IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN M. INGATO,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 03C-05-087 SCD
	:	
JUSTIN BEISEL, SKY SAFETY INC, a Delaware corporation, and WILMINGTON COLLEGE, INC., a Delaware corporation,	:	
Defendants.	:	

Submitted: February 22, 2005
Decided: February 28, 2005

Upon Consideration of Wilmington College, Inc.'s Motion for Summary Judgment– **GRANTED**.

OPINION

Does a college with a degree requirement which necessitates that services be purchased from an independently operated flight training school have a relationship with its student such that a duty arises to protect its student from the negligence of the employee of that flight training school? Plaintiff, a student at a flight training school upon the recommendation of the college, was injured when the aircraft in which he was training crashed due to the negligence of the flight instructor. I conclude that college has no duty to student, and therefore no liability.

Facts

On February 25, 2002, John M. Ingato ("plaintiff") and Justin Beisel, ("Beisel") were injured when the small plane they occupied crashed while preparing to land. There is no dispute that the crash occurred because of a lack of fuel to the engine due to the failure to switch from one fuel tank to another as part of the pre-landing preparation.

Beisel was an employee of Sky Safety Inc. ("Sky Safety"), plaintiff was a student pilot. Beisel's negligence is not contested. Sky Safety and Beisel have settled with plaintiff. Plaintiff's remaining claim against Wilmington College ("College") charges it with responsibility for the conduct of Beisel.

Plaintiff enrolled in the aviation management-flight program at the College in September 2000. The aviation management-flight program required that he secure FAA certifications for both visual and instrument operation of an aircraft. In the Spring of 2001 he began flight training with Sky Safety, and completed the training and requisite examination for an FAA certification for visual operation of an aircraft. In September 2001, he commenced a second round of training for his instrument certification. It was during that training that the accident occurred.

Discovery indicates that there was no relationship between the College and Sky Safety. Sky Safety was one of several flight training schools used by the College's students. The College did not receive any revenue from Sky Safety, it did not provide the instructors, and it had no control over the method or manner of the instruction. Students who enrolled for training at Sky Safety, including the plaintiff, contracted directly with Sky Safety, and made payments directly to Sky Safety. The College gave students academic credit when they presented the required FAA certifications.

Plaintiff's claim against the College rests entirely on the assertion that the College directed the plaintiff to take his flight training at Sky Safety. Plaintiff offers his testimony and certain documents in support of that position. The College denies that such direction occurred, but concedes that such a fact must be accepted for the purposes of summary judgment. With that concession, the issue presented is whether the College owed any duty to the plaintiff with regard to flight training.

Discussion

Negligence is failure to meet the standard of care required by law.[1] Liability for negligence is limited by the scope of the legally defined duty.[2] Thus, there must be a duty, before liability can be imposed.[3] The scope of the duty turns on the relationship between the party claiming harm and the party charged with negligence.[4]

The nature of the relationship between a college and its students was considered in *Furek v University of Delaware*.[5] Furek was a student at the University when he decided to join the local chapter of a fraternity. The fraternity was located on land owned by the University. As part of the initiation process, which included a series of abusive and degrading activities, some lye-based liquid was poured over Furek's head, resulting in burns to his face, neck and back. The record indicated that though the University had instructed fraternities not to engage in hazing activities, there were activities occurring on an annual basis under circumstances which suggested that the University knew or should have known about them. While rejecting the doctrine of *in loco parentis* in recognition of the realities of modern college life, the Court concluded that there were bases for finding a duty.[6] The first arose from the fact that the University had assumed a duty:

> The evidence in this record strongly suggests that the University not only was knowledgeable of the dangers of hazing but, in repeated communications to students in general and fraternities in particular, emphasized the University policy of discipline for hazing infractions. The University's policy against hazing, like its overall commitment to provide security on its campus, thus constituted an

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[1] *Furek v. University of Delaware*, 594 A.2d 506, 516 (Del. 1991).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.* at 516-23.

[6] *Id.* at 516-17.

assumed duty which became "an indispensable part of the bundle of services which colleges . . . afford their students"[7]

In addition, the Court found a further duty owed by the University derived from its status as a landowner. The scope of that duty "extends only to the acts of third persons which are both foreseeable and subject to university control."[8] Based on past incidents, and common knowledge of hazing, the Court found that it was a jury question as to whether the hazing which caused the injury was foreseeable.

Furek provides no assistance to the plaintiff here, as there are no facts from which a duty arises. There is no evidence that the College assumed any duty regarding flight training. Nor did it exercise any control over the method or manner of the training by Sky Safety. The training did not take place on the property of the College or with its instructors. There is no evidence of prior problems that the College attempted to address involving the nature of the training provided. There is simply no evidence to support the claim of duty made here, even if plaintiff's testimony, that he "was told that we were going to be required to go to Sky Safety" and that Sky Safety was "recommended,"[9] is accepted as fact.

FAA certifications were requirements for the aviation management-flight program. Such a requirements, which required activities off the campus, does not give rise to a duty on the part of the school. *See Stephenson v. College Misericordia*[10] (holding that the college was not vicariously liable for an injury sustained by a student taking a horseback riding class at an equestrian center to fulfill the college's physical education requirement, as the instructor and

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[7] *Id.* at 520 (internal citation omitted).

[8] *Id.* at 521-22.

[9] Transcript of plaintiff's deposition, pp. 35-36 (attached as Ex. D to plaintiff's Answering Brief, D.I. 43).

[10] 376 F. Supp. 1324 (M.D. Pa. 1974).

center were not employees of the college and there was no showing that the college had any right to control the work of the instructor or the center).

Plaintiff's has presented through a theory of duty through the report of an expert who contends that the College was an *operator* of the aircraft at the time of the accident under 14 C.F.R. Part 1. One who operates an aircraft may not do so in a careless or reckless manner.[11]

The provision in question states:

> *Operate*, with respect to aircraft, means use, cause to use or authorize to use, for the purpose. . . . of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).[12]

Plaintiff's argument is that at the time of the crash, the College "caused to use" or authorized the use of the aircraft, by virtue of requiring that a student secure an FAA certificate.[13] "Caused to use" has been applied to the owner of an airplane that operated without the proper documentation[14] and to a pilot who attempted to start an aircraft which was not in airworthy condition, causing a fire.[15] Plaintiff offers no authority for his expansive interpretation of the FAA regulation to a party with no nexus to the airplane in question. This argument is without merit.

Legal Standard

A motion for summary judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[16] In determining

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[11] 14 C.F.R. § 91.13.

[12] 14 C.F.R. § 1.1.

[13] Letter to the Court from plaintiff dated February 8, 2005.

[14] *Morse v. FAA*, 37 F.3d 1505 (Table), 1994 WL 526960 (9th Cir.).

[15] *Daily v. Bond*, 623 F.2d 624 (9th Cir. 1980).

[16] *Merrill v. Crothall-American, Inc*., 606 A.2d 96 (Del. 1992).

whether there is a genuine issue of material fact, the evidence must be viewed in the light most favorable to the non-moving party.[17]

Conclusion

There being no issue of material of fact, summary judgment is GRANTED in favor of Wilmington College on the grounds that the facts of this incident do not give rise to any duty of care.

IT IS SO ORDERED.

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Judge Susan C. Del Pesco

Original to Prothonotary
xc: Counsel of Record

[17] *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).