

DISTRICT COURT, DENVER, COLORADO
1437 Bannock St.
Denver, CO 80202

DATE FILED: January 20, 2015
CASE NUMBER: 2014CV31778

Plaintiffs:

CHARLES L. SISK and STEPHANIE L. BRENNAN

v.

Defendants:

ROCKY MOUNTAIN PLANNED PARENTHOOD,
INC., d/b/a PLANNED PARENTHOOD OF THE
ROCKY MOUNTAINS, INC., and JANE DOES 1-4

COURT USE ONLY

Case Number(s): 14CV31778

Courtroom: 376

**COURT'S ORDER RE: PLAINTIFFS' MOTION TO AMEND COMPLAINT
TO ADD CLAIM FOR PUNITIVE DAMAGES**

This matter is before the Court pursuant to Plaintiffs' Motion to Amend Complaint to Add Claim for Punitive Damages filed December 22, 2014. No Response was filed. The Court having reviewed the Motion, the file, and being fully advised Finds and Orders as follows:

I. Background

Plaintiffs bring this case on behalf of R.Z., a minor. When R.Z. was 13, her stepfather and abuser, Timothy Smith, brought her to Defendants for an abortion. Plaintiffs allege that Defendants did not inform R.Z.'s biological mother in writing, 48 hours before the planned abortion as required by C.R.S. § 12-37.5-104. Defendants did not question R.Z. about the identity or age of her child's father nor did they ask her whether she was being abused. During the visit, Smith insisted that R.Z. receive injectable birth control, overriding R.Z.'s objections, so that her mother would not find out about the drug. After R.Z. was admitted, Smith went out to lunch and did not return. After she was released, R.Z. left the building unaccompanied and found Smith in the parking lot.

Plaintiffs allege that Defendants should have known or suspected that R.Z. was being abused and, thus, had a duty to report their suspicions, pursuant to C.R.S. § 19-3-304. Plaintiffs assert that Defendants' actions or failure to act facilitated R.Z.'s continued sexual abuse by Smith. Plaintiffs filed the following claims: (1) respondeat superior (Rocky Mountain Planned Parenthood, Inc. ("Planned Parenthood")); (2) negligence (all Defendants); (3) negligence *per se* (all Defendants); (4) negligent infliction of emotional distress (all Defendants); and, (5) extreme and outrageous conduct (all Defendants).

Plaintiffs move to amend their complaint to include an auxiliary claim for punitive damages (against Planned Parenthood), asserting that Defendants' conduct was willful and wanton.

II. Applicable Law

After a responsive pleading has been filed, it is within the court's discretion whether to allow a party to amend his pleading. *A Good Time Rental, LLC v. First Am. Title Agency, Inc.*, 259 P.3d 534, 541 (Colo. App. 2011). "[A] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." C.R.C.P. 15(a). Courts should look favorably upon requests to amend, as long as, the underlying facts or circumstances support a plaintiff's claim. *Varner v. Dist. Court for Fourth Judicial Dist.*, 618 P.2d 1388, 1390 (Colo. 1980). "Trial courts may permit amendments to pleadings at any stage of the litigation process so long as undue delay does not result and other parties are not prejudiced by such amendments." *Super Valu Stores, Inc. v. Dist. Court In & For Weld Cnty.*, 906 P.2d 72, 77 (Colo. 1995).

C.R.S. § 13-21-102 provides:

(1)(a) In all civil actions in which damages are assessed by a jury for a wrong done to the person or to personal or real property, and the injury complained of is attended by circumstances of fraud, malice, or willful and wanton conduct, the jury, in addition to the actual damages sustained by such party, may award him reasonable exemplary damages.

(b) As used in this section, "willful and wanton conduct" means conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff.

(1.5)(a) A claim for exemplary damages in an action governed by this section may be allowed by amendment to the pleadings only after the exchange of initial disclosures pursuant to rule 26 of the Colorado rules of civil procedure and the plaintiff establishes prima facie proof of a triable issue. After the plaintiff establishes the existence of a triable issue of exemplary damages, the court may, in its discretion, allow additional discovery on the issue of exemplary damages as the court deems appropriate.

Wanton and reckless conduct is that which "creates a substantial risk of harm to another and is purposefully performed with an awareness of the risk in disregard of the consequences." *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 215 (Colo. 1984).

III. Conclusion

Plaintiffs have established a *prima facie* case that Defendants purposefully committed conduct which they must have realized as dangerous, and performed it heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff.

Plaintiffs' Motion to Amend Complaint to Add Claim for Punitive Damages is GRANTED as set forth:

1. Plaintiffs' Third Amended Complaint and Jury Demand is accepted as filed on December 22, 2014, as Exhibit 5 to Plaintiffs' Motion to Amend Complaint to Add Claim for Punitive Damages.

DATED this 20th day of January 2015

BY THE COURT:



Herbert L. Stern, III
District Court Judge

CC: Counsel of Record by e-filing