

Control No. 1110863

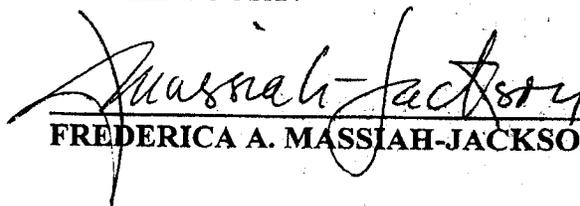
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DION L. DEANS, Administrator of the Estate of WILLIAM DEANS, JR., Deceased Plaintiff	:	FEBRUARY TERM, 2010
	:	NO. 0514
vs.	:	
	:	
THE VISITING NURSE ASSOCIATION OF GREATER PHILADELPHIA, RYAN B. SHOLINSKY, R.N., SUZANNE LAMPE, R.N., MIRIAM HILLIARD, L.P., VIRGINIA JAQUISH, R.N. and ALAN J. SNYDER, DPM Defendants	:	

ORDER

And Now, this 30th day of January, 2012, after consideration of the Motion for Summary Judgment filed by Suzanne Lampe, R.N. and the Responses thereto, including all Supplemental Memoranda submitted, and for the reasons set forth in the Memorandum filed this date, it is hereby ORDERED that the Motion for Summary Judgment is GRANTED.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Deans Vs The Visiting Nurse Association Of Gr-ORDMM



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R. POSTELL
DAY FORWARD

Control No. 11111085

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DION L. DEANS, Administrator of the Estate of WILLIAM DEANS, JR., Deceased Plaintiff	:	FEBRUARY TERM, 2010
	:	NO. 0514
vs.	:	
THE VISITING NURSE ASSOCIATION OF GREATER PHILADELPHIA, RYAN B. SHOLINSKY, R.N., SUZANNE LAMPE, R.N., MIRIAM HILLIARD, L.P., VIRGINIA JAQUISH, R.N. and ALAN J. SNYDER, DPM Defendants	:	

ORDER

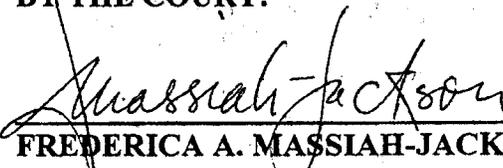
And Now, this 30th day of January, 2012, after consideration of the Motion for Summary Judgment filed by Visiting Nurse Association of Greater Philadelphia, Ryan B. Sholinsky, R.N., Miriam Hilliard, L.P. and Virginia Jaquish, R.N. and Responses thereto, including all Supplemental Memoranda submitted, and for the reasons set forth in the Memorandum filed this date, it is hereby ORDERED that the Motions for Summary Judgment are GRANTED.

BY THE COURT:

DOCKETED

JAN 30 2012

R. POSTELL
DAY FORWARD


FREDERICA A. MASSIAH-JACKSON, J.

Deans Vs The Visiting Nurse Association Of Gr-ORDMM



10020051400170

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DION L. DEANS, Administrator of the	:	
Estate of WILLIAM DEANS, JR., Deceased	:	FEBRUARY TERM, 2010
Plaintiff	:	
	:	NO. 0514
vs.	:	
	:	
THE VISITING NURSE ASSOCIATION OF	:	
GREATER PHILADELPHIA, RYAN B.	:	
SHOLINSKY, R.N., SUZANNE LAMPE, R.N.,	:	
MIRIAM HILLIARD, L.P., VIRGINIA	:	
JAQUISH, R.N. and ALAN J. SNYDER, DPM	:	
Defendants	:	

MEMORANDUM IN SUPPORT OF ORDERS GRANTING CERTAIN
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

MASSIAH-JACKSON, J.

Corrected Copy 

January 31st, 2012

In Hyrza v. West Penn Allegheny Health System, 978 A.2d 961 (Pa. Superior Ct. 2009), the Superior Court considered and fine-tuned the cases cited by the parties herein: Davis v. Miller, 123 A.2d 422 (Pa. 1956); Herbert v. Parkview Hospital, 854 A.2d 1285 (Pa. Superior Ct. 2004); Ball v. Johns-Manville Corporation, 625 A.2d 650 (Pa. Superior Ct. 1993).

While Defendant-Doctor Snyder has skillfully intertwined arguments for summary judgment, joinder of additional defendants, contribution from settling co-defendants, and jury verdict interrogatories/verdict sheets, and much more, the Hyrza Court stated clearly at 978 A.2d at 969, “. . . **we conclude that there is no absolute right to have settling co-defendants placed on a verdict slip**”

Rule 1035.2 permits entry of judgment as a matter of law when the record contains insufficient evidence to make out a prima facie cause of action. In Pennsylvania, in order to establish that the care and treatment by Nurse Lampe deviated from her standard of professional care (as a nurse and not as a physician), and, that the breach proximately caused the harm to Plaintiff-Deans, an expert medical report and testimony must be presented. See generally, Papach v. Mercy Suburban Hospital, 887 A.2d 233, 250-253 (Pa. Superior Ct. 2005), relying on Toogood v. Rogal, 824 A.2d 1140 (Pa. 2003); Grossman v. Barke, 868 A.2d 561 (Pa. Superior Ct. 2005). As Nurse Lampe notes in these materials, without expert testimony, it will not be possible to establish a prima facie case against the settled co-defendant.

The arguments proffered by Defendant-Snyder in anticipation of a future trial, appear to be similar to the post-trial arguments of Defendant-Appellants in the Hyrza v. West Penn Allegheny Health System, supra, litigation at 978 A.2d 969. That is, because the plaintiff's

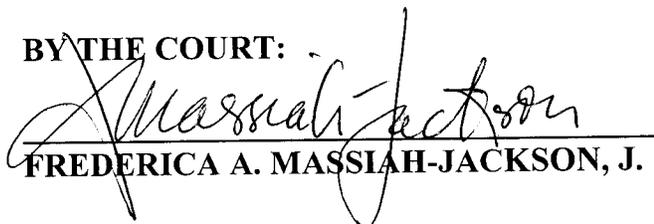
expert reports “comment on the care of Visiting Nurses”, and opines that Dr. Snyder’s care “contributed” to the harm, then the opinion of plaintiff’s expert “clearly implicates” the care and treatment by the Visiting Nurses and Nurse Lampe. Dr. Snyder concludes that plaintiff’s expert “cast a damning light” on all of the defendants. See Defendant-Snyder’s Supplemental Memoranda, Control Nos. 11110863, 11111085, (no page numbers). This type of analysis was rejected in Hyrca, supra, when the Superior Court held that statements must be considered not in isolation but “in the context of other statements which clearly singled out [the attending physician]” as ultimately responsible.

Most significantly, at this procedural juncture, Dr. Snyder’s interpretation, in anticipation and with speculation of what may or may not be the testimony at the future trial, is inadequate to overcome a pre-trial dispositive motion. See also, Rose v. Annabi, M.D., 934 A.2d 743 (Pa. Superior Ct. 2007).

It may be that Dr. Snyder may have a right to seek contribution or indemnity in a separate action. If so, the Defendant-Doctor will then have an opportunity to produce expert reports. Miix v. Insurance Co. v. Scott Epstein, D.O., 937 A.2d 469 (Pa. Superior Ct. 2007).

For all of the reasons set forth above, the Motions for Summary Judgment of Defendants Suzanne Lampe R.N., Visiting Nurse Association of Greater Philadelphia, Ryan B. Sholinsky, R.N., Mariam Hilliard, L.P., and Virginia Jaquish, R.N. are **GRANTED**.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.