

Benjamin, Justice, concurring in result:

I agree with the decision to affirm the trial court, but for reasons separate from those set forth in Justice Loughry’s decision. I agree with my colleagues and with Judge Cuomo crediting the complaint as having been artfully drafted. I also agree with the circuit court that artfully pled claims do not trump facts when considering immunity issues.

After considering the nature of the petitioner’s claims, the circuit court dismissed this matter with prejudice on the basis that *both* statutory and common law immunity barred petitioner’s claims. Specifically, with respect to common law immunity, the circuit court relied upon *Wolfe v. City of Wheeling*, 182 W. Va. 253, 378 S.E.2d 307 (1989), to conclude that there was no special duty owed to petitioner either pled or present, thereby requiring dismissal. Petitioner appealed the order below only with respect to the circuit court’s statutory immunity ruling. Petitioner did not raise the common law immunity portion of the circuit court’s ruling in her Petition for appeal. In her Reply Brief herein, in response to respondent’s arguments, she contends that because of the manner in which her complaint was pled, common law immunity is not at issue. However, being an independent basis of the circuit court’s decision below, the failure to appeal the common law immunity portion of the circuit court’s order requires affirmation of the dismissal of the matter below. I, therefore, concur insofar as this Court affirms the dismissal of this matter.