0008. (3 of 3)

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 1, 2016
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2609-0584	FRANCE M. GEORGE Deceased Generation Skipping Trust Created under will of France M. George, Deceased and John R. George, Now Deceased	PNC Bank, National Association Surviving Trustee Successor to National City Bank

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 15, 2016
at 9:30 A.M.

in Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 1, 2016
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2676-0539	LEONA M. DAVIS	George D. Gillis, Administrator DBNCTA

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 15, 2016
at 9:30 A.M.

in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA
CIVIL DIVISION

EDWARD J. EWING and MARK E. ZOONER, SR.,	:	
AND TIFFANY SAWYERS, Co-Administrators of the	:	
Estate of TRUDY J. ZOONER, Deceased,	:	
Plaintiffs,	:	
vs.	:	
BRIAN D. POTKUL and COMMONWEALTH	:	
OF PENNSYLVANIA DEPARTMENT	:	
OF TRANSPORTATION,	:	
Defendants.	:	No. 1985 of 2015, G.D.

OPINION AND ORDER

VERNON, J.

July 12, 2016

Before the Court are Preliminary Objections filed by Defendant, Commonwealth of Pennsylvania Department of Transportation (“PennDOT”) moving to strike the allegations in Plaintiffs’ Complaint for parental and filial consortium and related damages for loss of services or support for the parent and daughters of the deceased.

STANDARD OF REVIEW

A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa.Super.2001) citing Pa.R.C.P. 1028(a)(4). A demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law. *Gekas v. Shapp*, 364 A.2d 691 (Pa. 1976). “Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” *Cardenas* at 321–22. “[C]onclusions of law, unwarranted inferences from the facts, argumentative allegations or expressions of opinion” need not be accepted as true. *Myers v. Ridge*, 712 A.2d 791, 794 (Pa.Comm. 1998). In order to sustain the demurrer, it is essential that the plaintiff’s complaint indicate on its face that his claim cannot be sustained, and the law will not permit recovery. *Id.* If there is any doubt, this should be resolved in favor of overruling the demurrer. *Id.*

DISCUSSION

In *Department of Public Welfare v. Schultz*, 579 Pa. 164, 855 A.2d 753 (2004), our Supreme Court held that a parent cannot bring an action for non-pecuniary losses against a Commonwealth agency. At the time set for oral argument, Plaintiffs acknowledged the holding in *Schultz* and conceded that they may not recover non-pecuniary losses suffered by non-spouses, i.e., a parent or a child of the decedent.

The issue that remains for this Court to decide is whether a parent and child of a decedent may recover for pecuniary/economic damages. Specifically Plaintiffs make claims for the loss of value of services which they relate are akin to loss of earning and earning capacity as set forth in 42 Pa.C.S. §8528(c)(1) on behalf of the husband of the decedent, Mark E. Zooner, Sr., on behalf of three daughters of the decedent, Tiffany Sawyers, Amy Condupa, and Timmie Sawyers, and on behalf of the mother of decedent, Roberta Belsar. See Complaint, ¶55. At Count VI – Wrongful Death, Plaintiffs pled damages for “lost income and financial support which would have reasonably expected to have been received from Plaintiffs’ Decedent during her lifetime. See Complaint, ¶56.

The Wrongful Death Act creates a right of action for the spouse, children or parents of a decedent. 42 Pa.C.S.A. §8301(b). Plaintiffs on behalf of the daughters and mother of decedent are beneficiaries permitted by statute. 42 Pa.C.S.A. §8301(b). However, we must read the Wrongful Death Act in context with the Sovereign Immunity Act when the Commonwealth is named as a defendant. The types of damages which are recoverable against the Commonwealth under the Wrongful Death Act are subject to the limitations on damages enumerated by statute at 42 Pa.C.S. §8528(c). Past and future loss of earnings and earning capacity are recoverable damages as provided for in 42 Pa.C.S. §8528(c)(1).

“As a general rule, pecuniary loss embraces the amount of the deceased’s probable earnings that would have gone for the benefit of the children, parent, husband or wife and is broad enough to include the value of probable services that would, in the ordinary course of events, be of benefit to one within this class.” *Vrabel v. Com.*, 844 A.2d 595, 600 (Pa. Commw. Ct. 2004) citing *Gaydos v. Domabyl*, 301 Pa. 523, 152 A. 549, 555 (1930). See Pa. SSJI (Civ) § 6.10, Subcommittee Note (Second ed., January, 2003 revision).

The *Vrabel* Court acknowledged precedent included “a claim for ‘loss of the value of decedent’s services’ among damages recoverable against the Commonwealth in a wrongful death action.” See *Huda v. Kirk*, 122 Pa. Cmwlth. 129, 131 (Pa. Commw. Ct. 1988) abrogated on other grounds by *Dep’t of Pub. Welfare v. Schultz*, 579 Pa. 164, 855 A.2d 753 (2004). Notably, *Schultz* did not address claims for pecuniary losses, but rather overruled *Huda* on non-pecuniary losses under 42 Pa.C.S. §8528(c)(4) relating to loss of consortium. As such, the holdings of *Vrabel* and *Huda* are still the law of this Commonwealth with respect to pecuniary losses.

Plaintiffs pled pecuniary damages that are recoverable under the Wrongful Death Act and the Sovereign Immunity Act when they sought compensation for “lost income and financial support,” being a type of damage derivative from “past and future loss of earnings and earning capacity” provided in the Sovereign Immunity Act as to a Commonwealth entity.

When sustaining a preliminary objection that would result in the dismissal of an action, the objection should be sustained only in cases that are free from doubt. *Engle v. Engle*, 603 A.2d 654 (Pa.Super. 1992). At the preliminary objection stage of these proceedings, upon the allegations as pled by Petitioner, the Court must overrule the objections. Plaintiffs’ claims for Wrongful Death damages brought on behalf of the surviving children and mother of the decedent will not be stricken from the Complaint in so far as they allege past and future loss of earnings and earning capacity pursuant to 42 Pa.C.S. §8528(c)(1).

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 12th day of July, 2016, upon consideration of the Preliminary Objections filed by Defendant, Commonwealth of Pennsylvania Department of Transportation, and the Response of Plaintiffs, and after argument, it is hereby ORDERED and DECREED that the objection regarding loss of consortium or non-pecuniary losses is SUSTAINED upon Plaintiffs' concession and the objection regarding economic losses or pecuniary losses is OVERRULED.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

SAVE THE DATE

Fayette County Bar Association Bench Bar Conference

Friday, August 19, 2016
Uniontown Country Club

Continental Breakfast
3 CLE Credits
Lunch

Summer Picnic Happy Hour

Thursday, July 21, 2016
4:30-6:30
Hutchinson Park
Pavilion Four

Join your colleagues for a picnic in the park with catering by Clean Slate's Mobile Kitchen and summertime beverages.



Food Truck

Please RSVP by July 18
(724) 437-7994 or cindy@fcbar.org

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219