

Love
v.
Huguely

Wrongful Death Suit

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

SHARON D. LOVE, Administrator of the Estate of Yeardley R. Love, Deceased,

Plaintiff,

v.

Case No. CL2012-130

GEORGE W. HUGUELY, V,

Defendant.

DEMURRER

Defendant, George W. Huguely, V ("Defendant"), by counsel, pursuant to Virginia Code § 8.01-273, and for the reasons stated in his Brief in Support, demurs to the Complaint because it does not state a cause of action upon which relief can be granted, nor do the allegations state facts upon which the relief demanded can be granted. Specifically,

1. Count I titled "Alternative Count—Negligence—Failure to Use Ordinary Care" fails because Plaintiff has stated no facts to support the allegations that Defendant failed to use ordinary care.

2. Count II titled "Alternative Count—Negligence—Indifference and Acting with Utter Disregard of Caution" fails because Plaintiff has stated no facts to support the allegations that Defendant acted with indifference and that his conduct constituted an utter disregard of caution amounting to a complete neglect of the safety of Love.

3. Count III titled "Alternative Count—Negligence—Acting with Conscious Disregard and Reckless Indifference" fails because Plaintiff has stated no facts to support the allegations that Defendant acted with conscious disregard for the safety of Love and/or with a

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reckless indifference to the consequences to Love or that he was aware or should have been aware that his conduct would probably result in injury and/or death to Love.

4. Count IV titled "Alternative Count—Willful and Malicious Injury and Death to Love" fails because:

- a. Virginia does not recognize this cause of action; and
- b. Plaintiff has stated no facts to support the allegations that Defendant willfully and maliciously caused the injuries and/or death of Love.

5. Count V titled "Assault and/or Battery" fails because:

- a. Plaintiff has stated no facts that would support an allegation of assault, which requires an apprehension of immediate battery; and
- b. Plaintiff has stated no facts that would support an allegation of battery, which requires that Defendant intended the bodily contact and that the touching was unwanted and neither consented to, excused, nor justified.

6. Count VI titled "Punitive Damages" fails because Virginia does not recognize a cause of action for punitive damages.

7. The claim for punitive damages fails because:

- a. Plaintiff has stated no facts that would support the allegations that Defendant's actions were willful and/or wanton and/or malicious and/or done with actual malice and/or so reckless as to evince a conscious disregard for the safety and life of Love; and
- b. Claims for punitive damages are capped by law at \$350,000 pursuant to Va. Code § 8.01-38.1.

WHEREFORE, George W. Huguely, V, by counsel, respectfully requests that this Court dismiss Plaintiff's Complaint without leave to amend.

GEORGE W. HUGUELY, V,

By 
Counsel

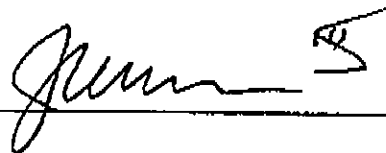
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CERTIFICATE

I hereby certify that on this 11 day of June 2012, a true and exact copy of the foregoing
was mailed, first class postage prepaid, to the following:

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SHARON D. LOVE, Administrator of the Estate of Yeardley R. Love, Deceased,

Plaintiff,

v.

Case No. CL2012-130

GEORGE W. HUGUELY, V,

Defendant.

BRIEF IN SUPPORT OF DEMURRER

Defendant, George W. Huguely, V ("Defendant"), by counsel, submits the following Brief in Support of his Demurrer to the Complaint.

INTRODUCTION

This is a wrongful death action in which Sharon Love, Administrator of the Estate of Yeardley R. Love, Deceased, ("Plaintiff") seeks \$29,450,000 in compensatory and \$1,000,000 in punitive damages. Plaintiff alleges six causes of action against Defendant: (1) negligence—failure to use ordinary care; (2) negligence—indifference and acting with utter disregard of caution; (3) negligence—acting with conscious disregard and reckless indifference; (4) willful and malicious injury and death to Love; (5) assault and/or battery; and (6) punitive damages.

FACTS

The only facts alleged in the Complaint are as follows. Defendant and Love were both students at the University of Virginia and had been in a girlfriend-boyfriend relationship prior to May 2, 2010. (Compl. at ¶ 4.) On May 2-3, 2010, Defendant entered Love's apartment and engaged in a physical altercation with Love, then twenty-two years old, which resulted in injuries to Love and her death. (Id. at ¶¶ 5-6.)

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ARGUMENT

"In any suit in equity or action at law, the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer." Va. Code § 8.01-273(A). A demurrer tests the legal sufficiency of the facts alleged in the pleadings. Glazebrook v. Bd. of Supervisors, 266 Va. 550, 554, 587 S.E.2d 589, 591 (2003). In ruling on a demurrer, a court must accept as true all facts properly pleaded in the Complaint as well as all reasonable and fair inferences that may be drawn from those facts. Id. "However, a demurrer does not admit the correctness of the conclusions of law found in the challenged pleading." Fuste v. Riverside Healthcare Ass'n, 265 Va. 127, 132, 575 S.E.2d 858, 861 (2003) (citing Ward's Equip., Inc. v. New Holland N. Am., Inc., 254 Va. 379, 382, 493 S.E.2d 516, 518 (1997)). A court must determine whether the complaint alleges "sufficient facts to constitute a foundation in law for the judgment sought, and not merely conclusions of law." Hubbard v. Dresser, Inc., 271 Va. 117, 122, 624 S.E.2d 1, 4 (2006).

I. Count I—Alternative Count—Negligence—Failure to Use Ordinary Care Fails to State a Claim.

In Count I, Plaintiff alleges that Defendant "failed to use ordinary care, leading to an accident for which he was responsible that resulted in the injuries and death of Love," and that this negligence was a proximate cause of Love's injuries and death. (Compl. at ¶¶ 8-9.)

Negligence requires "a legal duty on the part of the defendant, breach of that duty, and a showing that such breach was the proximate cause of injury, resulting in damage to the plaintiff. Blue Ridge Serv. Corp. of Va. v. Saxon Shoes, Inc., 271 Va. 206, 218, 624 S.E.2d 55 (2006). "Negligence cannot be presumed from the mere happening of the accident." Sykes v. Langley Cabs, Inc., 211 Va. 202, 208, 176 S.E.2d 417, 421 (1970).

The burden is on the plaintiff to prove that the accident was due to the negligence of the defendant as a proximate cause. What is proved must establish more than a probability of negligence. Inferences must be based on facts, not on presumptions. It is incumbent upon the plaintiff to show why and how the accident happened. If that is left to conjecture, guess or random judgment, the plaintiff is not entitled to recover.

Murphy v. J.L. Saunders, Inc., 202 Va. 913, 917, 121 S.E.2d 375, 378 (1961). While Rule 3:18(b) provides that a plaintiff need not specify the particulars of a defendant's alleged negligence, Va. S. Ct. R. 3:18(b), a plaintiff must still allege facts necessary to establish the cause of action, see Ely v. Whitlock, 238 Va. 670, 677, 385 S.E.2d 893, 897 (1989).

Plaintiff has not alleged what duty Defendant owed Love, nor has she alleged facts regarding how and why the accident happened and how Defendant allegedly failed to use ordinary care. As such, Count I fails to state a claim and should be dismissed.

II. Count II—Alternative Count—Negligence—Indifference and Acting with Utter Disregard of Caution and Count III—Alternative Count—Negligence—Acting with Conscious Disregard and Reckless Indifference Fail to State a Claim.

In Count II, Plaintiff alleges that Defendant acted with “such indifference to Love that his conduct constituted an utter disregard of caution amounting to a complete neglect of the safety of Love” and that this negligence was a proximate cause of Love’s injuries and death. (Compl. at ¶¶ 10-11.) In Count III, Plaintiff alleges that Defendant “acted with a conscious disregard for the safety of Love and/or with a reckless indifference to the consequences to Love when he was aware, or should have been aware, of his conduct and from his knowledge of the existing circumstances, that his conduct would probably result in injury and/or death to Love” and that this negligence was a proximate cause of Love’s injuries and death. (Id. at ¶¶ 12-13.) Based on the allegations, these counts are for gross negligence and reckless or willful and wanton conduct respectfully.

“[A] plaintiff must allege all facts necessary to establish a cause of action.” Ely v. 238 Va. at 677, 385 S.E.2d at 897 (citing Knight v. Fourth Buckingham Cmty., Inc., 179 Va. 13, 18, 18 S.E.2d 264, 266 (1942)). As such, a complaint is insufficient if it merely alleges conclusions of law. See Hubbard, 271 Va. at 122, 624 S.E.2d at 4; Pulte Home Corp. v. Parex, Inc., 265 Va. 518, 523-24, 579 S.E.2d 188, 190-91 (2003) (holding that a complaint that merely parroted the language of a code section that set forth legal bases for a cause of action amounted to no more than a legal conclusion and failed to state a claim when there were no factual allegations to support those conclusions).

Counts II and III contain no facts in support of their allegations of gross negligence and reckless or willful and wanton conduct. Instead, they merely recite the elements of those categories of negligence and state conclusions of law. The only facts alleged in the Complaint, that Defendant entered Love’s apartment and engaged in a physical altercation, which resulted in Love’s injuries and death, (Compl. at ¶ 5), do not rise to the level of gross negligence and/or reckless or willful and wanton conduct. As such, Plaintiff has stated no facts in support of her allegations in Counts II and III and those counts should be dismissed.

III. Count IV—Alternative Count—Willful and Malicious Injury and Death to Love Fails to State a Claim.

In Count IV, Plaintiff alleges that Defendant willfully and maliciously caused the injuries and/or death of Love. (Compl. at ¶ 14.) This Count fails to state a claim and should be dismissed.

A. Virginia does not recognize a cause of action for willful and malicious injury and death.

Tort actions in Virginia involve either negligent acts or intentional acts. Counts I, II, and III of Plaintiff’s Complaint seek to allege causes of action sounding in negligence. Count IV

purports to allege intentional acts on the part of Defendant in that it alleges that Defendant acted willfully and maliciously. (*Id.*)

Examples of intentional torts include: assault, battery, false imprisonment, malicious prosecution, abuse of process, and intentional infliction of emotional distress. However, Defendant is unable to locate any authority recognizing a cause of action in Virginia for willful and malicious injury and/or death. The only time the phrase “willful and malicious injury” appears to be used in case law is in connection with allegations of conspiracy pursuant to Virginia Code section 18.2-499(A), which is inapplicable to the present case. See e.g., N. Va. Real Estate, Inc. v. Martins, 283 Va. 86, 110, 720 S.E.2d 121, 133 (2012).

Reading Count IV as alleging an intentional act on the part of Defendant, an intentional injury to another person would constitute a battery. See *infra* Part IV.B. That a battery may have been committed willfully and maliciously—as opposed to intentionally or recklessly, see Bannister v. Mitchell, 127 Va. 578, 584, 104 S.E. 800, 801 (1920)—does not give rise to a separate cause of action for willful and malicious injury. As such, Count IV fails to state a claim and should be dismissed.

B. Plaintiff has stated no facts to support her allegations that Defendant willfully and maliciously caused the injuries and/or death of Love.

Even if Virginia did recognize a cause of action for willful and malicious injury, Plaintiff has stated no facts to support her allegations that Defendant willfully and maliciously injured Love. See *supra* Part II. Therefore, Count IV fails to state a claim and should be dismissed.

IV. Count V—Alternative Count—Assault and/or Battery Fails to State a Claim.

In Count V, Plaintiff alleges that Defendant’s actions constituted an assault and/or battery of Love and that, as a result of the assault and/or battery, Love suffered injuries and death. (Compl. at ¶¶ 15-16.) This Count fails to state a claim and should be dismissed.