
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 25-242

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WEST VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION,

Petitioner,

v.

MARY F. MYERS, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF
RONALD M. MYERS,

Respondents.

PETITIONER'S BRIEF

From the Circuit Court of Kanawha County,
Case No. 24-C-842

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I. ASSIGNMENT OF ERROR

The Circuit Court erred by denying portions of the West Virginia Division of Correction and Rehabilitation's ("WVDCR") Motion to Dismiss seeking dismissal of claims for mere negligence and negligent training because WVDCR is entitled to qualified immunity as a State agency for its discretionary actions. All allegations against WVDCR asserted in the negligence causes of action arise from WVDCR's exercise of its discretionary governmental functions in making decisions related to facility administration and officer training. These claims fail to identify any violation of clearly established laws about which WVDCR should reasonably know, and fail to describe conduct that is fraudulent, malicious, or oppressive. *See, e.g., W. Va. Dep't of Hum. Servs. v. David B.*, 911 S.E.2d 884, 887, 2024 W. Va. LEXIS 504, *1 (2024); *W. Va. Reg'l Jail Auth. v. A.B.*, 234 W. Va. 492, 514, 766 S.E.2d 751, 756 (2014); *W. Va. State Police, et al. v. J.H.*, 244 W. Va. 720, 856 S.E.2d 679 (2021); *W. Va. Bd. of Educ. v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015).

II. STATEMENT OF THE CASE

West Virginia Courts have consistently dismissed negligence claims, including claims of negligent training, asserted against state entities based upon the doctrine of qualified immunity. *W. Va. Dep't of Hum. Servs. v. A.R.*, 249 W. Va. 590, 900 S.E.2d 16 (2024); *W. Va. Div. of Corrs. & Rehab. v. Robbins*, 248 W. Va. 515, 889 S.E.2d 88 (2023); *Morehead v. W. Va. Army Nat'l Guard*, 915 S.E.2d 378; 2025 W. Va. LEXIS 151; *Parsons v. Raines*, 2025 W. Va. App. LEXIS 116, *12 (ICA)(memorandum decision); 2024 W. Va. App. LEXIS 340; *Ziglar v. Skiles*, 2024 LEXIS 66177; 2024 WL 5003297 ((ICA) (memorandum decision); *W. Va. Dep't of Hum. Servs. v. David B.*, 911 S.E.2d 884; 2024 W. Va. LEXIS 504.

Despite this precedence, the Circuit Court below erroneously concluded in a perfunctory fashion that “[t]he Plaintiff in this matter clearly stated in several paragraphs of her Complaint that Defendant WVDCR and its employees and representatives violated the constitutional and statutory rights of Ronald Myers and violated its own policies and procedures. The allegations are more than sufficient to advise Defendant of the claims made against it and the violations of clearly established laws.” JA 021. As this Court has soundly held, “for purposes of qualified immunity, internal agency policies, procedures, manuals, guidelines, or similar documents that have not been legislatively approved are not, and cannot be used to create, clearly established statutory rights or law of which a reasonable person would have known.” *W. Va. Dep’t of Hum. Servs. v. David B.*, 911 S.E.2d 884, 896, 2024 W. Va. LEXIS 504, *30.

Indeed, “[t]he purpose of qualified immunity is to allow officials to do their jobs and to exercise judgment, wisdom, and sense without worry of being sued.” *W. Va. Dep’t of Hum. Servs. v. David B.*, 911 S.E.2d 884; 2024 W. Va. LEXIS 504 (citing *W. Va. Bd. of Ed. v. Marple*, 236 W. Va. 654, 661, 783 S.E.2d 75, 82 (2015)). “In West Virginia, unless expressly limited by statute, “qualified immunity is necessarily broad[.]” *Maston*, 236 W. Va. at 500, 781 S.E.2d at 948, and applies to “the State, its agencies, officials, and/or employees.” *Kent v. Sullivan*, 249 W. Va. 747, 901 S.E.2d 500, 505 (2024).

WVDCR is not subject to liability simply because an inmate, who was admittedly under the medical care of professionals while housed at Eastern Regional Jail (“ERJ”), may have had signs of having a stroke before being transferred to the emergency room. According to the Complaint, Mr. Myers was incarcerated at ERJ beginning on or about June 23, 2022. JA 026. The Complaint alleges that on or about July 11, 2022, Mr. Myers was found unresponsive in his cell

and transported to WVU Berkeley Medical Center. JA 027. Mr. Myers suffered a stroke and passed away on July 19, 2022. JA 029.

Plaintiff's Complaint sets forth factual allegations entirely focused upon alleged failures in the provider-to-patient relationship. For example, Wexford's alleged failure to obtain accurate and sufficient information respecting Mr. Myers' conditions, risks, and medical concerns (JA 026); the fact that no medical referral was placed to have Mr. Myers evaluated by a psychologist (JA 026); the fact that medical staff allegedly made no effort to communicate with Mrs. Myers to obtain Mr. Myers' medication information or the name of his treating physician (JA 026); alleged incomplete medical records (JA 026); the alleged medical failure to evaluate Mr. Myers' cognitive functioning on intake, failure to order prescribed medications, failure to document that Mr. Myers was not eating the week prior to having a stroke, failure to properly evaluate Mr. Myers, failure to examine Mr. Myers, failure to evaluate Mr. Myers when his mental state was reported to be altered, failure to evaluate Mr. Myers when he was found unresponsive the morning of July 22, 2020, failure to timely transfer Mr. Myers to a hospital, and failure to take Mr. Myers' vitals during his incarceration (JA 028-029).

In a conclusory fashion, the Complaint states that WVDCR, through its employees, had knowledge that Mr. Myers was sick and exhibited signs of cognitive impairment for days prior to being transferred to the hospital; failed to obtain medical attention for Mr. Myers for several days; knew he was not eating; knew he was not receiving medication. JA 030-031. Contrary to these barebone allegations, the Complaint is replete with medical care during his entire stay at ERJ. JA 025-027.

The only other factual allegation specific to corrections staff pertains to a report allegedly made by an unidentified John/Jane Doe Correctional Officer to the emergency room staff at WVU Berkeley Medical Center on July 11, 2022. JA 027. This unattributed statement to hospital staff included the following reports: that Mr. Myers had refused to take his medication for a couple of days; that on the morning of July 11, 2022, Mr. Myers was found lying on his bunk “presumably asleep” and that corrections officers did not check Mr. Myers to determine if he was sleeping or to determine why he did not move for several hours that day; that later in the afternoon of July 11, 2022, Mr. Myers was found to have an altered mental state and had not left the bed all day; that Mr. Myers had complete “left-sided neglect;” and that Mr. Myers was last “normal” on July 10, 2022. JA027. Notably, the Complaint does not allege that any WVDCR officers personally observed or experienced any of these issues, nor had any reason to believe Mr. Myers was having a medical emergency of which a reasonable officer should have known. This was simply a report to the emergency hospital staff once Mr. Myers was transported to a medical facility. JA 027. Plaintiff alleges that Mr. Myers suffered a stroke which resulted in his death. JA 027.

Myers’ Complaint asserts claims against Petitioner for, *inter alia*, negligence and negligent training.¹ Petitioner filed a Motion to Dismiss seeking dismissal of Myers’ negligence and negligent training claims on the grounds that Petitioner is entitled to qualified immunity. On March 19, 2025, the Circuit Court entered an Order denying the Petitioner’s Motion to Dismiss. Regarding Petitioner’s qualified immunity arguments, the Circuit Court found that dismissal was not appropriate because WVDCR violated Mr. Myers’ clearly established rights under West Virginia Code of State Rules § 95-1-15. Additionally, the Circuit Court found that Mr. Myers’

¹Petitioner also filed a writ of prohibition on the final cause of action entitled “deliberate indifference in violation of clearly established West Virginia law” in Count III. This is the subject of No. 25-328.

clearly established rights were violated because WVDCR did not adhere to its own policy and procedures. Lastly, the Circuit Court found that WVDCR violated Mr. Myers' rights that are clearly established in West Virginia Code § 15A-3-5.

III. SUMMARY OF ARGUMENT

The basis for this appeal is the Circuit Court's decision to deny qualified immunity to Petitioner WVDCR as to the negligence and negligent training claims. Failing to dismiss these claims completely ignores the very purpose of qualified immunity: immunity from suit. Negligence and negligent training are both claims specifically subject to qualified immunity unless Respondent can establish that WVDCR violated a clearly established statutory or constitutional right of Mr. Myers, of which it reasonably should have known. Moreover, the Circuit Court failed to apply the correct heightened pleading standard as it relates to negligence claims.

The very heart of the qualified immunity defense is that it spares the defendant from having to go forward with an inquiry into the merits of the case. A ruling on qualified immunity should be made early in the proceedings so that the expense of trial is avoided where the defense is dispositive. First and foremost, qualified immunity is an entitlement not to stand trial, not merely a defense from liability. The uniqueness of qualified immunity and its provision of total immunity from suit rather than just a defense is an important reason for the heightened pleading.

Based on the limited facts alleged against unidentified WVDCR officers, the Circuit Court broadly concluded that WVDCR and its employees, including Defendants John/Jane Doe Corrections Officers, were subject to various unidentified policies, rules, procedures, and protocols regarding the identification of, and care for, an inmate in a health crisis, and that said Defendants had a duty to comply with those policies and provide proper medical care for Mr. Myers. JA 020. Such "policies, rules, procedures, and protocols" are undefined and not contained in the Complaint.

Regardless, this Court has repeatedly held that this is insufficient to qualify as a clearly established law or right.

Additionally, a claim for negligent training easily falls within the category of discretionary governmental functions. *W. Va. State Police, et al. v. J.H.*, 244 W.Va. 720, 856 S.E.2d 679 (2021). Respondent failed to identify any clearly established law allegedly violated by WVDCR, or that WVDCR acted maliciously, fraudulently, or oppressively in training its officers. Petitioners moved for dismissal of both claims on the grounds that WVDCR is entitled to qualified immunity for the discretionary acts of training its employees and assessing inmates' medical needs. Each alleged action is discretionary in the course of either administration of the facility and/or training officers. Casting such a wide net becomes self-defeating when analyzing the application of qualified immunity. Petitioner is entitled to qualified immunity, and the Circuit Court erred in denying Petitioner's Motion to Dismiss on the negligence claims.

IV. STATEMENT REGARDING ORAL ARGUMENT

WVDCR does not dispute that this Court has authoritatively decided the issue of qualified immunity but submits that the decisional process may be significantly aided by oral argument. WVDCR further submits that, although immunity issues are of consequence, at issue is the application of existing law such that the matter is appropriate for Rule 19 oral argument.

V. ARGUMENT

A. The Standard of Review

"This Court has held that '[a]ppellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*.'" *Boone v. Activate Healthcare, LLC*, 245 W. Va. 476, 859 S.E.2d 419, 422 (2021) (citing Syl. Pt. 1, *Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 815 S.E.2d 474 (2018) (citing Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*,

194 W. Va. 770, 461 S.E.2d 516 (1995))). Stated otherwise, “[w]hen a party ... assigns as error a circuit court’s denial of a motion to dismiss, the circuit court’s disposition of the motion to dismiss will be reviewed *de novo*.’ Syl. Pt. 4, in part, *Ewing v. Bd. of Educ. of Cty. of Summers*, 202 W. Va. 228, 503 S.E.2d 541 (1998).” *W. Va. Reg’l Jail & Corr. Facility Auth. v. Grove*, 244 W. Va. 273, 852 S.E.2d 773, 780 (2020). “We therefore give a new, complete and unqualified review to the parties’ arguments and the record before the circuit court.” *Gastar Exploration, Inc. v. Rine*, 239 W. Va. 792, 806 S.E.2d 448, 454 (2017) (quoting *Blackrock Capital Inv. Corp. v. Fish*, 799 S.E.2d 520, 526 (2017)).

Additionally, “[i]n Syllabus point 1 of *West Virginia Board of Education v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015), [this Court] held: ‘A circuit court’s denial of a motion to dismiss that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the ‘collateral order’ doctrine.’” *Grove, supra*. In that regard:

It is well-established that “[t]his Court reviews *de novo* the denial of a motion for summary judgment, where such a ruling is properly reviewable by this Court.” Syl. Pt. 1, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002). Moreover, “[a] circuit court’s denial of summary judgment that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the ‘collateral order’ doctrine.” Syl. Pt. 2, *Robinson v. Pack*, 223 W. Va. 828, 679 S.E.2d 660 (2009). This review, however, is guided by the following principle regarding immunity:

[t]he ultimate determination of whether qualified or statutory immunity bars a civil action is one of law for the court to determine. Therefore, unless there is a bona fide dispute as to the foundational or historical facts that underlie the immunity determination, the ultimate questions of statutory or qualified immunity are ripe for summary disposition. Syl. Pt. 1, *Hutchison v. City of Huntington*, 198 W. Va. 139, 479 S.E.2d 649 (1996).

W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B., 234 W. Va. 492, 766 S.E.2d 751, 760 (2014) (emphasis added). As this Court has recognized, “[t]he Court observed in *Robinson* that allowing interlocutory appeal of a qualified immunity ruling is the only way to preserve the intended goal

of an immunity ruling: to afford public officers more than a defense to liability by providing them with ‘the right not to be subject to the burden of trial.’” *City of Saint Albans v. Botkins*, 228 W. Va. 393, 719 S.E.2d 863, 867 (2011) (internal citation omitted). As commentators have noted:

[Qualified immunity] is designed to allow government officials to ***avoid the expense and disruption of litigation***, and is not merely a defense to liability. When a complaint fails to allege a violation of a clearly established law or discovery fails to uncover evidence sufficient to create a genuine issue whether the defendant committed such a violation, the qualified immunity defense provides the defendant with immunity from the burdens of trial as well as a defense to liability, and is effectively lost if the case is erroneously permitted to go to trial.

63C Am. Jur. 2d Public Officers and Employees § 305 (footnotes omitted) (emphasis added).

The Supreme Court of Appeals of West Virginia has reiterated that “matters involving qualified immunity require a ‘heightened pleading standard.’” *W. Va. State Police v. J.H.*, 244 W. Va. 720, 736, 856 S.E.2d 679, 695 (2021) (citing *W. Va. Reg’l Jail & Corr. Facility Auth. v. Estate of Grove*, 244 W. Va. 273, 282, 852 S.E.2d 773, 782 (2020) (“Accordingly, we find that the circuit court erred by failing to apply the heightened pleading standard in this particular matter and reverse its ruling in this regard.”)). The Supreme Court further reiterated:

We believe that in civil actions where immunities are implicated, the trial court must insist on heightened pleading by the plaintiff. See Schulte v. Wood, 47 F.3d 1427 (5th Cir. 1995) (en banc) (a §1983 action); *see generally Parkulo v. West Virginia Board of Probation and Parole*, [199 W.Va. 161, 483 S.E.2d 507] [(1996)]. To be sure, we recognize the label “heightened pleading” for special pleading purposes for constitutional or statutory torts involving improper motive has always been a misnomer.

Id. at 736 – 37, 856 S.E.2d at 695 – 96 (quoting *Hutchison v. City of Huntington*, 198 W. Va. 139, 149-50, 479 S.E.2d 649, 659-60 (1996)) (emphasis in original); *see also W. Va. Bd. of Educ. v. Croaff*, No. 16-0532, 2017 W. Va. LEXIS 338, 2017 WL 2172009, at *3 (W. Va. May 17, 2017) (memorandum decision) (““In civil actions where immunities are implicated, the trial court must

insist on heightened pleading by the plaintiff.’ *Hutchison*, 198 W. Va. at 149, 479 S.E.2d at 659.”); *W. Va. Bd. of Educ. v. Marple*, 236 W. Va. 654, 660, 783 S.E.2d 75, 81 (2015).

The Circuit Court failed to apply the heightened pleading standard to the qualified immunity analysis, which constitutes clear legal error.

B. WVDCR Is Entitled To Qualified Immunity From Allegations Of Negligence, Including Allegations Of Negligent Training, And The Circuit Court’s Refusal To Dismiss These Claims Was In Error.

“[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.” *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995)(citations omitted); *Parkulo v. W. Va. Bd. of Prob. & Parole*, 199 W. Va. 161, 483 S.E.2d 507, 510 (1996).² “The

² “In the absence of an insurance contract waiving the defense, the doctrine of qualified or official immunity bars a claim of mere negligence against a State agency not within the purview of the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1, *et seq.*, and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer.” *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995). It is undisputed that WVDCR is clearly a state agency. JA 016. This Court has expressly held that the State’s insurance policy procured through the Board of Risk and Insurance Management does not waive immunity defenses:

Therefore, we hold that the state insurance policy exception to sovereign immunity, created by West Virginia Code § 29-12-5(a)(4) [2006] and recognized in Syllabus Point 2 of *Pittsburgh Elevator Co. v. W.Va. Bd. of Regents*, 172 W. Va. 743, 310 S.E.2d 675 (1983), applies only to immunity under the West Virginia Constitution and does not extend to qualified immunity. To waive the qualified immunity of a state agency or its official, the insurance policy must do so expressly, in accordance with Syllabus Point 5 of *Parkulo v. W. Va. Bd. of Probation & Parole*, 199 W. Va. 161, 483 S.E.2d 507 (1996).

...

doctrine of qualified or official immunity bars a claim of mere negligence” against a state officer “acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer.” *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995). In *W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B.*, 234 W.Va. 492, 766 S.E.2d 751 (2014), the Supreme Court of Appeals clarified the application of qualified immunity. Qualified immunity bars a claim of negligence against a State agency “and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer.” Syl. Pt. 7, *A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (quoting Syl. Pt. 6, *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995)). In the absence of a showing that discretionary governmental acts violated clearly established laws of which a reasonable person would have known, “both the State and its officials or employees charged with such acts or omissions are immune from liability.” Syl. Pt. 11, *id.*

Under West Virginia law, “broad categories of training, supervision, and employee retention, as characterized by respondent, easily fall within the category of ‘discretionary’ governmental functions.” *W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751, 773 (2014) (finding that the state agency was entitled to qualified immunity on a negligence claim for failure to reasonably train, supervise, and screen employees, absent a showing that the agency violated a clearly established law). Barring a showing that WVDCR violated a

Under the facts of this case, the Board and Mr. Linger are not precluded from claiming qualified immunity because the insurance policy’s terms do not expressly waive the defense. In fact, the Certificate of Liability Insurance contained in the record expressly states: “It is a condition precedent of coverage under the policies that the additional insured does not waive any statutory or common law immunity conferred upon it.”

W. Va. Bd. Of Educ. v. Marple, 236 W. Va. 654, 783 S.E.2d 75 (2015).

“clearly established right or law” with respect to training procedures, WVDCR is entitled to qualified immunity on claims involving these discretionary acts. Additionally, the determination of whether an inmate appears to need medical care is a discretionary decision involving individual judgment and perception and is thus subject to qualified immunity.

Further, according to the Supreme Court of Appeals of West Virginia, not every law, statute, rule, policy, procedure, or enactment will be considered “clearly established law” for purposes of defeating qualified immunity. A “clearly established” law in this context is one which defines a “clearly established right.” *W. Va. Reg’l Jail & Corr. Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014). A right is considered “‘clearly established’ when its contours are ‘sufficiently clear that a reasonable official would understand that what he is doing violates that right.’” *Id.* (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)) (additional citation omitted). Critically, sources of law that are too vague or abstract, or that do not establish a right, will not suffice to defeat qualified immunity. Even if WVDCR failed to follow certain policies, they are not “clearly established law” that could defeat qualified immunity because they do not grant inmates any specific rights. Indeed, the Supreme Court of Appeals of West Virginia has expressed wariness “of allowing a party to overcome qualified immunity by cherry picking a violation ...” *Crouch v. Gillispie*, 240 W. Va. 229, 237, 809 S.E.2d 699, 707 (2018).

In a demonstration of this analysis, the Court in *A.B.* specifically determined that the Prison Rape Elimination Act (“PREA”) (34 U.S.C. § 30301 *et seq.*) does not constitute clearly established law because it does not grant prisoners any specific rights. *A.B.*, 234 W. Va. 492, 766 S.E.2d 751, 774 (additional citations omitted). As a result, the Court found that neither PREA nor the standards promulgated at its direction provide any basis to defeat qualified immunity under West Virginia law. *Id.* at 774.

Myers has pleaded against WVDCR nothing more than the alleged violation of abstract rights. Indeed, like PREA, vague and unspecified policies do not constitute clearly established law for purposes of qualified immunity because they likewise do not grant prisoners any specific rights. *See A.B.*, 234 W. Va. 492, 766 S.E.2d at 774 (additional citations omitted); *Crouch*, 240 W. Va. at 234, 809 S.E.2d at 704. Myers has identified no clearly established laws that were allegedly violated by WVDCR. There are simply no facts that could overcome the defense of qualified immunity.

The concept that qualified immunity operates to bar claims of mere negligence against public employees and agencies has been reiterated numerous times in recent years by the Supreme Court of Appeals of West Virginia. *See, e.g., Jarvis v. West Virginia State Police, et al.*, 227 W. Va. 472, 711 S.E.2d 542 (2010); *City of Saint Albans v. Botkins*, 228 W. Va. 393, 719 S.E.2d 863 (2011); *W. Va. Dept. of Health and Human Resources v. Payne*, 231 W. Va. 563, 746 S.E.2d 554 (2013).

In *Payne*, the Supreme Court of Appeals found that “Respondents seem to argue simply that if the DHHR defendants were doing their job properly, this incident would not have occurred.” *The West Virginia Department of Health and Human Resources v. Payne*, 231 W. Va. at 574. Though the tragic facts of *Payne* made such arguments appealing, “qualified immunity insulates the State and its agencies from liability based on vague or principled notions of government regulation.” *Id.* The Court concluded in *Payne* that the DHHR was entitled to qualified immunity. The same result should be reached here, as Myers’ allegations amount to nothing more than a vague notion that WVDCR employees must not have been doing their jobs properly or Mr. Myers would not have died. Such an argument is not sufficient to overcome qualified immunity.

To the extent the Circuit Court found that Myers identified a clearly established right that was violated in relying upon Title 95 of the West Virginia Code of State Regulations, that finding is erroneous because those regulations have been repealed and are not clearly established law. The original promulgating authority for Title 95 was West Virginia Code § 31-20-9, which was repealed effective July 1, 2018.

The Circuit Court also fleetingly mentions that “[a] prisoner’s right to adequate medical care and freedom from deliberate indifference to medical needs has been clearly established by the Supreme Court and this Circuit since at least 1976 ...” JA 018. Despite this singular legal statement, there is no explanation whatsoever regarding the deficiencies of WVDCR that actually violated any constitutional right. There is no explanation as to what WVDCR was required to do yet failed to do that constituted the violation of a clearly established right. This is not a clearly established right that was violated by WVDCR based on the Complaint allegations.

Additionally, West Virginia Code § 15A-3-18 specifically expired Title 95 of the West Virginia Code of State Regulations:

(b) All legislative rules and policies of the former Division of Corrections, the former Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall remain effective until amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code by the Division of Correction and Rehabilitation: ***Provided, That these rules shall expire on July 1, 2021, if not superseded sooner.***

W. Va. Code § 15A-3-18 (emphasis added); *See, e.g., Crawford v. McDonald*, 2023 W. Va. LEXIS 85, *22, 2023 WL 2729675 (recognizing that W.Va. Code § 31-20-9, which is now repealed, does not constitute clearly established law for qualified immunity purposes). Myers cites no other source of alleged “clearly established law” that was allegedly violated by WVDCR as it relates to inmate medical care. Accordingly, WVDCR is entitled to qualified immunity.

The Circuit Court also erroneously found that West Virginia Code §15A-3-5 provides a source of clearly established rights and/or laws with respect to training and/or supervision. This statute provides no such clearly established right or law. The statute provides:

- (a) The commissioner, or his or her designee, has the authority to manage and administer the finances, business, operations, security, and personnel affairs of correctional units and juvenile facilities under the jurisdiction of the division.
- (b) The superintendent of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge, but the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.
- (c) It is the duty of the commissioner to investigate any complaint made against the superintendent of any institution, and against any other officer or employee thereof, if the same has not been investigated.
- (d) All prospective correctional employees shall pass a preemployment drug screening prior to being hired.
- (e) All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

W. Va. Code §15A-3-5. Far from defining any clearly established right, this statute defines the general authority of certain individuals such as the commissioner and superintendents of each institution regarding the ability to hire and supervise staff. There is nothing in the statute that defines any clearly established right in connection with training or otherwise. As such, it does not serve as a basis to defeat qualified immunity.

Myers has also failed to identify any particular “right” associated with any aspect of the claims against WVDCR. This situation is analogous to the question posed to the Supreme Court of Appeals in *Crouch v. Gillispie*, 240 W.Va. 229, 809 S.E.2d 699 (2018); *see also Morehead v. W. Va. Nat’l Guard*, 915 S.E.2d 378, *388; 2025 W. Va. LEXIS 151, **19; *see also generally W. Va. Dep’t of Hum. Servs. v. A.R.*, 249 W. Va. 590, 900 S.E.2d 16 (2024).

In *Crouch*, the Court explained that specificity of a right is required:

To prove that a clearly established right has been infringed upon, a plaintiff must do more than allege that an abstract right has been violated. Instead, the plaintiff must make a “particularized showing” that a “reasonable official would understand that what he is doing violated that right...”

Id.

Simply making the “the skeletal assertion that if ... [a correctional officer] were properly trained and supervised, the rape would not have occurred” is nothing more than an “illusory and languid contention ... [not] sufficient to overcome the State’s immunity.” *A.B.*, 234 W. Va. at 516 n.33, 766 S.E.2d at 775, n.33.). Myers’ failure to identify any clearly established law that was allegedly violated is fatal to the negligence claims asserted against WVDCR. It appears that Myers is alleging that WVDCR failed generally to engage in what she believes to be adequate employment and facility administration practices. However, she has identified no *specific* criticism in the way that the correctional facility was operated that could be deemed a violation of a clearly established law or right sufficient to overcome qualified immunity as described in *A.B.* Under circumstances like the case at bar, WVDCR is entitled to qualified immunity from claims of negligence, including negligent training. Therefore, WVDCR is entitled to qualified immunity as a matter of law.

CONCLUSION

Petitioner requests that this Court reverse the Circuit Court’s order denying Petitioner’s Motion to Dismiss and remand this case with instructions to the Circuit Court to enter an order finding that WVDCR is entitled to qualified immunity for Counts IV and V of Respondent’s Complaint.

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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 25-242**

**WEST VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION,**

Petitioner,

v.

**MARY F. MYERS, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF
RONALD M. MYERS,**

Respondents.

CERTIFICATE OF SERVICE

I, Natalie C. Schaefer, counsel for Petitioner, hereby certify that I have served a true and accurate copy of the foregoing “Petitioner’s Brief” upon counsel of record by utilizing the Court’s e-filing system, on this day, July 21, 2025, as follows:

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