

2015 WL 2150169 (Pa.Com.Pl.) (Trial Order)  
Court of Common Pleas of Pennsylvania.  
First Judicial District  
Civil Trial Division  
Philadelphia County

Matthew CHARLTON,  
v.  
PMA INSURANCE GROUP and Mylene Zimmerman.  
No. 1312000914.

April 10, 2015.  
Opinion Pursuant to [Pa.R.A.P. 1925\(a\)](#)  
[K. Shreeves-Johns](#), Judge.

\*1 Matthew Charlton, (hereinafter “Appellant”), appeals the trial court's Order of January 16, 2015<sup>1</sup>, which granted a judgment on the pleadings in favor of Appellees, Mylene Zimmerman and PMA Insurance Group (hereinafter “Appellees”).

On December 24, 2014, Appellees filed a Motion for Judgment on the Pleadings alleging that under the facts produced, Appellant's claim against Appellees is barred by the exclusivity provisions of the Workers' Compensation Act, therefore, Appellant is unable to recover as a matter of law. On January 16, 2015, the trial court granted Appellees' Motion for Judgment on the Pleadings. This appeal followed, which raises the following issue on appeal:

1. Whether the trial court erred in concluding that Appellant's cause of action is barred by the exclusivity provisions of the Workers' Compensation Act.

***FACTS***

Appellant's Complaint alleges that on August 26, 1986, Appellant was injured in a workplace accident which left him with physical and emotional injuries. From 1986 to the present, Appellee PMA Insurance Group has paid workers' compensation benefits on Appellant's behalf. Appellee PMA has paid for Appellant's psychiatric treatment for emotional harm suffered by Appellant as a result of his workplace injuries.

Appellant treated with Dr. Timothy Michals, M.D. for his workplace emotional injuries. During the course of treatment, Appellant disclosed to Dr. Michals that he had been sexually abused as a small child. Dr. Michals referred Appellant to Steven Samuel Ph.D. to receive treatment for his childhood sexual abuse. Dr. Samuel treated Appellant free of charge and neither billed or notified PMA of Appellant's childhood sexual abuse. Although Dr. Michals never treated Appellant for childhood sexual abuse, Dr. Michals' treatment notes reflect Appellant's confession concerning his childhood trauma.

On September 18, 2012, Appellee Mylene Zimmerman, a Senior Account Claims Representative employed by PMA wrote to Dr. Michals requesting, his office notes, which were needed to determine Appellant's continued benefit eligibility. On November 1, 2012, Dr. Michals sent Zimmerman his office notes regarding his treatment of Appellant for his workplace injuries which embodied information about Appellant's sexual abuse history.

In June 2013, Zimmerman spoke by telephone with Appellant about his workers' compensation case with PMA. Zimmerman allegedly told Appellant that “you will settle this case.” Appellant responded to Zimmerman that he had not recovered from his workplace injuries and continued to need treatment. According to Appellant's Complaint, Zimmerman continued to insist that

Appellant would have to settle his workers' compensation case with PMA and added that “we are tired of paying for something that happened to you as a child.” Appellant believed that Zimmerman was referring to his childhood sexual abuse and claims to have become extremely agitated, anxious and upset. After Appellant and Zimmerman's telephone conversation, Zimmerman left a voicemail on Appellant's telephone during which she stated the following:  
\*2 What we talked about the other day actually is done and over. That will never ever be discussed again and that was something that was brought up to me, I brought up to you and that is the only group of people who will be discussing that. So if you want to give me a call back I'd appreciate it. Bye.

Appellant subsequently, brought the present action against Appellees claiming Intentional Infliction of Emotional Distress and seeking compensatory and punitive damages.

## **DISCUSSION**

### **I. Judgment on the Pleadings Standard**

Motions for judgments on the pleadings are governed by [rule 1034\(a\) of the Pennsylvania Rules of Civil Procedure](#). Rule 1034(a) provides:

(a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.

#### [Pa.R.C.P. No. 1034\(a\)](#).

A motion for judgment on the pleadings is similar to a demurrer, it may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law.

[Miller v. Nelson, 768 A.2d 858 \(Pa. Super. Ct. 2001\)](#).

In reviewing a trial court's judgment on the pleadings, the appellate court must accept as true all well-pleaded facts of the non-moving party, consider against it only those facts it specifically admits, and determine whether the trial court's ruling was based on a clear error of law or whether the pleadings disclosed facts which properly should go to the jury. [Mellon Bank, N.A. v. National Union Ins. Co. of Pittsburgh, PA, 768 A.2d 865 \(Pa. Super. Ct. 2001\)](#).

### **II. Whether the Trial Court Abused Its Discretion and/or Committed an Error of Law By Granting Appellee's Motion for Judgment on the Pleadings.**

Here, the question in addressing Appellant's appeal is whether this court properly granted Appellees' motion for judgment on the pleadings when it concluded that Appellant's claim against Appellees is barred by the exclusivity provisions of the Workers' Compensation Act. The Pennsylvania Workers' Compensation Act (“Act”) provides that it is the exclusive remedy available to employees for work-related injuries:

The liability of an employer under this act shall be exclusive and in the place of any and all other liability to such employees...or any otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

77 Pa.C.S.A. § 481(a).

It is undisputed that the employer's immunity from tort action extends to its workers' compensation carrier. [Kuney v. PMA Insurance Company, 578 A.2d 1285 at 1286 \(Pa. 1990\)](#).

Appellant contends that because the injury alleged in his Complaint did not occur in the scope and course of his employment, it was unrelated to his workplace injuries, as such, his intentional infliction of emotional distress claim is not barred by the exclusivity provisions of the Act.

Appellant cites to Pennsylvania Supreme Court case [Tropiano v. Travelers Insurance Company, et al., 319 A.2d 426 \(Pa. 1974\)](#) to support his contention. In *Tropiano*, the Court held that the

workers' compensation insurer of an employee was not immune from liability in trespass to that employee for injuries allegedly caused by the insurer's negligence in supplying medical services in the treatment and care of the injury previously sustained by the employee in the course of his employment.

\*3 Appellant's reliance on *Tropiana*, is misplaced as *Tropiana* is distinguishable from the present matter. In *Tropiana*, the appellant was injured during the course of his employment. At the time of appellant's injury, he was covered by workers' compensation insurance. After a series of medical treatments failed to improve his condition, and, in fact caused him additional harm, appellant filed a suit in trespass against several doctors and the workers' compensation insurer. In contrast, the case *subjudice* does not involve acts of negligence arising out of medical treatment directed and controlled by the insurance carrier. Here, Appellees' alleged culpability arises from settlement discussions between the workers' compensation insurer and Appellant. Under Pennsylvania law, any such remedy must be brought under the Workers' Compensation Act. See *Kuney v. PMA Insurance Company*, 578 A.2d 1286 (Pa. 1990)(the exclusivity provisions of the workers' compensation law prohibit tort action against the insurance carrier for damages caused by the insurer's alleged intentional mishandling of the injured employee's compensation claim).

In the motion for judgment on the pleadings, Appellees cite to this Court's decision in [\*Santiago v. Pennsylvania National Mutual Casualty Insurance Company\*, 613 A.2d 1235 \(Pa. Super. Ct. 2005\)](#), to support their position. In *Santiago*, the appellant suffered a work-related injury to his wrist. As a result of his injury, appellant developed a psychiatric condition. The workers' compensation insurer paid for appellant's mental health treatment for a few years before terminating payment. As a result of the termination, appellant filed a workers' compensation claim. During settlement negotiations between representatives of the workers' compensation insurer and the appellant, the appellant alleged that fraudulent misrepresentations made by the insurer caused him to suffer emotional distress which resulted in his attempt to commit suicide. In *Santiago*, this Court held that exclusivity provisions of the Workmen's Compensation Act applied and provided immunity to the insurance carrier with respect to claims based on the carrier's alleged fraudulent and bad faith conduct in settlement negotiations that purportedly prompted a weakening of claimant's psychological health and his attempt at suicide. The trial court in the present matter relied on the *Santiago* decision when deciding to grant Appellees' motion for judgment on the pleadings as its facts are similar to those in the case at bar. In both *Santiago* and the present case, the appellants brought causes of action against their employers' workers' compensation insurers for tortious conduct in the course of handling their workers' compensation claims. The *Santiago* appellant, like the present Appellant, both alleged to have suffered mental distress as a result of acts of the workers' compensation insurers during settlement discussions. The trial court finding no real distinction between *Santiago* and the present case was compelled to rule in accordance with the *Santiago* decision.

### **III. Conclusion**

Therefore, for the foregoing reasons, the trial court's Order should be affirmed.

By the Court:

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K. Shreeves-Johns, J.