NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KAREN MASUSOCK,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
JEFFREY S. YABLON, M.D., and CHESTER COUNTY HOSPITAL,	:	
	:	
Appellees	:	No. 293 EDA 2013

Appeal from the Order entered on December 18, 2012
in the Court of Common Pleas of Chester County,
Civil Division, No. 10-09488

BEFORE: DONOHUE, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED JULY 29, 2013**

Karen Masusock ("Masusock") appeals from the Order granting summary judgment in favor of Jeffrey S. Yablon, M.D. ("Dr. Yablon") and Chester County Hospital ("CCH"). We affirm.

On July 10, 2006, Masusock was involved in an automobile accident and sustained injuries to her spine. Masusock first sought conservative treatment from several physicians, but after treatment from pain specialists proved ineffective, Masusock was referred to Dr. Yablon for a surgical consultation. On February 12, 2007, Dr. Yablon performed spinal surgery on Masusock at CCH to correct complications resulting from the automobile accident. Approximately one year after the surgery, Masusock's pre-surgical symptoms reappeared, allegedly due to problems associated with the surgery performed by Dr. Yablon. As Dr. Yablon had closed his practice at

CCH, Masusock was forced to consult with a new neurosurgeon in order to determine the source of her newfound pain and suffering. The new neurosurgeon advised Masusock that she needed further surgery to correct various complications that had resulted from the initial surgery performed by Dr. Yablon. Despite receiving the second surgery, Masusock contends that she still suffers from chronic and severe pain as a result of Dr. Yablon's negligence in performing the initial surgery.

On April 24, 2008, Masusock filed a Complaint in the Court of Common Pleas of Delaware County against Bryan P. Day ("Day"), the driver involved in the automobile accident that resulted in Masusock seeking treatment for her spinal injury. Day and Masusock settled the case for $225,000 and executed a release that stated the following:

> KNOW ALL MEN BY THESE PRESENTS:
>
> That the Undersigned, being of lawful age, for the sole consideration of Two Hundred Twenty Five Thousand Dollars ($225,000) to the undersigned in hand paid, receipt whereof is hereby acknowledged, does hereby and for my, our heirs, executors, administrators, successors and assigns remise, release, acquit and forever discharge Bryan P. Day and his agents, servants, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships whether named or unnamed, of and from any and all claims, actions, causes of action, demands, rights, damages, property damage, costs, loss of service, suits, judgments, contracts, covenants, agreements, bonds, expenses and compensation, whatsoever, in law or equity, whether known or unknown, foreseen or unforeseen, especially from all liability arising out of the accident, casualty or event which occurred on or about July 10, 2006, at or near State Road 8083 near Interstate 476, Nether Providence Township, Delaware County,

Pennsylvania, Delaware County Court of Common Pleas, No. 08-4861.

Release of All Claims, 9/3/08.

On August 4, 2010, Masusock initiated the action against Dr. Yablon and CCH by Writ of Summons. On November 15, 2010, Masusock filed an amended Complaint, wherein she alleged that Dr. Yablon and CCH had breached the standard of care in treating the injuries she suffered in the car accident involving Day. After disposition of the preliminary objections raised by both defendants, CCH and Dr. Yablon filed Answers and New Matters.

Dr. Yablon filed a Motion for summary judgment on August 31, 2012. Subsequently, CCH filed its Motion for summary judgment on September 10, 2012. On December 18, 2012, the trial court granted both of these Motions, concluding that the release executed by Masusock with Day discharged all claims and parties from liability arising from the July 10, 2006 car accident.

Masusock filed a timely Notice of appeal, and the trial court ordered her to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Masusock filed a timely Concise Statement, after which the trial court issued an Opinion.

On appeal, Masusock raises the following question for our review: "Whether the trial court erred in finding that the broad release language relative to an action involving a motor vehicle accident barred a subsequent claim for alleged medical malpractice arising from treatment following the accident?" Brief for Appellant at 3.

In reviewing the grant of a motion for summary judgment, we use the following standard and scope of review:

> We view the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. Our scope of review of a trial court's order granting or denying summary judgment is plenary, and our standard of review is clear: the trial court's order will be reversed only where it is established that the court committed an error of law or abused its discretion.

Erie Ins. Exch. v. Larrimore, 987 A.2d 732, 736 (Pa. Super. 2009) (citations omitted).

Masusock argues that the trial court erred in granting summary judgment because the trial court focused on an incomplete reading of the release language. Brief for Appellant at 10-14. Specifically, Masusock contends that the language "at or near State Road 8083 near Interstate 476, Nether Providence Township, Delaware County, Pennsylvania, Delaware County Court of Common Pleas, No. 084861" constitutes information that warrants a specific and limiting analysis, rather than a broad construction of the release language. ***Id.*** at 10-11. She argues that a proper and specific reading of the release constrains the document to releasing only those individuals that were involved in the automobile accident on July 10, 2006. ***Id.*** at 11-13. Additionally, Masusock argues in the alternative that even if the release is read broadly, thus precluding any and all future claims, she could not have agreed to release both Dr. Yablon and CCH, as she was

unaware that she had claims against them when signing the release on September 3, 2008. ***Id.*** at 13-14.

When construing the language of a release, this Court has recognized the following:

> [W]hen construing the effect and scope of a release, the court, as it does with all other contracts, must try to give effect to the intentions of the parties. Yet, the primary source of the court's understanding of the parties' intent must be the document itself. Thus, what a party now claims to have intended is not as important as the intent that we glean from a reading of the document itself. The parties' intent at the time of signing as embodied in the ordinary meaning of the words of the document is our primary concern.

Brown v. Cooke, 707 A.2d 231, 233 (Pa. Super. 1998) (quotations and citations omitted).

> The court will adopt an interpretation that is most reasonable and probable bearing in mind the objects which the parties intended to accomplish through the agreement. There is no requirement that all of the parties to be discharged from liability are specifically named within a release if the terms of the release clearly extend to other parties. The Pennsylvania Supreme Court has held that when the terms of a release discharge all claims and parties, the release is applicable to all tortfeasors despite the fact that they were not specifically named and did not contribute toward the settlement.

Ford Motor Co. v. Buseman, 954 A.2d 580, 583 (Pa. Super. 2008) (internal quotations and citations omitted).

In the seminal case of ***Buttermore v. Aliquippa Hosp.***, 561 A.2d 733 (Pa. 1989), our Supreme Court addressed the effect of a general release on a subsequent lawsuit against a non-party to the release. In ***Buttermore***, James Buttermore was involved in an automobile accident, resulting in

numerous injuries for which he received treatment at Aliquippa Hospital. ***Id.*** at 734. Mr. Buttermore settled his claim with the driver of the other vehicle involved in the accident, Frances Moser, for the sum of $25,000, and executed a release. ***Id.*** The release stated the following, in relevant part:

> "forever [discharging] Frances Moser … and any and all other persons, associations and/or corporations, whether known or unknown, suspected or unsuspected, past, present and future claims, … on account of or arising from damage to property, bodily injury or death resulting or to result from an accident which occurred on or about the 3rd day of December, 1981 at or near Aliquippa, Pennsylvania …."

Id. The Supreme Court of Pennsylvania determined that the general release, signed by Mr. Buttermore, which discharged all claims pertaining to the accident and injuries he suffered, must be read to include any and all individuals or entities involved in the claim or treatment of the individual, regardless of the intent of the parties. ***Id.*** at 735-36. Thus, the Court determined that the release did indeed discharge others who had not contributed consideration toward the release, extinguishing claims against any and all tortfeasors pursuant to the broad contractual language utilized. ***Id.***

Here, the language in the release is unambiguous, clear, broad in scope, and in fact, similar to the language found in the release in ***Buttermore***. The plain and ordinary language of the release signed by Masusock specifically releases "Bryan P. Day … and all other persons, firms, corporations, associations or partnerships whether named or unnamed, of

and from any and all claims … whether known or unknown, foreseen or unforeseen" from liability for the July 10, 2006 accident. Release of All Claims, 9/3/08. The failure of Masusock's known injuries to properly heal because of alleged medical malpractice falls within the confines of the release. ***See Buttermore, supra***; ***see also Republic Ins. Co. v. Paul Davis Sys.***, 670 A.2d 614, 615-16 (Pa. 1995) (holding that release as to "all other persons" from "any and all other actions" of "whatsoever kind or nature" was a general release and barred subsequent suit); ***Brown v. Herman***, 665 A.2d 504, 507-09 (Pa. Super. 1995) (holding that release discharging "any and all other persons, insurers, firms, partnerships, and corporations" in a products liability case precluded subsequent medical malpractice suit); ***Porterfield v. Trustees of the Hosp. of the Univ. of Pa.***, 657 A.2d 1293, 1295-96 (Pa. Super. 1995) (holding that general release which discharged not only the party to the initial lawsuit but "any and all other persons, firms, corporations, associations" from all injuries and damages "known and unknown" barred a subsequent medical malpractice action).

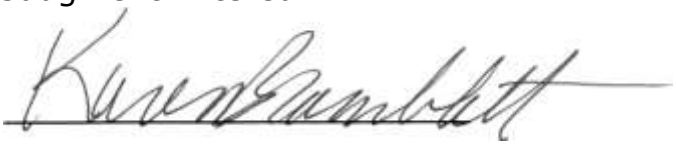
We note that Masusock argues that ***Buttermore*** is inapplicable to this case and that the language of a release found in the case of ***Harrity v. Medical College of Pa. Hosp.***, 653 A.2d 5 (Pa. Super. 1994), is more similar to the case at bar. Brief for Appellant at 11. In ***Harrity***, the language of the release limited its scope to damages "arising out of an

accident which occurred June 22, 1986[,] *and for which suit was brought in the United States District Court for the Eastern District of Pennsylvania at Civil Action No. 88-4913, styled: Sarah T. Harrity vs. Claridge at Park Place vs. Claridge at Park Place, Inc. ….”* ***Id.*** at 10 (emphasis added). The Court determined that the release language was extremely clear and limiting, preventing only causes of action among the parties involved in the initial lawsuit. ***Id.*** at 11. Unlike ***Harrity***, the "and for which suit was brought" restrictive language does not appear in the release signed by Masusock. Thus, the restrictive nature of the language found in the ***Harrity*** release is dissimilar to the broad and all-encompassing language of the release signed by Masusock.

Based upon the foregoing, we conclude that the language of the release is unambiguous and clearly articulates that after Masusock signed the release on September 3, 2008, she was forever barred from bringing future claims arising out of the injuries she suffered as a result of the automobile accident. As such, the trial court correctly awarded summary judgment in favor of Dr. Yablon and CCH.

Order affirmed.

Judgment Entered.



Prothonotary

Date: 7/29/2013