

HANDOUT #8

**Motion for Judgment on the Pleadings Based
Upon Criminal Conviction
(Collateral Estoppel) (PA)**

SOLOFF & ZERVANOS, P.C.

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**IN THE COURT OF COMMON PLEAS
LEBANON COUNTY, PENNSYLVANIA**

K.C., as parent and natural guardian of C.B.,	:	
a minor; C.C. as parent and guardian of C.B.,	:	
a minor,	:	
Plaintiff	:	
v.	:	
	:	No.: 2008-01807
	:	
LEON BECKER & VIRGINIA BECKER	:	
Defendants	:	
	:	JURY TRIAL DEMANDED

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS &
IN THE ALTERNATIVE FOR PARTIAL SUMMARY JUDGMENT
ON LIABILITY IN COUNTS V & VI AGAINST DEFENDANT LEON BECKER**

I. MATTER BEFORE COURT

Plaintiffs, as parents and guardians of their minor daughter, C.B., motion for judgment on the pleadings and in the alternative for partial summary judgment on liability in Counts V & VI against Defendant Leon Becker.

II. STATEMENT OF QUESTION INVOLVED

Should Judgment be entered in favor of Plaintiffs and against Defendant, Leon Becker for liability in Counts V (assault) and VI (battery) where Defendant Leon Becker has admitted acts of assault and battery in his answer, at deposition and where he has been convicted of the crimes of indecent assault and endangering the welfare of a child after a jury trial?

Suggested Answer: YES.

III. FACTUAL AND PROCEDURAL HISTORY

Plaintiffs, on behalf of their minor daughter, C.B., filed a lawsuit and brings claims against Defendant Leon Becker for: Negligent Failure to Rescue (Count III); Assault (Count V); Battery (Count VI); False Imprisonment (Count VII); and Intentional Infliction of Emotional Distress (Count VIII). Specifically, Plaintiffs assert claims against Defendants for damages and injuries for harmful acts committed by Defendant Leon Becker against Plaintiffs' minor daughter, C.B., which occurred on various dates in 2006-2007 when she was 4 years old. See Plaintiffs' Complaint, para. 6, Exhibit 1. Plaintiffs allege, *inter alia*, that Defendant Leon Becker "continually and repeatedly perform heinous, horrific, inexplicable, and illegal sexual acts upon the minor child C.B., his own granddaughter." *Id.* para. 8.

On or about November 5, 2008, Defendant Leon Becker filed an answer to the complaint and in his answer admitted that "Leon Becker caused C.B. to touch him in an inappropriate way on one single occasion." See Paras. 11 & 13, Leon Becker's Answer to Complaint, Exhibit 2. In his answer, Defendant Leon Becker admitted that: "any alleged injury sustained was caused solely and exclusively by Defendant Leon Becker." *Id.* at para. 12. In his answer Becker admitted that: "on a single occasion Defendant caused Plaintiff C.B. to touch him in an unlawful manner." *Id.* at para. 33. In his answer Becker admitted that: "It is admitted that on one single occasion the Defendant caused the Plaintiff C.B. to have inappropriate contact with him." *Id.* at para. 35. In his answer Becker also similarly admitted that: "on one single occasion the Defendant [Leon Becker] cause [*sic*; caused] Plaintiff C.B. to have inappropriate contact with him. *Id.* at para. 40.

Defendant Leon Becker was found guilty after a jury trial in August, 2008 of having

committed the crimes of indecent assault, in violation of 18 Pa.C.S.A. § 3126, and endangering the welfare of a child, in violation of 18 Pa.C.S. § 4304 for the inappropriate touching and act of endangerment of a child, C.B., under Lebanon County criminal Docket Nos. CP-38-CR-2161-2007 & CP-38-CR-191-2008.

IV. LEGAL ARGUMENTS

A. JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED IN PLAINTIFFS' FAVOR ON LIABILITY FOR COUNTS V & VI PURSUANT TO PA.R.CIV.P. 1034 WHERE DEFENDANT LEON BECKER HAS ADMITTED COMMITTING ACTS OF ASSAULT AND BATTERY IN HIS ANSWER

According to Pennsylvania Rule of Civil Procedure 1034(a), "after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for a judgment on the pleadings." In addition, the motion should be granted where the law is clear and trial would be "a fruitless exercise." *Bata v. Central Penn National Bank*, 423 Pa. 373, 224 A.2d 174, 178 (Pa. 1966). It is well-settled that judgment on the pleadings is appropriate if there are no disputed issues of fact. *Williams v. Lewis*, 319 Pa. Super. 552, 466 A.2d 682, 683 (Pa. Super. Ct. 1983).

There can be no dispute that Defendant Leon Becker has admitted to acts of improper touching of his 4-year-old granddaughter, including causing her to touch him. Thus, there is no factual dispute that an assault and battery were committed by him upon Plaintiffs' minor daughter and thus judgment should be entered against him for liability under counts V & VI of Plaintiff's complaint with the issues of damages to be determined at the time of trial.

B. PARTIAL SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFFS' FAVOR ON LIABILITY FOR COUNTS V & VI OF PLAINTIFFS' COMPLAINT BASED UPON DEFENDANT LEON

**BECKER’S ANSWER, SWORN DEPOSITION TESTIMONY AND
CRIMINAL CONVICTION FOR INDECENT ASSAULT AND
ENDANGERING THE WELFARE OF A CHILD**

Summary Judgment should be entered where there are no material issues of fact. *See, e.g.,* Pa.R.Civ.P. 1035.

1. Partial Summary Judgment Should be Entered in Plaintiffs’ Favor Based Upon Leon Becker’s Criminal Conviction For Indecent Assault and Endangering the Welfare of a Child

Criminal convictions, under Pennsylvania law, are admissible in subsequent civil proceedings as conclusive evidence of the facts underlying the conviction. *Folino v. Young*, 568 A.2d 171, 172 (Pa. 1990); *Commonwealth v. Mitchell*, 535 A.2d 581, 585 (Pa. 1987). Under Pennsylvania law, a criminal conviction collaterally estops a defendant from denying his acts in a subsequent civil trial. *Shaffer v. Smith*, 543 Pa. 526, 529, 673 A.2d 872, 874 (1996); *Folino v. Young*, 523 Pa. 532, 568 A.2d 171 (1990); *In re Kravitz Estate*, 418 Pa. 319, 211 A.2d 443 (1965); *Hurt v. Stirone*, 416 Pa. 493, 206 A.2d 624, *cert. denied*, 381 U.S. 925, 14 L. Ed. 2d 684, 85 S. Ct. 1561 (1965). The Pennsylvania Supreme Court, in *Shaffer, supra*, held that: “[O]nce a criminal defendant has been convicted and sentenced, a plaintiff in a civil proceeding may invoke collateral estoppel to preclude the defendant from denying his criminal acts.” *Shaffer*, 543 Pa. at 532, 673 A.2d at 875.

The Supreme Court of Pennsylvania has held that a defendant should not be allowed to subsequently “deny that which was established by his criminal conviction, without proof that his conviction was procured by fraud, perjury or some manner or error now sufficient to upset the conviction itself.” *Mitchell*, 535 A.2d at 585; *Stidham v. Millvale Sportsmen’s Club*, 618A.2d 945, 952-953 (Pa. Super. 1992); *State Farm Fire & Cas. Co. v. Estate of Cooper*, 2001WL

1287574, at *4-5, 2001 U.S. Dist. LEXIS 17050, at *13-14 (E.D. Pa. Oct. 24, 2001) (holding that because a guilty plea constitutes an admission to all facts averred in the indictment, “it may be used 'to establish the operative facts in a subsequent civil case based on those same facts”)

18 Pa.C.S.A. § 3126, “Indecent Assault”, provides, in pertinent part, that:

A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1) the person does so without the complainant's consent;
- . . .
- (7) the complainant is less than 13 years of age

Further, 18 Pa.C.S.A. § 4304, “Endangering Welfare of Children” provides, in pertinent part, that:

(a) OFFENSE DEFINED.--

(1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

Criminal convictions, under Pennsylvania law, are admissible in subsequent civil proceedings as conclusive evidence of the facts underlying the conviction. *Folino v. Young*, 568 A.2d 171, 172 (Pa. 1990); *Commonwealth v. Mitchell*, 535 A.2d 581, 585 (Pa. 1987). Under Pennsylvania law, a criminal conviction collaterally estops a defendant from denying his acts in

a subsequent civil trial. *Shaffer v. Smith*, 543 Pa. 526, 529, 673 A.2d 872, 874 (1996); *Folino v. Young*, 523 Pa. 532, 568 A.2d 171 (1990); *In re Kravitz Estate*, 418 Pa. 319, 211 A.2d 443 (1965); *Hurt v. Stirone*, 416 Pa. 493, 206 A.2d 624, *cert. denied*, 381 U.S. 925, 14 L. Ed. 2d 684, 85 S. Ct. 1561 (1965). The Pennsylvania Supreme Court, in *Shaffer, supra*, held that: “[O]nce a criminal defendant has been convicted and sentenced, a plaintiff in a civil proceeding may invoke collateral estoppel to preclude the defendant from denying his criminal acts.” *Shaffer*, 543 Pa. at 532, 673 A.2d at 875.

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Because Becker has been criminally convicted of indecent assault and endangering the welfare of a child, *beyond a reasonable doubt*, judgment should be entered against Defendant Leon Becker as a matter of law on, at the least, count V (assault) & VI (battery) of Plaintiffs’ complaint. Becker was already convicted in the criminal court system, this finding is *res judicata* in this action based upon the same conduct. Thus, Defendant Leon Becker’s conviction in criminal court and subsequent admissions in the pleadings and testimony (outlined above) provided in this case conclusively establishes liability against him under Counts V & VI for

assault and battery in this subsequent civil action under Pennsylvania law.

1. Partial Summary Judgment Should be Entered in Plaintiffs' Favor Based Upon Leon Becker's Admissions in Pleadings and in Deposition Testimony

Because Mr. Becker has admitted in his answer and sworn testimony that he caused improper sexual touching of Plaintiffs' minor child, C.B., judgment on the pleadings, or alternatively, summary judgment should be entered in Plaintiffs' favor on liability against Leon Becker on, at the least, Count V (assault) and Count VI (battery) of Plaintiffs' complaint. In March, 2010, Defendant Leon Becker admitted to committing acts of assault and battery and as a result causing "havoc" and "chaos" in C.B.'s life. See attached deposition testimony of Leon Becker, Exhibit 3. Becker testified and admitted that he:

- committed an "offense" to his granddaughter, C.B. See Leon Becker Dep., p. 13, Exhibit 3;
- "molested" his granddaughter, C.B.. *Id.* at p. 20;
- touched C.B. inappropriately on her vaginal area. *Id.* at p. 56;
- caused C.B. to touch his penis. *Id.* at p. 56.
- caused C.B. to stroke his penis in "an up and down motion." *Id.* at p. 57.
- caused "chaos" and "havoc" in C.B.'s life. *Id.* at pp. 70-71.

Becker admitted in a sworn deposition that this occurred when C.B. was four. *Id.* at p. 58-59.

Becker admitted that he doesn't blame anybody but himself for what happened to C.B.. *Id.* at p. 72.

Pennsylvania's Standard Civil Jury Instruction 13.01, "Assault", which states the

common law of Pennsylvania, provides that:

An assault is an act done with the intent to put another in reasonable and immediate fear of a harmful or offensive contact with his or her body and that does, in fact, cause such fear.

To commit an assault, it is not necessary that the person actually intend to inflict a harmful or offensive contact with the body of another. It is enough that the person intend to cause only a fear of such contact. In order for the defendant to be held responsible for the commission of an assault against the plaintiff, you must find:

First, that the defendant intended to put the plaintiff in reasonable and immediate fear of a harmful or offensive contact with [his] [her] body; and

Second, that the plaintiff, as a result of the defendant's act, was put in reasonable and immediate fear of such contact.

Pennsylvania Standard Civil Jury Instruction 13.02, "Battery", provides that

A battery is an act done with the intent to cause a harmful or offensive contact with the body of another [or an act done with the intent to put another in reasonable and immediate fear of a harmful or offensive contact with his or her body] and that directly [or indirectly] results in the harmful or offensive contact with the body of another.

In order for the defendant to be held responsible for committing a battery against the plaintiff, you must find:

First, that the defendant intended to cause a harmful or offensive contact with the body of the plaintiff or that the defendant intended to put the plaintiff in reasonable and immediate fear of a harmful or offensive contact with [his] [her] body, and

Second, that the defendant's act directly [or indirectly] resulted in a harmful or offensive contact with the plaintiff's body. A body contact is offensive if it would offend a reasonable person's personal sense of dignity.

Although it is sufficient, by itself, to establish liability on Counts V & VI that Leon Becker was already convicted, he also testified and admitted to conduct that constitutes the civil definition of assault and battery, as outlined above. There can be no dispute that the touching of the vaginal area of a four year old child is both a harmful and offensive touching and contact and Becker's actions in causing a four year old child to touch and stroke his penis is similar an assault and battery under Pennsylvania law.

Plaintiffs are entitled to entry of partial summary judgment, in their favor on the sole legal issues of liability (duty and breach) so that the trial against Defendant Leon Becker with respect to these counts should be limited to causation and damages only. There are no issues of fact that Leon Becker committed at least an assault and battery upon C.B. and Leon Becker has admitted this already in his answer and sworn deposition testimony.

V. CONCLUSION AND RELIEF REQUESTED

Trial of the issues of liability against Defendant Leon Becker with regard to liability for Counts V & VI of Plaintiff's complaint would be futile and Plaintiff has demonstrated that judgment should be entered in their favor on these counts with damages to be determine on these counts at the time of trial.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Honorable Court enter judgment on the pleadings and/or partial summary judgment on liability against Defendant Leon Becker for Counts V & VI of their complaint.

Respectfully submitted,

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BY: _____

Jeffrey P. Fritz

Attorney for Plaintiffs

Dated: July 2, 2010