IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

JASON RYAN MOORHEAD,
Plaintiff,

v. **//CIVIL ACTION NO. 18-C-71**

WEST VIRGINIA ARMY NATIONAL GUARD, A West Virginia State Agency, and WEST VIRGINIA MOUNTAINEER CHALLENGE ACADEMY, an Affiliate of the West Virginia Army National Guard,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter came before the Court, Judge Steven L. Shaffer, on February 23, 2022, and June 22, 2022, pursuant to a hearing on the parties' dispositive motions. The Plaintiff appeared in person and by counsel, Steven P. New and Joshua D Wiseman. The Defendant appeared by counsel, Christopher Ross and Omar Ahmad. For the reasons detailed below, the Court **GRANTS** the *Defendants' Motion for Summary Judgment* and thus the remaining motions need not be addressed.

Factual and Procedural Background

The Plaintiff, Jason Ryan Moorhead ("Mr. Moorhead") filed the *Complaint* against Defendants West Virginia Army National Guard and West Virginia Mountaineer Challenge Academy on July 16, 2018.[1] In the *Complaint*, Mr. Moorhead alleged the following counts against the Defendants: Failure to Notify Parent; Failure to Seek Proper Medical Treatment; Failure to Provide a Safe Environment; Failure to Supervise; Breach of Fiduciary Duty; and Unconscionable Conduct. These claims arise from the Plaintiff's participation in the Mountaineer Challenge Academy in July of 2015. The Defendants filed the *Answer of Defendant West Virginia Army*

[1] Attorney Karen S. Hatfield filed the *Complaint* on behalf of the Plaintiff. On October 25, 2018, Plaintiff's current counsel filed their *Notice of Appearance*.

National Guardian and West Virginia Mountaineer Challenge Academy to Plaintiff's Complaint on August 22, 2018.

The Plaintiff alleged in his *Complaint* that he was not given adequate time to properly exit the bed according to the approved method and thus exited the bunk bed in an unapproved manner, resulting in injury. In its pleadings and argument since, the Plaintiff argues that other candidates also improperly jumped from the top bunk to the floor and that Mountaineer Challenge Academy staff, who were supervising, did not correct this improper method of exiting bunk beds.

On July 13, 2021, the Plaintiff filed *Plaintiff's Motion for Leave to File Amended Complaint* requesting that he be permitted to amend the *Complaint* to set forth more detailed allegations. The Defendants opposed this motion. The Court held a hearing on this motion on August 20, 2021, during which the Plaintiff withdrew his motion. *See Order on Plaintiff's Motion for Leave to File Amended Complaint,* entered September 3, 2021.

Defendants filed *Defendants' Motion for Summary Judgment* on December 1, 2021. The Defendants set forth the following arguments in support of *Defendants' Motion for Summary Judgment:* (1) waiver of right to bring action; (2) qualified immunity bars the Plaintiff's negligence claim against the Defendants; (3) the Defendants are not liable for any claims against Preston Memorial Hospital or its employees; (4) the Defendants are not liable for injuries sustained prior to the Plaintiff's enrollment with the Mountaineer Challenge Academy; (5) Plaintiff's medical negligence claim is barred by the Medical Professional Liability Act. The Defendants also raised the qualified immunity defense in *Defendants' Motion to Dismiss,* which was filed on December 1, 2021.

On February 7, 2022, the Plaintiff filed *Motion for Partial Summary Judgment of Plaintiff Jason Ryan Moorhead.* In his motion, the Plaintiff argues he is entitled to summary judgment on

the following matters under the negligence standard: (1) the Plaintiff's medical injuries were caused by the Defendant's breach of duty to the Plaintiff; and (2) the Plaintiff suffered damages due to the injuries sustained or aggravated while attending the Mountaineer Challenge Academy Program.

The Court held a hearing on February 23, 2022, and on June 22, 2022, during which counsel presented extensive proffer and arguments. The Plaintiff and Defendants agree on the following facts. The Defendant Mountaineer Challenge Academy accepted the Plaintiff, Jason Moorhead, to its program in 2015 as a cadet candidate.[2] Mr. Moorhead began the program on July 12, 2015, which initially consisted of an orientation and acclimation period. These candidates undergo an "acclimation period" consisting of two weeks to determine whether candidates become cadets and remain in the program. In essence, the acclimation period is again to a probationary period during which a candidate may voluntarily leave or be discharged from the program.

At some point during the acclimation period, Mountaineer Challenge Academy staff instructed the candidates to its program, including Mr. Moorhead, on the proper means to exit the bunk beds in which the candidates slept. The Defendants assert that the proper means to exit a top bunk was to sit upright, turn to face down on the bed, and then slide off the bunk on one's stomach. During the acclimation period, Mr. Moorhead exited the bunk in a manner contrary to the instructed manner, jumping from the top bunk onto the concrete floor. This is the incident during which the Plaintiff states he suffered injury.

Counsel agrees regarding the timeline for the timeline for when events occurred.[3] Mr.

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[2] Mountaineer Challenge Academy proffers that juveniles accepted to their program are considered "candidates" to become "cadets.".

[3] In his *Complaint*, the Plaintiff alleged the incident occurred on July 15, 2015. *Complaint*, ¶ 7. However, at the June 22, 2022, hearing, counsel agreed to the timeline. It is the timeline as proffered and agreed to by counsel that

Moorhead participated in orientation for the Mountaineer Challenge Academy on July 12, 2015. He underwent a routine physical examination by Preston Memorial Hospital staff on July 15, 2015, as part of his introduction to the program. On July 17, 2015, Mr. Moorhead exited the top bunk in an unapproved manner. Then on July 18, 2015, Cadre[4] Samuels, a Mountaineer Challenge Academy employee, took Mr. Moorhead to see a Preston Memorial Hospital nurse. On that same date, an unknown individual provided Mr. Moorhead with a pair of crutches.[5] On July 20, 2015, Preston Memorial Hospital Nurse Practitioner Brian Steffke examined Mr. Moorhead and directed that he be placed on lower body restriction, meaning a restriction on physical activity. On July 22, 2015, Dr. Pumphrey with Preston Memorial Hospital examined Mr. Moorhead and cleared him of any physical restrictions. On July 22, 2015, the Mountaineer Challenge Academy discharged Mr. Moorhead from their program. Between July 19, 2015, and July 22, 2015, Mountaineer Challenge Academy staff issued 19 write-ups for Mr. Moorhead.

Legal Standard

A motion for summary judgment should only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c).

> [I]n light of the jury's role in resolving questions of conflict and credibility, we have admonished that this rule should be applied with great caution. In cases of substantial doubt, the safer course of action[] is to deny the motion and proceed to trial. Thus, if the evidence would allow a reasonable jury to return a verdict for the nonmoving party, then summary judgment will not lie.

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this Court uses in this Order.

[4] "Cadre" is a title used by employees of the Mountaineer Challenge Academy.

[5] Neither the Plaintiff nor the Defendants were clear on who provided Mr. Moorhead with the pair of crutches.

Powderidge Unit Owners Ass'n v. Highland Properties, Ltd., 196 W.Va. 692, 698, 474 S.E.2d 872, 878 (1996) (citations omitted). However, "Rule 56 was incorporated into West Virginia civil practice for good reason, and circuit courts should not hesitate to summarily dispose of litigation where the requirements of the Rule are satisfied." *Jividen v. Law*, 194 W. Va. 705, 713, 461 S.E.2d 451, 459 (1995).

Once a party has moved for summary judgment and shown by affirmative evidence that no genuine issue of material fact exists,

> the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the *West Virginia Rules of Civil Procedure*.

Syl. pt. 3, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995).

Discussion

The Court **FINDS** that no genuine issues of material of fact arise in this matter due to the agreed facts by counsel and the parties. Furthermore, the issue of whether qualified immunity applies is a question of law for this Court to determine.[6]

Qualified immunity is a legal doctrine granting immunity to government actors for performing (or not performing) discretionary duties in an official capacity. Exceptions to this general immunity from liability include where the plaintiff demonstrates that the acts or omissions are "in violation of clearly established statutory or constitutional rights or law of which a reasonable person would have known or are otherwise fraudulent, malicious, or

[6] The Court notes that the Defendants also raise the qualified immunity doctrine in *Defendants' Motion to Dismiss*. However, because the parties presented the Court with agreed upon facts, which go beyond the four corners of the Plaintiff's *Complaint*, this Court finds that the appropriate procedural method to consider the qualified immunity defense is through *Defendants' Motion for Summary Judgment* rather than *Defendants' Motion to Dismiss*.

oppressive [. . .]" *West Virginia State Police v. J.H.*, 244 W.Va. 720, 736, 856 S.E.2d 679,695 (2021) (quoting Syl. Pt. 11, *W.Va. Regional Jail and Correctional Facility Authority v. A.B.* 234 W.Va. 492, 766 S.E.2d 751 (2014)).

To determine whether qualified immunity applies, the Court must consider whether "(1) a state agency or employee is involved; (2) there is an insurance contract waiving the defense of qualified immunity; (3) the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1 *et seq.* would apply; (4) the matter involves discretionary judgments, decisions, and/or actions; (5) the acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive; and (6) the State employee was acting within his/her scope of employment." *West Virginia Regional Jail and Correctional Facility Authority v. Estate of Grove.* 244, W.Va. 273, 283, 852 S.E.2d 773, 783 (2020) (citing generally to *West Virginia Regional Jail and Correctional Facility Authority v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014)).

There is no question that this matter involves a state agency. The Plaintiff and Defendants agree that the Defendant West Virginia Army National Guard is an agency of the State of West Virginia. They also agree that the Defendant West Virginia Mountaineer Challenge Academy is an affiliate of the Defendant West Virginia Army National Guard. *See Complaint,* ¶ 2, and *Answer of Defendant West Virginia Army National Guard and West Virginia Mountaineer Challenge Academy to Plaintiff's Complaint.* Neither party has asserted that an insurance contract exists that would waive the defense of qualified immunity.

The Governmental Tort Claims and Insurance Reform Act was enacted to limit liability of political subdivisions and provide insurance coverage to political subdivisions for any

liability they may incur. W.Va. Code § 29-12A-1. A "political subdivision" includes the following: county commission; municipality; county board of education; a corporation established by one or more counties or municipalities; public service districts; combined city-county health departments; volunteer fire departments, and emergency service organizations. W.Va. Code § 29-12A-3(c). "State" includes state agencies and explicitly is not included in the definition of "political subdivisions." *Id* at (e). *See also W.Va. Regional Jail and Correctional Facility Authority v. A.B.* 234 W.Va. 492, 766 S.E.2d 751, n. 4 (2014). By the clear language of the statute, the Governmental Tort Claims and Insurance Reform Act does not apply to this case.

The next factor is whether the Defendants' actions involved discretionary judgments, decisions, and/or actions. The Plaintiff asserted the following counts in his *Complaint*: Failure to Notify Parent; Failure to Seek Proper Medical Treatment; Failure to Provide a Safe Environment; Failure to Supervise; Breach of Fiduciary Duty; and Unconscionable Conduct. In this matter, the Plaintiff has not identified any specific employees or officials of the Mountaineer Challenge whose actions of which he complains. Rather, he attributes actions by what are likely multiple individuals to the Defendants as a whole. First, this Court will address whether the Mountaineer Challenge Academy's actions were discretionary. If they were discretionary, Court will address the Mountaineer Challenge Academy's acts or omissions to determine if they violate clearly established statutory or constitutional rights; laws which a reasonable person would have known; or whether the acts or omissions are otherwise fraudulent, malicious, or oppressive.

The key issue here is what Plaintiff portrays as the Mountaineer Challenge's Academy's failure to ensure the Plaintiff properly exited his bunk bed, along with the subsequent alleged

failure to notify parent, failure to seek proper medical treatment; failure to provide a safe environment, failure to supervise; breach of fiduciary duty; and unconscionable conduct.

Longstanding case law establishes that "[i]f a public officer is either authorized or required, in the exercise of his judgment and discretion, to make a decision and to perform acts in the making of that decision, and the decision and acts are within the scope of his duty, authority, and jurisdiction, he is not liable for negligence or other error in the making of that decision, at the suit of a private individual claiming to have been damaged thereby." Syl Pt. 4, *West Virginia Regional Jail and Correction Authority v. A.B.*, 234 W.Va. 492, 766 S.E.2d 751 (2014) (quoting Syl. Pt 4, *Clark v. Dunn*, 195 W.Va. 272, 465 S.E.2d 374 (1995)).

Discretionary function is a broad range into which many workplace duties fall. For instance, negligent training and supervision of employees is considered discretionary. *See West Virginia State Police v. J.H.*, 244 W.Va. 720, 856 S.E.2d 679 (2021); *West Virginia Regional Jail and Correction Authority v. A.B.*, 234 W.Va. 492, 766 S.E.2d 751 (2014). The investigative process into allegations of child abuse and neglect by the Child Protective Services ("CPS") division of the West Virginia Department of Health and Human Resources is discretionary and thus CPS workers are entitled to qualified immunity for negligence. *See Crouch v. Gillespie*, 240 W.Va. 229, 809 S.E.2d 699 (2018). Even if the CPS worker violated specific policy guidelines issued by the Department of Health and Human Resources, the Supreme Court found that the process itself was discretionary. *Id.* Likewise, allegations of negligent monitoring, enforcement, and licensing of behavior health facilities regulations promulgated by the West Virginia Department of Health and Human Resources are insufficient to overcome qualified immunity when the those duties have been placed in the relevant agency Secretary's discretion. *West Virginia Department of Health and Human Resources v. Payne*,

231 W.Va. 563, 746 S.E.2d 554 (2013). Similarly, while a state employer may have a duty to maintain a safe workplace, "the method and manner in which such duty is carried out involves an exercise of discretion." *West Virginia Board of Edu. v. Croaff*, No. 16-0532, 2017 WL 2172009 (2017). In *W.Va. Regional Jail and Correctional Facility Authority v. A.B.* 234 W.Va. 492, 766 S.E.2d 751 (2014), the West Virginia Supreme Court of Appeals found that a corrections officer's general functions are "*broadly* characterized as discretionary, requiring the use of his discretionary judgments and decisions." *Id* at 509, 768. (emphasis in original)

Based on this case law, this Court must then determine whether the allegations of failure to seek proper medical treatment, failure to provide a safe environment, failure to supervise, breach of fiduciary duty, failure to notify parent, and unconscionable conduct fall within the range of discretionary duties. The concrete actions (or inactions) by the Mountaineer Challenge involve the supervision of the Plaintiff when exiting his bunk bed and his subsequent medical treatment. The remainder of the Plaintiff's claims flow from these two claims, which this Court will address first.

Here, there are no disagreements that Mountaineer Challenge staff supervised the candidates during the time period the candidates exited their bunk bed. Instead, the argument is whether the supervision was reasonable or adequate. The manner in which Mountaineer Challenge candidates and cadets exit a bunk bed is a matter of policy, as Mountaineer Challenge Academy had protocol addressing exiting a bunk bed. Mountaineer Challenge Academy's supervision and implementation of that policy are matters of discretion, as described in *Crouch v. Gillespie*, *West Virginia Department of Health and Human Resources v. Payne*, and *West Virginia Board of Edu. v. Croaff, supra.*

The Parties agree that the Mountaineer Challenge Academy did seek medical treatment

for the Plaintiff. At separate times, a nurse, a nurse practitioner, and a medical doctor examined the Plaintiff for his injuries. The Mountaineer Challenge Academy then relied upon the medical professionals for recommendations regarding the Plaintiff's participation in exercise and other aspects of its program. In response, the Plaintiff then claims that the medical care was not adequate and that the Mountaineer Challenge Academy should have sought additional or different care. The Plaintiff's response reveals that the crux of the argument is not whether the Mountaineer Challenge Academy acted or failed to act but whether its actions in not seeking additional or different care were reasonable. This clearly falls into a discretionary function of duties. The Mountaineer Challenge Academy utilized a third party, Preston Memorial Hospital, to provide medical care for those participating in its program. In this case, three separate health care personnel provided Mr. Moorhead with treatment. If the Plaintiff claims that the healthcare was not sufficient or did not meet minimum medical standards, then those allegations should have been filed under the West Virginia Medical Professional Liability Act.

Because the claims of failure to provide a safe environment, breach of fiduciary duty, and failure to notify parent flow from the claims of failure to supervise and failure to seek proper medical treatment and their underlying factual background, this Court must also find that these claims involving the Mountaineer Challenge Academy's discretionary functions. Even though these claims are not discretionary, the analysis is not complete.

The next step to analyze is whether the acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive. In support of that argument, the Plaintiff argues that he had a right to a safe learning environment during his time at the Mountaineer Challenge Academy. Essentially, he argues that Defendant Mountaineer Challenge

Academy acted *in loco parentis* to him while he participated in the program.

Chapter 18A of West Virginia Code grants teachers *in loco parentis* status. This Code states, in relevant part, "[t]he teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes [. . .]" West Virginia Code § 18A-5-1(a). The Plaintiff also cites the case of *Cathe A. v. Doddridge Cty. Bd. Of Edu.*, 200 W.Va. 521, 527-528, 490 S.E.2d 340, 346-347 (1997) which found that the constitutional guarantee of a "thorough and efficient school system" implies a "safe and secure school environment.[7]" The Plaintiff alleges that the Defendants breached its *in loco parentis* duty and constitutional guarantee of a "safe and secure school environment" by creating the situation by which the Plaintiff sustained his physical injuries and other damages.

However, Defendants argues that the Mountaineer Challenge Academy is not defined as a school and is instead an "special alternative education program" as designated in West Virginia Code § 15-1B-24. The Defendants state that this means that it did not have a duty to provide a safe and secure school environment and that qualified immunity bars any liability they may otherwise bear toward the Plaintiff.

To determine whether the Mountaineer Challenge Academy is a "school," This Court must look to Chapter 18A, Chapter 15, and Chapter 18 of the West Virginia Code.[8]

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[7] In *Cathe A. v. Doddridge Cty. Bd. Of Edu,* the court faced the question of whether the school system could expel a student with a history of disruptive behavior who brought a weapon to school in order to protect the safety and security of other students and school employees.

[8] The Court also notes that whether the Mountaineer Challenge Academy is a "school" is important because the West Virginia Governmental Tort Claims and Insurance Reform Act, West Virginia Code §29-12A-1, et seq. governs suits against county boards of education. This Act limits liability to only certain situations and does not grant immunity for most cases of negligence. *See C.C. v. Harrison County Board of Education*, 245 W.Va. 592, 603, 859 S.E.2d 762, 771 (2021). Because of this, county boards of education are not immune to most negligence suits whereas state agencies and other state government actors are immune from most negligence suits. This indicates a clear policy decision by the West Virginia Legislature.

To decide this issue, this Court must further analyze Chapter 18A to determine whether employees of Mountaineer Challenge Academy are considered "teachers" or another form of personnel that may be subject to the *in loco parentis* doctrine. West Virginia Code § 18A-1-1 states that all school personnel are defined as "personnel employed by a county board [of education]" and that two categories of school personnel exist: professional personnel and service personnel. West Virginia Code § 18A-1-1(a).[9] The Mountaineer Challenge Academy is part of a state agency and there are no claims that its employees are employed by the Preston County Board of Education or any other board of education.

Furthermore, "student" is defined as "any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction." W.Va. Code § 18A-5-1(g)(1). The Plaintiff has not argued that he was under the control of the Preston County Board of Education, enrolled in any board-authorized program, or within the facilities of the Preston County school system during his participation in the Mountaineer Challenge Academy program. Thus this Court cannot find that he was a "student" in July of 2015.

West Virginia Code § 15-1B-24 authorized the creation of the Mountaineer Challenge Academy as a joint program between the United States Secretary of Defense and the Governor of West Virginia pursuant to federal law. W.Va. Code § 15-1B-24(a) This Code also designates the Mountaineer Challenge Academy as a "special alternative education program" and permitted by West Virginia Code § 18-2-6.[10] *Id* at (b). This Code also requires to the State Board of Education to cooperate with the Mountaineer Challenge Academy in certain narrow

[9] Professional personnel may be classroom teachers, principals, supervisors, central office administrators, and other professional employees, such as registered nurses. West Virginia Code § 18A-1-1(c).
[10] West Virginia Code 18-2-6(f) permits a student who graduates or passes a high school equivalency test to be considered a high school graduate for statistical purposes.

situations, such as being included in the state child nutrition program, providing identification for students who have dropped out in high school (presumably as potential candidates for the program), and participation in the adult basic education program. *Id* at (c). Thus, through these provisions, the Mountaineer Challenge Academy is not a traditional school subject to the oversight of any county board of education.

References to the Mountaineer Challenge Academy in Chapter 18 of West Virginia Code also do not integrate the Mountaineer Challenge Academy into the public school system. West Virginia Code 18-2-6(f) permits a student who graduates or passes a high school equivalency test to be considered a high school graduate for statistical purposes. Inclusion for statistical purpose does not equate to control by any board of education to establish that the Mountaineer Challenge Academy is a traditional public school. Nor is the Mountaineer Challenge Academy a public charter school that is included within the public school system and subject to supervision by the West Virginia Board of Education.[11]

Because the Mountaineer Challenge Academy is not a school subject to the *in loco parentis* requirements of West Virginia Code § 18A-1-1, this Court cannot find that the Mountaineer Challenge Academy violated a clearly established statutory or constitutional right or a law which a reasonable person would have known. Similarly, because Mountaineer Challenge Academy is not part of the school system, this Court cannot find that the right to a safe and secure school environment set forth in *Cathe A. v. Doddridge Cty. Bd. Of Edu.*, *supra*, exists for the Mountaineer Challenge Academy. The Plaintiff and/or his family elected to remove the Plaintiff from the public school system into an alternative educational program

[11] West Virginia Code § 18-5G-1(g) provides limitations on the number of public charter schools permitted to operate in this State. However, the Mountaineer Challenge Academy would not count toward this limitation "if converted to a public charter school." (emphasis added) Clearly, Mountaineer Challenge Academy is not considered a public charter school at this time.

which does not offer the same constitutional guarantees.

The facts agreed to by both the Plaintiff and Defendant do not establish any action on the part of the Defendants that rise to the level of being fraudulent, malicious, or oppressive. Instead, the allegations involve simple negligence.

The final step is to analyze whether the State employee was acting within his/her scope of employment." Here, there are no allegations that any of the Mountaineer Challenge Academy employees were acting outside their scope of employment. Although the Plaintiff has identified no specific employees regarding the Mountaineer Challenge Academy's failures, there are no factual allegations that indicate any actions would be outside the scope of any employee's employment at the Mountaineer Challenge Academy. No employee is alleged to have committed a crime, acted without authorization, or otherwise acted without the scope of their employment.

West Virginia case law is clear. Simple negligence actions against state agencies are barred by qualified immunity unless immunity is waived, the acts or omissions complained of are in violation of clearly established statutory or constitutional rights, or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive. This matter involves a State agency, government actors working within their scope of employment in regards to discretionary functions, a lack of applicability of the West Virginia Governmental Tort Claims and Insurance Reform Act, a lack of waiver by an insurance contract and no claims behind simple negligence pled in the *Complaint* or developed in discovery since. The Plaintiff has not met the heightened pleading requirements required Therefore, this Court has no choice but to grant the *Defendants' Motion for Summary Judgment.*

The Defendants advanced other arguments, such as waiver, in *Defendants' Motion for*

Summary Judgment. However, because this Court finds that the defense of qualified immunity bars this suit, the Court does not address the remaining arguments in the *Defendants' Motion for Summary Judgment* and other pending motions.

Conclusion

Because the qualified immunity defense applies to the Defendant and the Plaintiff has not met his burden in proving any exceptions to the qualified immunity defense, this Court hereby

ORDERS that the *Defendants' Motion for Summary Judgment* is granted. The Court saves the objections of Plaintiff to this Order.

This is a final order. This Order may be appealed to the Intermediate Court of Appeals in the manner set forth in the West Virginia Rules of Appellate Procedure. It is further

ORDERED that the Clerk of the Court shall forward a certified copy of this letter to (1) Stephen P. New, Joshua D. Wiseman, New, Taylor & Associates, P.O. Box 5516, Beckley, WV 25801; and (2) Christopher C. Ross, Omar D. Ahmad, Pullin Fowler Flanagan Brown & Poe, PLLC, 901 Quarrier St., Charleston, WV 25301.

Jcopy SD 7-28-22

ENTER this 28th day of July 2022.

Steven L. Shaffer, JUDGE

ENTERED this 28th day of July 2022.

Lisa Leishman

Lisa Leishman, CLERK

By: Sandy Murray, Deputy

A TRUE COPY:
ATTEST: S/LISA LEISHMAN
CLERK OF THE CIRCUIT COURT
By S. Murray Deputy