

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ESTATE OF BARON D. ADAMS	:	
BARON K. ADAMS, ADMINISTRATRIX	:	
Plaintiff	:	NOVEMBER TERM, 2010
	:	
vs.	:	NO. 1150
	:	
POLICE OFFICER MICHAEL WEXLER	:	
and	:	
POLICE OFFICER CLARENCE IRVINE	:	
Defendants	:	

ORDER

And Now, this ^{9th}15 day of May, 2012, after consideration of the Motion for Reconsideration of this Court's Order, dated April 16, 2012, which denied Defendants' Motion for Summary Judgment, and Plaintiff's Response thereto, and for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby ORDERED that the Motion for Reconsideration filed by Police Officer Wexler and Police Officer Irvine is **DENIED**. This case shall proceed to trial.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Adams Etal Vs Wexler, -ORDER



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Court Exhibit "A"

A. Introduction

Defendants-Police Officer Michael Wexler and Police Officer Clarence Irvine have filed this Motion for Reconsideration of the April 16, 2012 Order which denied Summary Judgment. The Defendants-Police Officers continue to assert that there is a legal basis for a ruling as a matter of law in favor of their Motion. This Court does not agree. It will be a jury's decision to determine whether or not the circumstances give rise to "willful misconduct" and/or "gross negligence".

Rule 1035.2 of the Rules of Civil Procedure provide:

"After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury."

It is also true that oral testimony alone of the moving party or the moving party's witnesses, even if uncontradicted, is insufficient to establish the absence of a genuine issue of material fact. It is not the province of the Court to assume that the testimony from the moving party's witnesses are true. Nanty-Glo Borough v. American Surety Co., 163 A. 523 (Pa. 1932).

Throughout the Defendants Memorandum for Reconsideration, there is complete reliance on deposition testimony of the moving parties as the support for the dispositive motion. The Plaintiff challenged this substantive deficiency in the initial Motion Papers and again in Response to the Reconsideration Motion. These Defendants have failed to address the well-established Nanty-Glo rule in their materials.

B. Legal Discussion

In Sherk v. County of Dauphin, 614 A.2d 226 (Pa. 1992), the Pennsylvania Supreme Court declined the invitation from the Commonwealth party to immunize it from all liability for injuries and damages caused by willful misconduct and gross negligence. The Sherk Court re-affirmed its ruling in Goryeb v. Pennsylvania Department of Public Welfare, 575 A.2d 545 (Pa. 1990), and quoted at 614 A.2d 232:

“When a Commonwealth party participates in a decision that a person be examined, treated or discharged pursuant to the Mental Health Procedures Act, such a party shall not be civilly or criminally liable for such decision or for any of its consequences except in the case of willful misconduct or gross negligence. Conversely, and most importantly to the instant case, a Commonwealth party participating in a decision to examine, treat or discharge a mentally ill patient within the purview of the Mental Health Procedures Act who commits willful misconduct or gross negligence can be liable for such decision.”

The Supreme Court noted that certain defendants who commit willful misconduct or gross negligence shall be liable for any and all of the consequences. See also, Emerich v. Philadelphia Center for Human Development, 720 A.2d 1032 (Pa. 1998). On April 16, 2012, when the record was considered in a light favorable to the non-moving party, this Court determined that Defendants Wexler and Irvine did participate in a decision that Deceased Plaintiff-Baron be examined, treated or discharged per the MHPA.

Exceptions to immunity from civil and criminal liability must be narrowly construed. This Court is unable to conclude that either our statutes or the facts herein mandate a determination that judgment as a matter of law is appropriate. Police Officers Wexler and Irvine have been unable to distinguish this case which involves the interplay between the MHPA and the Political Subdivision Tort Claims Act from well-established precedent involving the interplay between the MHPA and the Sovereign Immunity Act or the interplay between the MHPA and the Mental Health Retardation Act. See, F.D.P. v. Ferrara, 804 A.2d 1221 (Pa. Superior Ct. 2002).

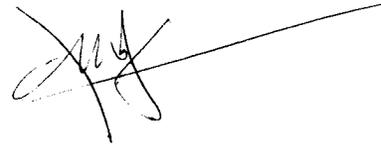
In Albright v. Abington Memorial Hospital, 696 A.2d 1159 (Pa. 1997), the Pennsylvania Supreme Court held that “only where a case is entirely free from doubt and there is no possibility that a reasonable jury could find gross negligence” can such decision be taken from a jury. The record herein as it relates to Count I and Count II of the Complaint presents questions of fact to be determined by a jury.

C. **Conclusion**

Police Officers Wexler and Irvine filed this Motion for Reconsideration stating, inter alia,

“26. The purpose of this motion for reconsideration is focused solely upon the merits of Count I Plaintiff’s Complaint.”

For all of the reasons set forth above, Defendants’ Motion for Reconsideration of the Order, dated April 16, 2012, is **DENIED**.

A handwritten signature in black ink, appearing to be "J. W. Wexler", is written over a horizontal line that extends across the right side of the page.