

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH NOVEMBER 30, 2016

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Appellate Procedure

A. *Collateral Order Doctrine*

- [Farrell v. Regola, 2016 PA Super 241 \(Nov. 8, 2016\)](#)

➤ **Holding:** An appellate court has jurisdiction under Pa.R.A.P. 313 to review a trial court order requiring a party to produce privileged materials. The Rule permits a party to appeal as of right if (1) the order is separable from and collateral to the main cause of action, (2) the right involved is too important to be denied review, and (3) the question presented is such that if review is postponed until a final judgment in the case, the claim will be irreparably lost.

All decisions are “[hyperlinked](#)” to the slip opinion. All you have to do is “[click](#)” or “[ctrl + click](#)” on the title of the case, and if connected to the Internet, your browser will open decision for you to read in its entirety. Try it!

II. Civil Procedure

A. *Coordinate Jurisdiction Rule*

- [Bates v. Delaware County Prison Employees' Independent Union, No. 339 C.D. 2016 \(Pa. Cmwlth., Nov. 16, 2016\)](#)

➤ **Holding:** Under the coordinate jurisdiction rule, a trial judge may not alter the resolution of a legal question previously decided by a prior judge of coordinate jurisdiction. There are two exceptions to the Rule: (1) when there has been a change in either the controlling law or a substantial change in facts or evidence, and (2) when the prior ruling was clearly erroneous and would create a manifest injustice if followed.

B. *Disqualification of Counsel*

- [Sutch v. Roxborough Memorial Hospital, 2016 PA Super 251 \(Nov. 15, 2016\)](#)

➤ **Holding:** A trial court may remove counsel when his or her conduct threatens due process. In this case, defense counsel sought to interfere with plaintiff's due process right to a fair trial by attempting to tamper with plaintiff's expert witness testimony in violation of several Rules of Professional Conduct. Thus, reporting the attorney to the Disciplinary Board is not a sufficient remedy under the circumstances.

CONTINUED ON PAGE 3

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III. Evidence

A. *Expert Testimony - Exclusion*

□ [*Nobles v. Staples, Inc.*, 2016 PA Super 240 \(Nov. 8, 2016\)](#)

- **Holding:** Knowledge and references are not sufficient to support an expert opinion when the expert fails to cite some scientific authority that (1) he has applied to the facts at hand, and (2) supports the expert's ultimate conclusion.

B. *Fraud Allegations and Summary Judgment*

□ [*Del Pielago v. Orwig*, 2016 PA Super 258 \(Nov. 21, 2016\)](#)

- **Holding:** When there is a factual issue whether fraud was used to procure a general release from liability, a trial court should not grant summary judgment.

IV. Substantive Law

A. *Exculpatory Clauses/Waivers*

□ [*Toro v. Fitness International, LLC*, 2016 PA Super 243 \(Nov. 10, 2016\)](#)

- **Holding:** To be valid, an exculpatory clause must meet three conditions: (1) the waiver clause must not contravene public policy, (2) the contract must be between persons relating entirely to their own private affairs, and (3) each party must be a free bargaining agent to the agreement so that the contract is not one of adhesion. Where plaintiff is a business invitee, he must show that the property owner either created or had actual or constructive notice of the dangerous condition to preclude the entry of summary judgment.

□ [*Valentino v. Philadelphia Triathlon, LLC*, 2016 PA Super 248 \(Nov. 15, 2016\)](#)

- **Holding:** A liability waiver executed by a decedent may be asserted as a bar to a wrongful death claim because a wrongful death claimant's right to recover is derivative of and dependent upon a tortious act that resulted in the decedent's death. [The dissent](#) asserted that a wrongful death action is an independent cause of action, created by statute, and is not derivative of the decedent's rights at the time of death.

B. *Legal Malpractice*

□ [*Heldring v. Lundy Beldecos & Milby, P.C.*, 2016 PA Super 263 \(Nov. 28, 2016\)](#)

- **Holding:** Upon proper proof, the failure to sue the correct party may be a viable basis for a legal malpractice claim.

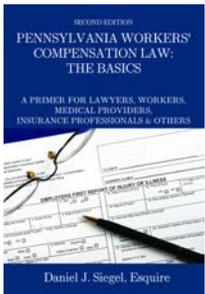
C. *Sovereign Immunity - Real Property Exception*

□ [*Brewington v. City of Philadelphia*, No. 886 C.D. 2015 \(Pa. Cmwlth., Nov. 14, 2016\)](#)

- **Holding:** In order to fall within the real property exception to governmental immunity under the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542(b)(3), the injured party must show that (a) the injury resulted from a dangerous condition that (b) stemmed from the care, custody or control of real property, not personalty. Liability may be imposed for negligence which makes the governmental realty unsafe for its intended and foreseeable use.

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