

**IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PENNSYLVANIA**

|                          |   |                        |
|--------------------------|---|------------------------|
| JOHN DOE                 | : |                        |
|                          | : |                        |
| Plaintiff,               | : | CIVIL ACTION - LAW     |
|                          | : |                        |
| v.                       | : |                        |
|                          | : | No. CV-2026-00283      |
|                          | : |                        |
| WILLIAMSPORT AREA SCHOOL | : |                        |
| DISTRICT and ROGER FREED | : |                        |
| And MICHELLE PULIZZI and | : | Preliminary Objections |
| SEAN WALKER and          | : |                        |
| JOHN DOES 1-10           | : |                        |
| Defendants               | : |                        |

**OPINION ON PRELIMINARY OBJECTIONS OF ROGER FREED,  
MICHELLE PULIZZI, AND SEAN WALKER FILED MAY 8, 2025**

This matter came before the Court on June 17, 2026, for oral argument on the Preliminary Objections to the Complaint filed on May 8, 2026, by Defendants Roger Freed, Michelle Pulizzi, and Sean Walker (hereinafter sometimes referred to collectively as the “Moving Defendants”).

**QUESTIONS PRESENTED:**

1. WHETHER COUNT I OF THE COMPLAINT SHOULD BE DISMISSED AS TO THE MOVING DEFENDANTS.
2. WHETHER A DEMURRER SHOULD BE ENTERED TO PLAINTIFF’S CLAIMS AGAINST SEAN WALKER.
3. WHETHER A DEMURRER SHOULD BE ENTERED TO ALL OF PLAINTIFF’S CLAIMS OF NEGLIGENCE AGAINST FREED AND PULIZZI.
4. WHETHER COUNTS V AND VI OF THE COMPLAINT SHOULD BE DISMISSED, BASED UPON THE FACT THAT THERE IS NO CAUSE OF ACTION FOR NEGLIGENCE PER SE.
5. WHETHER PARAGRAPH 111 OF THE COMPLAINT SHOULD BE STRICKEN.

**ANSWERS TO QUESTIONS PRESENTED:**

1. AT THIS EARLY STAGE OF THE LITIGATION, PLAINTIFFS’ CLAIMS WILL BE NOT BE DISMISSED, BUT PLAINTIFF WILL BE REQUIRED TO FILE AN AMENDED COMPLAINT.

2. A DEMURRER WILL NOT YET BE ENTERED TO PLAINTIFF'S CLAIMS AGAINST SEAN WALKER.
3. PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST FREED AND PULIZZI WILL NOT YET BE STRICKEN, BUT PLAINTIFF WILL BE DIRECTED TO FILE AN AMENDED COMPLAINT.
4. PLAINTIFF'S COUNTS FOR NEGLIGENCE PER SE WILL BE STRICKEN, WITHOUT PREJUDICE TO ASSERT THAT AS A BASIS FOR A CLAIM OF NEGLIGENCE.
5. THE AMENDED COMPLAINT WILL NOT CONTAIN ANY REFERENCE TO PULIZZI'S PLEA OF *NOLO CONTENDERE*.

#### **DISCUSSION:**

1. AT THIS EARLY STAGE OF THE LITIGATION, PLAINTIFFS' CLAIMS WILL BE NOT BE DISMISSED, BUT PLAINTIFF WILL BE REQUIRED TO FILE AN AMENDED COMPLAINT.

The Test to Be Applied in Construing the Pa.R.C.P.

This Court is obligated to “liberally construe” the Rules of Civil Procedure “to secure the just, speedy and inexpensive determination of every action” and “may disregard any error or defect of procedure which does not affect the substantial rights of the parties” to that end. Pa.R.C.P. 126. In reviewing preliminary objections, “[a]ll well-pled facts in the complaint, *and reasonable inferences arising from those facts*, are accepted as true. However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted.” *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Commw. Ct. 2013) (quoting *Wilson v. Marrow*, 917 A.2d 357, 361 n. 3 (Pa. Commw. Ct. 2007) (*emphasis added*); *Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D.&C.2d 784, 788 (Beaver Cnty. 1976) (“...[A] motion to strike should be overruled unless a party can affirmatively show prejudice...”).

The purpose of pleadings is to place the opposing party on notice of the claims or defenses which they must meet, and to provide a summary of the material facts upon which those claims or defenses are based. *Yacoub v. Lehigh Valley Medical Associates*, 2002 PA.Super. 251, 805 A.2d 579, 589 (Pa.Super. 2002), citing *McClellan v. Health Maintenance Organization of Pennsylvania*, 413 Pa.Super. 128, 604 A.2d 1053 (Pa.Super. 1992). “The material facts on which a cause of action or defense is based shall be stated in a concise and

summary form.” Pa.R.C.P. § 1019(a). “The purpose of this rule is to require the plaintiff to disclose the material facts sufficient to enable the adverse party to prepare the case.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Commw. Ct. 2007). Furthermore, “Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, ‘it must also formulate the issues by summarizing those facts essential to support the claim.’” *Wetzel*, 74 A.3d at 356–57 (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super. Ct. 1992)). Finally, “the lower court has broad discretion in determining the amount of detail that must be averred since the standard of pleading set forth in Rule 1019(a) is incapable of precise measurement.” *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963).

#### Plaintiff Must File An Amended Complaint:

It appears to the Court that the Plaintiff alleges very different facts with regard to each of the Defendants. Nevertheless, Counts I and II and III and IV and V are labeled as being filed against “All Defendants.” There does not appear to be any Count VII, yet there is a Count VIII. Although Count I is labeled as against “All Defendants,” the language at Paragraphs 123 through 132 is obviously directed at Defendant Williamsport Area School District (hereinafter “WASD”). The Court will direct the Plaintiff to file an Amended Complaint. Unless all the claims asserted against all the Defendants are identical (and they very obviously are not), the Plaintiff is directed to separately state each of the claims as against each of the Defendants, with sufficient material allegations of fact, in a concise and summary form.

#### 2. A DEMURRER WILL NOT YET BE ENTERD TO PLAINTIFF’S CLAIMS AGAINST SEAN WALKER.

##### The Test Applicable to a Demurrer:

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein*, *supra*; **\*\*829** *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also*, *Schott v. Westinghouse Electric Corp.*, *supra*, 436 Pa. at 291, 259 A.2d at 449.

*Mudd v. Hoffman Homes for Youth, Inc.*, 374 Pa.Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)). Accord, *Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa.Super. 2023).

The Complaint lacks material facts which would support a finding that any act or omission by Walker was the legal cause of the damages alleged by Plaintiff. At Paragraph 105, Plaintiff alleges that Walker “pulled Plaintiff aside one day to talk about Plaintiff’s interactions with Pulizzi. Walker told Plaintiff to “leave her alone, she’s bad news.” Walker also told Plaintiff that Pulizzi was “trouble.” A fair reading of the allegations at Paragraph 105 leads to the conclusion that Walter was trying to prevent the conduct which is the basis for Plaintiff’s claims. Unless the Amended Complaint contains allegations of material fact to the effect that some act or omission by Walker was the legal cause of the damages alleged by Plaintiff, a future dismissal of Plaintiff’s claims against him are likely.

3. PLAINTIFF’S CLAIMS OF NEGLIGENCE AGAINST FREED AND PULIZZI  
WILL NOT YET BE STRICKEN, BUT PLAINTIFF WILL BE DIRECTED TO  
FILE AN AMENDED COMPLAINT.

In the matter of *Isaac v. Jameson Memorial Hospital*, 2007 PA Super. 250, 932 A.2d 924 (Pa.Super. 2007), our Superior Court made clear that claims of intentional misconduct and claims of negligence are distinct.

Moreover, since the tort founded upon lack of informed consent is an intentional tort, i.e. a battery, negligence principles generally do not apply. *Montgomery v. Bazaz–Sehgal*, 568 Pa. 574, 585, 798 A.2d 742, 748–49 (2002); *Moure*, 529 Pa. at 404 n. 8, 604 A.2d at 1008 n. 8.

*Isaac v. Jameson Memorial Hospital*, 2007 PA Super. 250, 932 A.2d 924, 929-930. (Pa.Super. 2007).

Plaintiff's claims against Freed and Pulizzi are very obviously claims of intentional misconduct (see Paragraphs 37, 38, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 84, 85, 86, 87, 89 and 104). In the Amended Complaint, Plaintiff must isolate their claims based upon theories of intentional tort, from those based upon theories of negligence. The same facts will rarely support both.

4. PLAINTIFF'S COUNTS FOR NEGLIGENCE PER SE WILL BE STRICKEN, WITHOUT PREJUDICE TO ASSERT STATUTORY VIOLATIONS AS A BASIS FOR A CLAIM OF NEGLIGENCE.

As Lycoming County President Judge Eric R. Linhardt observed in his scholarly opinion in the matter of *Fausnaught v. UPMC Susquehanna*, 2020 WL 5875630 (Pa.Com. Pl. 2020), negligence pe se is a theory of negligence, but is not a separate cause of action. For that reason, it may not be pled separately. In the Amended Complaint, Plaintiff is free to allege violations of applicable law as a basis for a claim of negligence, but may not plead negligence per se as a separate cause of action.

5. THE AMENDED COMPLAINT WILL NOT CONTAIN ANY REFERENCE TO PULIZZI'S PLEA OF *NOLO CONTENDERE*.

The rule that pleas of nolo contendere are not generally admissible in a subsequent civil matter has been the law of this Commonwealth for over one hundred (100) years.

"A plea of nolo contendere, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. It is an implied confession of guilt only, and cannot be used against the defendant as an admission in any civil suit for the same act." Such was the statement of President Judge Rice, speaking for this court in *Commonwealth v. Ferguson*, 44 Pa.Super. 626, 628, the leading case in this Commonwealth. Sentence may be imposed upon such plea as well as upon a plea of guilty. Ibid. We have consistently followed that case ever since. See *Teslovich v. Fireman's Fund Ins. Co.*, 110 Pa.Super. 245, 168 A. 354, where the record of such a plea in a prosecution for arson was held to have been properly excluded in an action of assumpsit on a policy of fire insurance covering the property destroyed by fire; *Com. v. Rousch*, 113 Pa.Super. 182, 172 A. 484; *Com. v. Smith*, 116 Pa.Super. 134, 177 A. 68; *Ferguson v. Reinhart*, 125 Pa.Super. 154, 159, 160, 190 A. 153; *Com. v. Smith*, 151 Pa.Super. 113, 130, 131, 30 A.2d 339.

*Commonwealth ex rel. Warner v. Warner*, 156 Pa.Super. 465, 466-467, 40 A.2d 886, 887 (PA.Super. 1945).

## **ORDER**

**AND NOW, this 7<sup>th</sup> day of July, 2026, it is hereby Ordered that the Preliminary Objections to the Complaint filed on May 8, 2026, by Defendants Roger Freed, Michelle Pulizzi, and Sean Walker Defendants are granted in part and denied in part, as follows:**

1. Plaintiff is directed to file an Amended Complaint within twenty (20) days of the date of filing of this Order.
2. Unless all the claims asserted against all the Defendants are identical, the Plaintiff shall separately state each of the claims as against each of the Defendants, with sufficient material allegations of fact, in a concise and summary form.
3. The Amended Complaint shall either delete claims against Defendant Sean Walker, or will include allegations of material fact to support a finding that some act or omission by Walker was the legal cause of the damages alleged by Plaintiff.
4. The Amended Complaint will not include separate counts alleging negligence per se, but may allege violations of applicable law as a basis for a claim of negligence.
5. The Amended Complaint will not make reference to Pulizzi's plea of *nolo contendere*.
6. The balance of the Preliminary Objections are denied.

BY THE COURT,

William P. Carlucci, Judge

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