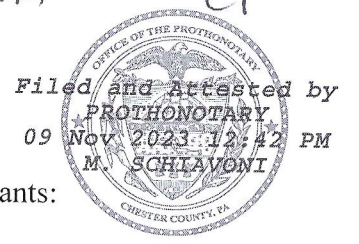


~~Jennifer Neff~~
~~Hon. Cheryl L. Austin~~

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THOMAS, THOMAS & HAFFER, LLP

By: Christopher M. Gallagher, Esquire
Attorney ID No. 318088

By: Paul B. Alexander, Esquire
Attorney ID No. 332819

Four Penn Center, Suite 1060
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103

267-861-7597 – Ext. 8519

E-Mail: cgallagher@tthlaw.com

E-Mail: palexander@tthlaw.com

Attorneys for Defendants:
Christopher Bashore,
West Goshen Township and
West Goshen Township Board of
Supervisors

DOREEN WOODWARD, Individually and
As Administrator of the ESTATE OF
JOHN DAVID WOODARD, JR.
Deceased, and as Parent and Natural Guardian
Of E.W., a Minor

vs.

CHRISTOPHER BASHORE, Individually
And in his capacity as WEST GOSHEN
TOWNSHIP MANAGER
WEST GOSHEN TOWNSHIP AND
WEST GOSHEN TOWNSHIP BOARD
OF SUPERVISORS

COURT OF COMMON PLEAS
CHESTER COUNTY, PA

DOCKET NO. 2023-08132-TT

**PRELIMINARY OBJECTIONS OF DEFENDANTS
TO PLAINTIFFS COMPLAINT**

Defendants, Christopher Bashore, individually and in his capacity as West Goshen Township Manager, West Goshen Township and West Goshen Township Board of Supervisors, by and through their counsel, Thomas, Thomas & Hafer LLP, hereby file the instant Preliminary Objections to Plaintiffs' Complaint, averring as follows:

I. FACTUAL & PROCEDURAL HISTORY

1. Plaintiffs filed a Complaint on October 19, 2023 following the suicide death of John David Woodward, Jr. (the “decedent”).

2. The decedent was employed by West Goshen Township as the Director and/or Superintendent of Public Works. See Complaint ¶ 10.

3. The Public works department was made up of the Parks Department, the Roads Department, and the Sewer Department. See Complaint ¶ 11.

4. Each department had a superintendent. See Complaint ¶ 13-15.

5. Plaintiffs allege that for a period of approximately 10 years there was an unwritten policy, identified as “snow time” or “squirrel time”, wherein public works employees were given credit for working when the township was otherwise closed so that they could use the “credit” at a later date. See Complaint ¶ 21-22, 26.

6. Plaintiffs allege that the unwritten policy was initiated by a prior township manager and a prior member of the board of supervisors. See Complaint ¶ 24.

7. Plaintiffs allege that this unwritten policy concerning the “snow/squirrel time” was tracked and awarded by the superintendents. See Complaint ¶ 23.

8. When the current township manager, Defendant Christopher Bashore, learned of the unwritten policy, he, acting on behalf of the Township, placed the decedent, and the other individuals identified by Plaintiffs as tracking the unwritten policy, on unpaid administrative leave on July 20, 2023. See Complaint ¶ 17, 18, 31, 32.

9. Plaintiffs allege that Defendant Bashore, acting on behalf of the Township, “*basically* threaten[ed] the superintendents with going to jail” at the July 20, 2023 meeting as the “snow/squirrel time” was a theft and payroll fraud. See Complaint ¶ 29.

10. Plaintiffs do not allege any action taken by Defendant Bashore that was outside the scope of his authority as township manager.

11. The decedent and the other superintendents were told to be available to answer questions while the “snow/squirrel time” policy was being investigated by an outside law firm. See Complaint ¶ 34, 35.

12. The decedent and the other superintendents were interviewed by the outside law firm regarding the “snow/squirrel time” policy during the week of July 24, 2023. See Complaint ¶ 36.

13. The decedent’s body was found at his residence on July 28, 2023, having died by suicide. See Complaint ¶ 49-50.

14. On or about October 19, 2023, Plaintiffs, Doreen Woodward, (1) individually, and as (2) administrator of the Estate of the decedent, as well as (3) parent and natural guardian of E.W, commenced the underlying action naming Christopher Bashore, individually, and in his capacity as West Goshen Township Manager as well as the West Goshen Township Board of Supervisors as defendants.

15. Plaintiffs, jointly, bring two (2) claims against Defendant Bashore, individually, and two (2) claims against Defendant Bashore in his capacity as West Goshen Township Manager and the West Goshen Township Board of Supervisors.

16. Defendants now file the following preliminary objections to Plaintiffs’ Complaint.

17. The legal insufficiency of a pleading, *i.e.*, failure to state a claim upon which relief may be granted, may be asserted by preliminary objections in the nature of a demurrer, pursuant to Pa.R.C.P. 1028(a)(4).

A. Governmental Immunity

1. Plaintiffs' negligence claims should be dismissed as Plaintiffs' claims do not fall into any of the exceptions to immunity under the Political Subdivisions Tort Claims Act?

18. A local agency¹ is generally immune from tort claims pursuant to the Political Subdivision Tort Claims Act (“PSTCA” or “Tort Claims Act”), which provides: “[N]o local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.” 42 Pa.C.S. § 8541.

19. Certain “limited exceptions” apply to this general grant of immunity, under which a local agency may be held liable for damages only if: (1) the damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available an immunity defense; (2) the injury was caused by the **negligent** acts of the local agency or its employee; **and** (3) the negligent acts fall within one of the enumerated exceptions to governmental immunity listed in [42 Pa.C.S.] 8542(b).” Falor v. Sw. Pa. Water Auth., 102 A.3d 584, 586-87 (Pa. Commw. 2014)(emphasis added).

20. It is the plaintiff’s burden to establish that an exception to immunity applies, by demonstrating that each of these three threshold requirements are met. Olick v. City of Easton, 2019 Pa. Commw. Unpub. LEXIS 183, at *6 (Pa. Commw. 2019) (citing Santori v. Snyder, 645 A.2d 443, 446-47 (Pa. Commw. 1994)).

21. The exceptions to immunity recognized by the PSTCA consist of negligent acts relating to: (1) the operation of a motor vehicle; (2) the care, custody, or control of personal property; (3) the care, custody, or control of real property; (4) a dangerous condition of trees, traffic

¹ In the context of the PSTCA, a “local agency” is defined as “[a] government unit other than the Commonwealth government.” 42 Pa.C.S. § 8501. West Goshen Township, which Plaintiffs identify in Paragraph 9 of the Complaint as “Second-Class Township”, is clearly a local agency within the meaning of the PSTCA.

controls, or street lights; (5) a dangerous condition of specified utility service facilities; (6) a dangerous condition of a street; (7) a dangerous condition of a sidewalk; (8) the care, custody, and control of animals; and (9) sexual abuse, where the plaintiff's injuries were caused by negligent acts or omission of the local agency. 42 Pa.C.S. §§ 8541, 8542(b), 8545. The Pennsylvania Supreme Court has repeatedly specified that, "because of the clear intent [of the Political Subdivision Tort Claims Act] to insulate government from exposure to tort liability, [these] exceptions to immunity are to be strictly construed." Walker v. Eleby, 842 A.2d 389, 392 (Pa. 2004) (quoting Lockwood v. City of Pittsburgh, 751 A.2d 1136, 1139 (Pa. 2000)).

22. As the text of the act clearly states, the immunity defense also applies to employees of local agencies. 42 Pa.C.S. § 8545; K.A. v. Abington Heights Sch. Dist., 28 F. Supp. 3d 356, 378 (M.D. Pa. 2014); Renk v. City of Pittsburgh, 641 A.2d 289, 292 (Pa. 1994).

23. In accordance with these principles, and as more fully detailed within Defendants' brief in support, Defendants respectfully submit that Plaintiffs' Negligent Infliction of Emotional Distress ("NIED") counts, Count I and II of the Complaint, do not fall within any of the PSTCA's exceptions to immunity, such that same should be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as a matter of law.

2. Plaintiffs' intentional tort claims should be dismissed as the Township Defendants are not subject to liability for intentional torts under the Political Subdivisions Tort Claims Act?

24. It is well-established that a local agency is not subject to liability for intentional torts, as a matter of law. See McCormick v. Dunkard Valley Joint Mun. Auth., 2008 Pa. Commw. Unpub. LEXIS 505, at *14 (Pa. Commw. 2008) (noting that, pursuant to the PSTCA, only negligent acts can expose a municipal authority to liability) *citing* Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Commw. 1995) and Petula v. Mellody, 631 A.2d 762 (Pa. Commw. 1993));

Weaver v. Franklin Cty., 918 A.2d 194, 202 (Pa. Commw. 2007)(under the PSTCA, a local agency's immunity is not waived with respect to intentional torts).

25. Plaintiffs allege that the Townships' actions of placing the decedent on unpaid administrative leave pending an investigation from an outside law firm for his involvement in the unwritten "snow/squirrel time" policy was done to intentionally cause the decedent emotional distress, humiliation, and embarrassment. See Complaint ¶¶ 74-75.

26. Because the PSTCA affords immunity to a local agency with respect to intentional acts, the claim set forth in Count IV of the Complaint should be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as a matter of law.²

B. The alleged actions of Defendant Bashore do not rise to the level of extreme and outrageous

27. Local agency employee immunity does not apply when the employee engages in "willful misconduct."

28. Willful misconduct in this regard is synonymous with "intentional tort". Schnupp v. Port Auth., 710 A.2d 1235, 1238 (Pa. Commw. 1998).

29. Presently, Plaintiffs bring a claim for Intentional Infliction of Emotional Distress ("IIED") against Defendants Bashore.

30. Although a cause of action for ("IIED") has never been formally recognized by the Pennsylvania Supreme Court, courts that have sustained such claims do so only where "the conduct [is] **so outrageous in character, and so extreme in degree, so as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.**" Hoy v. Angelone, 720 A 2d 745, 754 (Pa. 1998) (emphasis added); see also, Hoy v.

² In that same vein, punitive damages are not recoverable against local agencies. 42 Pa.C.S. § 8541; Feingold v. Se. Pa. Transp. Auth., 488 A.2d 284, 293 (Pa. Super. 1985)

Angelone, 691 A.2d 476, 482-83 (Pa. Super. 1998)(wherein the Pennsylvania Superior Court explained that, “[W]e have allowed recovery [for IIED] in only very egregious cases.”).

31. For purposes of establishing an IIED claim, “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.” Kazatsky v. King David Mem’l Park, 527 A.2d, 988, 997 (Pa. 1987).

32. Rather, recovery under an IIED theory is reserved “for only the most clearly desperate and ultra-extreme conduct.” Hoy, 691 A.2d at 754.

33. The initial determination of whether a defendant’s alleged conduct (if ultimately proven) is sufficiently extreme and outrageous to permit recovery is a legal issue to be decided by the court. Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997).

34. Here, Plaintiffs’ IIED claim is premised on the allegation that it was extreme and outrageous for Mr. Bashore to tell the decedent that his role in the unwritten “snow/squirrel time” policy could constitute theft and payroll fraud and that he could face jail time for same.

35. Simply, as a matter of law, and as more fully described in Defendants’ brief in support, Mr. Bashore’s actions cannot be deemed to be extreme and outrageous and properly dismissed, with prejudice, pursuant to Pa.R.C.P. 1028(a)(4).

C. Plaintiffs’ negligence infliction of emotional distress claims should be dismissed as Plaintiffs do not allege one of the four (4) scenarios required to bring a negligence infliction of emotional distress claim

36. Notwithstanding the Defendants’ immunity to Plaintiffs’ negligent infliction of emotional distress (“NIED”) claims, Plaintiffs’ Complaint also fails to state a claim for NIED against the Defendants.

37. In order to raise a claim for NIED in Pennsylvania, a plaintiff must demonstrate one of four factual scenarios: (1) that the defendant owed a fiduciary duty toward the plaintiff; (2) that the plaintiff suffered a physical impact that caused the emotional distress; (3) that the plaintiff was in the “zone of danger” of the defendant's tortious conduct; or (4) that the plaintiff witnessed a serious injury to a close family member. Doe v. Phila. Cmty. Health Alt. AIDS Task Force, 745 A.2d 25, 27 (Pa. Super. 2000), aff'd, 767 A.2d 548 (Pa. 2001).

38. Simply, Plaintiffs Complaint does not contain allegations that would fall into any of the four (4) recoverable scenarios for a NIED claim.

39. Accordingly, Defendants respectfully submit that Count I and II of the Complaint should also be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as the Complaint fails to state a claim.

D. West Goshen Township Board of Supervisors are properly dismissed from the underlying action as the board is not a separate entity from West Goshen Township

40. To the extent Plaintiffs' Complaint is not dismissed in its entirety under immunity grounds and for failing to state a claim, Defendants move for the dismissal of the West Goshen Board of Supervisors as the only proper Defendant in this action is West Goshen Township.

41. The Pennsylvania Rules of Civil Procedure provide that “[a]n action shall be brought by or against a political subdivision in its name.” Pa. R.C.P. No. 2102(b).

42. Plaintiffs' claims only implicate the decisions and actions of West Goshen Township acting through the Board of Supervisors.

43. Pursuant to Pa R. C. P. 2102(b) the proper defendant in Plaintiffs' claim is West Goshen Township, and only West Goshen Township. See Bolduc v. Bd. of Supervisors, 618 A.2d 1188, 1189 (Pa. Commw. Ct. 1992)(noting but not addressing violation of Pa.R.C.P. No. 2102(b)

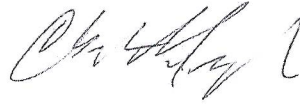
by naming board of supervisors rather than township as defendant); Philadelphia v. Glim, 613 A.2d 613, 616 (Pa. Commw. Ct. 1992)(trial court erred in not granting judgment on the pleadings in favor of police department because the police department may not be sued as though it were a legal entity separate from the city).

44. Accordingly, Defendants move to strike the Complaint as to the Board of Supervisors.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that this Honorable Court enter an order dismissing Plaintiffs' Complaint in its entirety, with prejudice, and entering judgment against Plaintiffs.

Respectfully submitted:

THOMAS, THOMAS & HAFER LLP



Date: November 9, 2023

By:

Christopher M. Gallagher, Esquire

THOMAS, THOMAS & HAFER LLP

Paul B. Alexander

Date: November 9, 2023

Paul B. Alexander, Esquire
Attorneys for Defendants,
Christopher Bashore, Individually and in his
Capacity as West Goshen Township Manager,
West Goshen Township and West Goshen
Township Board of Supervisors

THOMAS, THOMAS & HAFER, LLP

By: Christopher M. Gallagher, Esquire
Attorney ID No. 318088

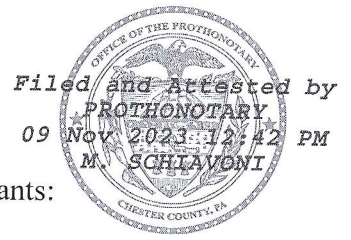
By: Paul B. Alexander, Esquire
Attorney ID No. 332819

Four Penn Center, Suite 1060
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103

267-861-7597 – Ext. 8519

E-Mail: cgallagher@tthlaw.com

E-Mail: palexander@tthlaw.com



Attorneys for Defendants:
Christopher Bashore,
West Goshen Township and
West Goshen Township Board of
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DOREEN WOODWARD, Individually and
As Administrator of the ESTATE OF
JOHN DAVID WOODARD, JR.
Deceased, and as Parent and Natural Guardian
Of E.W., a Minor

vs.

CHRISTOPHER BASHORE, Individually
And in his capacity as WEST GOSHEN
TOWNSHIP MANAGER
WEST GOSHEN TOWNSHIP AND
WEST GOSHEN TOWNSHIP BOARD
OF SUPERVISORS

COURT OF COMMON PLEAS
CHESTER COUNTY, PA

DOCKET NO. 2023-08132-TT

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS OF DEFENDANTS
TO PLAINTIFFS COMPLAINT**

Defendants, Christopher Bashore, individually and in his capacity as West Goshen Township Manager, West Goshen Township and West Goshen Township Board of Supervisors, by and through their counsel, Thomas, Thomas & Hafer LLP, hereby file the instant Brief in Support of their Preliminary Objections to Plaintiffs' Complaint.

I. FACTUAL & PROCEDURAL HISTORY

The decedent, John David Woodward, Jr., was employed by West Goshen Township as the Director and/or Superintendent of Public Works. See Complaint ¶ 10. The Public works department was made up of the Parks Department, the Roads Department, and the Sewer Department. See Complaint ¶ 11. Each department had a superintendent. See Complaint ¶ 13-15.

Plaintiffs allege that for a period of approximately 10 years there was an unwritten policy, identified as “snow time” or “squirrel time”, wherein public works employees were given credit for working when the township was otherwise closed so that they could use the “credit” at a later date. See Complaint ¶ 21-22, 26.

Plaintiffs allege that the unwritten policy was initiated by a prior township manager and a prior member of the board of supervisors. See Complaint ¶ 24. Plaintiffs allege that this unwritten policy concerning the “snow/squirrel time” was tracked and awarded by the superintendents. See Complaint ¶ 23. When the current township manager, Defendant Christopher Bashore, learned of the unwritten policy, he, acting on behalf of the Township, placed the decedent, and the other individuals identified by Plaintiffs as tracking the unwritten policy, on unpaid administrative leave on July 20, 2023. See Complaint ¶ 17, 18, 31, 32. Plaintiffs allege that Defendant Bashore, acting on behalf of the Township, “*basically* threaten[ed] the superintendents with going to jail” at the July 20, 2023 meeting as the “snow/squirrel time” was a theft and payroll fraud. See Complaint ¶ 29. Plaintiffs do not allege any action taken by Defendant Bashore that was outside the scope of his authority as township manager.

The decedent and the other superintendents were told to be available to answer questions while the “snow/squirrel time” policy was being investigated by an outside law firm. See Complaint ¶ 34, 35. The decedent and the other superintendents were interviewed by the outside

law firm regarding the “snow/squirrel time” policy during the week of July 24, 2023. See Complaint ¶ 36.

The decedent’s body was found at his residence on July 28, 2023, having died by suicide. See Complaint ¶ 49-50.

On or about October 19, 2023, Plaintiffs, Doreen Woodward, (1) individually, and as (2) administrator of the Estate of the decedent, as well as (3) parent and natural guardian of E.W, commenced the underlying action naming Christopher Bashore, individually, and in his capacity as West Goshen Township Manager as well as the West Goshen Township Board of Supervisors as defendants.

Plaintiffs, jointly, bring two (2) claims against Defendant Bashore, individually, and two (2) claims against Defendant Bashore in his capacity as West Goshen Township Manager and the West Goshen Township Board of Supervisors.

Count I – Plaintiffs vs. Christopher Bashore, individually – Negligent Infliction of Emotional Distress

Plaintiffs allege the Defendant Bashore threatened¹ the decedent with jail time for his involvement in in the unwritten “snow/squirrel time” policy and that he was negligent for doing so. See Complaint ¶ 55. Plaintiffs allege that the threat of discipline caused the decedent emotional distress, which led to the decedent’s suicide. See Complaint ¶ 57. Plaintiffs allege that the decedent’s death caused Ms. Woodward and E.W. emotional distress. See Complaint ¶ 58, 60.

¹ Plaintiffs at paragraph 29 allege that Defendant Bashore “basically” threatened the decedent with jail while paragraph 55 alleges that the threat of jail time was made. It is unclear from the pleadings whether Plaintiffs are alleging that the threat of jail time actually occurred given the discrepancy. Regardless, neither Defendant Bashore nor West Goshen Township had the authority to send the decedent or supervisors to jail.

Count III – Plaintiffs vs. Christopher Bashore, individually – Intentional Infliction of Emotional Distress

Plaintiffs also allege that Defendant Bashore’s actions, which were in the course of his authority as township manager, were “extreme, outrageous, intentional, and reckless” and that they support a claim for intentional infliction of emotional distress and an award of punitive damages. See Complaint ¶ 69-72.

Count II – Plaintiffs vs. West Goshen Township Board of Supervisors and Christopher Bashore in his role as West Goshen Township Manager – Negligent Infliction of Emotional Distress

Plaintiffs allege that the Township Defendants authorized Defendant Bashore to place the decedent on administrative leave prior to the conclusion of the investigation into the “snow/squirrel time” policy and that they were negligent in doing so. See Complaint ¶ 62-64. Plaintiffs allege that these actions caused emotional distress to the decedent and his family. See Complaint ¶ 63.

Count IV – Plaintiffs vs. West Goshen Township Board of Supervisors and Christopher Bashore in his role as West Goshen Township Manager – Intentional Infliction of Emotional Distress

Finally, Plaintiffs also allege that the Township Defendants’ actions were “extreme, outrageous, intentional, and reckless” and that they support a claim for intentional infliction of emotional distress and an award of punitive damages. See Complaint ¶ 73-75.

II. QUESTIONS PRESENTED

A.1. Whether Plaintiffs’ negligence claims should be dismissed as Plaintiffs’ claims do not fall into any of the exceptions to immunity under the Political Subdivisions Tort Claims Act?

Suggested Answer: Yes

A.2. Whether Plaintiffs’ intentional tort claims should be dismissed as the Defendants are not subject to liability for intentional torts under the Political Subdivisions Tort Claims Act?

Suggested Answer: Yes

B. Whether Plaintiffs' intentional infliction of emotional distress claim against Defendant Bashore should be dismissed as the alleged conduct is not extreme and outrageous?

Suggested Answer: Yes

C. Whether Plaintiffs' negligence infliction of emotional distress claims should be dismissed as Plaintiffs do not allege one of the four (4) scenarios required to bring a negligence infliction of emotional distress claim?

Suggested Answer: Yes

D. Whether West Goshen Township Board of Supervisors are properly dismissed from the underlying action as the board is not a separate entity from West Goshen Township?

Suggested Answer: Yes

III. ARGUMENT

The legal insufficiency of a pleading, *i.e.*, failure to state a claim upon which relief may be granted, may be asserted by preliminary objections in the nature of a demurrer, pursuant to Pa.R.C.P. 1028(a)(4). When a party asserts preliminary objections in the nature of a demurrer, the court's review is limited to the content of the pleading at issue. In re Adoption of S.P.T., 783 A.2d 779, 782 (Pa. Super. 2001). Thus, the court may determine only whether the allegations set forth in the pleading are sufficient to establish a cause of action recognized at law. Id. Although the court must accept as true all material facts set forth in the pleading, as well as any inferences which may reasonably be drawn therefrom, the court need not consider the pleader's conclusions of law, unwarranted inferences, opinions, or argumentative allegations. Wagner v. Waitlevertch, 774 A.2d 1247, 1250 (Pa. Super. 2001). A demurrer is properly granted where no recovery is possible as a matter of law based on the factual averments set forth in the pleading or any reasonable inferences supported by such averments. Price v. Brown, 680 A.2d 1149, 1151 (Pa. 1996).

The defense of immunity may be raised on preliminary objections where the defense is clear on the face of the Complaint. Miller v. Kestler, 582 A.2d 416 (Pa. Cmwlth. 1990). In fact, the appellate courts have explained that a government agency may raise the defense of governmental immunity at any time to prevent unnecessary litigation. Lyons v. City of Philadelphia, 633 A.2d 1006, 1010 (Pa. Cmwlth. 1993).

A. Governmental Immunity

1. Plaintiffs' negligence claims do not fall within any of the enumerated exceptions to governmental immunity

Claims asserted against a municipal government are subject to the provisions of the Political Subdivisions Tort Claims Act ("PSTCA"), 42 Pa.C.S. 8541, *et seq.* Thereunder, a local agency² is generally immune from tort claims pursuant to the Political Subdivision Tort Claims Act ("PSTCA" or "Tort Claims Act"), which provides: "[N]o local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S. § 8541. "The clear intent of the Tort Claims Act was to insulate the government from exposure to tort liability....Tort immunity [thereunder] is a non-waivable, absolute defense." McShea v. City of Phila., 995 A.2d 334, 341 (Pa. 2010). "Whether the [defendant township] is immune under the Tort Claims Act is a pure question of law." Metro. Edison Co. v. City of Reading, 162 A.3d 414, 419 n.4 (Pa. 2017).

Certain "limited exceptions" apply to this general grant of immunity, under which a local agency may be held liable for damages only if: (1) the damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having

² In the context of the PSTCA, a "local agency" is defined as "[a] government unit other than the Commonwealth government." 42 Pa.C.S. § 8501. West Goshen Township, which Plaintiffs identify in Paragraph 9 of the Complaint as "Second-Class Township", is clearly a local agency within the meaning of the PSTCA.

available an immunity defense; (2) the injury was caused by the **negligent** acts of the local agency or its employee; **and** (3) the negligent acts fall within one of the enumerated exceptions to governmental immunity listed in [42 Pa.C.S.] 8542(b).” Falor v. Sw. Pa. Water Auth., 102 A.3d 584, 586-87 (Pa. Commw. 2014)(emphasis added). It is the plaintiff’s burden to establish that an exception to immunity applies, by demonstrating that each of these three threshold requirements are met. Olick v. City of Easton, 2019 Pa. Commw. Unpub. LEXIS 183, at *6 (Pa. Commw. 2019) (citing Santori v. Snyder, 645 A.2d 443, 446-47 (Pa. Commw. 1994)).

The exceptions to immunity recognized by the PSTCA consist of negligent acts relating to: (1) the operation of a motor vehicle; (2) the care, custody, or control of personal property; (3) the care, custody, or control of real property; (4) a dangerous condition of trees, traffic controls, or street lights; (5) a dangerous condition of specified utility service facilities; (6) a dangerous condition of a street; (7) a dangerous condition of a sidewalk; (8) the care, custody, and control of animals; and (9) sexual abuse, where the plaintiff’s injuries were caused by negligent acts or omission of the local agency. 42 Pa.C.S. §§ 8541, 8542(b), 8545. The Pennsylvania Supreme Court has repeatedly specified that, “because of the clear intent [of the Political Subdivision Tort Claims Act] to insulate government from exposure to tort liability, [these] exceptions to immunity are to be strictly construed.” Walker v. Eleby, 842 A.2d 389, 392 (Pa. 2004) (quoting Lockwood v. City of Pittsburgh, 751 A.2d 1136, 1139 (Pa. 2000)).

As the text of the act clearly states, the immunity defense also applies to employees of local agencies. 42 Pa.C.S. § 8545; K.A. v. Abington Heights Sch. Dist., 28 F. Supp. 3d 356, 378 (M.D. Pa. 2014); Renk v. City of Pittsburgh, 641 A.2d 289, 292 (Pa. 1994).

In accordance with these principles, Defendants respectfully submit that Plaintiffs’ Negligent Infliction of Emotional Distress (“NIED”) counts, Count I and II of the Complaint, do

not fall within any of the PSTCA's exceptions to immunity, such that same should be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as a matter of law.

Admittedly, an employees' immunity does not extend to acts that are judicially determined to be crimes, actual fraud, actual malice, or willful misconduct. 42 Pa.C.S. § 8550. Presently, Plaintiffs try to overcome Mr. Bashore's immunity from suit as the township manager by alleging in their NIED count against him that his conduct was both negligent and intentional. While pleading in the alternative is permitted under the rules of civil procedure, as Plaintiffs have done by alleging claims for both Negligent Infliction of Emotional Distress and Intentional Infliction of Emotional Distress, any allegations of intentional conduct within Plaintiffs' NIED claim are superfluous and not proper for consideration with respect to the present preliminary objection with regard to the NIED claim. Any argument to the contrary would result in the illogical scenario wherein Plaintiffs are bringing four intentional infliction of emotional distress claims.

2. Local agencies are not subject to liability for intentional torts

It is well-established that a local agency is not subject to liability for intentional torts, as a matter of law. See McCormick v. Dunkard Valley Joint Mun. Auth., 2008 Pa. Commw. Unpub. LEXIS 505, at *14 (Pa. Commw. 2008) (noting that, pursuant to the PSTCA, only negligent acts can expose a municipal authority to liability) *citing* Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Commw. 1995) and Petula v. Mellody, 631 A.2d 762 (Pa. Commw. 1993)); Weaver v. Franklin Cty., 918 A.2d 194, 202 (Pa. Commw. 2007)(under the PSTCA, a local agency's immunity is not waived with respect to intentional torts).

Plaintiffs allege that the Townships' actions of placing the decedent on unpaid administrative leave pending an investigation from an outside law firm for his involvement in the

unwritten “snow/squirrel time” policy was done to intentionally cause the decedent emotional distress, humiliation, and embarrassment. See Complaint ¶ 74-75.

Because the PSTCA affords immunity to a local agency with respect to intentional acts, the claim set forth in Count IV of the Complaint should be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as a matter of law.³

B. The alleged actions of Defendant Bashore do not rise to the level of extreme and outrageous

As indicated above, local agency employee immunity does not apply when the employee engages in “willful misconduct.” Willful misconduct in this regard is synonymous with “intentional tort”. Schnupp v. Port Auth., 710 A.2d 1235, 1238 (Pa. Commw. 1998)

Although a cause of action for intentional infliction of emotional distress (“IIED”) has never been formally recognized by the Pennsylvania Supreme Court, courts that have sustained such claims do so only where “the conduct [is] **so outrageous in character, and so extreme in degree, so as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.**” Hoy v. Angelone, 720 A 2d 745, 754 (Pa. 1998) (emphasis added); see also, Hoy v. Angelone, 691 A.2d 476, 482-83 (Pa. Super. 1998)(wherein the Pennsylvania Superior Court explained that, “[W]e have allowed recovery [for IIED] in only very egregious cases.”). For purposes of establishing an IIED claim, “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.” Kazatsky v. King David Mem’l Park, 527 A.2d, 988, 997 (Pa. 1987). Rather, recovery under an IIED theory

³ In that same vein, punitive damages are not recoverable against local agencies. 42 Pa.C.S. § 8541; Feingold v. Se. Pa. Transp. Auth., 488 A.2d 284, 293 (Pa. Super. 1985)

is reserved “for only the most clearly desperate and ultra-extreme conduct.” Hoy, 691 A.2d at 754.

The initial determination of whether a defendant’s alleged conduct (if ultimately proven) is sufficiently extreme and outrageous to permit recovery is a legal issue to be decided by the court. Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997).

Examples of conduct that courts have deemed sufficiently outrageous to sustain an IIED claim include: wantonly hiding and improperly disposing of the body of a minor who was struck by a motor vehicle, giving rise to a cause of action by his parents (Papieves v. Lawrence, 263 A.2d 118 (Pa. 1970)); a doctor intentionally fabricating medical records to misstate a patient’s cause of death and suggest that he had been killed by a third person, who was then indicted for murder (Banyas v. Lower Bucks Hospital, 437 A.2d 1236 (1981)); a nuclear power company personnel deliberately venting deadly radioactive steam into a tunnel where a contractor was known to be working, then concealing the same by falsely telling him that meter readings showed no exposure to radiation (Field v. Phila. Elec. Co., 565 A.2d 1170, 1184 (Pa. 1989)).

On the other hand, examples of conduct that courts have deemed insufficient include: school officials conducting a criminal investigation, which included holding a student “in the in-school suspension room and [vice-principal’s] office for over seven hours, question[ing] him during this time period, and did not allow him to call his parents or an attorney, or inform him of his alleged right to do so” while investigating whether he was involved in the sale of drugs (K.A. v. Abington Heights Sch. Dist., 28 F. Supp. 3d 356, 377 (M.D. Pa. 2014)); and pursuing a civil suit and commencing criminal charges to collect monies believed to be owed (Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997)).

Here, Plaintiffs' IIED claim is premised on the allegation that it was extreme and outrageous for Mr. Bashore to tell the decedent that his role in the unwritten "snow/squirrel time" policy could constitute theft and payroll fraud and that he could face jail time for same. Simply, as a matter of law, Mr. Bashore's actions cannot be deemed to be extreme and outrageous as the actions do not even begin to approach those in the cases of Papieves, Banvas, and Field. Rather, they are much more similar to the cases of K.A. and Strickland, where criminal investigations were actually pursued, not merely threatened. Accordingly, Plaintiffs' IIED claim against Defendant Bashore is properly dismissed, with prejudice, pursuant to Pa.R.C.P. 1028(a)(4).

C. Plaintiffs' Complaint fails to state a claim for negligent infliction of emotional distress

Notwithstanding the Defendants' immunity to Plaintiffs' negligent infliction of emotional distress ("NIED") claims, Plaintiffs' Complaint also fails to state a claim for NIED against the Defendants.

In order to raise a claim for NIED in Pennsylvania, a plaintiff must demonstrate one of four factual scenarios: (1) that the defendant owed a fiduciary duty toward the plaintiff; (2) that the plaintiff suffered a physical impact that caused the emotional distress; (3) that the plaintiff was in the "zone of danger" of the defendant's tortious conduct; or (4) that the plaintiff witnessed a serious injury to a close family member. Doe v. Phila. Cmty. Health Alt. AIDS Task Force, 745 A.2d 25, 27 (Pa. Super. 2000), aff'd, 767 A.2d 548 (Pa. 2001).

Simply, Plaintiffs Complaint does not contain allegations that would fall into any of the four (4) recoverable scenarios for a NIED claim. Accordingly, Defendants respectfully submit that Count I and II of the Complaint should also be dismissed with prejudice pursuant to Pa.R.C.P. 1028(a)(4), as the Complaint fails to state a claim.

D. The Board of Supervisors is not a proper defendant

To the extent Plaintiffs' Complaint is not dismissed in its entirety under immunity grounds and for failing to state a claim, Defendants move for the dismissal of the West Goshen Board of Supervisors as the only proper Defendant in this action is West Goshen Township.

The Pennsylvania Rules of Civil Procedure provide that "[a]n action shall be brought by or against a political subdivision in its name." Pa. R.C.P. No. 2102(b).

Plaintiffs' claims only implicate the decisions and actions of West Goshen Township acting through the Board of Supervisors. Pursuant to Pa R. C. P. 2102(b) the proper defendant in Plaintiffs' claim is West Goshen Township, and only West Goshen Township. See Bolduc v. Bd. of Supervisors, 618 A.2d 1188, 1189 (Pa. Commw. Ct. 1992)(noting but not addressing violation of Pa.R.C.P. No. 2102(b) by naming board of supervisors rather than township as defendant); Philadelphia v. Glim, 613 A.2d 613, 616 (Pa. Commw. Ct. 1992)(trial court erred in not granting judgment on the pleadings in favor of police department because the police department may not be sued as though it were a legal entity separate from the city).

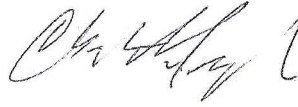
Accordingly, Defendants move to strike the Complaint as to the Board of Supervisors.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Honorable Court enter an order dismissing Plaintiffs' Complaint in its entirety, with prejudice, and entering judgment against Plaintiffs.

Respectfully submitted:

THOMAS, THOMAS & HAFFER, LLP



Date: November 9, 2023

By:

Christopher M. Gallagher, Esquire

THOMAS, THOMAS & HAFFER, LLP

Paul B. Alexander

Date: November 9, 2023

Paul B. Alexander, Esquire
Attorneys for Defendants,
Christopher Bashore, Individually and in his
Capacity as West Goshen Township Manager,
West Goshen Township and West Goshen
Township Board of Supervisors