IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clifford T. Newman, Jr., Appellant	:	
v.	:	
Pa. Department of Corrections; Barry Smith, Facility Manager; Sean Bresnchan, Psychologist Manager; Robert Cleaver, Psychologist I-Block; and John Doe, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, et al., Workers at the Houtzdale State Correctional Institution	:	No. 1020 C.D. 2024 Submitted: October 9, 2025

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: December 8, 2025

Clifford T. Newman, Jr. (Newman) appeals *pro se* from an order of the Court of Common Pleas of Clearfield County (Trial Court) dated May 7, 2024 sustaining preliminary objections and dismissing, with prejudice, his civil complaint (Complaint) against the following Defendants: the Pennsylvania Department of Corrections (Department); Barry Smith, Facility Manager (Smith); Sean Bresnchan, Psychologist Manager (Bresnchan); Robert Cleaver, Psychologist I-Block (Cleaver) (jointly, Identified Defendants);[1] and John Doe, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, *et al.*, Workers at the Houtzdale State Correctional

[1] Although the caption of the Complaint lists this Defendant as Robert Cleaver, the preliminary objections indicate his name as Robert Glover. Reproduced Record (RR) at 20a. Elsewhere in the record, however, both Newman and the Identified Defendants refer to him as Robert Cleaver.

Institution (jointly, Doe Defendants). Upon review, we affirm the Trial Court's order.

I. Background

Newman is an inmate at the State Correctional Institution at Houtzdale, Pennsylvania (SCI-Houtzdale). *Newman v. Pa. Dep't of Corr.* (C.P., No. 2023-0727-CD, filed May 7, 2024) (Trial Court Opinion), RR at 67a. In April 2023, Newman filed the Complaint in this Court against all of the Defendants. *Id.* This Court, after determining that we lacked original jurisdiction over the claims in the Complaint, transferred the Complaint to the Trial Court. *Id.*

In the Complaint,[2] Newman alleged that in April 2021, during the COVID-19 pandemic, he was placed in temporary isolation after having been outside the prison facility for a medical appointment. RR at 3a. Another inmate, Torr Gray (Gray), was then placed in the same temporary isolation cell with Newman. *Id.* Gray was much younger than Newman and allegedly suffered from mental health issues for which he had been prescribed medication to which he was not yet adjusted. *Id.* Newman, who was in his 60s and suffering from various medical issues "including heart issues, high blood pressure, and high blood sugar," was not physically able to defend himself against violence from Gray, who was some 30 years younger. *Id.* Newman alleged that, as a result of Gray's mental illness, Gray physically attacked Newman, inflicting various severe injuries requiring life-flight transport to a hospital and causing a stroke. *Id.* at 4a. The injuries inflicted in

[2] As noted further below, for purposes of disposing of preliminary objections, all well-pleaded facts averred in the Complaint are taken as true. *Podolak v. Tobyhanna Twp. Bd. of Supervisors*, 37 A.3d 1283, 1287 (Pa. Cmwlth. 2012).

the attack resulted in permanent disabilities and required extensive physical therapy. *Id.*

Newman alleged that the various Defendants owed him duties of reasonable care because Gray was under their control or custody, that they breached their duties of care by placing Gray in the same cell as Newman by random assignment, and that the attack on Newman by Gray and Newman's resulting injuries were reasonably foreseeable results of Gray's known mental illness and the Defendants' breaches of their duties of reasonable care. RR at 4a-15a. Newman sought injunctive relief against the Department to prohibit the COVID-19 isolation practices alleged to have resulted in Newman's injuries. *Id.* at 16a. He sought money damages against the other Defendants, in both their official and personal capacities, for "medical expenses, lost earnings, pain and suffering, mental anguish, permanent disability, punitive damages and other damages the [Trial C]ourt deems just, proper and equitable." *Id.* at 2a & 16a.

Identified Defendants filed preliminary objections asserting failure to properly serve the Complaint on the Attorney General of Pennsylvania, insufficient specificity, sovereign immunity, and unavailability of injunctive relief and punitive damages against the Department. RR at 25a-27a. After receiving briefs and hearing oral argument, the Trial Court sustained all of the preliminary objections and dismissed the Complaint with prejudice. *Id.* at 71a-77a. Newman's timely appeal followed.[3]

[3] Newman initially appealed to the Superior Court, which transferred the appeal to this Court.

II. Issues

On appeal,[4] Newman asserts several errors,[5] which we reorder and summarize as follows.

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[4] As this Court has explained,

> appellate review of a trial court's order sustaining preliminary objections and dismissing a complaint is limited to determining whether the trial court abused its discretion or committed an error of law. *Petty v. Hosp*[.] *Serv*[.] *Ass*[*'*]*n of N*[*e.*] *P*[*a.*], 967 A.2d 439, 443 n.7 (Pa. Cmwlth. 2009). In reviewing preliminary objections, all well pleaded relevant and material facts are to be considered as true, and preliminary objections shall only be sustained when they are free and clear from doubt. *Id.* Such review raises a question of law; thus, our standard of review is *de novo* and our scope of review is plenary. *Id.*

Podolak, 37 A.3d at 1286-87.

[5] Newman's statement of issues reads in full as follows:

> A. The [Trial C]ourt violated the Pennsylvania Constitution [A]rticle [I Section]11 by using a process that was unfair and present[ed] the appearance of impropriety.
>
> B. The [Trial C]ourt abused its discretion when it prejudged the case, or show[ed] bias, prejudice, or a capricious disbelief in disposing of the case.
>
> C. The [Trial C]ourt abused its discretion when it dismissed the [C]omplaint without leave to amend to cure any defect in the complaint.
>
> D. The [Trial C]ourt abused it discretion when it granted preliminary objections in the nature of demurrer without the [Trial C]ourt conducting fact finding.
>
> E. The [Trial C]ourt abused its discretion when it dismissed pursuant to Pa.[]R.C[iv.]P. 1028(a)(1) when it misapplied case law.

Newman argues that the Trial Court erred by concluding that the various Defendants were shielded from liability by sovereign immunity. Newman challenges the Trial Court's determination that the Complaint was insufficiently specific. Newman maintains that he adequately pleaded facts that were sufficient to establish the elements of his negligence claims and avers that, as such, his claims meet the exceptions to sovereign immunity under Section 8522(b)(2) of the Sovereign Immunity Act,[6] 42 Pa.C.S. § 8522(b)(2), and Section 114 of the Mental Health Procedures Act,[7] 50 P.S. § 7114.

Newman also contends that the Trial Court did not fairly consider his position in disposing of the preliminary objections. Newman maintains that the Trial Court's opinion simply mirrored the Identified Defendants' brief in support of their preliminary objections and did not even mention Newman's counter-arguments, thereby displaying bias and depriving Newman of his constitutional right to have his case reviewed by a fair tribunal. He adds that the Trial Court Opinion fails to state clearly the basis for its order.

> F. The [Trial C]ourt abused its discretion when it dismissed pursuant to Pa.[]R.C[iv.]P. 1028(a)(2) and Pa.[]R.C[iv].P. 1028(a)(3) when it misapplied the case law.
>
> G. The [Trial C]ourt abused its discretion when it dismissed pursuant to Pa.[]R.C[iv.]P. 1028(a)(4) when it misapplied the case law.
>
> H. The [Trial C]ourt abused its discretion when it dismissed due to remedies of injunctive relief and punitive damages sought when it misapplied the case law.

RR at 79a-80a.

[6] Sections 8521-8527 of the Judicial Code, 42 Pa. C.S. §§ 8521-8527, are commonly referred to as the Sovereign Immunity Act.

[7] Act of July 9, 1976, P.L. 817, *as amended*, 50 P.S. §§ 7101-7503.

Newman further maintains that the Trial Court erred by dismissing the Complaint with prejudice rather than allowing him an opportunity to amend. He also suggests that some of the preliminary objections raised disputed questions of fact, specifically improper service of the Complaint on the Attorney General, that the Trial Court was required to, but did not, resolve by taking evidence before ruling on the preliminary objections.

Newman additionally posits that Identified Defendants' preliminary objections to his demands for injunctive relief and punitive damages were legally insufficient because Identified Defendants did not cite a subsection of the applicable rule governing preliminary objections that would authorize such objections. Newman further asserts that, in any event, the purported unavailability of certain forms of relief did not justify dismissing the Complaint.

We address each of Newman's arguments in turn.

III. Discussion

A. Immunity

Newman challenges the Trial Court's dismissal of the Complaint on the basis of sovereign immunity. Newman insists that the Complaint was sufficiently specific to establish the elements of his negligence claims and that he clearly stated that his claim was one alleging negligence. He posits that, accordingly, sovereign immunity has been abrogated pursuant to Section 8522(b)(2) of the Sovereign Immunity Act, 42 Pa.C.S. § 8522(b)(2), and Section 114 of the Mental Health Procedures Act, 50 P.S. § 7114, as to all of his claims. We disagree.

Section 8522(a) of the Sovereign Immunity Act provides, in pertinent part, that the Legislature has waived sovereign immunity, "in the instances set forth

in subsection (b) only[,] . . . as a bar to an action against Commonwealth parties, for damages arising out of a negligent act . . . ." 42 Pa.C.S. § 8522(a). Section 8522(b) lists the specific types of negligence claims as to which liability may be imposed against Commonwealth parties. Relevant here, Newman asserts that immunity from his claims is abrogated by Section 8522(b)(2), which permits the imposition of liability for negligence arising from "[a]cts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel." 42 Pa.C.S. § 8522(b)(2).

However, this Court has previously held that "[t]he administrative decision to place an inmate in a double cell is not one of the enumerated exceptions to sovereign immunity." *Mattis v. Pa. Dep't of Corr.* (Pa. Cmwlth., No. 1929 C.D. 2013, filed May 20, 2014), slip op. at 14.[8] Moreover, Section 8522(b)(2) is facially inapplicable to the Department and to Smith as its Facility Manager, as Newman does not allege that they are healthcare personnel.[9] As for Bresnchan and Cleaver, assuming, without deciding, that they are healthcare personnel within the meaning of Section 8522(b)(2), the Complaint does not allege either a duty to Newman or a negligent act by either of them, other than failure to prevent Gray from being housed temporarily in a double cell with Newman, which, as explained above, cannot be the basis for an exception to immunity. *See Mattis*, slip op. at 14. Therefore, we agree

[8] This unreported opinion is cited as persuasive authority pursuant to Section 414(a) of this Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a).

[9] The same is true of the various John Doe Defendants.

with Identified Defendants that Newman failed to plead any exception to sovereign immunity.[10]

Section 114(a) of the Mental Health Procedures Act provides, in pertinent part, that

> [i]n the absence of willful misconduct or gross negligence, . . . a director of a facility, a physician, . . . or any other authorized person who participates in a decision that a person be examined or treated . . . or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence . . . shall not be civilly . . . liable for such decision or for any of its consequences.

50 P.S. § 7114(a). Here, Newman's Complaint failed to cite any authority suggesting that Section 114(a) constitutes any abrogation of immunity, particularly in light of the conclusion in *Mattis* that an administrative decision to place an inmate in a double cell does not provide an exception to immunity. Further, the Complaint avers no facts suggesting that the Department, Bresnchan, or Cleaver participated in any decision to house Gray with Newman in a double cell. Thus, Newman failed to plead facts invoking an exception from Section 114(a).

For these reasons, we conclude that the Trial Court did not err in sustaining Identified Defendants' preliminary objections asserting immunity and dismissing the Complaint.

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[10] Further, we observe that Newman, like the plaintiff in *Mattis v. Pennsylvania Department of Corrections* (Pa. Cmwlth., No. 1929 C.D. 2013, filed May 20, 2014), failed to file the certificate of merit required for a claim of professional negligence by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure, Pa.R.Civ.P. 1042.3. *See Mattis*, slip op. at 14 n.10. As the deadline to do so or to request an extension of time to do so has long expired, Newman cannot maintain an action for professional negligence against any of the Defendants.

B. Purported Bias by the Trial Court

Newman asserts that the Trial Court improperly relied solely on Identified Defendants' brief, did not fairly consider Newman's position, failed to explain the basis of its decision, and thereby deprived Newman of his constitutional right to have his case reviewed by a fair tribunal. We agree that the Trial Court acted improperly in adopting the brief of Identified Defendants in support of their preliminary objections. Because of our disposition of this issue, however, we do not reach Newman's constitutional argument. We also do not reach Newman's assertion of bias or his related demand for recusal of the Trial Court judge.

In *Milan v. Department of Transportation*, 620 A.2d 721 (Pa. Cmwlth. 1993), this Court explained that

> the trial judge stated that he was convinced, after substantial review of [the appellants'] statement of matters complained of on appeal, that all asserted points of error were thoroughly treated in the brief of [the appellee] in opposition to the motion for post[-]trial relief. He further stated that [the appellee's] brief, thoroughly documented by reference to the notes of testimony, explained and supported the court's rulings in a cohesive and well researched manner consistent with the approach otherwise taken by he and his staff in composing an original opinion. While the trial court's action is technically correct according to the Pennsylvania Rules of Appellate Procedure, we find the adoption of a party's brief, which is necessarily prepared from an advocate's point of view, wholly inappropriate. A trial court opinion should reflect the independent thought and reasoning of the court. While we are well aware of the enormous caseload of the trial courts in this Commonwealth, this type of corner cutting in an attempt to save time and effort is frowned upon by this [C]ourt.

Id., 620 A.2d at 723 n.2.

Here, unlike in *Milan*, the Trial Court did not expressly state that it was relying on and adopting Identified Defendants' brief in support of their preliminary objections. However, Newman correctly observes that the Trial Court's opinion is merely a slightly shortened version of that brief, setting forth Identified Defendants' language and citations verbatim and bringing to bear no independent analysis by the Trial Court. We agree with Newman that this wholesale adoption of Identified Defendants' brief here, as in *Milan*, is "wholly inappropriate." *Milan*, 620 A.2d at 723 n.2.

As we acknowledged in *Milan*, however, conduct such as that in which the Trial Court engaged here technically does not violate the Pennsylvania Rules of Appellate Procedure. *Milan*, 620 A.2d at 723 n.2. Moreover, in light of our conclusion that all of the Defendants are immune from liability as discussed in the previous section, the Trial Court's inappropriate unreasoned adoption of Identified Defendants' brief constituted harmless error.

Newman also contends that the Trial Court's lack of independent analysis violated article I, section 11 of the Pennsylvania Constitution, Pa. Const. art. I, § 11.[11] Pennsylvania law is well settled, however, that "[w]hen a case raises both a constitutional and a non-constitutional issue, a court should not reach the constitutional issue if the case can properly be decided on non-constitutional

[11] Article I, section 11 provides:

> All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Pa. Const. art. I, § 11.

grounds." *P.J.S. v. Pa. State Ethics Comm'n*, 723 A.2d 174, 176 (Pa. 1999) (citing *Mt. Lebanon v. Cnty. Bd. of Elections*, 368 A.2d 648, 650 (Pa. 1977)). Here, we are able to dispose of Newman's issues on appeal without considering any constitutional issues. Accordingly, we do not reach Newman's constitutional argument.

Newman posits further that the defects in the Trial Court's opinion indicate a bias against him and that, as a result, the case should be remanded and another judge assigned. We decline to decide this issue.

In a recent *en banc* decision, this Court discussed the standards for recusal at length as follows:

> Rule 1.2 of the Pennsylvania Code of Judicial Conduct provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Pa. Code of Judicial Conduct Rule 1.2. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge . . . engaged in . . . conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." *Id.* Rule 1.2, Comment 5. Rule 2.11(A) further provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ." *Id.* Rule 2.11(A). Thus, a party requesting recusal must introduce evidence establishing bias, prejudice, or unfairness that "raises a substantial doubt as to the jurist's ability to preside impartially." *Commonwealth v. Abu-Jamal*, . . . 720 A.2d 79, 89 (Pa. 1998). A recusal motion initially is "directed to and decided by the jurist whose impartiality is being challenged." *Id.* The Pennsylvania Supreme Court has further explained:
>
> > In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. The

> jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make . . . . Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion.

Id. (citations omitted). There is a presumption that Commonwealth judges are "honorable, fair and competent," *id.* at 89 (citation omitted), and, when confronted with a recusal request, are competent to determine whether they can rule "in an impartial manner, free of personal bias or interest in the outcome." *DeLuca v. Mountaintop Area Joint Sanitary Auth*[.], 234 A.3d 886, 897 (Pa. Cmwlth. 2020) (citation omitted). Our Supreme Court also has recognized that, [w]hile the mediation of courts is based upon the principle of judicial impartiality, disinterestedness, and fairness pervading the whole system of judicature, so that courts may as near as possible be above suspicion, there is, on the other side, an important issue at stake: that is, that causes may not be unfairly prejudiced, unduly delayed, or discontent created through unfounded charges of prejudice or unfairness made against the judge in the trial of a cause. . . . If the judge feels that he can hear and dispose of the case fairly and without prejudice, his decision will be final unless there is an abuse of discretion. This must be so for the security of the bench and the successful administration of justice. Otherwise, unfounded and ofttimes malicious charges made during the trial by bold and unscrupulous advocates might be fatal to a cause, or litigation might be unfairly and improperly held up awaiting the decision of such a question or the assignment of another judge to try the case. If lightly countenanced, such practice might be resorted to, thereby tending to discredit the judicial system. The conscience of the judge alone is brought in question; he should, as far as possible, avoid any feelings of unfairness or hostility to the litigants in a case. *Reilly by Reilly v.* [*Se. Pa. Transp. Auth.*], . . . 489 A.2d 1291, 1299 (Pa. 1985).

Italian Sons & Daughters of Am. v. City of Pittsburgh, 315 A.3d 217, 230-31 (Pa. Cmwlth. 2024) (*en banc*).

Consistent with our opinion in *Italian Sons & Daughters*, we conclude that it would be the prerogative of the Trial Court to rule on bias and recusal issues in the first instance. Here, those issues were first raised by Newman in his appeal to this Court. We observe, however, that those issues have not been waived by Newman's failure to assert them earlier, as the bias and recusal issues first arose from the inappropriate lack of independent analysis revealed in the Trial Court's opinion and order. In appropriate circumstances, a remand would arguably be needed in order to allow the Trial Court to rule on bias and recusal. Nonetheless, because, as discussed above, we have determined that Identified Defendants enjoy immunity, we conclude that determinations concerning bias and recusal would not affect the outcome of this appeal, and we decline to remand this matter for rulings by the Trial Court on those issues.

C. Dismissal with Prejudice and Disposition without a Hearing

Newman contends that the Trial Court erred by dismissing the Complaint with prejudice rather than allowing him an opportunity to amend. Relatedly, he asserts that the preliminary objections to the sufficiency of service on the Attorney General raised disputed questions of fact that the Trial Court was required to resolve through a hearing before disposing of the preliminary objections. We agree but conclude that the Trial Court's errors were harmless in light of our disposition of Newman's appeal.

Regarding dismissal with prejudice, a court sustaining preliminary objections should allow an amended complaint if there is a reasonable possibility

that an amendment may cure the defects in the complaint. *See Carlino v. Whitpain Invs.*, 453 A.2d 1385, 1388 (Pa. 1982) (quoting *Otto v. Am. Mut. Ins. Co.*, 393 A.2d 450, 451 (Pa. 1978)). As this Court has observed, "[i]f it is possible that the pleading can be cured by amendment, a court 'must give the pleader an opportunity to file an amended complaint . . . . This is not a matter of discretion with the court but rather a positive duty.'" *Jones v. City of Phila.*, 893 A.2d 837, 846 (Pa. Cmwlth. 2006) (quoting *Framlau Corp. v. Cnty. of Del.*, 299 A.2d 335 (Pa. Super. 1972)).

Here, the Trial Court's dismissal with prejudice implies that the Trial Court believed the Complaint suffered from fatal defects that could not be cured by amending the Complaint. We agree with the Trial Court's implicit conclusion and observe that the defense of immunity is a legal conclusion and, as such, it is not susceptible to a cure through an amended pleading. Accordingly, the Trial Court did not err in dismissing the Complaint with prejudice rather than allowing Newman an opportunity to amend it.

Regarding Newman's argument that the preliminary objections to the sufficiency of service on the Attorney General raised disputed questions of fact that the Trial Court was required to resolve through a hearing before disposing of the preliminary objections, we agree that "interrogatories, depositions, or an evidentiary hearing" may be required where preliminary objections raise disputed questions of fact. *Kaba v. Berrier*, 275 A.3d 85, 89 (Pa. Cmwlth. 2022) (citing *Minor v. Kraynak*, 155 A.3d 114, 126 (Pa. Cmwlth. 2017) (additional citation omitted)). Here, however, we conclude that any potential error by the Trial Court in failing to hold an evidentiary hearing was harmless in light of our disposition of Newman's appeal on grounds of immunity.

D. Demands for Injunctive Relief and Punitive Damages

Finally, Newman posits that the preliminary objections to his demands for injunctive relief and punitive damages are legally insufficient because Identified Defendants did not cite a subsection of the applicable rule governing preliminary objections that would authorize such objections. Because this assertion challenges the sufficiency of a preliminary objection, we conclude that Newman has waived it by failing to file his own preliminary objection to that preliminary objection. *See Com. ex rel. Corbett v. Desiderio*, 698 A.2d 134, 137 (Pa. Cmwlth. 1997) (explaining that, "[b]ased on Pa.R.C[iv].P.[] 1032(a), a party is required to file objections to the procedural propriety of another party's preliminary objections or else the objections are waived"); *Chester Upland Sch. Dist. v. Yesavage*, 653 A.2d 1319, 1324 n.8 (Pa. Cmwlth. 1994) (explaining that "[t]he proper method for challenging the propriety of a preliminary objection is by a preliminary objection to a preliminary objection"). Accordingly, we will not consider Newman's argument.

IV. Conclusion

Based on the foregoing discussion, the Trial Court's order is affirmed.

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CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clifford T. Newman, Jr., Appellant	:	
v.	:	
Pa. Department of Corrections; Barry Smith, Facility Manager; Sean Bresnchan, Psychologist Manager; Robert Cleaver, Psychologist I-Block; and John Doe, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, et al., Workers at the Houtzdale State Correctional Institution	:	No. 1020 C.D. 2024

O R D E R

AND NOW, this 8th day of December 2025, the order of the Court of Common Pleas of Clearfield County dated May 7, 2024 is AFFIRMED.

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CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clifford T. Newman, Jr.,	:	
Appellant	:	
	:	
v.	:	
	:	
Pa. Department of Corrections;	:	
Barry Smith, Facility Manager; Sean	:	
Bresnchan, Psychologist Manager;	:	
Robert Cleaver, Psychologist I-Block;	:	
and John Doe, John Doe 1, John	:	
Doe 2, John Doe 3, John Doe 4, John	:	
Doe 5, et al., Workers at the Houtzdale	:	No. 1020 C.D. 2024
State Correctional Institution	:	Submitted: October 9, 2025

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge

CONCURRING OPINION BY
JUDGE DUMAS **FILED: December 8, 2025**

I respectfully concur in the result. The majority opines that Clifford T. Newman, Jr.'s (Newman) complaint did not "allege either a duty to Newman or a negligent act . . . other than failure to prevent" Torr Gray "from being housed temporarily in a double cell with Newman . . . ." *Newman v. Pa. Dep't of Corr.* (Pa. Cmwlth., No. 1020 C.D. 2024, filed December 8, 2025), slip op. at 7. According to the majority, this failure "cannot be the basis for an exception to [sovereign] immunity." *Id.* (citing *Mattis v. Pa. Dep't of Corr.* (Pa. Cmwlth., No. 1929 C.D. 2013, filed May 20, 2014), slip op. at 14). However, I view Newman's complaint differently: in my view, Newman has alleged a professional malpractice claim that falls within an exception to sovereign immunity. Nevertheless, I concur in the result

because I agree with the majority that Newman has failed to timely file a certificate of merit. *Id.* at 8 n.10.

Newman has alleged that Cleaver was a psychologist responsible for mentally ill inmates on Newman's cell block and responsible for monitoring their adjustment to treatment plans. Compl., 3/23/23, ¶¶ 9, 20. Cleaver had "special training in the treatment of mental illness." *Id.* ¶ 81.

The complaint further alleges the following. Gray was Cleaver's "patient." *Id.* ¶ 99. Cleaver "knew, or should [have] known" that Gray "had to be placed on psychiatric medication." *Id.* ¶ 87. Cleaver knew Gray "could experience undesired effects including thoughts of harming oneself or others and becoming violent," and "would need time to become stable and adjust to his medication . . . ." *Id.* ¶¶ 88-89. Cleaver also knew that the "stress of being in isolation would have a negative effect on" Gray's mental state and that monitoring was "needed since he was not adjusted to his medication . . . ." *Id.* ¶¶ 90-91. Without monitoring, Gray's "thoughts of harming [himself] or others and violence" would remain undetected. *Id.* ¶ 92.

Cleaver, however, allegedly did nothing. Newman returned to prison on April 16, 2021. Gray was placed in Newman's cell about one hour later. Four days later, Gray beat Newman so severely that "life-flight" was called. Newman suffered facial fractures and a stroke. *Id.* ¶¶ 18, 21, 33, 35-36. Per Newman, "Cleaver had several days to do something, such as move . . . Gray to an empty cell . . . to prevent harm to [Newman], but did nothing." *Id.* ¶ 105. "Even [though] the risk of harm to [Newman] was obvious to any reasonable person, the trained professional choice was to do nothing . . . ." *Id.* ¶ 107.

Based on these facts, Newman has alleged that the defendants had a duty under Restatement (Second) of Torts § 319 (A.L.I. 1965), which imposes a duty

on one "who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled" and "is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." *Id.* ¶ 41; *see* Resp. to Prelim. Objs., 4/29/24, at 5 (unpaginated) (quoting Restatement (Second) of Torts § 319).[1] Newman has alleged that Cleaver breached this duty by "failing to use reasonable care" because he "could have foreseen that . . . Gray could become violent" and that "those harmful consequence[s] could [have] been prevented by the exercise of reasonable care . . . ." Compl. ¶¶ 108-09.

Newman has raised similar allegations against Bresnchan, the psychologist who "supervised all other psychologists, and insured the proper care and treatment of mentally ill inmates." *Id.* ¶ 8. Bresnchan "had oversight of any and all practices and policies that involved mentally ill inmates including" double-celling unmonitored mentally ill inmates with regular inmates. *Id.* ¶ 179 (citing ¶ 12(c)-(d)). Bresnchan knew "to a moral certainty" that "double[-]celling regular inmates and mentally ill inmates, at some point, would result in assaults and bodily injury," and "the lack of monitoring would, at some point, result in warning signs missed, assaults, and bodily injury." *Id.* ¶¶ 183-84.

With respect, in my view, Newman has alleged that Bresnchan and Cleaver owed a duty to him and breached that duty. Newman has alleged that his injuries resulted not from a decision to house Gray in a double cell but rather from their failure to monitor a dangerous, mentally ill inmate not yet adjusted to his medication. Cleaver had four days to intervene but made what Newman has characterized as "the trained professional choice" to do nothing, which led to

[1] "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." Restatement (Second) of Torts § 319 (A.L.I. 1965).

Newman's severe beating. *Id.* ¶ 107.

Newman suggests his claim is similar to the claim addressed by our Supreme Court in *Sherk v. County of Dauphin*, 614 A.2d 226 (Pa. 1992) (plurality). Resp. to Prelim. Objs. at 4 (quoting the holding); *see* Newman's Br. at 5 (arguing his negligence claim fell within the professional malpractice exception to sovereign immunity). In *Sherk*, a state mental health professional released a psychiatric patient who subsequently shot a third party. *Sherk*, 614 A.2d at 227. *Sherk* held that "sovereign immunity has been waived and a Commonwealth party may be liable for harm inflicted by a third party where the gross negligence or willful misconduct of the Commonwealth party in treating and releasing a psychiatric patient is a substantial factor in causing the harm." *Id.* at 232-33 (construing Section 114 of the Mental Health Procedures Act,[2] 50 P.S. § 7114(a) together with 42 Pa.C.S. § 8522(a)); *accord* Newman's Br. at 5 (same). Akin to *Sherk*, Newman has raised a similar claim: whether Bresnchan and Cleaver committed professional malpractice by permitting Cleaver's patient to be double-celled with another inmate when they knew the patient was unmonitored, unadjusted to his medication, and could become violent. Newman has alleged their failure to exercise their professional judgment was a substantial factor in causing his harm. *See* Newman's Br. at 5-6.

However, as the majority notes, Newman has failed to timely file a certificate of merit. The deadline for filing a certificate of merit or requesting an extension has passed.

For these reasons, I respectfully concur in the result.

LORI A. DUMAS, Judge

[2] Act of July 9, 1976, P.L. 817, *as amended*, 50 P.S. §§ 7101-7503.