

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

BETH A. ELLIOTT,

Plaintiff,

v.

ALLSTATE INSURANCE,

Defendant.

C.A. No. CPU5-17-001034

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Ms. Beth A. Elliott  
14 Drew Court  
Dover, DE 19901  
*Self-Represented Plaintiff*

Submitted: November 2, 2018  
Decided: January 28, 2019

**Decision and Order for Defendant's Motion to Dismiss**

The plaintiff, Beth A. Elliott, filed a personal injury action against the defendant, Allstate Insurance, on July 19, 2017, claiming damages resulting from an automobile accident with the defendant's insured that occurred on July 18, 2015. The defendant has filed a Motion to Dismiss pursuant to Court of Common Pleas Civil Rule 12(b)(6). The plaintiff filed correspondence discussing ongoing treatment in lieu of a response. On October 2, 2018, the Court gave the plaintiff additional time to file a proper response to the defendant's Motion to Dismiss. The plaintiff has

failed to respond. After careful consideration by the Court, the defendant's Motion to Dismiss is granted.

### **FACTS<sup>1</sup>**

On July 18, 2015, the plaintiff was stopped in traffic in the center lane on northbound Route 13 approximately forty feet south of Division Street, Dover, Kent County, Delaware. A vehicle driven by a fifteen-year-old female, the minor child of Patrick Schliesing and insured by Allstate Insurance, ("the insured") struck the plaintiff's vehicle from behind. The insured was cited for inattentive driving after admitting she was distracted while talking to a passenger prior to impact.

The plaintiff had six passengers in her vehicle at the time of the accident. Only one injury, head pain suffered by a passenger in the plaintiff's vehicle, was reported at the time of the collision. The plaintiff now also alleges injuries from the accident, including a concussion, headaches, depression, post-traumatic stress disorder and financial harm. The plaintiff filed suit against the defendant on July 19, 2017, alleging that the insured was distracted and drove without an adult at least twenty-five years of age inside the vehicle. The plaintiff further alleges that the insured caused the plaintiff ongoing damages resulting from the accident, including medical issues, mental anguish and financial difficulties. Additionally, the plaintiff claims that the defendant lost paperwork numerous times to avoid settlement and that the plaintiff was transferred from agent to agent several times while attempting to deal with the situation.

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<sup>1</sup> The facts as listed by the Court have been proffered by the plaintiff and the defendant in their filings and have not been proven by a preponderance of the evidence.

## **PARTIES' CONTENTIONS**

The defendant, Allstate Insurance, contends that the plaintiff has no direct claim against it because direct action may not be brought against a tortfeasor's insurer based upon the alleged negligence of the tortfeasor without first bringing suit against the alleged tortfeasor. The defendant further contends that the plaintiff's personal injury claims are barred by the applicable statute of limitations by one day.

After being provided an opportunity to respond to the defendant's motion to dismiss by the Court, the plaintiff failed to file a response to the motion. Based on the Complaint and correspondence filed by the plaintiff in this matter, it appears to the Court that the plaintiff contends that she was never made aware of any time limitations or other action she needed to take.

## **LEGAL STANDARD**

When deciding a motion to dismiss based on Court of Common Pleas Civil Rule 12(b)(6), "the Court must examine the complaint and accept all well-pleaded allegations as true."<sup>2</sup> "If the facts alleged in the complaint are sufficient to support a claim for relief, the motion should be denied."<sup>3</sup> "The test for sufficiency is a broad one, that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."<sup>4</sup> "An allegation, though vague or lacking in detail, is nevertheless 'well-pleaded' if it puts the opposing party on notice of the claim being brought against it."<sup>5</sup>

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<sup>2</sup> *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at \*2 (Del. Super. June 23, 2015) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)) (internal citation omitted).

<sup>3</sup> *Id.*

<sup>4</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978) (citation omitted).

<sup>5</sup> *Morabito*, 2015 WL 3882609, at \*2 (citing *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995)) (internal citations omitted).

## DISCUSSION

When filing a lawsuit for personal injury, a plaintiff must bring his or her case against the tortfeasor and not the tortfeasor's insurer.<sup>6</sup> Delaware "is not a State where a direct action is permitted against [a tortfeasor's liability insurer]."<sup>7</sup> The rationale behind this rule is "that it would not be sound public policy to permit an insurer to be joined as a defendant in an action grounded upon the acts of the insured."<sup>8</sup> Therefore, "an injured party may not bring a direct action against a liability insurer based upon the negligence of the insured."<sup>9</sup> Additionally, pursuant to Title 10 Section 8119 of the Delaware Code, "[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained."<sup>10</sup>

In the instant case, the accident between the plaintiff and the insured in which the plaintiff claims she suffered personal injuries occurred on July 18, 2015. This accident was allegedly caused by the insured while the insured was distracted on the roadway. The defendant was not the tortfeasor. It was only the insurance carrier covering the insured in the accident. The tortfeasor was the insured. Pursuant to *Kaufmann v. McKeown*, the plaintiff needed to bring suit against the insured because the plaintiff, as the injured party, may not bring a direct action for personal injury directly against an insurance carrier based on the negligence of the insured. Furthermore, pursuant to 10 *Del. C.* § 8119, the plaintiff had two years, until July 18, 2017, to file suit for personal injuries. The plaintiff filed suit on July 19, 2017, one day after the two-year statute of limitations had concluded. Therefore, at

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<sup>6</sup> See *Kaufmann v. McKeown*, 193 A.2d 81, 83 (Del. 1963).

<sup>7</sup> *Id.*

<sup>8</sup> *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531, 534 (Del. Super. 1990).

<sup>9</sup> *Willis v. City of Rehoboth Beach*, 2004 WL 2419143, at \*1 (Del. Super. Oct. 14, 2004) (citing *Delmar News, Inc.*, 584 A.2d at 533–34).

<sup>10</sup> 10 *Del. C.* § 8119.

the time of filing, the plaintiff was barred by the applicable statute of limitations from bringing a claim for personal injury.

### **CONCLUSION**

For the foregoing reasons, the Court finds that the plaintiff has wrongfully brought suit against the defendant. Under Court of Common Pleas Civil Rule 12(b)(6), the plaintiff has failed to state a claim upon which she is entitled to relief against the defendant. Therefore, the defendant's Motion to Dismiss is granted and the plaintiff's case is dismissed with prejudice.

**IT IS SO ORDERED.**



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The Honorable Charles W. Welch, III