

MS. EMILY J. FIRTH, in her own right	:	IN THE COURT OF COMMON PLEAS OF
individually and on behalf of her husband,	:	LYCOMING COUNTY, PENNSYLVANIA
Mr. William Clarke Firth, Deceased, and as	:	
guardian ad litem on behalf of all persons	:	
entitled to share in the damages,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	NO. 05-00,686
	:	
	:	
MUNCY VALLEY HOSPITAL, also	:	
d/b/a SUSQUEHANNA HEALTH	:	
SYSTEM; DAVID KAHLER, M.D.; and	:	
MARK D. BEYER, D.O.	:	
	:	
Defendants	:	MOTIONS FOR RECONSIDERATION

***Date: April 4, 2006***

**OPINION and ORDER**

Before the Court for determination are the Motion for Reconsideration of Defendants Muncy Valley Hospital and Susquehanna Health System filed January 9, 2006 and the Motion for Reconsideration of Defendants David Kahler, M.D. and Mark D. Beyer, D.O. filed January 23, 2006. Both motions for reconsideration ask the court to reverse its denial of the demurrer to Plaintiff's survival action. Defendants assert that the survival action must be dismissed because Plaintiff Emily J. Firth did not commence the suit in her capacity as the personal representative of William Firth's estate as required by 20 Pa.C.S.A. § 3373. Both motions are denied.

## **I. BACKGROUND**

### **A. Procedural History**

The case was instituted on April 13, 2005 when Emily J. Firth (hereafter “Ms. Firth”) filed a praecipe for a writ of summons. The caption of the praecipe for writ of summons identified the plaintiff as:

**Ms. Emily J. Firth**, in her own right individually and on behalf of her deceased husband, Mr. William Clarke Firth, Deceased, and as trustee ad litem on behalf of all persons entitled to share in the damages,  
**Plaintiffs**

Praecipe for Writ of Summons, *Firth v. Muncy Valley Hosp.*, No. 05-00,686 (Lycoming Cty. 2005) (emphasis in original). Writs of summons were issued the same day. The writs of summons identified the plaintiff as, “Ms. Emily J. Firth.”

Ms. Firth filed a complaint on May 25, 2005. Defendants Muncy Valley Hospital and Susquehanna Health Systems filed preliminary objections to the complaint on June 16, 2005. Defendants Kahler and Beyer filed preliminary objections to the complaint on June 22, 2005. Ms. Firth obtained letters of administration on July 14, 2005. This court issued a memorandum opinion and order on December 29, 2005 (filed December 30, 2005) denying in part and granting in part the Defendants’ various preliminary objections. Defendants have sought reconsideration of that opinion and order. Defendants Muncy Valley Hospital and Susquehanna Health Systems filed a motion for reconsideration on January 9, 2006. Defendants Kahler and Beyer file a motion for reconsideration on January 23, 2006.

## **B. Facts**

The complaint alleges the following facts. Plaintiff Emily J. Firth and her husband, William Clarke Firth, had resided in Montoursville, Pennsylvania. On April 13, 2003, Emily and William Firth went to the Muncy Valley Hospital's emergency room seeking treatment for William. Dr. Mark D. Beyer attended to Mr. Firth at the emergency room. The Firths brought with them the medication William had been taking and relayed his complaints, symptoms, and information regarding his medical history to Dr. Beyer. Dr. Beyer released Mr. Firth, but instructed him to return the following day so that a sonogram of his abdomen could be performed. The Firths left the Muncy Valley Hospital and went home.

On April 14, 2003, Emily and William Firth returned to the Muncy Valley Hospital's emergency room. Dr. David Kahler attended to Mr. Firth in the emergency room. Again, the Firths brought with them the medication William had been taking and relayed his complaints, symptoms, and information regarding his medical history to Dr. Kahler. Dr. Kahler placed Mr. Firth on bactrim and doubled his dosage of furosemide. Dr. Kahler then released Mr. Firth.

Following William's release on April 14, 2003 and until April 16, 2003, the Firths made telephone calls to the Muncy Valley Hospital emergency room informing the nursing staff of William's continuing and additional complaints. The nursing staff advised the Firths that William did not need to return to the emergency room as the medication he had been prescribed had not had sufficient time to take effect. The nursing staff further advised the Firths that the records did not indicate that William was experiencing any cardiac difficulties.

Despite the nursing staff's advice, the Firths went to the Muncy Valley Hospital on April 16, 2003. William was in significant pain and had a low oxygen level. Dr. Kahler

attended to Mr. Firth in the emergency room. Following a lengthy period of time, Dr. Kahler determined that the Muncy Valley Hospital and staff were not equipped to handle Mr. Firth's care and that he should be transferred to the Williamsport Hospital. Mr. Firth was then transferred to the Williamsport Hospital.

Upon entry to the Williamsport Hospital, Mr. Firth was diagnosed as being in cardiogenic shock. Mr. Firth was placed on life support, which he would go on and off over the next seven days. On April 24, 2003, Mr. Firth died. Ms. Firth contends that Drs. Beyer and Kahler's failure to diagnose and treat Mr. Firth's cardiac problem caused his death.

**C. Defendant's Preliminary Objections and the Court's Memorandum  
Opinion and Order of December 29, 2005**

In their preliminary objections, inter alia, Defendants Muncy Valley Hospital, Susquehanna Health System, Dr. Beyer, and Dr. Kahler demurred to Ms. Firth's survival action on the basis that it was barred by the statute of limitations since the praecipe for writ of summons was defective as Ms. Firth was not the personal representative of William Firth's estate; therefore, she did not have the authority and/or capacity to bring the survival action. In the December 29, 2005 memorandum opinion and order, the court determined that the survival action was appropriately initiated and was not barred by the statute of limitations. The court determined that the caption of the praecipe for writ of summons properly identified the plaintiff in the action and that the omission of the full caption on the writ of summons issued by the Lycoming County Prothonotary's Office was an administrative error by an officer of the court that could not be attributed to any fault on the part of Ms. Firth. The court further noted that Ms. Firth "... [had] also exercised good faith in seeing that the writ was appropriately served, that the complaint was promptly prepared and served and she [had] also filed certificates of

merit.” This coupled with the court’s belief that Defendants had been served with a copy of the praecipe for writ of summons along with the writ of summons permitted the court to find that no prejudice had occurred to Defendants.

#### **D. Defendants’ Argument in Support of Reconsideration**

In their motions for reconsideration, Defendants again assert that Ms. Firth’s survival action is barred by the statute of limitations because it was not instituted by the personal representative of William Firth’s estate within the appropriate time frame. Defendants argue that the court erred in concluding that the survival action was appropriately initiated and that the caption of the praecipe for writ of summons properly identified the plaintiff in this action. Defendants argue that Ms. Firth was not named or identified in the praecipe for writ of summons as the personal representative of William Firth’s estate. As such, Defendants argue that the survival action was not commenced by the personal representative of William Firth’s estate and any such action is now barred by the statute of limitations.

### **II. ISSUE**

There is one main issue with two subparts before the court.

- (1) Whether the April 13, 2005 praecipe for writ of summons properly commenced the survival action before the statute of limitations had expired?
  - (a) Whether Emily J. Firth had the legal authority and/or capacity to commence a survival action at the time the praecipe for a writ of summons was filed?
  - (b) Whether the relation back doctrine applies so as to validate the praecipe for writ of summons thereby commencing the survival action prior to the running of the statute of limitations?

### **III. DISCUSSION**

The discussion will be divided into three parts. The first part will set forth the standard of review regarding a demurrer. The second part will set forth why the praecipe for writ of summons was legally deficient to institute the survival action. The third part will set forth why the relation back doctrine applies to validate Ms. Firth's filing of the praecipe for writ of summons thereby properly commencing the survival action prior to the running of the statute of limitations.

#### **A. Standard of Review**

A preliminary objection in the form of a demurrer tests the legal sufficiency of a pleading. *Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co.*, 860 A.2d 1038, 1041 (Pa. Super. 2004). A demurrer will be granted where the challenged pleading is legally insufficient. *Williams v. Nationwide Mut. Ins. Co.*, 750 A.2d 881, 883 (Pa. Super. 2000). That is, a demurrer will be granted when it is clear from the facts that the party has failed to state a claim upon which relief may be granted. *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1185, 1191 (Pa. 2001).

The demurrer must be resolved solely on the basis of the pleading; no testimony or evidence outside of the pleading may be considered. *Williams*, 750 A.2d at 883. Furthermore, the court may not address the merits of the matter presented in the pleading. *In re S.P.T.*, 783 A.2d 779, 781 (Pa. Super. 2001). All material facts set forth in the pleading as well as all inferences reasonably deducible therefrom shall be admitted as true for purposes of deciding the demurrer. *Willet v. Pennsylvania Med. Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997); *Ins. Adjustment Bureau*, 860 A.2d at 1041. ““The question presented by the demurrer

is whether, on the facts averred, the law says with certainty that no recovery is possible. Where any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the demurrer.” *Ins. Adjustment Bureau*, 860 A.2d at 1041 (quoting *Vulcan v. United of Omaha Life Ins. Co.*, 715 A.2d 1169, 1172 (Pa. Super. 1998))

## **B. Effectiveness of the Praecipe for Writ of Summons to Commence the Survival Action**

### **1. General Rules and Principles Regarding a Survival Action**

At common law, the right of action for personal injuries, whether or not suit had been commenced before death, did not survive the death of the injured person. *Incollingo v. Ewing*, 282 A.2d 206, 226 (Pa. 1971). However, the General Assembly has provided through statute that all causes of action or proceedings shall survive the death of the injured person. 42 Pa.C.S.A. § 8302<sup>1</sup>; 20 Pa.C.S.A. § 3371.<sup>2</sup> “The survival act does not create a new cause of action; it permits a personal representative to enforce a cause of action that has already accrued prior to the decedent’s death.” *Pastierick v. Duquesne Light Co.*, 526 A.2d 323, 326 (Pa. 1987). A survival action has its genesis in the decedent’s injury, not his death. *Moyer v. Rubright*, 651 A.2d 1139, 1141 (Pa. Super. 1994), *app. denied*, 659 A.2d 988 (Pa. 1995); *Frey v. Pennsylvania Elec. Co.*, 607 A.2d 796, 798 (Pa. Super. 1992), *app. denied*, 614 A.2d 1142 (Pa. 1992). A survival action is a cause of action that accrues to the decedent that survives his death. *Sunderland v. R.A. Barlow Homebuilders*, 791 A.2d 384, 391 (Pa. Super. 2002), *aff’d*, 838 A.2d 662 (Pa. 2003).

---

<sup>1</sup> “All causes of action or proceedings, real or personal, shall survive the death of the plaintiff or the death of the defendant, or the death of one or more joint plaintiffs or defendants.” 42 Pa.C.S.A. § 8302.

<sup>2</sup> “All causes of action or proceedings shall survive as provided by 42 Pa.C.S. § 8302 (relating to survival action).” 20 Pa.C.S.A. § 3371.

“A survival action, . . . , is brought by the administrator of the decedent’s estate in order to recover the loss to the estate of the decedent resulting from the tort.” *Estate of Coleman*, 772 A.2d 1026, 1027 (Pa. Super. 2001). The decedent’s estate brings suit on behalf of the decedent based upon claims the decedent could have pursued. *Frey*, 607 A.2d at 798. The recovery of damages in a survival action stems from the rights of action possessed by the decedent at the time of death. *Moyer*, 651 A.2d at 1141. A survival action simply continues the right of action which accrued to the decedent prior to his death in his personal representative. *Frey*, 607 A.2d at 798.

The statute of limitations governing a survival action is two years. 42 Pa.C.S.A. § 5524(2)<sup>3</sup>; *Symbula v. Johns-Manville Corp.*, 526 A.2d 328, 329-30 (Pa. 1987); *Moyer*, 651 A.2d at 1141. The statute of limitations begins to run on a survival action on the date of the injury to the decedent, as if the decedent were bringing his own lawsuit. *Holt v. Lenko*, 791 A.2d 1212, 1215 (Pa. Super. 2002). At the latest, the statute of limitations for a survival action begins to run on the date of the decedent’s death. *Pastierick*, 526 A.2d at 326; *Moyer*, 651 A.2d at 1142.

---

<sup>3</sup> “The following actions and proceedings must be commenced within two years:

. . .

- (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.”

42 Pa.C.S.A. § 5524(2).

## **2. General Rules and Principles Regarding Commencement of an Action**

With regard to the statute of limitations, an action is commenced when "... a document embodying the matter is filed ...." 42 Pa.C.S.A. § 5503(a). Subsection (b) of 42 Pa.C.S.A. Section 5503 notes "... that court rules may be implemented further defining which document, when filed, shall constitute the commencement of a matter." *Johnson v. Allgeier*, 852 A.2d 1235, 1237 (Pa. Super. 2004). Pennsylvania Rule of Civil Procedure 1007 defines such documents. An action may be commenced by filing with the prothonotary a praecipe for a writ of summons or a complaint. Pa.R.C.P. 1007; *see also, Baker v. Olczak*, 797 A.2d 342, 345 (Pa. Super. 2002). Thus, the filing of a praecipe for a writ of summons to commence an action is sufficient to toll the running of the statute of limitations. *Devine v. Hutt*, 963 A.2d 1160, 1167 (Pa. Super. 2004); *Johnson*, 852 A.2d at 1237.<sup>4</sup>

## **3. General Rules and Principles Regarding Commencement of a Survival Action**

A survival action must be brought by or against the personal representative of the decedent's estate. 20 Pa.C.S.A. § 3373<sup>5</sup>; *Prevish v. Northeast Med. Ctr.*, 692 A.2d 192, 200 (Pa. Super. 1997), *aff'd*, 717 A.2d 1023 (Pa. 1998) (per curiam); *D'Orazio v. Locust Lake*

---

<sup>4</sup> "[A] writ of summons remains effective to commence an action only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion." *Bigansky v. Thomas Jefferson Univ. Hosp.*, 658 A.2d 423, 433 (Pa. Super. 1995), *app. denied*, 668 A.2d 1119 (Pa. 1995) (quoting *Lamp v. Heyman*, 366 A.2d 882, 889 (Pa. 1979)). A plaintiff must put forth a good faith effort to notify the defendant of the suit. *Ibid.* A good faith effort at service of the writ of summons is a condition subsequent that must be fulfilled to complete commencement of the action begun by filing the praecipe for writ of summons. *Johnson*, 852 A.2d at 1237. A "... 'failure to make a good faith effort to notify the defendant will serve to nullify both the commencement of the action and the tolling of [the] statute of limitations.'" *Bigansky*, 658 A.2d at 433 (quoting *Ferrara v. Hoover*, 636 A.2d 1151, 1152 (Pa. Super. 1994)) (change in original). Defendants have not asserted that the survival action was not properly commenced on the basis that Ms. Firth failed to timely serve the writs of summons.

<sup>5</sup> "An action or proceeding to enforce any right or liability which survives a decedent may be brought by or against his personal representative alone or with other parties as though the decedent were alive." 20 Pa.C.S.A. § 3373.

*Village, Inc.*, 406 A.2d 550, 551 (Pa. Super. 1979); *Marzella v. King*, 389 A.2d 659, 600 (Pa. Super. 1978).

‘It is fundamental that an action at law requires a person or entity which has the right to bring the action, and a person or entity against which the action can be maintained. By its very terms, an action at law implies the existence of legal parties; they may be natural or artificial persons, but they must be entities which the law recognizes as competent.’

*Prevish*, 692 A.2d at 200-01 (quoting *Thompson v. Peck*, 181 A. 597, 598 (Pa. 1935)). Thus, “[i]t is well settled that a decedent’s estate cannot be a party to litigation unless a personal representative exists.” *Estate of Gasbarini v. Med. Ctr. of Beaver County, Inc.*, 409 A.2d 343, 347 (Pa. 1979); *see also, Marzella*, 389 A.2d at 660-61.

**4. The April 13, 2005 Praeceptum for Writ of Summons was Legally Deficient at the Time It was Filed and Could Not Toll the Statute of Limitations**

The April 13, 2005 praecipe for writ of summons was legally deficient and could not commence Ms. Firth’s survival action against Defendants. A cause of action must be commenced before the statute of limitations has run otherwise it is barred. In order to commence an action, a plaintiff must either file a praecipe for writ of summons or a complaint. With regard to a survival action, the only one authorized to bring the action is the personal representative of the deceased individual. As such, the only one who can commence, that is file a complaint or a praecipe for writ of summons, a survival action is the personal representative.

At the time the praecipe for writ of summons was filed, Ms. Firth was not the personal representative of William Firth. She did not become his personal representative until July 14,

2005 when she obtained letters of administration. As such, she did not have the authority and/or capacity to bring the survival action and file the praecipe for writ of summons commencing the survival action. Therefore, the praecipe for writ of summons was legally defective and its filing could not toll the running of the statute of limitations.

However, the fact that Ms. Firth did not have the authority and/or capacity to bring the survival action at the time the praecipe for writ of summons was filed does not mean that the cause of action is barred. The court must determine whether the relation back doctrine applies thereby validating the praecipe for writ of summons.

### **C. Applicability of the Relation Back Doctrine**

#### **1. General Rules and Principles Regarding the Relation Back Doctrine**

Pennsylvania courts have utilized the relation back doctrine to uphold the commencement of a survival action within the statute of limitations by an individual who was not the personal representative of the decedent's estate, but later became the personal representative. See, *Gasbarini*, 409 A.2d 343 (Pa. 1979); *Wilkes-Barre Gen. Hosp. v. Lesho*, 435 A.2d 1340 (Pa.Cmwlt. 1981); *D'Orazio*, 406 A.2d 550 (Pa. Super. 1979); *McGuire v. Erie Lackawanna Railway Co.*, 385 A.2d 466 (Pa. Super. 1978). “ ‘Simply stated, the doctrine of relation back as applied to cases where an estate is a party means that the courts under certain circumstances will validate the acts of the personal representative of the estate which preceded the date of his official appointment.’ ” *Prevish*, 692 A.2d at 201 (quoting *Lesho*, 435 A.2d at 1342). “Thus where a plaintiff, acting as personal representative of an estate, initiates an action before the statute of limitations has run, but before his or her appointment has been finalized, the doctrine of relation back may be applied in appropriate circumstances to validate

the filing of the action, even though the plaintiff's appointment is not finalized until after the statute of limitations period has expired." *Ibid.* In determining whether the relation back doctrine should be applied, the focus of the inquiry must be "... whether in all the circumstances "relation back" will achieve a just result." *McGuire*, 385 A.2d at 468.

In determining whether a just result will be achieved, an important factor to consider is whether the objectives of the statutes of limitations will be achieved if the relation back doctrine is applied. *McGuire*, 385 A.2d at 468. The statutes of limitations promote finality and stability by discouraging delay and the presentation of stale claims. *Ibid.*

In support of their argument for reconsideration, Defendants place great reliance on *Prevish v. Northwest Medical Center*, 692 A.2d 192 (Pa. Super. 1997). In *Prevish*, the plaintiff asserted a negligence cause of action against the defendants arising out of the medical treatment she received between September 11, 1992 and October 15, 1992. 692 A.2d at 195. Plaintiff initiated the suit by filing a praecipe for a writ of summons on September 8, 1994. The caption of the writ identified the plaintiff as "Estate of Judith A. Bills, Deceased." *Ibid.* On November 18, 1994, plaintiff filed a complaint in which the caption identified the plaintiff as "Thomas D. Prevish, Executor of the Estate of Judith A. Bills, Deceased." *Ibid.* The complaint alleged that Thomas Prevish had been appointed executor on November 15, 1994.

Both defendants filed preliminary objections to the complaint. One of the issues raised by the preliminary objections was that the cause of action was barred by the statute of limitations because the praecipe for writ of summons was defective since an estate does not have the capacity to sue and the complaint contained an impermissible amendment since it

introduced a new party as plaintiff after the statute of limitations had run. *Prevish*, 692 A.2d at 195. The trial court granted the defendants' preliminary objections and struck the complaint.

On appeal, the Superior Court affirmed the granting of the preliminary objections and the striking of the complaint. The Superior Court determined that the relation back doctrine did not apply. *Prevish*, 692 A.2d at 205. The Superior Court set forth the facts and reasoning of *Gasbarini, supra, McGuire, supra, D'Orazio, supra, and Lasho, supra*. After doing so, the Superior Court determined that “[i]n all four cases, ..., the defendants were notified, before the statute of limitations had run, of the fact that an action had been filed against them by a named individual who was, at least putatively, the personal representative of the decedent’s estate.” *Id.* at 204. (emphasis added).

The Superior Court then determined that the writ of summons in *Prevish* was a nullity as the caption identified the estate of the decedent as plaintiff. *Prevish*, 692 A.2d at 204. The Superior Court also determined that unlike in the four cited cases, which applied the relation back doctrine, the defendants in the *Prevish* case had not been notified prior to the running of the statute of limitations that the action filed against them had been done by a person qualified and intending to be the personal representative of the decedent’s estate. *Id.* at 204. The Superior Court found that the writ of summons did not identify the executor of the estate nor inform the defendants of a possible executor. *Id.* at 205. This failure evidenced “‘the sort of instability that statutes of limitations seek to preclude.’” *Ibid.* (quoting *McGuire*, 385 A.2d at 469). As such, the Superior Court determined that it was not going to extend the relation back doctrine to “... ratify, post-appointment, the attempted commencement of an action by a

personal representative whose existence was in no way suggested by the pleading that he filed.”

*Ibid.* (emphasis added).

**2. The Relation Back Doctrine Applies Because the April 13, 2005 Praecipe for Writ of Summons Sufficiently Identifies Ms. Firth as the Personal Representative of William Firth**

Unlike the *Prevish* defendants, Defendants here were notified prior to the running of the statute of limitations that a person qualified to be and intending to be the personal representative of William Firth was bringing suit against them. The praecipe for writ of summons clearly identifies the individual bringing suit – Emily J. Firth. The praecipe for writ of summons clearly identifies the capacity in which she is bringing suit – on behalf of William Firth, deceased. While the praecipe for writ of summons does not use the magic words of “administratrix”, “executrix,” or “personal representative,” the “on behalf of” language conveys the same meaning and information to Defendants. A survival action may only be brought by the personal representative of an estate. When a personal representative files a survival action she is bringing the suit on behalf of the deceased individual. The language used in the caption of the praecipe for writ of summons clearly put Defendants on notice as to the identity of the person who was bringing suit and in what capacity. Unlike *Prevish*, where the plaintiff was identified as the non-entity “Estate of Judith A. Bills,” here there was an identified individual with the purported capacity to bring the survival action against Defendants, which clearly suggested to Defendants the existence of a personal representative.

In *Gasbarini*, *Lesho*, *D’Orazio*, and *McGuire*, the relation back doctrine was applied to uphold suits where technically incorrect and inadequate documents had been filed prior to the

running of the statute of limitations. In *Gasbarini*, the Pennsylvania Supreme Court applied the relation back doctrine where the complaint identified the plaintiff in the caption as “Estate of Gasbarini,” but alleged in paragraph nine that, “Plaintiff is the widow and was duly appointed administratrix of his estate by the Register of Wills of Beaver County, Pennsylvania. ...” *Id.* 409 A.2d at 344, 346. In fact, she was not and did not fully qualify as such until after the statute of limitations had run. *Id.* at 346. In *Lesho*, the caption of the notice of complaint filed with the office of the Arbitration Panels for Health Care identified the plaintiffs to be “Administrators.” 435 A.2d at 1341. The complaint filed in *Lesho* identified the plaintiffs in the caption and body of the complaint as individuals and as “Administrators of the Estate of Rosemary Lesho.” *Ibid.* However, they were not and did not become duly appointed as such until more than a year after the complaint had been filed, which was well beyond the statute of limitations. *Ibid.*

In *D’Orazio*, the writ of summons identified the plaintiff as “Theresa D’Orazio, Trustee, ad litem.” 406 A.2d at 551. The complaint filed within the statute of limitations then identified the plaintiff as “Theresa D’Orazio, Administratrix of the Estate of Patrick L. Lawler.” *Ibid.* In fact, the named plaintiff had not been appointed the administratrix because she had not signed a bond and did not become so appointed until 2 ½ years after the complaint was filed. *Ibid.* In *McGuire*, the complaint alleged that the plaintiff was the administrator of his daughter’s estate. 385 A.2d at 467. Similar to *D’Orazio*, plaintiff was not the administrator because he had failed to post bond. The plaintiff would not become the administrator of his daughter’s estate until he posted bond after the statute of limitations had run.

In *Gasbarini*, *Lesho*, *D’Orazio*, and *McGuire*, the relation back doctrine was applied because the objectives of the statute of limitations had been achieved, specifically stability. The stability that is of concern with regard to the statute of limitations has to do with the certainty regarding the claims being asserted and the identity of the party bringing those claims. In all four cases, it was determined that there was no uncertainty and that stability had been achieved. In all four cases, the defendants had been informed prior to the running of the statute of limitations of the causes of action asserted against them and the facts supporting those causes of action through the complaints. *Gasbarini*, 409 A.2d at 346; *Lesho*, 435 A.2d at 1343; *D’Orazio*, 406 A.2d at 551; *McGuire*, 385 A.2d at 468. In all four cases, the defendants were informed of the identity of the plaintiff who was asserting the causes of action. *Gasbarini*, 409 A.2d at 346; *Lesho*, 435 A.2d at 1343; *D’Orazio*, 406 A.2d at 552; *McGuire*, 385 A.2d at 468. In all four cases, regardless of the erroneous designation of the plaintiff’s true legal capacity the defendants were sufficiently informed as to the capacity in which the plaintiff was asserting the cause of action. *Gasbarini*, 409 A.2d at 346; *Lesho*, 435 A.2d at 1343; *D’Orazio*, 406 A.2d at 552; *McGuire*, 385 A.2d at 468. As such, in all four cases, the defendants knew the claims they were faced with and the identity of the individual asserting those claims. This information allowed the defendants to know who it was that was claiming they acted wrongfully, to know to whom they should respond, to know to whom they might subject to discovery or other inquiry, and most importantly it allowed the defendants to begin preparing a defense to the claims without a waste of time and resources. In the four cases, the defendants had been supplied with sufficient information to eliminate uncertainty, which thereby provided stability.

The court recognizes that in *Gasbarini*, *Lesho*, *D'Orazio*, and *McGuire* that magic words were used by the plaintiff to assert that he was the personal representative. However, the use of such magic words was not dispositive in determining whether the relation back doctrine was to be applied. What was dispositive in each of the four cases was the information that those words, as well as the other information in the complaint, conveyed to the defendants. In all four cases, the defendants were informed that a named individual, who was qualified to become the personal representative, was asserting wrongful death and survival claims against them. It was that information, not the words themselves, that eliminated the uncertainty and provided the stability. Thus, the key inquiry is what information does the commencing document convey to the defendant. If the commencing document identifies the individual bring suit, the capacity in which she is bringing the suit, and the nature of the suit then a defendant has been provided with sufficient information to eliminate uncertainty and the sought after stability has been achieved.

Thus, despite the lack of magic words in the praecipe for writ of summons, Defendants herein have been provided with sufficient information to eliminate uncertainty and to provide stability. The praecipe for writ of summons identified the individual bringing suit as Ms. Firth and the capacity in which she was bringing it through the "on behalf of" language. The praecipe for writ of summons provided Defendants with the information that Ms. Firth was bringing a survival action on behalf of William Firth against them. This information would allow them to begin preparing a defense to that cause of action, albeit preliminarily, as well as focus that defense on events and circumstances involving their contact with William Firth. Thus, the objectives of the statute of limitation have been accomplished prior to the running of the statute

of limitations for the survival action Ms. Firth has asserted. As such, the relation back doctrine shall be applied to validate the April 13, 2005 praecipe for writ of summons, which would thereby mean that the survival action was commenced prior to the expiration of the two years statute of limitations.

#### **IV. CONCLUSION**

The motions for reconsideration are denied.

#### **ORDER**

It is hereby ORDERED that the Motion for Reconsideration of Defendants Muncy Valley Hospital and Susquehanna Health System filed January 9, 2006 is DENIED.

It is hereby ORDERED that the Motion for Reconsideration of Defendants David Kahler, M.D. and Mark D. Beyer, D.O. filed January 23, 2006 is DENIED.

Plaintiff shall have twenty (20) days from notice of this order to file an amended complaint in compliance with the Memorandum Opinion and Order of December 30, 2005.

BY THE COURT:

William S. Kieser, Judge

cc: David R. Bahl, Esquire  
Bonnie L. Kift, Esquire  
121 St. Clair Circle  
Ligonier, PA 15658  
John C. Conti, Esquire  
Two PPG Place, Suite 400  
Pittsburg, PA 15222

Judges

Christian J. Kalaus, Esquire

Gary L. Weber, Esquire (Lycoming Reporter)