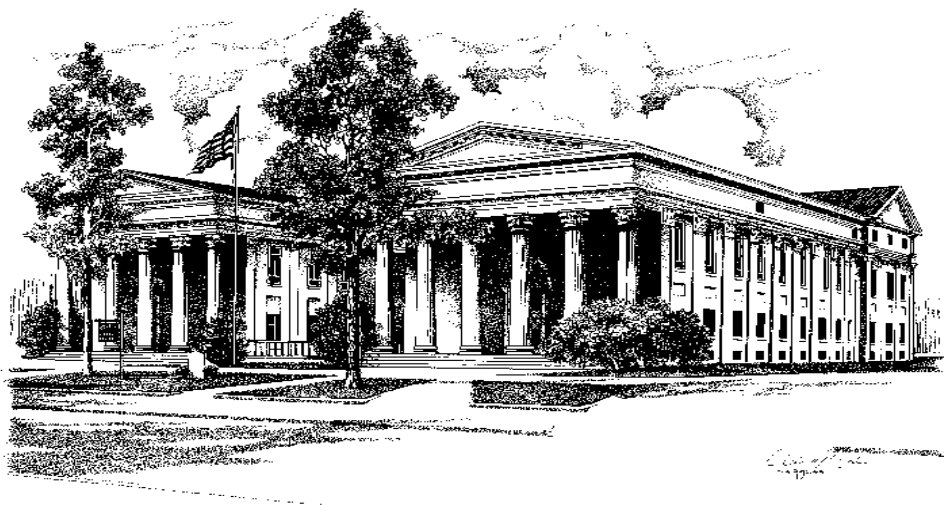


# Erie County Legal Journal

July 21, 2017

Vol. 100 No. 29



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100 ERIE 89 - 95  
Martin v. Giroux, et al.

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# Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County  
The Sixth Judicial District of Pennsylvania*

Managing Editor: Megan E. Black  
Administrator of Publications: Paula J. Gregory

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# Erie County Bar Association

## Calendar of Events and Seminars

### MONDAY, JULY 24, 2017

ECBA Board of Directors Meeting  
Noon  
ECBA Headquarters

### TUESDAY, JULY 25, 2017

#### ECBA Video Seminar

*Buying and Selling Real Estate in Bankruptcy*  
8:30 a.m. - 9:30 a.m.  
ECBA Headquarters  
\$47 (ECBA member), \$60 (nonmember)  
\$33 (member judge not needing CLE)  
1 hour substantive

### WEDNESDAY, JULY 26, 2017

ECBA Mid-Year Membership Meeting  
11:45 a.m.  
Sheraton Hotel Ballroom  
\$30/ECBA member

### THURSDAY, JULY 27, 2017

Solo / Small Firm Division Meeting  
Noon  
Calamari's

### FRIDAY, JULY 28, 2017

Senior Lawyer Division Event  
Chautauqua Institution Lecture Series

### TUESDAY, AUGUST 1, 2017

AKT Kid Connection Event  
Group Shopping at the Millcreek Mall  
5:30 p.m. - 7:00 p.m.

### WEDNESDAY, AUGUST 2, 2017

Defense Bar Meeting  
4:00 p.m.  
ECBA Headquarters

### SATURDAY, AUGUST 5, 2017

ECBA and PBA Young Lawyer Divisions'  
Caravan Event for Zone 7  
Lake Erie Wine Tour 2017  
Lunch at the Brewererie beginning at 11:00 a.m.  
Tour from 1:00 p.m. - 5:45 p.m.

### MONDAY, AUGUST 7, 2017

ECBA Live Seminar  
*A Client Walks Into Your Office ...  
How to recognize and deal with clients who  
exhibit mental health or behavioral issues.*  
8:30 a.m. - 3:15 p.m.  
Manufacturers & Business  
Association Conference Center  
\$225 (ECBA member) \$290 (nonmember)  
4 hours substantive / 1 hour ethics

### TUESDAY, AUGUST 8, 2017

ECBA Video Seminar  
*Roth Conversions: Is paying the tax  
now a good idea?*  
8:30 a.m. - 9:30 a.m.  
ECBA Headquarters  
\$47 (ECBA member), \$60 (nonmember)  
\$33 (member judge not needing CLE)  
1 hour substantive



Erie County Bar  
Association



@eriepabar

To view PBI seminars visit the events calendar  
on the ECBA website  
<http://www.eriebar.com/public-calendar>

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## CAREER OPPORTUNITY

**Position:** Chief Deputy Clerk (Type II)

**Annual Salary:** \$143,304 - \$172,100 (depending on qualifications), JS 16

**Position Location:** Pittsburgh, PA

**Application Deadline:** July 25, 2017 at 12:00 p.m.

### Position Summary:

The United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”) is accepting applications for the position of Chief Deputy Clerk of the Bankruptcy Court. The business of the Court is conducted at three divisional locations in Pittsburgh, Erie, and Johnstown, PA. Currently, the Clerk’s Office has approximately 37 employees with four presiding Judges (three in Pittsburgh and one in Erie).

The Chief Deputy Clerk is a senior level management position that serves as second-in-command and reports directly to the Clerk of Court. Under direction of the Clerk of Court, the Chief Deputy Clerk is responsible for the managing, planning, supervision, and administration of the Clerk’s Office and acts as the Clerk of Court in his absence. Among other duties, the Chief Deputy Clerk is principally responsible for effectively managing the following court support services: automation, case administration, courtroom services, intake, records management, training, statistical reporting, quality control, finance and budget management, procurement, space and facilities, and human resources management. The Chief Deputy Clerk analyzes the quality and quantity of work, recommends corrective actions, and consults and makes recommendations to the Clerk of Court on various management matters. The Chief Deputy Clerk also assists the Clerk of Court with: the development, implementation, and refinement of procedures to enhance the productivity and effectiveness of the Clerk’s Office; organizational and strategic planning; application of the Bankruptcy Code, Guide to Judiciary Policy, Federal Rules of Bankruptcy Procedure, and Local Rules of the Court; and preparation of special studies, narrative reports, and district-wide projects. Travel to Erie, Johnstown, and to conferences (both locally and nationally) is required.

### Qualification Requirements:

Applicants must have (a) a Juris Doctor degree from an accredited law school (law review preferred), (b) at least six years of experience in a law related profession, and (c) at least two years of responsibility for budgeting and/or organizational management.

Additionally, applicants must possess skill in dealing with others in professional work relationships and tact in handling workplace and employee relations issues with a high degree of integrity, along with the ability to exercise mature judgment. Applicants must also possess excellent oral and written communication skills; excellent interpersonal and leadership skills; and demonstrate strong organizational, prioritizing, and problem-solving skills. The successful candidate must have knowledge of sound financial controls and policies. A working knowledge of legal terminology and procedures is required. A working knowledge of the Bankruptcy Code and Rules, broad automation skills, and an understanding of electronic case management systems are highly desirable. Proficiency in Microsoft Office

Suite (Excel, PowerPoint, Word) is essential. Familiarity with electronic database systems is preferred. All applicants must be a U.S. citizen or be eligible to work in the United States. All appointments subject to FBI Background Investigation, with periodic reinvestigation, if applicable. All employees of the Court are "At Will" employees. All appointments also subject to mandatory electronic funds transfer.

**Benefits:**

The selected applicant is eligible for a choice of health, dental, and vision insurance coverage from a variety of plans. Participation in the Federal Health Insurance, Life Insurance, and Flexible Spending Plan is optional. The selected applicant will be paid ten (10) holidays per year. The successful candidate will be subject to a ten-year mandatory background investigation and FBI fingerprint check as a condition of employment with possibly an updated investigation every five years thereafter.

**Application Procedures and Information:**

Qualified persons must electronically submit by 12:00 p.m. on July 25, 2017 a cover letter, a detailed résumé including salary history, and a Federal Judicial Branch Application for Employment (Form AO 78) via: <http://www.pawb.uscourts.gov/career-opportunities>.

**Please DO NOT CALL OR EMAIL the Court inquiring about the position. Due to the anticipated high volume of applications, the Court cannot respond to inquiries. Only qualified applicants will be considered for this position. Participation in the interview process will be at the applicant's own expense, and relocation expenses will not be provided.**

**The Court reserves the right to modify the conditions of this job announcement, to staff the position as applications are received, or to withdraw the announcement, any of which may occur without prior written or other notice.**

**U.S. Bankruptcy Court  
Western District of Pennsylvania  
[www.pawb.uscourts.gov](http://www.pawb.uscourts.gov)  
U.S. Steel Tower  
54th Floor  
600 Grant Street  
Pittsburgh, PA 15219  
An Equal Opportunity Employer**

July 7, 14, 21

**SIDNEY MARTIN, Plaintiff/Appellant**

**v.**

**NANCY GIROUX, SGT. MALONEY, MELANIE KOSINSKI, and DORINA VARNER,  
sued in their individual and official capacities, Defendants/Appellees**

***CIVIL PROCEDURE / PRELIMINARY OBJECTIONS***

Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. The test on preliminary objections is whether it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief. When ruling on preliminary objections in the nature of a demurrer, a court must overrule the objections if the complaint pleads sufficient facts which, if believed, would entitle the petitioner to relief under any theory of law. All material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purpose of this review. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

***SOVEREIGN IMMUNITY / GENERALLY***

Pursuant to Section 11 of Article I of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provisions of Title 42 (relating to judiciary and judicial procedure) or 62 (relating to procurement) unless otherwise specifically authorized by statute.

***SOVEREIGN IMMUNITY / GENERALLY***

A Commonwealth party is not liable unless (1) the alleged act of the Commonwealth party is a negligent act for which damages would be recoverable under the common law or by statute, pursuant to 42 Pa. C. S. § 8522(a); and (2) the act of the Commonwealth party falls within one of the exceptions listed in 42 Pa. C. S. § 8522(b). The exceptions to sovereign immunity must be strictly construed and narrowly interpreted.

***NEGLIGENCE / ELEMENTS***

In order to establish a cause of action for negligence, a plaintiff must prove the following elements: (1) a defendant's duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages.

***NEGLIGENCE / BREACH OF DUTY***

In any negligence action, establishing a breach of a legal duty is a condition precedent to a finding of negligence.

***SOVEREIGN IMMUNITY / EXCEPTIONS***

Pursuant to 42 Pa. C. S. §8522(b), the exceptions to sovereign immunity include: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways or sidewalks; (5) potholes or other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8)

- 7 -

Sidney Martin (hereafter referred to as “Appellant”) from this Trial Court’s Order dated August 29, 2016. By said Order dated August 29, 2016, this Trial Court sustained Nancy Giroux, Sgt. Maloney, Melanie Kosinski and Dorina Varner’s (hereafter referred to as “Appellees”) Preliminary Objections and dismissed Appellant’s Civil Complaint with prejudice for the following reasons: (1) Appellees, as Commonwealth parties, have sovereign immunity in the instant circumstances, pursuant to 1 Pa. C. S. §2310, as Appellant failed to demonstrate successfully a negligent act by any of the Appellees for which damages would be recoverable and which falls within any of the exceptions enumerated in 42 Pa. C. S. §8522(b); (2) Appellant failed to demonstrate successfully both the objective and subjective prongs to satisfy an Eight Amendment claim for “cruel and unusual punishment;” and (3) Appellant failed to demonstrate successfully personal involvement by any of the Appellees to satisfy a civil rights violation claim.

### **Factual and Procedural History**

Appellant filed a Civil Complaint on December 16, 2015. Appellant filed a Motion to Compel Service of Original Process by Sheriff’s Office on February 24, 2016, which was granted by the Honorable William R. Cunningham on March 2, 2016.

Senior Deputy Attorney General William A. Dopierala entered an appearance on behalf of Appellees on March 17, 2016. Attorney Dopierala filed Preliminary Objections in the Nature of a Demurrer to Appellant’s Complaint on March 28, 2016. Appellant filed his Objections to Appellees’ Preliminary Objections on April 18, 2016. Attorney Dopierala filed a Brief in Support of Appellees’ Preliminary Objections on May 27, 2016. Appellant filed a Brief in Support of Appellant’s Objections on August 3, 2016. A hearing on Appellees’ Preliminary Objections was scheduled for August 10, 2016, at which this Trial Court heard argument from Appellant *pro se* and from Senior Deputy Attorney General Henry J. Salvi, who appeared instead of Attorney Dopierala, who is now retired. At the time of the hearing, both parties agreed on the record that this Trial Court had original jurisdiction to preside over and rule upon the instant civil action. Following said hearing, and by Opinion and Order dated August 29, 2016, this Trial Court sustained Appellees’ Preliminary Objections and dismissed Appellant’s Civil Complaint with prejudice.

Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on September 12, 2016. This Trial Court filed its 1925(b) Order on September 19, 2016. Senior Deputy Attorney General Kemal A. Mericli entered an appearance in the Pennsylvania Superior Court on behalf of Appellees on October 3, 2016. The Pennsylvania Superior Court issued a Rule to Show Cause on October 3, 2016 regarding jurisdiction and possible transfer of the instant civil appeal to the Pennsylvania Commonwealth Court, and directed Appellant to respond by letter to them within fourteen (14) days and explain why the instant civil appeal should not be transferred to the Pennsylvania Commonwealth Court. Appellant filed his Concise Statement of Matters Complained of on Appeal with the Erie County Court of Common Pleas on October 6, 2016. Appellant filed his Response to Rule to Show Cause with the Pennsylvania Superior Court on October 12, 2016. By Order dated October 21, 2016, the Pennsylvania Superior Court transferred the instant appeal to the Pennsylvania Commonwealth Court, citing the original jurisdiction of the Pennsylvania Commonwealth Court pursuant to 42 Pa. C. S. §762(a)(1)(i).

### **Rationale and Conclusions**

Appellant raises eight (8) issues in his *pro se* Concise Statement of Matters Complained



of on Appeal, and this Trial Court consolidates Appellant's issues into the following four (4) issues and addresses them as follows:

**A. Whether this Trial Court applied the proper standards governing Preliminary Objections in the nature of a demurrer.**

Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *Bourke v. Kazaras*, 746 A.2d 642, 643 (Pa. Super. 2000). The test on preliminary objections is whether it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief. *Id.* When ruling on preliminary objections in the nature of a demurrer, a court must overrule the objections if the complaint pleads sufficient facts which, if believed, would entitle the petitioner to relief under any theory of law. *Gabel v. Cambruzzi*, 616 A.2d 1364, 1367 (Pa. 1992). All material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purpose of this review. *Clevenstein v. Rizzuto*, 266 A.2d 623, 624 (Pa. 1970). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867, 868 (Pa. 1970). Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. *Gabel*, 616 A.2d at 1367 (Pa. 1992).

In Appellant's issues numbered three, four and six of his Concise Statement of Matters Complained of on Appeal, Appellant raises issues regarding "a genuine issue of material fact" in his cause of action and "sufficient evidence of facts to make out a *prima facie* cause of action." Although these standards are proper in other facets of the Pennsylvania Rules of Civil Procedure, they are not applicable to Preliminary Objections in the nature of a demurrer. In its Opinion dated August 29, 2016 and as outlined above, this Trial Court provided the proper standards governing Preliminary Objections in the nature of a demurrer, supported by relevant case law, and applied the proper standards to Appellant's Civil Complaint, supported by arguments which were addressed in this Trial Court's Opinion dated August 29, 2016 and as addressed below.

**B. Whether this Trial Court concluded properly that Appellees have sovereign immunity in these circumstances pursuant to 1 Pa. C. S. §2310, where Appellant failed to demonstrate successfully a negligent act by any of the Appellees for which damages would be recoverable and which falls within any of the exceptions enumerated in 42 Pa. C. S. §8522(b).<sup>2</sup>**

On September 28, 1978, the Pennsylvania General Assembly enacted the Sovereign Immunity Act, which states:

Pursuant to Section 11 of Article I of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. When the

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<sup>2</sup> These issues are derived from Appellant's issues numbered one and two of his *pro se* Concise Statement of Matters Complained of on Appeal, wherein Appellant argues this Trial Court erred in concluding the Appellees were entitled to sovereign immunity.

General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provisions of Title 42 (relating to judiciary and judicial procedure) or 62 (relating to procurement) unless otherwise specifically authorized by statute.

*1 Pa. C. S. §2310.* A Commonwealth party is not liable unless (1) the alleged act of the Commonwealth party is a negligent act for which damages would be recoverable under the common law or by statute, pursuant to 42 Pa. C. S. § 8522(a); and (2) the act of the Commonwealth party falls within one of the exceptions listed in 42 Pa. C. S. § 8522(b). *Brown v. Blaine*, 833 A.2d 1166, 1173 (Pa. Commw. Ct. 2003). The exceptions to sovereign immunity must be strictly construed and narrowly interpreted. *Bufford v. Pennsylvania Department of Transportation*, 670 A.2d 751, 753 (Pa. Commw. Ct. 1996).

First, Appellant failed to demonstrate successfully the Appellees committed a negligent act. In order to establish a cause of action for negligence, a plaintiff must prove the following elements: (1) a defendant's duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages. *Talarico v. Bonham*, 650 A.2d 1192, 1194 (Pa. Commw. Ct. 1994). In his Civil Complaint, Appellant asserts generalized allegations of negligence, including "The state and its employees owe inmates a duty of care and this duty was breached" (*see Appellant's Civil Complaint, paragraphs 83 and 101*), and "State employees owed Martin [Appellant] a duty not to be negligent" (*see id., paragraph 88*). However, Appellant has failed to demonstrate a specific duty, supported by relevant statutory and case law, which the Appellees owed to Appellant. Moreover, Appellant has failed to demonstrate a breach of any specific duty. *See Grossman v. Barke*, 868 A.2d 561, 566 (Pa. Super. 2005) (in any negligence action, establishing a breach of a legal duty is a condition precedent to a finding of negligence). In fact, contained in Appellant's Civil Complaint are averments that, during the three (3) day water outage SCI Albion officials provided numerous portable toilets and water coolers for the inmates to use. As Appellant has failed to demonstrate successfully a negligent act, i.e. a specific duty and a breach of that duty, Appellant has not overcome successfully the application of sovereign immunity to Appellees.

Assuming *arguendo* Appellant demonstrated successfully a negligent act by the Appellees, Appellant's allegations do not fall within one of the exceptions to sovereign immunity. Pursuant to 42 Pa. C. S. §8522(b), the exceptions to sovereign immunity include: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways or sidewalks; (5) potholes or other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. *42 Pa. C. S. §8522(b)*. Appellant's allegation that a leak in SCI Albion's water tower resulting in no running water at the prison for several days, which Appellant alleges was caused by the "negligence" of the Appellees, does not fit into one of the above-referenced exceptions to sovereign immunity, and Appellant fails to argue any of the exceptions to sovereign immunity are applicable. Therefore, as Appellant's claims do not fall within one of the exceptions to sovereign immunity pursuant to 42 Pa. C. S. §8522(b), Appellees are entitled properly to sovereign immunity in these circumstances pursuant to 1 Pa. C. S. §2310.

**C. Whether this Trial Court concluded properly that Appellant failed to argue**

**successfully both the objective and subjective prongs for an Eighth Amendment claim of cruel and unusual punishment.<sup>3</sup>**

A prison official violates the Eighth Amendment only when two requirements are met: first, the deprivation alleged must be, objectively, “sufficiently serious,” i.e. a prison official’s act or omission must result in the denial of “the minimal civilized measure of life’s necessities;” and second, a prison official must have a “sufficiently culpable state of mind,” i.e. one of “deliberate indifference” to inmate health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Eighth Amendment liability requires “more than ordinary lack of due care for the prisoner’s interests or safety.” *Id.* (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Id.*

First, Appellant failed to establish the objective prong for an Eighth Amendment claim for “cruel and unusual punishment,” i.e. that Appellant himself was deprived “the minimal civilized measure of life’s necessities.” The leak in SCI Albion’s water tower, which caused a three (3) day water outage at SCI Albion, was not felt solely by Appellant; rather, every inmate was affected by the water outage, as well as all of SCI Albion’s administration and staff. Courts have held that a brief interruption in running water by itself does not so deprive an inmate of “the minimal civilized measure of life’s necessities” that it constitutes a violation of the Eighth Amendment. *See Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *see also Banks v. Mozingo*, 423 F. App’x 123, 127-28 (3rd. Cir. 2011). Moreover, Appellant indicates, both in his Civil Complaint and by his attached Exhibits C, E and G, which are the official responses to Appellant’s grievances, portable toilets and water coolers were provided for use by the inmates and staff during the three (3) day water outage. This clearly demonstrates SCI Albion officials did not disregard an “excessive risk to health and safety” of the inmates. As Appellant has failed to demonstrate successfully that he himself was deprived solely of “minimal civilized measure of life’s necessities,” Appellant has failed to establish the objective prong for an Eighth Amendment claim for cruel and unusual punishment.

Furthermore, Appellant failed to establish the subjective prong for an Eighth Amendment claim for “cruel and unusual punishment,” i.e. that the Appellees demonstrated “deliberate indifference” to Appellant’s health or safety. As stated above, Appellant asserts allegations of negligence against the Appellees in his Civil Complaint; however, Appellant’s allegations of negligence do not satisfy the standard required for an Eighth Amendment claim of “cruel and unusual punishment.” *See Farmer*, 511 U.S. at 839-841 (**subjective recklessness**, as used in the criminal law, is a familiar and workable standard that is consistent with the “Cruel and Unusual Punishments Clause,” and has been adopted as the test for “deliberate indifference” under the Eighth Amendment). Moreover, Appellant indicates, both in his Civil Complaint and by the attached Exhibits C, E and G, which are the official responses to Appellant’s grievances, SCI Albion officials provided portable toilets and water coolers

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<sup>3</sup> These issues are derived from Appellant’s issues numbered seven and eight of his *pro se* Concise Statement of Matters Complained of on Appeal, wherein Appellant argues this Trial Court erred in concluding Appellant failed to establish successfully an Eighth Amendment claim for “cruel and unusual punishment.”

for inmate use during the three (3) day water outage, demonstrating reasonable conduct by SCI Albion officials during an unfortunate event. *See id* at 845 (a prison official's duty under the Eighth Amendment is to ensure "reasonable safety;" thus, prison officials who act reasonably cannot be found liable under the "Cruel and Unusual Punishments Clause.") As Appellant failed to demonstrate successfully "deliberate indifference" on the part of the Appellees or any other SCI Albion official, Appellant failed to establish the subjective prong for an Eighth Amendment claim for cruel and unusual punishment.

**D. Whether this Trial Court concluded properly that Appellant had failed to argue successfully personal involvement by any of the Appellees to substantiate a civil rights violation claim.<sup>4</sup>**

To be liable in a civil rights violation action, a defendant must have personal involvement in the alleged wrongs. *See Sutton v. Rasheed*, 323 F.3d 236, 249 (3rd Cir. 2003). Personal involvement can be shown through allegations of personal direction or actual knowledge or acquiescence, but the allegations must be made with appropriate particularity. *See Bush v. Veach*, 1 A.3d 981, 986 (Pa. Commw. Ct. 2010) (citing *Rode v. Dellarciprete*, 845 F.2d 1195 (3rd Cir. 1988)).

In his Civil Complaint, Appellant alleged: (1) Appellee Giroux refused to fix a cracked valve in the water tower and denied Appellant's grievance; (2) Appellee Maloney disregarded inmates' safety by telling them to "lock up in their cells" and refusing to let inmates use the portable toilets; (3) Appellee Kosinski denied Appellant's grievance; and (4) Appellee Varner denied Appellant's grievance. First, Appellees Giroux, Kosinski and Varner's responses to Appellant's grievances do not demonstrate actual knowledge. *See id* at 986. Second, Appellee Maloney's alleged actions have no connection to the leak in SCI Albion's water tower and do not demonstrate personal responsibility with the three (3) day water outage. Finally, although Appellant does allege Appellee Giroux had knowledge of the leak in SCI Albion's water tower and allegedly refused to repair the leak, Appellant has failed to allege Appellee Giroux's knowledge of the leak with appropriate particularity, thus failing to demonstrate successfully Appellee Giroux's personal involvement. *See id*. As Appellant failed to demonstrate successfully the Appellees' personal involvement with the three (3) day water outage, Appellant failed to substantiate his civil rights violation claim.

For all of the foregoing reasons, this Trial Court concludes the instant appeal is without merit and respectfully requests the Pennsylvania Commonwealth Court deny said appeal.

**BY THE COURT**

**/s/ Stephanie Domitrovich, Judge**

<sup>4</sup> These issues are derived from Appellant's issue numbered five of his Concise Statement of Matters Complained of on Appeal, wherein Appellant argues this Trial Court erred in concluding Appellant failed to establish successfully "personal involvement" by the Appellees.

**SIDNEY MARTIN, APPELLANT**

**v.**

**NANCY GIROUX, SGT. MALONEY, MELANIE KOSINSKI, AND DORINA  
VARNER, SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1934 C.D. 2016 Submitted: May 5, 2017

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge  
HONORABLE DAN PELLEGRINI, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
SENIOR JUDGE PELLEGRINI

FILED: May 26, 2017

Sidney Martin (Martin) appeals, *pro se*, a Court of Common Pleas of Erie County's (trial court) order sustaining the preliminary objections of Nancy Giroux, Sgt. Maloney, Melanie Kosinski, and Dorina Varner (collectively, Defendants) and dismissing his complaint on grounds of sovereign immunity and failure to state a cause of action. Discerning no error, we affirm.

**I.**

The facts as alleged in the complaint, except as otherwise noted, are as follows. Martin is currently incarcerated at the State Correctional Institution at Albion (SCI-Albion). In early 2014, plumbers in SCI-Albion's maintenance department became aware of a cracked valve in the water tower. The maintenance department submitted an agency purchasing request to fix the cracked valve, which then-Superintendent Nancy Giroux (Superintendent Giroux) denied. Over one year later, on the morning of March 9, 2015, SCI-Albion experienced water problems and the water for the facility had to be turned off.<sup>1</sup> For three days, the cells on Martin's prison unit were without running water or functioning toilets.

That same day, a water cooler holding ten gallons of water was brought to Martin's unit and prisoners were permitted to sign up to receive water.<sup>2</sup> In the afternoon, 14 portable toilets were brought to SCI-Albion for prisoners on the west side of the facility to use. Twenty-four additional portable toilets were provided on March 10, 2015.<sup>3</sup> These portable toilets became

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<sup>1</sup> The Department of Corrections' (Department) responses to a grievance Martin later filed regarding this issue explained that SCI-Albion experienced an unplanned loss of water due to a leak in the water tower. SCI-Albion declared a limited state of emergency and water to the institution was shut off in an effort to conserve any remaining water. Martin attached a copy of his grievance and the Department's responses to his complaint.

<sup>2</sup> The Department's final appeal decision regarding Martin's grievance indicates that the water cooler jugs were replaced twice a day during the water outage. While showers could not be utilized, body wipes were provided for prisoners to clean themselves.

<sup>3</sup> Again, the Department's responses to Martin's grievance indicate that there were very limited resources available due to the capacity vendors could provide in one trip and the time it took to get these provisions in place while still ensuring security measures at the facility.

unsanitary through use and prisoners had no access to them from 8:50 p.m. on March 9, 2015, through 7:40 a.m. on March 10, 2015, because they were locked in their cells.<sup>4</sup>

At approximately 3:45 p.m. on March 10, 2015, Martin expressed his need to use the toilet, and Sgt. Maloney told him, “You will go, when we say you can go. Now take it in, or I’ll write you up for loitering.” (Complaint ¶ 42.) At approximately 7:35 a.m. on March 11, 2015, another sergeant refused Martin’s request to use the toilet. At some point on March 11, 2015, Martin obtained a clear plastic bag, brought it back to his cell and defecated inside the bag. Throughout the three-day water shutoff, Martin had to urinate in Styrofoam cups, a coffee bag, a potato chip bag and eventually in the sink because he could not leave his cell to use a functioning toilet when he needed to. This caused a stench in Martin’s cell. The water was restored to SCI-Albion by 11:15 a.m. on March 12, 2015.

Martin filed an official inmate grievance regarding the nonfunctioning toilets and lack of running water in his cell, as well as the alleged unsanitary conditions during the water outage. Martin’s grievance was denied, and he appealed it to final review.

Martin claimed in his complaint that the Defendants’ conduct was negligent because they breached their duty of care to him. Martin also alleged that their actions subjected him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution because he was forced to live in a cell for three days without a functioning toilet or running water, thus depriving him of basic needs. Martin claimed he “has not been able to function properly” (Complaint 72) since the incident, and having to hold his bowels for extreme periods of time caused him physical discomfort, abdominal pain, severe headaches, distress and embarrassment. Martin sought compensatory and punitive damages as well as costs.

Defendants filed preliminary objections arguing that Martin’s negligence claim was barred by sovereign immunity because the negligent acts did not fall within an exception to this immunity. Defendants also asserted that Martin’s Eighth Amendment claim failed as a matter of law because the facts did not meet either the subjective or objective prongs of the cruel and unusual punishment standard. Finally, Defendants asserted that Martin’s Eighth Amendment claim failed for lack of personal involvement of any of the named Defendants. Martin filed preliminary objections to the Defendants’ preliminary objections.

Following oral argument, the trial court sustained the Defendants’ preliminary objections and dismissed Martin’s complaint, with prejudice. This appeal followed.<sup>5</sup>

## II.

### A.

Martin first argues that the trial court erred in applying the incorrect standard of review because there was a genuine issue of material fact and the Defendants’ preliminary objections should not have been decided without a jury first determining if Martin suffered injuries.

<sup>4</sup> The Department’s responses to grievances also stated that the portable toilets were cleaned twice daily during the water outage. Moreover, inmates were instructed to notify staff if they needed to use a portable toilet during the nighttime hours.

<sup>5</sup> Our review of a trial court order sustaining preliminary objections is limited to determining whether the trial court abused its discretion or erred as a matter of law. *Bussinger v. Dyne*, 76 A.3d 137, 140 n.6 (Pa. Cmwlth. 2013), *appeal denied*, 87 A.3d 817 (Pa. 2014).

There can be no material facts at issue when ruling on preliminary objections because all of the facts in a complaint are accepted as true. As the trial court pointed out, a “court will sustain a preliminary objection if, after accepting all well-pleaded facts as true and accepting all reasonable inferences that follow from those facts, the law will not allow recovery. ... Only in circumstances that are free from doubt may preliminary objections be sustained.” *Humphrey v. Department of Corrections*, 939 A.2d 987, 990 n.4 (Pa. Cmwlth. 2007), *aff’d*, 955 A.2d 348 (Pa. 2008) (citations omitted).

**B.**

Martin also argues that the trial court erred in finding that the Defendants were entitled to sovereign immunity because the Commonwealth is not a party and the Defendants acted outside the scope of their employment.<sup>6</sup> It is well established that “the Commonwealth, and its officials and employees acting within the scope of their duties, shall . . . enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.” 1 Pa. C.S. § 2310. The fact that the Commonwealth itself is not named as a party is irrelevant as sovereign immunity has also been granted to Commonwealth employees. A “Commonwealth party” has been defined as “[a] Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment.” 42 Pa. C.S. § 8501.

As this Court has observed:

the proper test to determine if a Commonwealth employee is protected from liability pursuant to 1 Pa. C.S. § 2310 and 42 Pa. C.S. § 8522 is to consider whether the Commonwealth employee was acting within the scope of his or her employment; whether the alleged act which causes injury was negligent and damages would be recoverable but for the availability of the immunity defense; and whether the act fits within one of the nine exceptions to sovereign immunity.

*LaFrankie v. Miklich*, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992) (citing *Yakowicz v. McDermott*, 548 A.2d 1330 (Pa. Cmwlth. 1988), *appeal denied*, 565 A.2d 1168 (Pa. 1989)).

Here, the facts as pled demonstrate that the Defendants were acting within the scope of their employment because the actions Martin complains of were of the kind and nature the Defendants were employed to perform at SCI-Albion, the allegations occurred substantially within authorized time and space limits, and were actuated at least in part by a purpose to serve the Department. *See Schell v. Guth*, 88 A.3d 1053, 1067 (Pa. Cmwlth. 2014) (citing *Sanchez v. Montanez*, 645 A.2d 383 (Pa. Cmwlth. 1994)).

Martin also claims that the Defendants are not entitled to sovereign immunity because their actions amount to willful misconduct. In contrast to the protection afforded Commonwealth employees, local agency employees may still be held liable for willful misconduct even if they acted within the scope of their duties. *See* 42 Pa. C.S. § 8545. However, no such provision exists for Commonwealth employees, and immunity still applies to those employees even if the conduct that caused the injury was willful. *See Kull v. Guisse*, 81 A.3d 148, 157 (Pa.

<sup>6</sup> Martin on appeal does not contend that if the Defendants are covered by sovereign immunity that any of the alleged conduct falls within one of the nine exceptions to immunity set forth in 42 Pa. C.S. § 8522.

Cmwlth. 2013); *Holt v. Northwest Pennsylvania Training Partnership Consortium, Inc.*, 694 A.2d 1134, 1140 (Pa. Cmwlth. 1997); *LaFrankie*.

For these reasons, the trial court did not err in determining that the Defendants were entitled to the defense of sovereign immunity.

C.

Martin also contends that the trial court erred in deciding that he did not make out an Eighth Amendment claim because he failed to establish any personal involvement of the Defendants or that the conditions he was subject to constituted cruel and unusual punishment. Martin fails to make out a claim on either basis.

1.

To be liable for constitutional claims under 42 U.S.C. § 1983,<sup>7</sup> a government defendant must have personal involvement in the alleged wrongdoing. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). Moreover, allegations of personal involvement must be made with particularity, *Rode*, 845 F.2d at 1207, and liability cannot be predicated solely on the theory of respondeat superior. *See id.*; *Rizzo v. Goode*, 423 U.S. 362 (1976).

The only allegation against Sgt. Maloney was that he refused Martin's request to use the toilet facilities and told him to go back to his cell. Martin's allegation against Defendants Kosinski, Varner and Superintendent Giroux is that they responded to his grievance in a way he did not like. These allegations do not demonstrate that the Defendants were personally involved in the damage to the water tower that caused the three-day water outage at SCI-Albion or in the resulting unsanitary prison conditions alleged in the complaint.<sup>8</sup> Moreover, prisoners have no constitutionally-protected right to a grievance procedure and participation in the after-the-fact review of a grievance or appeal is not enough to establish personal involvement for purposes of § 1983. *See Brooks v. Beard*, 167 Fed. App'x 923, 925 (3d Cir. 2006); *Rode*, 845 F.2d at 1208; *Atwell v. Lavan*, 557 F. Supp. 2d 532, 547 (M.D. Pa. 2008). Because Martin failed to allege facts that would establish any of the Defendants' actions caused a purported violation of his Eighth Amendment rights, the trial court properly found that he failed to make out a cause of action on that basis against any of the Defendants.

2.

Martin also failed to state an Eighth Amendment claim for the conditions of his confinement during the water outage. While the Eighth Amendment does not mandate comfortable prisons, *Tindell v. Department of Correction*, 87 A.3d 1029, 1041 (Pa. Cmwlth. 2014)

<sup>7</sup> Section 1983 is not a source of substantive rights, but a means to redress violations of federal law by state actors. *Gonzaga University v. Doe*, 536 U.S. 273, 284-85 (2002). Section 1983 provides, in pertinent part: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . . 42 U.S.C. § 1983.

<sup>8</sup> While Martin alleges that Superintendent Giroux denied an agency purchasing request to fix a cracked valve in the water tower, he does not allege that this failure caused the water emergency at SCI-Albion over a year later. In addition, Martin does not allege that Superintendent Giroux ordered that the water be shut off, was personally responsible for the conditions in his cell or denied him access to running water or a functioning toilet.



(citing *Farmer v. Brennan*, 511 U.S. 825 (1994)), it does impose a duty on prison officials to provide humane conditions of confinement. As such, “[p]rison officials must ensure that inmates are not deprived of the ‘minimal civilized measure of life’s necessities,’ including food, clothing, shelter, sanitation, medical care and personal safety.” *Tindell*, 87 A.3d at 1041 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981)). Nevertheless, extreme deprivations are required to establish a conditions of confinement claim, *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992), and “prison conditions may be ‘restrictive and even harsh’ without violating the Eighth Amendment.” *Neely v. Department of Corrections*, 838 A.2d 16, 20 (Pa. Cmwlth. 2003) (quoting *Rhodes*, 452 U.S. at 347). To establish an Eighth Amendment conditions of confinement claim, the alleged deprivation must be, objectively, sufficiently serious, and the prison official must have a sufficiently culpable state of mind, i.e., one of “deliberate indifference” to inmate health or safety. See *Beers-Capitol v. Whetzel*, 256 F.3d 120, 125 (3d Cir. 2001) (quoting *Farmer*, 511 U.S. at 834). As the United States Supreme Court has established:

a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

*Farmer*, 511 U.S. at 837.

Here, the Defendants were aware of the lack of water at SCI-Albion and acted reasonably by providing Martin and other prisoners at the facility with access to portable toilets and drinking water. Martin admits that these amenities were provided during the water outage, and the supporting documentation attached to his complaint demonstrates that he was not deprived of the minimal civilized measure of life’s necessities. This fact also demonstrates the Defendants were not deliberately indifferent as they did not disregard an excessive risk to Martin’s health and safety. While the lack of water and toilet facilities were certainly unpleasant, they did not rise to the standard to show cruel and unusual punishment necessary to make out an Eighth Amendment claim. Because Martin failed to establish both the objective and subjective prongs of an Eighth Amendment claim, the trial court did not err in dismissing that claim.

Accordingly, for the foregoing reasons, the order of the trial court is affirmed.

### **ORDER**

AND NOW, this 26th day of May, 2017, the order of the Court of Common Pleas of Erie County in the above-captioned matter is hereby affirmed.

/s/ Dan Pellegrini, Senior Judge

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**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 11900-17 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Jayden Brooke Lassiter to Jayden Brooke Swanson.

The Court has fixed the 17th day of August, 2017 at 10:30 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

July 21

**FICTITIOUS NAME NOTICE**

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

**FICTITIOUS NAME NOTICE**

1. Fictitious Name: All An Act Theatre Productions
  2. Address of principal place of business, including street and number: 6780 Haskell Dr., Fairview PA 16515.
  3. The real name and address, including street number and number of persons who are parties to the registration: David Mitchell 6780 Haskell Drive Fairview PA 16415.
  4. An application for registration of a Fictitious Name under the Fictitious Name Act was filed on February 23, 2017.
- Gerald J. Vilella, Esq.  
Dailey, Karle & Vilella  
150 East 8th Street 2nd Floor  
Erie, PA 16501

July 21

**INCORPORATION NOTICE**

Notice is hereby given that Articles of Incorporation were filed with the Department of State for Horgan Snacks Inc, a corporation organized

under the Pennsylvania Business Corporation Law of 1988.

July 21

**INCORPORATION NOTICE**

Notice is hereby given that Articles of Incorporation were filed with the Department of State for Marco's Baking Inc, a corporation organized under the Pennsylvania Business Corporation Law of 1988.

July 21

**INCORPORATION NOTICE**

Notice is hereby given that Articles of Incorporation were filed with the Department of State for Sassy Distribution Services Inc, a corporation organized under the Pennsylvania Business Corporation Law of 1988.

July 21

**INCORPORATION NOTICE**

Notice is hereby given that Articles of Incorporation were filed with the Department of State for TWH Sales Inc, a corporation organized under the Pennsylvania Business Corporation Law of 1988.

July 21

**LEGAL NOTICE**

In the Court of Common Pleas  
Of Erie County, Pennsylvania  
Civil Action-Law  
No. 10541-17

Notice of Action in Mortgage  
Foreclosure

Nationstar Mortgage LLC, Plaintiff  
vs. Unknown Heirs, Successors,  
Assigns and All Persons, Firms or  
Associations Claiming Right, Title  
or Interest From or Under Wilma  
J. Driver a/k/a Wilma Jean Driver,  
deceased, Theodore Grant Driver,  
III, known heir of Wilma J. Driver  
a/k/a Wilma Jean Driver, deceased  
and William P. Driver, known heir  
of Wilma J. Driver a/k/a Wilma Jean  
Driver, deceased, Defendants.

To the Defendants, Unknown Heirs,  
Successors and All Persons,  
Firms or Associations Claiming  
Right, Title or Interest From or Under  
Wilma J. Driver a/k/a Wilma Jean  
Driver, deceased, Theodore Grant  
Driver, III, known heir of Wilma  
J. Driver a/k/a Wilma Jean Driver,

deceased and William P. Driver,  
known heir of Wilma J. Driver a/k/a  
Wilma Jean Driver, deceased: TAKE  
NOTICE THAT THE Plaintiff,  
Nationstar Mortgage LLC has filed  
an action in Mortgage Foreclosure,  
as captioned above.

NOTICE

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DEFENSES OR OBJECTIONS  
WITH THE COURT. YOU ARE  
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AND A JUDGMENT MAY BE  
ENTERED AGAINST YOU  
WITHOUT FURTHER NOTICE  
FOR THE RELIEF REQUESTED  
BY THE PLAINTIFF. YOU MAY  
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Gable, Daniel T. Lutz, Leslie J.  
Rase, Alison H. Tulio & Katherine  
M. Wolf, Attys. for Plaintiff  
SHAPIRO & DeNARDO, LLC  
3600 Horizon Dr., Ste. 150  
King of Prussia, PA 19406  
610.278.6800

July 21

**LEGAL NOTICE**

ATTENTION: JASON WELLS  
INVOLUNTARY TERMINATION  
OF PARENTAL RIGHTS

**IN THE MATTER OF THE  
ADOPTION OF MINOR MALE  
CHILD J.T.G. - DOB: 04/24/2002  
BORN TO: NICHELLE WENDAE  
GOODWIN  
25 IN ADOPTION 2017**

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Hon. Shad Connelly, Senior Judge, Court Room No. B-208, City of Erie on August 11, 2017 at 1:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphan's Court Administrator  
Room 204 - 205

Erie County Court House  
Erie, Pennsylvania 16501  
(814) 451-6251

**NOTICE REQUIRED BY ACT 101  
OF 2010: 23 Pa. C.S §§2731-2742.**  
This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101

of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/ or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

July 21

**LEGAL NOTICE**

**ATTENTION: UNKNOWN  
BIOLOGICAL FATHER  
INVOLUNTARY TERMINATION  
OF PARENTAL RIGHTS  
IN THE MATTER OF THE  
ADOPTION OF MINOR FEMALE  
CHILD L.M.C. - DOB: 11-4-2016  
BORN TO: JEANNETTE MARIE  
CLEVELAND  
37B IN ADOPTION 2017**

If you could be the parent of the above mentioned child at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Senior Judge Shad Connelly, Court Room No. B - #208, City of Erie, on Thursday, August 10, 2017, at 1:30 p.m., and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are

warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphans' Court Administrator  
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Erie County Court House  
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(814) 451-6251

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July 21

AUDIT LIST  
NOTICE BY  
KENNETH J. GAMBLE  
Clerk of Records,  
Register of Wills and Ex-Officio Clerk of  
the Orphans' Court Division, of the  
Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, July 12, 2017** and confirmed Nisi.

**August 23, 2017** is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2017</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
182.	Patricia E. Polanski .....	Frank R. Polanski II, Kathleen J. Noce,..... Lori L. Polanski, Co-Executors	Thomas S. Kubinski Esq.

KENNETH J. GAMBLE  
Clerk of Records  
Register of Wills &  
Orphans' Court Division

July 21, 28



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**ESTATE NOTICES**

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

**FIRST PUBLICATION**

**ALEXANDER, EVELYN T.,  
a/k/a EVELYN ALEXANDER,  
deceased**

Late of the Township of Union, County of Erie, Commonwealth of Pennsylvania

*Co-Executors:* Debbie Jo Bisbee and David N. Alexander, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

*Attorney:* Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

**BATTAGLIA, ANTHONY M.,  
deceased**

Late of the Erie City

*Executor:* Anthony A. Battaglia  
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**BLOSSEY, CHARLES G.,  
a/k/a CHARLES GREGORY  
BLOSSEY,  
deceased**

Late of Mill Village Borough

*Executrix:* Stephanie J. Hebert  
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**CASEY, PATRICK FRANK,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

*Executor:* Richard A. Casey, c/o VLAHOS LAW FIRM, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508  
*Attorney:* Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**COREY, ADA L.,  
deceased**

Late of the Borough of Wesleyville, County of Erie, Commonwealth of Pennsylvania

*Executrix:* Carolyn L. Marton, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**DeWITT, SOPHIE C.,  
deceased**

Late of the Township of Wayne, County of Erie, Commonwealth of Pennsylvania

*Executrix:* June Wilkinson, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

*Attorney:* Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

**FROEHLICH, JOSEPH C., JR.,  
deceased**

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania

*Executrix:* Jennifer A. Andres, 259 Crisswell Road, Franklin, PA 16323-3817

*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**GLEASON, JOYCE M.,  
deceased**

Late of the Summit Township, County of Erie and Commonwealth of Pennsylvania

*Executor:* Brad K. Gleason, c/o Zanita A. Zacks-Gabriel, Esq., 402 West Sixth Street, Erie, PA 16507  
*Attorney:* Zanita A. Zacks-Gabriel, Esq., 402 West Sixth Street, Erie, PA 16507

**HEDSTROM, HOLLY K.,  
deceased**

Late of Fairview Township

*Executor:* James D. Hedstrom  
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**KOMAR, GEORGE J.,  
deceased**

Late of the Erie City

*Executor:* Brian G. Komar  
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**MITCHELL, ANDREW DON,  
a/k/a ANDREW D. MITCHELL,  
a/k/a ANDREW MITCHELL,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

*Administratrix:* Theresa Marie Hilliard, c/o 3210 West 32nd Street, Erie, Pennsylvania 16506-2702  
*Attorney:* Peter W. Bailey, Esquire, 3210 West 32nd Street, Erie, Pennsylvania 16506-2702

**PAUL, PEGGY L.,  
deceased**

Late of the Boro of Elgin, County of Erie, Commonwealth of Pennsylvania

*Executrix:* Rebecca J. Krakowski, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

*Attorney:* Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

**PLACEK, CLARENCE M.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Executor:* Judith A. Sova, 2628 Carter Avenue, Erie, PA 16506  
*Attorney:* Thomas S. Kubinski, Esquire, The Conrad - F.A. Brevillier House, 502 Parade Street, Erie, PA 16507

**PUSCHER, DORIS M.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Administrator:* Thomas F. Manucci, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507

*Attorney:* Kevin M. Monahan, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**ROBERTSON, MICHAEL L.,  
deceased**

Late of Waterford Township

*Administratrix:* Sarah E. Robertson  
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**SEELEY, MARILYN C.,  
a/k/a MARILYN CAROLINE  
SEELEY,  
deceased**

Late of Millcreek Township, County of Erie and State of Pennsylvania

*Executor:* Gloria D. Grow, c/o 227 West 5th Street, Erie, PA 16507

*Attorney:* Mark O. Prenatt, Esquire, 227 West 5th Street, Erie, PA 16507

**STEG, GILBERT A., a/k/a  
GILBERT A. STEG DDS, a/k/a  
DR. GILBERT A. STEG,  
deceased**

Late of Fairview Township, Erie County, Pennsylvania

*Executor:* Mark A. Steg, c/o Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

*Attorney:* Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**WOZNICKI, JEROME L., SR.,  
a/k/a JEROME L. WOZNICKI,  
deceased**

Late of the Erie City

*Executor:* Andrew J. Sisinni

*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**SECOND PUBLICATION**

**HAMBLIN, GLORIA R.,  
deceased**

Late of Millcreek Township

*Executor:* Russell N. Hamblin, 3419 West 41st Street, Erie, PA 16506

*Attorney:* None

**KESER, ROGER A.,  
deceased**

Late of the City of Erie

*Administrator:* Paul Keser

*Attorney:* John Mizner, Esq., 311 West Sixth Street, Erie, PA 16507

**SZUMIGALE, MARY A., a/k/a  
MARY SZUMIGALE, a/k/a  
MARY ANN SZUMIGALE,  
deceased**

Late of Millcreek Township

*Co-Executors:* George D. Szumigale, Jr., Marylou Rosio and Jeffrey J. Szumigale, 901 State Street, Erie, PA 16501

*Attorney:* None

**TAYLOR, KAREN ANN, a/k/a  
KAREN TAYLOR, a/k/a KAREN  
A. TAYLOR,  
deceased**

Late of the Township of Millcreek, County of Erie, State of Pennsylvania

*Co-Executrices:* Barbara E. Opatrny, 3684 County Line Road, Cochran, PA 16314 and Patricia A. McNabb, 8963 West Lake Road, Lake City, PA 16423

*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**URBAN, EDWARD F., a/k/a  
EDWARD FRANKLIN URBAN,  
SR., a/k/a EDWARD F. URBAN,  
SR.,  
deceased**

Late of Riverside County, California

*Executor:* Edward F. Urban, Jr., c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

*Attorney:* Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**THIRD PUBLICATION**

**BEASON, EVA DORIS,  
deceased**

Late of the City of Erie

*Executor:* Larry D. Meredith, Esq., 2021 E. 20th St., Erie, PA 16510

*Attorney:* Larry D. Meredith, Esq., 2021 E. 20th St., Erie, PA 16510

**BEEBE, JEAN S.,  
deceased**

Late of Millcreek Twp., Erie County, PA

*Administratrix:* Jane McBride, 10264 Grandview Ave., Albion, PA 16401

*Attorney:* Robert Freedenberg, Skarlatos Zonarich LLC, 17 S. 2nd St., 6th Fl., Harrisburg, PA 17101-2039

**BILSKI, RONALD E.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Executor:* Donald M. Kowalski, 6565 Knoyle Road, Erie, PA 16510-5430

*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**DREISCHALICK, GARY  
EDWARD,  
deceased**

Late of the City of Erie, County of Erie

*Executor:* David A. Dreischalick  
*Attorney:* Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505



**FENSTERMAKER,  
PHYLLIS G., a/k/a PHYLLIS  
FENSTERMAKER,  
deceased**

Late of the Township of  
Millcreek, County of Erie, State  
of Pennsylvania  
*Administratrix:* Arlene Brown,  
9977 Sampson Avenue, Lake City,  
PA 16423  
*Attorney:* James R. Steadman,  
Esq., 24 Main St. E., P.O. Box 87,  
Girard, PA 16417

**IRWIN, CHARLES D.,  
deceased**

Late of Girard Twp., Erie County,  
PA  
*Administrator:* Charles A.J. Halpin  
III, Land Title Bldg., 100 S. Broad  
St., Ste. 1830, Phila., PA 19110  
*Attorney:* Charles A.J. Halpin, III,  
Land Title Bldg., 100 S. Broad St.,  
Ste. 1830, Phila., PA 19110

**KIEKLAK, THERESA,  
deceased**

Late of the City of Erie, County  
of Erie, and Commonwealth of  
Pennsylvania  
*Executor:* Christina Hahn, 40521  
N. Bald Eagle Road, Antioch,  
IL 60002  
*Attorney:* Thomas S. Kubinski,  
Esquire, The Conrad - F.A.  
Brevillier House, 502 Parade  
Street, Erie, PA 16507

**MENEISH, JAMES A., JR.,  
deceased**

Late of the Township of  
Conneaut, County of Erie, State  
of Pennsylvania  
*Co-Executrices:* Cynthia JoAnn  
Zelina, 11650 Eureka Road,  
Edinboro, PA 16412 and Deedra  
G. Pfeffer, PO Box 712, Fairview,  
PA 16415  
*Attorney:* James R. Steadman,  
Esq., 24 Main St. E., P.O. Box 87,  
Girard, PA 16417

**MICHALEGKO, PAUL,  
deceased**

Late of the Township of Millcreek,  
Erie County, Pennsylvania  
*Executrix:* Paula Michalegko, 121  
Glencoe Road, Erie, PA 16509  
*Attorney:* Gary J. Shapira, Esq.,  
305 West Sixth Street, Erie, PA  
16507

**PFISTER, JOHN J.,  
deceased**

Late of the Township of Fairview,  
County of Erie and Commonwealth  
of Pennsylvania  
*Co-Executors:* Martha J. Wetick  
and Barbara A. Miles  
*Attorney:* Thomas J. Minarcik,  
Esquire, ELDERKIN LAW FIRM,  
150 East 8th Street, Erie, PA 16501

**POPE, WILLIE J., SR., a/k/a  
WILLIE JAMES POPE,  
deceased**

Late of the City of Erie, County  
of Erie  
*Administrator:* Pierre J. Toran, 216  
East Third Street, Erie, PA 16507  
*Attorney:* None

**TOMCZAK, JOAN M.,  
deceased**

Late of the Township of  
Harborcreek, County of Erie,  
Commonwealth of Pennsylvania  
*Executor:* Michele Tomczak,  
c/o Anthony R. Himes, Esquire,  
246 West Tenth Street, Erie,  
Pennsylvania 16501  
*Attorney:* Anthony R. Himes,  
Esquire, 246 West Tenth Street,  
Erie, Pennsylvania 16501

**WIECZOREK, ROBERT J.,  
a/k/a ROBERT WIECZOREK,  
deceased**

Late of the Township of Millcreek,  
Commonwealth of Pennsylvania  
*Executrix:* Denise Bizzarro, c/o  
Vendetti & Vendetti, 3820 Liberty  
Street, Erie, Pennsylvania 16509  
*Attorney:* Richard A. Vendetti,  
Vendetti & Vendetti, 3820 Liberty  
Street, Erie, PA 16509

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## CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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Erie, PA 16506 ..... *bill@wtmortonlaw.com*

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Sebald Hackwelder & Orton.....(f) 814-347-5725  
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North East, PA 16428..... *lorton@sholawyers.com*

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Erie, PA 16502 ..... *matt@williamsandjorden.com*

**DARLENE M. VLAHOS** .....814-616-6605  
Vlahos Law Firm, P.C. ....(f) 814-616-8366  
3305 Pittsburgh Avenue  
Erie, PA 16508 ..... *attylvlahos@aol.com*

### **Change of Firm Name**

Adam J. Williams, Esq. Erie Business Law is now Williams & Jorden

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