

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ahmeen Mustafa	:	
	:	
v.	:	
	:	
Tammy Ferguson and	:	
Earl Thomas,	:	No. 332 C.D. 2025
Appellants	:	Submitted: July 24, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: October 23, 2026

Tammy Ferguson (Ferguson) and Earl Thomas (Thomas) (collectively, Appellants) appeal from the Montgomery County Common Pleas Court’s (trial court) February 5, 2025 order denying their Motion for Summary Judgment (Motion). There are two issues before this Court: (1) whether the trial court’s February 5, 2025 order is an appealable collateral order; and (2) whether the trial court erred by denying Appellants’ Motion when they properly established that sovereign immunity barred Ahmeen Mustafa’s (Appellee) claims against them concerning the confiscation of his property. After review, this Court vacates and remands.

Background

Ferguson was the former Superintendent at the Commonwealth of Pennsylvania, Department of Corrections’ (DOC) State Correctional Institution (SCI) at Graterford, at which Thomas was a former corrections officer. Appellee is

currently an inmate at SCI-Benner Township.¹ On or about August 29, 2019, Appellee, pro se, filed a civil complaint (Complaint) concerning Appellants’² confiscation of Appellee’s \$250.00 Givenchy sunglasses and a \$225.00 Jules Jergens watch prior to his transfer from SCI-Graterford to SCI-Phoenix in July of 2018.³ Therein, Appellee specifically alleged that the October 24, 2016 Form DC-135M (Inmate Personal Property Inventory Sheet) completed upon his entry to SCI-Graterford listed sunglasses and a watch among his property. *See* Reproduced Record (R.R.) at 14a. Appellee claimed that, when he was moved to SCI-Phoenix on July 13, 2018, Thomas confiscated that property, photographed it, issued Appellee a Form DC-154A (Confiscated Items Receipt), and placed the property in SCI-Graterford’s Property Room. *See* R.R. at 13a. On September 1, 2018, Appellee filed a grievance seeking the property’s return, which DOC denied, declaring that they “were deemed contraband, therefore[,] those items would not be return[ed]” R.R. at 12a; *see also* R.R. at 3a. In his Complaint, Appellee asserted that Appellants “unreasonably seized, confiscated, lost, stole[,], discarded[,], and/or misplaced” his property “without just compensation, notice[,], and a fair opportunity to recapture [them].” R.R. at 3a. Regarding Ferguson, Appellee averred only that she was Superintendent at SCI-Graterford before she was transferred and became Superintendent at SCI-Phoenix, and she clearly signed the Facility Manager’s Appeal Response to Appellee’s grievance on February 3, 2019. *See* R.R. at 4a, 11a. Appellee declared that Appellants violated his rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the United States

¹ inmatelocator.cor.pa.gov/#/Result (last visited Oct. 22, 2026).

² Appellee’s complaint also included allegations against unknown and unrepresented John/Jane Does.

³ In July 2018, all SCI-Graterford staff and inmates were transitioned to SCI-Phoenix, including Appellants and Appellee.

Appellee fully grieved the loss of his property pursuant to DOC Policy DC-ADM 804 (Inmate Grievances) to no avail. *See* R.R. at 7a-12a.

(U.S.) Constitution,⁴ and sought monetary damages, as well as a declaratory judgment that Appellants' alleged actions violated the U.S. Constitution. *See* R.R. at 5a.

On October 25, 2019, Appellants filed preliminary objections to the Complaint, arguing, among other things, that they should be afforded immunity under the portion of the Judicial Code commonly known as the Pennsylvania Sovereign Immunity Act (Act),⁵ because the property was confiscated within the course and scope of their duties and does not fall within the personal property exception to sovereign immunity. *See* Section 8522(b)(3) of the Act, 42 Pa.C.S. § 8522(b)(3). Appellee opposed the preliminary objections.⁶ On September 23, 2021, the trial court overruled Appellants' preliminary objections without prejudice to them raising sovereign immunity in new matter and/or a summary judgment motion. On October 7, 2021, Appellants filed an answer with new matter to the Complaint. Appellee filed a reply to the new matter on November 9, 2021.

On September 11, 2024, Appellants filed the Motion, therein asserting: Ferguson was entitled to judgment in her favor due to her lack of personal involvement with Appellee's property; both Appellants were entitled to judgment in their favor because sovereign immunity barred Appellee's claims; and, both Appellants were entitled to judgment in their favor because there was no record evidence from which a reasonable fact-finder could conclude Appellants' actions violated the U.S. Constitution. *See* R.R. at 18a-94a. Appellee opposed the Motion, asserting: DOC's policy allowed Appellee to keep his property while he was in custody at SCI-Graterford, particularly medically necessary items like tinted

⁴ U.S. CONST. amends. I, IV, V, VI, VIII, IX, XIV.

⁵ *See* Sections 8521 through 8528 of the Judicial Code, 42 Pa.C.S. §§ 8521-8528.

⁶ On September 17, 2021, the trial court overruled Appellants' preliminary objections. However, on September 27, 2021, the trial court vacated and withdrew its September 17, 2021 order.

eyeglasses; DOC screened his property and did not label it as contraband on his Personal Property Inventory Sheet in 2016; and if his property constituted contraband, DOC policy allowed him to have it shipped elsewhere. *See* R.R. at 95a-111a. On February 5, 2025, the trial court issued an order simply denying Appellants' Motion. *See* R.R. at 112a.

Appellants appealed to this Court. By February 20, 2025 order, the trial court directed Appellants to file a Concise Statement of Errors Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure (Rule) 1925(b) (Rule 1925(b) Statement), which they did on February 26, 2025. On April 16, 2025, the trial court issued its opinion pursuant to Rule 1925(a) (1925(a) Opinion). Therein, the trial court declared that this Court should quash the appeal because Appellants appealed from the interlocutory order without seeking permission pursuant to Rule 1311, Pa.R.A.P. 1311 (relating to interlocutory appeals by permission). *See* Trial Ct. 1925(a) Op. at 8. The trial court clarified that it did not determine as a matter of law that Appellants were not immune; rather, it had denied the Motion on the basis that there were genuine issues of material fact regarding whether Appellee's property was contraband requiring confiscation and, if so, whether he was permitted to have it shipped to a designated recipient.⁷

This Court has determined that while adverse decisions on sovereign immunity are normally interlocutory and not appealable, they may be immediately appealable under Rule 313, Pa.R.A.P. 313. *See Brooks v. Ewing Cole, Inc.*, 259 A.3d 359 (Pa. 2021). Accordingly, on June 26, 2025, this Court ordered the parties

⁷ The trial court concluded that, although Appellants also moved for summary judgment on Appellee's constitutional claims, because they did not include those claims in their Rule 1925(b) Statement, they waived them. *See* Trial Ct. 1925(a) Op. at 2 n.1. Nevertheless, the trial court added that summary judgment was warranted in Appellants' favor on Appellee's constitutional claims. *See id.*

to address the appealability of the trial court's order in their principal briefs on the merits or in an appropriate motion.

Discussion

Appealability⁸

Initially, “[a]s a general rule, an appellate court’s jurisdiction extends only to review of final orders.”^[9] See [Rule 341,] Pa.R.A.P. 341 (“[A]n appeal may be taken as of right from any final order.”) *Rae v. Pa. Funeral Dirs. Ass’n*, 977 A.2d 1121, 1124-25 (Pa. 2009). Notwithstanding, Rule 313 specifies:

(a) General Rule. An appeal may be taken as of right from a collateral order of a trial court or other government unit.

(b) Definition. A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Pa.R.A.P. 313. Therefore,

an order is considered final and appealable if[:] (1) it is separable from and collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) the question presented is such that if review is postponed until final judgment in the case, the claimed right will be irreparably lost.

Brooks, 259 A.3d at 370 (quoting *Pugar v. Greco*, 394 A.2d 542 (Pa. 1978)).

⁸ “The appealability of an order under the [Rule] 313 collateral order doctrine presents a question of law, over which [this Court’s] standard of review is de novo and [its] scope of review is plenary.” *Brooks*, 259 A.3d at 365.

⁹ “Final orders are those which either[:] (1) dispose of all claims and all parties[:] (2) are explicitly defined as final orders by statute[:] or (3) are certified as final orders by the trial court or other reviewing body. See Pa.R.A.P. 341.” *Rae v. Pa. Funeral Dirs. Ass’n*, 977 A.2d 1121, 1125 (Pa. 2009).

[W]here an order satisfies Rule 313's three-pronged test, an appellate court may exercise jurisdiction even though the order is not final. If the test is not met, . . . and in the absence of another exception to the final order rule, there is no jurisdiction to consider an appeal of such an order.

Id. (quoting *Shearer v. Hafer*, 177 A.3d 850, 857 (Pa. 2018)). Courts must “construe the collateral order doctrine narrowly so as to avoid ‘undue corrosion of the final order rule,’ . . . and to prevent delay resulting from ‘piecemeal review of trial court decisions.’” *Shearer*, 177 A.3d at 858 (quoting *K.C. v. L.A.*, 128 A.3d 774, 778 (Pa. 2015)).

Specifically, in order to “decide whether an adverse decision on [Appellants’] assertion of sovereign immunity constitutes a collateral order, immediately appealable as of right under Rule 313[,] . . . [this Court] must determine whether the order denying [Appellants’] motion for summary judgment on its sovereign immunity defense satisfies each prong of Rule 313.” *Brooks*, 259 A.3d at 371. This Court has explained:

[I]n *Brooks*, the plaintiff was injured while exiting the Family Court of Philadelphia [(Family Court)]. *Id.* at 361. She sued the Family Court, which moved for summary judgment on the basis of sovereign immunity. *Id.* The trial court denied summary judgment, the Family Court appealed, this Court quashed as premature, and the Family Court appealed to our Supreme Court. *Id.* at 363-64. The *Brooks* Court reversed because the order was an appealable collateral order. *Id.* at 360-61.

In support, the *Brooks* Court reasoned that the issue of whether the Family Court could invoke sovereign immunity was a purely legal question separable from the underlying merits of the plaintiff’s negligence claim. *Brooks*, 259 A.3d at 372. Further, because the right to a sovereign immunity defense “is deeply rooted in public policy, as it is both secured by the [Pennsylvania] Constitution” and statute, the *Brooks* Court held that the issue was too important to defer resolution until after final judgment. *Id.* Finally, our Supreme Court held that the

Family Court’s ability to invoke sovereign immunity as a defense would be lost if appellate review occurred after final judgment. *Id.* at 373-74. The *Brooks* Court added that the U.S. Supreme Court also held that such orders were immediately appealable as “collateral orders because the entitlement is *an immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.” *Id.* at 374 (emphasis in original and cleaned up).

Marshall v. Se. Pa. Transp. Auth., 300 A.3d 537, 542 (Pa. Cmwlth. 2023).

Here,

[l]ike the Family Court in *Brooks*, the issue of whether [Appellants] can invoke sovereign immunity is a purely legal question separable from the underlying merits of [Appellee’s] negligence claims. *See [Brooks, 259 A.3d]* at 372. To paraphrase the *Brooks* Court, undoubtedly whether [Appellants] ha[ve] the right to invoke a defense of sovereign immunity in the courts of this Commonwealth implicates Pennsylvania’s public policy at the very least. *See id.* As in *Brooks*, delaying review of the instant orders until after final judgment would impair [Appellants’] right[s] to invoke sovereign immunity. *See id.*

Marshall, 300 A.3d at 542. Accordingly, because the trial court’s “order satisfies Rule 313’s three-pronged test, [this Court] may exercise jurisdiction even though the order [wa]s not final.” *Brooks*, 259 A.3d at 370 (quoting *Shearer*, 177 A.3d at 857).

Summary Relief¹⁰

“Summary judgment is appropriate in cases ‘where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.’” *Naylor v. Bd. of Supervisors of Charlestown Twp.*, 253 A.3d 786, 805 (Pa. Cmwlth. 2021) (quoting *Maas v. UPMC Presbyterian Shadyside*, 234 A.3d 427, 436 (Pa. 2020)).

Here, the trial court denied the Motion on the basis that there are genuine issues of material fact to be resolved, namely, whether Appellee’s tinted prescription eyeglasses and wristwatch were permitted personal property or contraband requiring confiscation and, if the latter, whether DOC policy allowed it to be shipped to a designated recipient, rather than being destroyed. The trial court expounded:

From the records, it is unclear whether the items confiscated were the same tinted prescription eyeglasses, sunglasses, and wristwatch that were documented on [the] October 24, 2016 inventory sheet. Further, it is unclear as to what happened to them during [Appellee’s] incarceration transfer from [SCI-Graterford] to SCI[-]Phoenix. Accordingly, the entry of summary judgment in favor of [] Appellants was inappropriate under the

¹⁰ This Court’s scope of review of an order granting summary judgment is plenary. *Basile v. H & R Block, Inc.*, . . . 761 A.2d 1115, 1118 ([Pa.] 2000). [This Court’s] standard of review is clear: the trial court’s order will be reversed only where it is established that the court committed an error of law or clearly abused its discretion. *Id.* . . . The reviewing court must view the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. *Basile*, 761 A.2d at 1118. When the facts are so clear that reasonable minds cannot differ, a trial court may properly enter summary judgment. *Id.* (citing *Cochran v. GAF Corp.*, . . . 666 A.2d 245, 248 ([Pa.] 1995)).

Gilbert v. Synagro Cent., LLC, 131 A.3d 1, 10 (Pa. 2015) (quoting *Atcovitz v. Gulph Mills Tennis Club*, 812 A.2d 1218, 1221-22 (Pa. 2002)).

circumstances and the matter was allowed to continue to trial.

Trial Ct. 1925(a) Op. at 8. Accordingly, the trial court did not address the issue of whether Appellants were entitled to judgment in their favor based on sovereign immunity. Notwithstanding, because it is dispositive, *see Brooks*, the trial court could, and should, have reviewed whether sovereign immunity barred Appellee's action against Appellants in the first instance.

Conclusion

Based on the foregoing, the trial court's order is vacated, and this matter is remanded to the trial court to determine whether sovereign immunity barred Appellee's action against Appellants.

ANNE E. COVEY, Judge

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Ahmeen Mustafa

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:

No. 332 C.D. 2025

ORDER

AND NOW, this 23rd day of October, 2026, the Montgomery County Common Pleas Court's (trial court) February 5, 2025 order is vacated, and the matter is remanded to the trial court for further action consistent with this Opinion.

Jurisdiction is relinquished.

ANNE E. COVEY, Judge