IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THE ESTATE OF MICHAEL SHAYNE RICHARDSON, by Natural Father, GARY L. RICHARDSON, Plaintiff-Administrator and GARY L. RICHARDSON, also Plaintiff on his own behalf,	:	
Plaintiff	:	
	:	
v.	:	**No. 18-0329**
	:	**CIVIL ACTION**
SUSQUEHANNA HEALTH CENTER (WILLIAMSPORT REGIONAL HOSPITAL), Its Executive Director of Emergency Services, KAREN ZINOBILE HESS, AND DR. GREGORY FRAILEY, D.O.; CHIEF DAVID YOUNG of Williamsport Bureau of Police and Its Agents: DETECTIVE RAYMOND KONTZ and DETECTIVE JOHN DOE, and JEROLD N. ROSS, SR., Chief Deputy Coroner of Lycoming County,	:	
Defendants	:	

OPINION AND ORDER

Background

On March 4, 2016, Michael Shayne Richardson (Plaintiff's son) was staying with his wife at the Genetti Hotel in Williamsport, PA. He was later found physically unresponsive on the hotel room floor by his wife. EMS transported Plaintiff's son to the Emergency Department of Defendant Susquehanna Health, Williamsport Regional Hospital, where attempts at lifesaving measures were employed. He was declared dead by Dr. Gregory Frailey at 11:49 a.m. Dr. Frailey contacted Chief Deputy Coroner, Jerold N. Ross, who appears on deceased's medical records. Plaintiff alleges that Ross never observed the body of Plaintiff's son, yet had Dr. Frailey release the body to a funeral home in Selingsgrove. Plaintiff alleges no autopsy was ordered, Ross never examined the body, and no police investigation into the cause of death was conducted. Ross issued three Certificates of Death, the final upon viewing photographs and a toxicology report

taken by the Crawford County Coroner at the request of Plaintiff. Plaintiff alleges condition of the body at the hospital, the photographs of the body, or the later toxicology report should have prompted Ross to conduct an investigation under the Coroner's Act, 16 P.S. § 1237 (a) (1)-(2), (4). Plaintiff having talked to hotel staff, seeing the pictures of his son, and talking to the Crawford County Coroner concluded his son was killed as a result of violence. This information was taken to the Office of the Lycoming County District Attorney, where he was directed to present the information to the Williamsport Bureau of Regional Police. Plaintiff met with Detective Raymond Kontz and Captain Don Mayes and gave them copies of the photographs. At a later date Plaintiff mailed additional materials including statements he had taken from witnesses and Facebook posts. Plaintiff alleges they at first stated they believed son's death was at first drug related, but upon viewing all the information promised to investigate. Plaintiff claims that Jerold Ross, Susquehanna Health Center (including employees that attempted to treat the deceased), and the Williamsport Bureau of Police (including employees listed) are responsible for his severe emotional despair due to their inability to investigate his son's death and/or act in accordance with established procedure. This has required Plaintiff to seek psychiatric counseling and treatment. He now has to take medication as a result of his distress.

On April 6, 2018, Plaintiffs filed a Complaint in the matter alleging intentional infliction of emotional distress and negligent infliction of emotional distress against Dr. Frailey, the Susquehanna Health Center/Williamsport Regional Hospital and its Emergency Department, Jerold Ross, and Detective Kontz and Captain Don Mayes of the Williamsport Bureau of Police. Additionally claims of Negligent Infliction of Emotional Distress against Defendant Executive Director Karen Zinobile Hess of the Susquehanna Health Emergency Department. Following Defendants filing of preliminary objections this Court had the parties brief their positions and

held a hearing on August 7, 2018. The Court bases its Opinion and Order upon the Complaint, preliminary objections filed, briefs, and the August 7th hearing.

Discussion

Plaintiff brings forward two claims, intentional infliction of emotional distress and negligent infliction of emotional distress, against each of the named Defendants, Jerold Ross (Defendant Ross), Dr. Frailey, the Williamsport Bureau of Police, including Chief Young, Captain Mayes, and Detective Kontz, (hereafter referred to collectively as Defendant Police), and Susquehanna Health, Williamsport Regional Hospital, including Executive Director Zinobile Hess and Dr. Frailey in their capacity as staff (hereinafter collectively Defendant Hospital). Each Defendant filed preliminary objections in the present action. When deciding preliminary objections this Court required to:

> accept as true the well-pled averments set forth in the ... complaint, and all inferences reasonably deducible therefrom. Moreover, the [C]ourt need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections.
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> *Pa. State Lodge, Fraternal Order of Police v. Dep't of Conservation & Natural Res.*, 909 A.2d 413, 415-16 (Pa. Cmwlth 2006), *aff'd*, 924 A.2d 1203 (Pa. 2007).

Intentional Infliction of Emotional Distress.

All Defendants have filed a preliminary objection as to the sufficiency of Plaintiff's claims for intentional infliction of emotional distress. Pennsylvania follows the definition of intentional infliction of emotional distress provided in the Restatement (Second) of Torts:

> One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress or where such conduct is directed at a third person, the actor is subject to liability if he

> intentionally or recklessly causes severe emotional distress to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm.
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> Restatement (Second) of Torts § 46.

Therefore under Pennsylvania law there are only two established ways to successfully claim intentional infliction of emotional distress. A plaintiff must either be intentionally or recklessly harmed by extreme and outrageous conduct or must be present at the time such conduct is intentionally or recklessly inflicted upon an immediate family member. *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 216 (Pa. Super. 2012). Either claim requires extreme and outrageous conduct explained as:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"
>
> The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt.
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> Restatement (Second) of Torts § 46 cmt d.

This element is often the crux of a court's analysis, but more often than not is dismissed for failure to meet the high burden of "atrocious, and utterly intolerable" conduct. *See e.g.*, *Motheral v. Burkhart*, 583 A.2d 1180 (Pa. Super. 1990) (claim dismissed where plaintiff alleged defendant made knowingly false accusations to a police officer that plaintiff had sexually molested his

daughter); *Jones v. Nissenbaum, Rudolf & Seidner*, 368 A.2d 770 (Pa. Super. 1976) (claim dismissed against law firm that repeatedly told plaintiffs their homes were going to be sold and they should remove their things immediately); *Dewalt v. Halter*, 7 Pa. D & C. 4th 645 (1990) (claim dismissed where tavern employees served a male patron excessive amounts of alcohol and then permitted him into the ladies room where he knowingly raped plaintiff); *Doe v. Dyer-Goode*, 566 A.2d 889 (Pa. Super. 1989) (claim dismissed where physician falsely told man he tested positive for AIDS). Extreme and outrageous conduct has not been found and it is not "enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." *Miller v. Paraino*, 626 A.2d 637, 640-41 (Pa. Super. 1993).

To establish a claim for intentional infliction of emotional distress committed upon a third party there needs to be presence and an immediate familial connection. *Johnson v. Caparelli*, 625 A.2d 668, 671-73 (Pa. Super. 1993). Presence, required to establish intentional infliction of emotional distress, is a contemporaneous observation of events. *Taylor v. Albert Einstein Med. Ctr.*, 754 A.2d 650, 652-53 (Pa. 2000). The element of presence is essential to a successful claim "because an individual who witnesses outrageous or shocking conduct directed at a third-party has no time in which to prepare himself/herself for the immediate emotional impact of such conduct." *Johnson*, 625 A.2d at 673.

Plaintiff alleges Defendants Dr. Frailey and the Susquehanna Center Emergency Department acted in an extreme and outrageous manner when Dr. Frailey intentionally or recklessly did not notify police about decedent based upon the state of the decedent's body in accordance with his duty under 18 Pa.C.S.A. § 5106. In support of this allegation Plaintiff

supplied this Court with photographs of the decedent's body. First, this Court finds the Plaintiff has not alleged sufficient facts to show actions were intentional or reckless. Plaintiff in his complaint and answer to Dr. Frailey's preliminary objections provides no information to show that Defendant's actions in not notifying the police were reckless or intentional, and instead just repeatedly asserts Dr. Frailey intentional violated 18 Pa.C.S.A. § 5106. Despite this allegation, Plaintiff recognizes that Dr. Frailey did in fact contact Defendant Chief Deputy Coroner Ross as required under a sudden death. Plaintiff's Complaint 4/6/18, at ¶ 27-29; *see also Frick v. McClelland*, 122 A.2d 43, 46 (Pa. 1956) ("There certainly is a duty on a physician to notify the coroner whenever the physician is aware of a sudden death."). Second, this Court finds Plaintiff has not established conduct, which could be viewed as extreme and outrageous. An allegation that Defendant may have acted criminally and could have been subject to a summary offense does not meet that threshold. *Miller*, 626 A.2d at 641. Third, this Court finds that Plaintiff's allegations fail to allege presence, which precludes a claim for conduct upon a third person. Therefore, Plaintiff's Count One should be dismissed as failing to state a claim which recovery could be granted.

Plaintiff alleges Defendant Ross acted in an extreme and outrageous manner when he intentionally or recklessly promised to come to emergency department to view the body, but never did; failed to comply with the Coroner's Act; failed to conduct an investigation; and failed to find violence contributed to the death of Plaintiff's son. Plaintiff's Complaint 4/6/18, at ¶ 24-30. Upon reviewing the Complaint, Brief in Opposition of Defendant Ross's Preliminary Objections, and pictures of decedent's body, this Court finds the allegations of Defendant Ross's actions do not reach the level of extreme and outrageous needed for a claim of intentional infliction of emotional distress. Based upon the discretionary nature of the responsibilities of a

Coroner, or in this case Chief Deputy Coroner, the most that could be found is Defendant Ross was negligent in exercising proper discretion, which does not rise to the level of extreme and outrageous. *See* 16 P.S. § 1238 (autopsy and inquest are discretionary); *Nader v. Hughes*, 643 A.2d 747, 751-54 (Pa. Cmwlth 1994) (if coroner determines death resulted from natural causes no inquest shall be necessary, likewise if the coroner believes it is obvious the death resulted from criminal acts no inquest is necessary and that discretion will be presumed to be in good faith). Although Defendant Ross does not raise the point in his preliminary objections, this Court would also like to reiterate that the actions/inactions of Defendant Ross are not claimed to have occurred in Plaintiff's presence. Therefore, Count III for intentional infliction of emotional distress against Defendant Ross shall be dismissed.

Plaintiff alleges Detective Raymond Kontz and Captain Don Mayes acted in an extreme and outrageous manner when they intentionally or recklessly failed to investigate the death of Plaintiff's son after multiple requests by Plaintiff, showing them the pictures of the body and all the additional information Plaintiff gave them, although promising Plaintiff they would do so. Plaintiff's Complaint 4/6/18, at ¶ 31-37. Police owe a duty to the general public not individuals. *Caldwell v. City of Philadelphia*, 517 A.2d 1296, 1299 (Pa. Super. 1986); *see also Yates v. City of Philadelphia*, 578 A.2d 609, 612 (Cmwlth 1990) ("[P]olice must have broad discretion to act without fear of civil liability resulting from the exercise of their duties . . . taking what action is, in their judgment, in the best interest of the public."). Plaintiff relies on *Heckensweiler v. McLaughlin*, 517 F. Supp. 2d 707, 719-20 (E.D. Pa. 2007) in his brief as an example of officers and police chief being held responsible for intentional infliction of emotional distress. But in that case, what the court recognized as extreme and outrageous conduct was when police, during negotiations, cut off a man's electricity, threatened to arrest him on felony

charges if he did not comply, fired hundreds of canisters of pepper spray into his building, and blasted loud music into the house for hours, all while knowing he was mentally unstable. *Id.* at 720. This led to the man committing suicide. *Id.* at 721. When looking at the factual differences between the case cited by Plaintiff and the alleged actions of the police presently, there is a massive discrepancy. Plaintiff fails to demonstrate any extreme or outrageous conduct by the police. Defendants owed no special duty to Plaintiff to investigate and any duty that could be found, failure of that duty falls short of extreme and outrageous conduct. Therefore Count Five should be dismissed for failure to state a recoverable claim.

Negligent Infliction of Emotional Distress

Plaintiff brings a claim against all named Defendants for negligent infliction of emotional distress and each Defendant has filed a preliminary objection for failure to state a recoverable claim. Negligent infliction of emotional distress can only be claimed in four recognized scenarios: "(1) situations where the defendant had a contractual or fiduciary duty toward the plaintiff; (2) the plaintiff was subjected to a physical impact; (3) the plaintiff was in a zone of danger, thereby reasonably experiencing a fear of impending physical injury; or (4) the plaintiff observed a tortious injury to a close relative." *Toney v. Chester Cty Hosp.*, 961 A.2d 192, 197-98 (Pa. Super. 2008).

Plaintiff had no contractual or fiduciary relationship with Dr. Frailey, Susquehanna Health Center, Jerold Ross, or the Williamsport Police Bureau, whereas perhaps his son would have. Plaintiff may not substitute himself into the shoes of his son and has no claim under the first recognized situation. He does attempt to allege Defendant Police by promising him to investigate his son's death had established a "quasi-contractual or constructively contractual [relationship] sufficiently for making out this claim." Brief in Opposition to Defendant Bureau of

Williamsport Police and Separate Officers' Preliminary Objections and Brief 7/27/18, at 7. As discussed earlier, police owe a responsibility only to the public in general and promising to investigate does not create a contractual relationship with a police department. *See Caldwell*, 517 A.2d at 1299.

Plaintiff does not argue he was subjected to physical impact or was ever in the zone of danger, otherwise known as the "near miss" situation. Likewise there is no evidence in his factual averments that would lend themselves to situation (2) or (3). The only plausible situation, which Plaintiff could attempt to argue successfully on the given complaint, is observing a tortious injury of a close relative. But as discussed above, presence and a contemporaneous observation are similarly required to successfully plead negligent infliction of emotional distress under a bystander theory. *Toney*, 961 A.2d at 198. Plaintiff instead of alleging a proper recognized situation where relief can be granted, states if this Court does not find the Defendants' actions were intentional or reckless to find they acted negligently. *See* Plaintiff's Complaint 4/6/18, at ¶ 24, 30, 38. Again Plaintiff fails to address this any further in his answers to each Defendant's preliminary objections and seems to instead plead standard negligence. Specifically in Plaintiff's Answer to Ross's Preliminary Objections, Plaintiff concedes "that a negligent cause of action may not pass muster." 7/27/18, at 9. In the case of Dr. Frailey and Defendant Hospital Plaintiff claims observation of the body a day later is contemporaneous. Not only is a day later not contemporaneous, Plaintiff does not claim there was tortious injury inflicted upon son's body to be contemporaneously observed. *See Toney*, 961 A.2d at 198; *Mazzagatti v. Everingham by Everingham*, 516 A.2d 672, 679 (Pa. 1986) (mother who received a call about an accident involving her daughter and arrived to observe her daughter lying in the road only a few minutes later did not satisfy the element of contemporaneous observation).

Plaintiff has failed to form a proper claim for which relief can be granted for negligent infliction of emotional distress; therefore Counts Two, Four, and Six are hereby dismissed.

High Public Official Immunity and Governmental Immunity

Both Defendants Ross and Williamsport Bureau of Police Chief David Young are claiming high public official immunity. High public official immunity is recognized as an absolute bar, an "unfettered discharge of public business and full public knowledge of the facts and conduct of such business. Absolute immunity is thus a means of removing any inhibition which might deprive the public of the best service of its officers and agencies." *Montgomery v. City of Philadelphia*, 140 A.2d 100, 103-04 (Pa. 1958). For this immunity to be found the individual must be considered a "high public official" and acting or speaking within their official capacity. *Durham v. McElynn*, 772 A.2d 68, 69 (Pa. 2001). High public officials are determined by the nature of the duties of a public officer, the importance of his office, whether or not he has policy making functions. *Linder v. Mollan*, 677 A.2d 1194, 1198 (Pa. 1996). This immunity "has in many instances been extended to a wide range of public officials whose policy-making roles were not salient. While it is often the case that 'high public officials' have policy-making functions, that is not the sole or overriding factor in determining the scope of immunity." *Durham*, 772 A.2d at 70. In *Durham*, the immunity was extended to assistant district attorneys. *Id*. Although they ultimately serve the will of the District Attorney the court found that they were "essential to district attorneys in fulfilling responsibilities of their high public offices, to wit, in carrying out the prosecutorial function." *Id.* In addition, the actions taken must be in their official capacity. This applies to any action or inaction within the scope of employee's official duties. *See Stackhouse v. Commonwealth, Pennsylvania State Police*, 892 A.2d 54, 60 (Pa. Cmwlth 2006) (failure to properly supervise an internal departmental investigation was still within scope

of duties); *Kovach v. Toensmeier Adjustment Serv., Inc.*, 321 A.2d 422, 423 (Pa. Cmwlth 1974) (actions or omissions while acting under official duties are not actionable).

The Chief of Police as the individual solely in charge of the police force, the head supervisory power, and having the power to create and establish policies and guidelines followed by the rest of the Bureau, falls squarely within the definition of high official position. *See Schroak v. Pennsylvania State Police*, 362 A.2d 486, 490 (Pa. Cmwlth 1976) (state police captain in charge of his troop was found to be a high official with absolute immunity). Plaintiff makes no allegation that any of the Chief's actions were outside of his official role and Plaintiff has seemed to concede this point during the preliminary objection hearing that took place on August 7, 2018 and in his Brief in Opposition to Defendant Bureau of Williamsport Police and Separate Officers' Preliminary Objections and Brief 7/27/18, at 11, therefore all claims against Chief David Young are dismissed.

As for Defendant Ross, the office of coroner "is one of great dignity and is equal in antiquity with that of the sheriff. Since its inception in 1276, the office of coroner has been investigative in nature, as well as judicial; it is an office designed to protect the public welfare, and, for this purpose, includes the powers of a committing magistrate." *Feldman v. Hoffman*, 107 A.2d 821, 828 (Pa. Cmwlth 2014) (internal citations omitted). As such it has been recognized under the "high official immunity" privilege. *Id.* Jerold Ross, as Chief Deputy Coroner of Lycoming County, holds an important official position. He is second in command to the Lycoming County Coroner and as in *Durham* is essential to the functioning of the office. To the extent not immunizing him would impede the entirety of the office, because "deputy or deputies shall have the same powers as the coroner." 16 P.S. § 1231. This situation does not differ from

that of an assistant district attorney and therefore the position of Chief Deputy Coroner would be treated as a high public official.

The next determination is whether the actions/inactions of Defendant Ross alleged in Plaintiff's complaint are within his official duties. Plaintiffs allegations against Defendant Ross are that he never visited the hospital to view the body of the deceased, he never personally saw the body of the deceased, and he failed to comply with the Coroner's act, 16 P.S. § 1237 (a) (1)-(2), (4) by not investigating the death of Plaintiff's son. By failing to properly investigate the death, he failed in "establishing a cause of death and preparing a true and valid Certificate of Death." Plaintiff's Complaint 4/6/18, at ¶ 90. Plaintiff states because of this he did not have peace of mind through a meaningful investigation of death which caused his emotional distress. Viewing the pleadings as factually accurate in favor of Plaintiff, the actions/omissions by Defendant Ross fall solely within his official duties as Chief Deputy Coroner. Whether his actions are correct or proper does not matter in the evaluation of whether they are within his scope of duty. Here even if the investigation is deemed as improper or negligent, as in *Stackhouse*, it is still within his official duties and therefore afforded protection under the "high official immunity" privilege. Counts III and IV, the whole of the allegations against Chief Deputy Coroner Ross, should therefore be dismissed.

Governmental Immunity

Likewise Defendants Ross and Williamsport Bureau of Police (including named individuals within the department) assert governmental immunity under 42 Pa.C.S.A § 8545, providing officials of local agencies are only liable to the extent the agency would be liable and thus receive the same immunity under 42 Pa.C.S.A. § 8541. First before delving into the applicability of governmental immunity as it applies to members of the police force and Jerold

Ross, the Williamsport Bureau of Police raise the preliminary objection that since it is not a political subdivision, under Pa. R. Civ. P. 2102(b) it cannot have an action brought against it. Plaintiff has conceded this point, therefore any claim against the Williamsport Bureau of Police as an entity shall be dismissed. *See* Brief in Opposition to Defendant Bureau of Williamsport Police and Separate Officers' Preliminary Objections and Brief 7/27/18, at 12.

Generally immunity is an affirmative defense that must be raised in new matter of a responsive pleading, but courts are to allow pleading in preliminary objections if it is facially applicable upon the pleadings and the plaintiff does not object. *R.H.S. v. Allegheny Cty Dep't of Human Servs., Office of Mental Health*, 936 A.2d 1218, 1227 (Pa. Cmwlth 2007). A defendant may still be liable under this section in their individual capacity if their actions "caused the injury and that the act was intentional, i.e., constituted a crime, actual fraud, actual malice or willful misconduct." *Palmer v. Bartosh*, 959 A.2d 508, 512 (Pa. Cmwlth 2008). "[E]mployee must desire to bring about the result that followed his conduct or be aware that the result was substantially certain to follow." *Id.* at 512-13. The statute enumerates a number of exceptions which are the limited circumstances when a plaintiff may otherwise recover:

(1) Vehicle Liability;
(2) Care, custody or control of personal property;
(3) Trees, traffic controls and street lighting;
(4) Utility service facilities;
(5) Streets;
(6) Sidewalks; and
(7) Care, custody or control of animals.

42 Pa.C.S.A. § 8542(b).

In Plaintiff's claims against Defendant Ross, he relies heavily upon *Geiges v. Roscoe*, 49 Pa. D. & C.3d 61 (1987) and *Meerhoff v. County of Erie*, 2011 WL 10943467 (Pa. Cmwlth 2011) (unreported) to refute Defendant Ross's preliminary objections. As for the issue of

governmental immunity, the *Geiges* court found that immunity did not exist and a claim can be brought forward against the defendant in that case, a county coroner. 49 Pa. D. & C. 3d at 62-65. This Court recognizes that on its face these cases look similar, but the factual differences between the two were the crux of the reasoning behind the holding in *Geiges*. In *Geiges*, Plaintiff's son's body was mixed up with another body and was accidently cremated, and the scheduled autopsy to never be performed. *Id.* at 63. The Court found that immunity does apply to coroners, but under these circumstances the exception of "Care, custody or control of personal property" applied. *Id.* at 64-65. The court found the defendant was in care, custody or control of the body, because they were charged with sending the body to the funeral home after conducting an autopsy and that Pennsylvania law has long recognized familial remains as personal property. *Id.* at 63-65 ("Given this ruling, there can be no doubt that the next of kin have a property right in the remains of their son.") (discussing *Pettigrew v. Pettigrew*, 56 A. 878 (Pa. 1904)). As for *Meerhoff*, the court in that case dismissed all negligent infliction of emotional distress claims and maintained all intentional infliction of emotional distress claims against the Coroner and Deputy Coroner. 2011 WL 10943467 at *5-6.

Defendant Coroner brings the preliminary objection of governmental immunity forward to refute Count IV, negligent infliction of emotional distress. The *Meerhoff* court recognized coroners were protected from this claim under governmental immunity. *Id.* at *4-5. Additionally, Defendant Ross, unlike the coroner in *Geiges*, was never in care, custody, or control of the decedent's body and therefore the claim does not fall under the enumerated exception listed under 42 Pa.C.S.A. § 8542(b). Count IV of negligent infliction of emotional distress should therefore be dismissed.

As for Plaintiff's claim against Captain Mayes and Detective Kontz, it is conceded that immunity generally applies to officers with the exception of "willful misconduct" on behalf of defendants. Brief in Opposition to Defendant Bureau of Williamsport Police and Separate Officers' Preliminary Objections and Brief 7/27/18, at 10. Therefore Count Six against Defendants Mayes and Kontz is dismissed as negligent infliction of emotional distress is barred by governmental immunity as it does not equate "willful misconduct." Plaintiff properly brings a claim for intentional infliction of emotional distress despite governmental immunity by again relying on *Heckensweiler*, 517 F. Supp. 2d at 719-20. The court recognized "willful misconduct" in that case as equivalent to extreme and outrageous conduct. *Id.* When again looking at the factual difference between the case cited by Plaintiff and the actions above, there is no "willful misconduct" because there is no extreme and outrageous conduct on the part of Captain Mayes and Detective Kontz, which would open them to liability in lieu of their governmental immunity. Therefore Count Five is dismissed.

Private Right of Action

The Court has adopted a three-prong test to determine if a statute has a private remedy when the statute is not explicitly clear. *Schappell v. Motorists Mut. Ins. Co.*, 934 A.2d 1184, 1189 (Pa. 2007). This Court in making its determination must decide:

> (1) whether the plaintiff is one of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; and (3) whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff.
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> *Id.*

Defendant Ross's third preliminary objection is a Demurrer of Counts III and IV due to the provision of County Code, 16 P.S. § 1231, et seq. which does not establish a private right

of action. Similarly **Defendant Susquehanna Health Center similarly files a preliminary objection** claiming 18 Pa.C.S. § 5601 does not create a private right of action.

Even taking Plaintiff's allegation as factual accurate that Defendant Ross's investigation or lack thereof violated the Coroner's Act, or Susquehanna Health Center's failure to report violated their statutory responsibilities, that is not enough to hold Defendants liable as there is not a private right of action established by the above mentioned statutes. Although this Court finds in favor of Defendants' position that a private right of action is not created by either statute, dismissal is not appropriate where failure to conform to the acts is not the entire basis of the underlying claim. The statute and alleged violations may serve as factual evidence, but may not be the **sole basis** for Plaintiff's claims of intentional and negligent infliction of emotional distress. So although Plaintiff's arguments rely heavily upon violations of the two above mentioned statutes to demonstrate responsibility, his claims do not solely rely upon the violation creating a cause of action and should not be dismissed on this ground.

Improper Caption

Both Defendant Ross and Defendant Police contend that no estate under Michael Shayne Richardson exists, yet the caption of the action contains "THE ESTATE OF MICHAEL SHAYNE RICHARDSON, by Natural Father, GARY L. RICHARDSON, Plaintiff-Administrator." As such, Defendants wish to have this Court dismiss all claims brought on behalf of the Estate and have it stricken from the caption.

Issues in the captioning of a case have been deemed "trivial" by the Pennsylvania Supreme Court, such that improper captioning does not demand dismissal and should be freely amended. *Commonwealth ex rel. Arlen Specter v. Bauer*, 261 A.2d 573, 576, 577 n.2 (Pa. 1970). This in conjunction with Plaintiff's freely admitted "his withdrawal of the Plaintiff he had early

identified as the Estate of Michael Shayne Richardson," leaves the Court free to ignore claims on behalf of the "Estate" as it does not exist. Plaintiff's Complaint 4/6/18, at ¶ 2. The Court will only deal with claims properly raised by permissible parties and dismiss all improperly brought claims on behalf of anyone except Plaintiff Gary L. Richardson in his individual capacity.

Count Seven

Both Defendants Hospital and Defendant Police raise a preliminary objection as to Count Seven failing to raise any cause of action. Plaintiff freely concedes this issue and therefore this Court dismisses Count Seven in its entirety. *See* Brief in Opposition to Defendant Bureau of Williamsport Police and Separate Officers' Preliminary Objections and Brief 7/27/18, at 12.

Conclusion

The Court additionally recognizes and notes that Defendant Ross raises the issues of there not being a permissible remedy to receive attorney's fees and/or punitive damages; Defendant Police raises the issue of an untimely answer to preliminary objections; Defendants Hospital and Dr. Frailey raise the issue of an improper/nonexistent issuance of Certificates of Merit; and Dr. Frailey raises the issue of scandalous and impertinent matter within the complaint. The Court will not decide these issues in lieu of the decisions on the remainder of the preliminary objections discussed above, the decisions would be inapplicable and moot following dismissal. In addition, Dr. Frailey raises a preliminary objection to a claim of negligence *per se* based upon Plaintiff's complaint. Although Plaintiff's complaint may use language and look as though a negligence *per se* claim is being raised, it has not been pleaded by Plaintiff and therefore shall be disregarded by the Court. The Court also recognizes that at the hearing on August 7, 2018, Defendant Hospital and Plaintiff were in talks of reaching an understanding, but since this Court has reached nothing further to that effect it will also be ignored. The

accompanying order shall address each defendant and preliminary objection in turn based on the multitude of Defendants and the nature of the Complaint.

ORDER

AND NOW, this _____ day of August, 2018, based upon the foregoing Opinion, the Court rules on the following Preliminary Objections:

1. Dr. Frailey's Preliminary Objection that Plaintiff's negligence *per se* claims in Counts One and Two fail to state a claim is OVERRULED, as Plaintiff never raises the claim in Counts One or Two.
2. Dr. Frailey's Preliminary Objection that Plaintiff failed to state a proper claim for intentional infliction of emotional distress in Count I is SUSTAINED.
3. Dr. Frailey's Preliminary Objection that Plaintiff failed state a claim upon which relief may be granted in Count Two for negligent infliction of emotional distress is SUSTAINED.
4. Jerold Ross's Preliminary Objection that Plaintiff lacked the capacity to sue on behalf of the estate is SUSTAINED.
5. Jerold Ross's Preliminary Objection that he was immune from suit under high official immunity and Plaintiff therefore failed to state a claim upon which relief could be granted is SUSTAINED.
6. Jerold Ross's Preliminary Objection that 16 P.S. § 1231 does not create a private right of action and therefore Plaintiff failed to state a claim upon which relief could be granted is OVERRULED.
7. Jerold Ross's Preliminary Objection that Plaintiff failed to state a claim for intentional infliction of emotional distress upon which relief could be granted is SUSTAINED.

8. Jerold Ross's Preliminary Objection that Plaintiff failed to state a claim for negligent infliction of emotional distress upon which relief could be granted is SUSTAINED.
9. Jerold Ross's Preliminary Objection that he was immune from suit for negligent infliction of emotional distress under 42 Pa.C.S.A. § 8541 and Plaintiff therefore failed to state a claim upon which relief could be granted is SUSTAINED.
10. Susquehanna Health Center, Williamsport Regional Medical Center and Karen Zinobile Hess's Preliminary Objection that 18 Pa.C.S. § 5601 does not create a private right of action and therefore Plaintiff has failed to state a claim upon which relief may be granted is OVERRULED.
11. Susquehanna Health Center, Williamsport Regional Medical Center and Karen Zinobile Hess's Preliminary Objection that Plaintiff failed to state a claim for intentional infliction of emotional distress upon which relief could be granted is SUSTAINED.
12. Susquehanna Health Center, Williamsport Regional Medical Center and Karen Zinobile Hess's Preliminary Objection that Plaintiff failed to state a claim for negligent infliction of emotional distress upon which relief could be granted is SUSTAINED.
13. Susquehanna Health Center, Williamsport Regional Medical Center and Karen Zinobile Hess's conceded Preliminary Objection that Plaintiff failed to state a claim upon which relief may be granted in Count Seven is SUSTAINED.
14. Williamsport Bureau of Police, Chief David Young, Captain Don Mayes and Detective Raymond Kontz's Preliminary Objection that Plaintiff failed to state a claim for negligent infliction of emotional distress upon which relief could be granted is SUSTAINED.
15. Williamsport Bureau of Police, Chief David Young, Captain Don Mayes and Detective Raymond Kontz's Preliminary Objection that Plaintiff failed to state a claim for

intentional infliction of emotional distress upon which relief could be granted is SUSTAINED.

16. Williamsport Bureau of Police, Chief David Young, Captain Don Mayes and Detective Raymond Kontz's conceded Preliminary Objection that Plaintiff failed to state a claim upon which relief may be granted in Count Seven is SUSTAINED.
17. Williamsport Bureau of Police, Chief David Young, Captain Don Mayes and Detective Raymond Kontz's Ross's Preliminary Objection that they are immune from suit under 42 Pa.C.S.A. § 8541, because their conduct was not "willful misconduct" and Plaintiff therefore failed to state a claim upon which relief could be granted is SUSTAINED.
18. Chief David Young's Preliminary Objection that he was immune from suit under high official immunity and Plaintiff therefore failed to state a claim upon which relief could be granted is SUSTAINED.
19. Williamsport Bureau of Police's conceded Preliminary Objection that they are an entity that is not capable of being sued is SUSTAINED.
20. Based upon the above rulings on Defendants' Preliminary Objections, Plaintiffs Complaint is DISMISSED in its entirety.

By the Court,

Nancy L. Butts, President Judge

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