IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

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No. 24-670

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FILED

November 4, 2026

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

TIM SECRIST and the
WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,
Petitioners,

v.

TAMMY WATKINS,
Administratrix of the Estate of William McKinsey May,
Respondent.

Appeal from the Circuit Court of Logan County
The Honorable Kelly Gilmore Codispoti, Judge
Civil Action No. CC-23-2022-C-96

REVERSED AND REMANDED WITH DIRECTIONS

Submitted: October 13, 2026
Filed: November 4, 2026

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JUSTICE WOOTON delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "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." Syl. Pt. 1, *W. Va. Bd. of Ed. v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015).

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.' Syl. Pt. 6, *Clark v. Dunn*, 195 W.Va. 272, 465 S.E.2d 374 (1995)." Syl. Pt. 7, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

3. "To determine whether the State, its agencies, officials, and/or employees are entitled to immunity, a reviewing court must first identify the nature of the governmental acts or omissions which give rise to the suit for purposes of determining whether such acts or omissions constitute legislative, judicial, executive or administrative policy-making acts or involve otherwise discretionary governmental functions. To the extent that the cause of action arises from judicial, legislative, executive or administrative

policy-making acts or omissions, both the State and the official involved are absolutely immune pursuant to Syl. Pt. 7 of *Parkulo v. W. Va. Bd. of Probation and Parole*, 199 W.Va. 161, 483 S.E.2d 507 (1996)." Syl. Pt. 10, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

WOOTON, Justice:

Respondent Tammy Watkins, the administratrix of her adult brother's estate, filed a wrongful death claim against Petitioners Tim Secrist, an Adult Protective Services ("APS") employee, and the West Virginia Department of Human Services ("DHS").[1] Mr. Secrist investigated allegations that Respondent's brother was abused or neglected. Respondent contends that Mr. Secrist's actions—failing to remove her brother from his residence, closing the referral, and failing to contact law enforcement or court officials about this case—proximately caused her brother's death. Petitioners contend that the circuit court should have granted their motions[2] to dismiss on the basis of qualified immunity because Mr. Secrist's complained of actions (1) involved discretionary decisions, (2) that did not violate any clearly established right or law, and (3) were not fraudulent, malicious, or oppressive. We agree with Petitioners and find that they are entitled to qualified immunity. We therefore reverse the Circuit Court of Logan County's October 9, 2024, order and remand this matter to the circuit court with instructions to grant Petitioners' motions to dismiss.

I. FACTUAL AND PROCEDURAL BACKGROUND

[1] The DHS operates APS. *See* W. Va. Code § 9-6-2(a) (2024) ("There is continued within the Department of Human Services the system of adult protective services.").

[2] Mr. Secrist and the DHS filed separate motions to dismiss.

In this appeal, we address whether Petitioners are entitled to qualified immunity based on the allegations asserted in Respondent's complaint. Because this is an appeal from a motion to dismiss, we construe the complaint in the light most favorable to Respondent and take all allegations in the complaint as true. *See Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va.*, 244 W. Va. 508, 515, 854 S.E.2d 870, 877 (2020).

The complaint alleges that the decedent, William McKinsey May ("Mr. May"), "was a 'vulnerable adult' as defined in West Virginia Code § 9-6-1(5)."[3] During the relevant events herein, Mr. May lived with his sister, Candus May, and her boyfriend, Charles Adkins, in a house in Logan County, West Virginia ("the residence"). Mr. May required assistance with his daily living activities including personal hygiene, food preparation, and taking medication.

On April 16, 2020, the Logan County APS office received a referral regarding abuse and neglect allegations concerning Mr. May.[4] On April 23, 2020, an APS employee, Mr. Secrist, visited the residence and interviewed Mr. May, Candus May, and Charles Adkins. Mr. Secrist documented the condition of the property which included (1)

[3] *See* W. Va. Code § 9-6-1(5) (2024) ("'Vulnerable adult' means any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection[.]").

[4] Respondent Tammy Watkins was the individual who contacted APS.

building materials and debris in the yard; (2) lights in the residence being operated by a generator because electrical service had not been installed; (3) a refrigerator that did not work; (4) excessive debris and clutter in the home; and (5) the only source of water in the residence being from a bathroom sink.[5]

Mr. Secrist spoke with Mr. May, who was seated in a recliner, and noted that he was "alert and oriented with gray hair and a trimmed beard;" that his feet were not black due to a medical condition as had been reported in the referral, though his toenails may have been neglected; and that he was "not overly thin, though . . . he could use an extra few pounds." Mr. May told Mr. Secrist that he liked living in the residence.

After Mr. Secrist left the residence, he called Candus May later that day and discussed specific repairs that needed to be made, including removing debris and clutter from the residence and obtaining a working refrigerator. During this call, Candus May told Mr. Secrist that the power company was scheduled to install electrical service on May 3,

[5] The reports Mr. Secrist completed in this matter are referenced directly and indirectly in Respondent's complaint. These reports were also attached to Petitioners' motions to dismiss. Therefore, these reports may be considered at the motion to dismiss stage. *See Chesapeake Appalachia, L.L.C. v. Hickman*, 236 W. Va. 421, 434 n.14, 781 S.E.2d 198, 211 n.14 (2015) ("'A circuit court ruling on a motion to dismiss under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure may properly consider exhibits attached to the complaint without converting the motion to a Rule 56 motion for summary judgment.' Syllabus Point 1, *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008). On a motion to dismiss, a court may consider, 'in addition to the pleadings, documents annexed to it, and other materials fairly incorporated within it. This sometimes includes documents referred to in the complaint but not annexed to it.' Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 12(b)(6) at 387 (4th Ed.2012).").

2020. Mr. Secrist stated that he would return on May 4, 2020, to inspect the residence, and that if the electrical service and other deficiencies were not addressed, he would start the process of removing Mr. May from the residence.

On May 4, 2020, Mr. Secrist returned to the residence and observed that a number of improvements had occurred since his prior visit: some clutter had been cleared; steps had been added to the front porch; the kitchen area "was more open;" and a generator-powered mini-refrigerator containing food had been added. Additionally, during this visit, Mr. Secrist "asked [Mr. May] if he was doing alright and he stated that he was." Further, Mr. Secrist asked Candus May about the electrical service and she told him that the power company had been contacted but that it needed to "set a new pole" before installation. She told Mr. Secrist that she would call him when the installation occurred. According to the complaint, Mr. Secrist did not check on whether additional water outlets had been connected, did not examine Mr. May's feet, and did not inquire about Mr. May's prescription medications during this visit. Mr. Secrist's report following this visit provided that Candus May and Charles Adkins "had obviously been working hard to get things in compliance with the directives from [APS] on the initial visit. [Mr. Secrist] will check back soon to see about the electricity. [Mr. Secrist] sees no reason at this time to begin the process of removing [Mr. May] from this home."

On May 20, 2020, Mr. Secrist made his third visit to the residence. He noted that the house was "still a wreck" due to remodeling. Further, he observed that the utility pole had been set, but electrical service had not been installed. Charles Adkins told him

that the power company had been to the property but had not completed the installation because of its concern with the placement of a pool. Also, Mr. Secrist told Candus May and Charles Adkins that a handrail needed to be installed on the front steps and that they needed to call him when the electrical service installation occurred.

On June 3, 2020, Mr. Secrist called Candus May and asked about the electrical service. She told him that Charles Adkins was currently obtaining wiring from Lowe's and that the power company and a certified electrician would then "come and inspect the hook-up and then connect the power." She stated that she would contact Mr. Secrist when the installation was complete. She also told Mr. Secrist that a handrail had been installed on the front steps.

Respondent's complaint provides that on June 30, 2020, Mr. Secrist "closed the referral and did not open an APS case." Further, the complaint alleges that the APS case was closed "despite not receiving any calls from Candus May [after June 3, 2020] regarding the issues involving the home; . . . despite not returning to the residence for one month to ensure the safety of William McKinsey May; [and] despite not knowing whether electric service was connected[.]"

Mr. May died on August 14, 2020, at the age of 62, while in the care of Hubbard Hospice House in Charleston, West Virginia. Mr. May's death certificate provided that his cause of death was "[c]omplications of multiple blunt force injuries" and

that a contributing factor to his death was "[a]therosclerotic cardiovascular disease[.]" No criminal charges were filed in relation to Mr. May's death.

Following Mr. May's death, Respondent was appointed administratrix of his estate and filed this lawsuit. The complaint alleges that if Mr. Secrist had removed Mr. May from the residence, referred the matter to the prosecuting attorney, or sought court intervention, Mr. May would not have remained in the home where his fatal injuries occurred, and that Mr. May's death "was the proximate and/or direct result of Defendant Secrist's willful and wanton misconduct and/or intentional misconduct." The complaint does not specifically address or explain how Mr. May suffered the fatal injuries or the precise date when these injuries occurred. Further, the complaint alleges that Mr. Secrist's failure to report his findings to the prosecuting attorney violated West Virginia Code § 9-6-14.[6]

In response, Petitioners filed motions to dismiss asserting that they were entitled to qualified immunity. Respondent filed a joint response to these motions, arguing that (1) Petitioners' complained of actions constitute "ministerial functions which are violative of statutory duties;" (2) Mr. Secrist's violations of West Virginia Code § 9-6-14

[6] *See* W. Va. Code § 9-6-14 (1984) ("Any person subject to the mandatory reporting provisions of this article who knowingly fails to make any report required herein or any person who knowingly prevents another person from making such a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than ten days, or both fined and imprisoned.").

and closing the APS case without confirming Mr. May's safety, constituted willful, wanton misconduct and/or intentional misconduct in violation of West Virginia Code § 9-6-2(d);[7] and (3) whether Petitioners committed a statutory violation or if their actions constituted willful and wanton conduct, are questions of fact for the jury.

Following a hearing, the circuit court entered its order denying the motions to dismiss. It agreed with Respondent and concluded that whether Mr. Secrist's acts were ministerial functions that violated statutory duties under West Virginia Code § 9-6-14, and whether his conduct was willful, wanton, and/or intentional, involved questions of fact requiring jury determination. After entry of the circuit court's order, Petitioners filed this appeal.

II. STANDARD OF REVIEW

The circuit court's order denying Petitioners' motions to dismiss is immediately appealable under the collateral order doctrine. *See* Syl. Pt. 1, *W. Va. Bd. of Ed. v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015) ("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."). Additionally, "When

[7] *See* W. Va. Code § 9-6-2(d) (2024) ("An adult protective services caseworker may not be held personally liable for any professional decision or action arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated: Provided, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by willful and wanton misconduct or intentional misconduct.").

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 Ed. of Cnty. of Summers*, 202 W. Va. 228, 503 S.E.2d 541 (1998). We again note that "[f]or purposes of the motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true." *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978). "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt. 3, in part, *Chapman v. Kane Transfer Co.*, 160 W. Va. 530, 236 S.E.2d 207 (1977) (internal citation and quotation omitted). With these standards in mind, we consider the parties' arguments.

III. ANALYSIS

On appeal, Petitioners argue that they are entitled to qualified immunity and that the circuit court erred by denying their motions to dismiss. According to Petitioners, the allegations against Mr. Secrist, including failing to remove Mr. May from the residence, closing the referral, and failing to contact law enforcement or court officials about this case, involved discretionary decisions that did not violate any clearly established right or law, and were not fraudulent, malicious, or oppressive. Further, Petitioners assert that the qualified immunity determination is a question of law for the court to decide; that Respondent failed to meet the heightened pleading standard required to overcome qualified

immunity; and that the complaint only included "skeletal assertions" that Mr. Secrist's actions involved "willful and wanton misconduct and/or intentional misconduct."

As explained below, we agree with Petitioners. We begin our analysis by addressing the circuit court's denial of qualified immunity based on its ruling that a jury needed to make certain factual determinations. We then explain our conclusion that Mr. Secrist's acts were discretionary and that Petitioners are entitled to qualified immunity as a matter of law.

We first address the circuit court's denial of qualified immunity based on its ruling that a jury needed to make certain factual determinations. The circuit court did not examine Petitioners' motions to dismiss pursuant to the qualified immunity framework this Court has established. Instead, the circuit court addressed a variety of legal concepts including negligence, due care, proximate cause, concurrent negligence, and statutory immunity, and concluded that under these theories, Petitioners were not entitled to qualified immunity because multiple issues in this case, including whether Mr. Secrist's acts were ministerial, presented questions of fact for a jury to resolve. The circuit court's order provides:

> [I]f, as asserted by plaintiff, Defendant Secrist's actions were ministerial functions which are violative of statutory duties pursuant to W.Va. Code §9-6-14, then Defendant Secrist may be held liable and this is a matter for jury consideration.
>
> . . . .

> [I]f, as asserted by plaintiff, Defendant Secrist's actions were willful, wanton and/or intentional pursuant to W.Va. Code §9-6-2(d), then these allegations present questions of fact for jury consideration.

The circuit court's order is not supported by our well-established caselaw providing that, absent certain factual disputes, a qualified immunity claim presents a question of law for a court to decide. We have held that

> it is the jury, not the judge, who must decide the disputed "foundational" or "historical" facts that underlie the immunity determination, but it is solely the prerogative of the court to make the ultimate legal conclusion. What this means is that unless there is a dispute of facts, the ultimate question of qualified or statutory immunity is ripe for summary disposition.

Hutchison v. City of Huntington, 198 W. Va. 139, 149, 479 S.E.2d 649, 659 (1996). The Court in *Hutchison* explained that an assertion of qualified immunity "should be heard and resolved prior to any trial because, if the claim of immunity is proper and valid, the very thing from which the defendant is immune—a trial—will absent a pretrial ruling occur and cannot be remedied by a later appeal." *Id.* at 149 n.13, 479 S.E.2d at 659 n.13. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) ("The entitlement is *an immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial."). To further this purpose, we require heightened pleading in cases involving immunities. *Hutchinson*, 198 W. Va. at 149, 479 S.E.2d at 659 ("[I]n civil actions where immunities are implicated, the trial court must insist on heightened pleading by the plaintiff.").

The facts of the instant case are not disputed, particularly at the motion to dismiss stage where the allegations in the complaint are taken as true. Those allegations are clear and straightforward: Respondent alleges that Mr. Secrist's failure to remove Mr. May from the residence, closing the referral, and failure to contact law enforcement or court officials about this case, resulted in Mr. May's death. Thus, whether qualified immunity applies is a question of law for the court to decide; it is not a question requiring a jury to resolve disputed facts. Therefore, we find that the circuit court's ruling on this issue was erroneous and we proceed to examine whether, as a matter of law, Petitioners are entitled to qualified immunity.

> This Court has explained that
>
> > "[i]n 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." Syl. Pt. 6, *Clark v. Dunn*, 195 W.Va. 272, 465 S.E.2d 374 (1995).

Syl. Pt. 7, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).[8]

[8] There is no allegation that Petitioners' insurance policy waived the defense of qualified immunity. Likewise, there is no allegation that Mr. Secrist was acting outside the scope of his employment.

Our immunity analysis begins with an inquiry into the nature of Petitioners' actions:

> To determine whether the State, its agencies, officials, and/or employees are entitled to immunity, a reviewing court must first identify the nature of the governmental acts or omissions which give rise to the suit for purposes of determining whether such acts or omissions constitute legislative, judicial, executive or administrative policy-making acts or involve otherwise discretionary governmental functions. To the extent that the cause of action arises from judicial, legislative, executive or administrative policy-making acts or omissions, both the State and the official involved are absolutely immune pursuant to Syl. Pt. 7 of *Parkulo v. W. Va. Bd. of Probation and Parole*, 199 W.Va. 161, 483 S.E.2d 507 (1996).

Id., Syl. Pt. 10.

Respondent asserted that Mr. Secrist's actions—failing to remove Mr. May from the residence, closing the referral, and failing to contact law enforcement or court officials about this case—are ministerial functions. Ministerial functions "are official acts which, under the law, are so well prescribed, certain, and imperative that nothing is left to the public official's discretion." *State v. Chase Sec., Inc.*, 188 W. Va. 356, 364, 424 S.E.2d 591, 599 (1992). Conversely, we have described discretionary acts as follows:

> [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, 278, 465 S.E.2d 374, 380 (1995) (Internal citation omitted).

Applying the foregoing to Petitioners' actions in this case, we easily conclude that the acts at issue are discretionary. This Court has examined APS's statutory duties and responsibilities and found that investigating suspected abuse of an adult protected person is a discretionary APS function. *See Markham v. W. Va. Dep't of Health & Hum. Res.*, No. 19-0163, 2020 WL 2735435, at *6 (W. Va. May 26, 2020) (memorandum decision) ("The circuit court found that [W. Va. Code § 9-6-2(c)'s] plain language makes clear that Adult Protective Services 'is charged with preventing, reducing, eliminating and investigating the exploitation and abuse and/or neglect of protected persons in this State.' Based on this statutory language setting forth the duties and responsibilities of Adult Protective Services, the circuit court determined that the 'complained of acts in this case relate to the discretionary government functions' of the [DHS]. We agree."). Similarly, services provided by APS "may include, but are not limited to," receiving reports, investigating them, case planning and monitoring, and arranging protective services. W. Va. Code § 9-6-1(2)(A)–(D). These activities, receiving and reviewing reports, conducting investigations, developing case planning and monitoring, and arranging protective services, all require discretionary decisions to be made at each stage of a particular APS case.

Additionally, in *Crouch v. Gillispie*, 240 W. Va. 229, 809 S.E.2d 699 (2018), we examined an analogous factual scenario involving an investigation by Child Protective

Services ("CPS") and determined that the conduct at issue was discretionary. In *Crouch*, we addressed whether a CPS official's actions—closing an abuse and neglect case without removing the child from the home following an investigation—constituted a discretionary judgment call that was protected by qualified immunity. We explained that

> [t]he challenges facing a CPS worker in making the determination of whether or not a situation of present danger exists and . . . whether to remove a child from a home, strikes at the heart of qualified immunity:
>
> > If 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.
> >
> > Qualified immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches. We have further explained that the purpose of such official immunity is not to protect an erring official, but to insulate the decisionmaking process from the harassment of prospective litigation. The provision of immunity rests on the view that the threat of liability will make officials unduly timid in carrying out their official duties.

Id. at 236, 809 S.E.2d at 706 (Emphasis added, internal citation and quotation omitted).

In the present case, Mr. Secrist made the decision to close the referral without removing Mr. May from the residence. This decision was made following Mr. Secrist's investigation which included multiple visits to the residence and multiple interviews with Mr. May and Candus May. We note that prior to closing the referral, Mr. Secrist's reports documented that multiple improvements had been made to the residence. Consistent with

this Court's previous recognition that investigating abuse or neglect of an adult protected person is a discretionary APS function, we find that Mr. Secrist's actions were discretionary. *See Markham*, 2020 WL 2735435, at *6. Therefore, we move to the next step of our qualified immunity analysis.

Because Mr. Secrist's actions were discretionary, Petitioners are entitled to qualified immunity unless Respondent can demonstrate that Petitioners "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[.]" Syl. Pt 11, in part, *A.B.*, 234 W. Va. at 507, 766 S.E.2d at 766. We have recognized that "the question of whether the constitutional or statutory right was clearly established is one of law for the court." *Hutchison*, 198 W.Va. at 149, 479 S.E.2d at 659. Further, we have explained that specificity 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 or that in the light of preexisting law the unlawfulness of the action was apparent.

Id. at 149 n.11, 479 S.E.2d at 659 n.11 (internal quotation and citation omitted).

In this regard, Respondent's complaint alleges two potential clearly established statutory rights to overcome Petitioners' claim to qualified immunity. First, the complaint provides that Mr. Secrist's "failure to report his findings to the prosecuting

attorney [was] a direct violation of West Virginia Code § 9-6-14."[9] West Virginia Code § 9-6-14 provides misdemeanor criminal penalties for a mandatory reporter "who knowingly fails to make any report required herein[.]" *Id.* This statute does not confer a clearly established right upon a vulnerable adult, nor does it specify or define how an APS abuse and neglect investigation is to be conducted.[10] Therefore, we find West Virginia

[9] *See* footnote 6.

[10] Additionally, we note that the duty to file a report concerning the abuse or neglect of an adult protected person with law enforcement or the prosecuting attorney appears in West Virginia Code § 9-6-11(b)(2). This requirement, however, clearly involves a discretionary function, rather than a ministerial command. The statute provides that after APS receives a report of abuse and neglect, it "shall, upon receiving any such report, *take such action as may be appropriate* and shall maintain a record thereof." W. Va. Code § 9-6-11(a) (Emphasis added). Further, we note that West Virginia Code § 9-6-9(a) requires mandatory reporters who have

> *reasonable cause to believe* that a vulnerable adult or facility resident is or has been neglected, abused, financially exploited or placed in an emergency situation, or if such person observes a vulnerable adult or facility resident being subjected to conditions that are likely to result in abuse, neglect, financial exploitation, or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of § 9-6-11 of this code[.]

Id. (Emphasis added).

Again, the reporting requirement in this statute involves a discretionary decision, whether a reporter has "reasonable cause to believe" abuse or neglect exists. The statute does not confer a clearly established right upon a vulnerable adult, nor does it specify or define how APS abuse and neglect investigations are to be conducted.

Code § 9-6-14 does not afford Respondent with a clearly established statutory right sufficient to overcome Petitioners' claim to qualified immunity.

Next, Respondent's complaint alleged that Mr. Secrist's "conduct . . . is not immune from suit pursuant to West Virginia Code § 9-6-2[11] as his actions constitute willful and wanton misconduct and/or intentional misconduct either of which negates immunity." We disagree. West Virginia Code § 9-6-2(d) confers statutory immunity on an APS worker for "any professional decision or action arrived at in the performance of his or her official duties[.]" *Id.* It contains an exception to this statutory immunity for losses "caused by willful and wanton misconduct or intentional misconduct." *Id.* This statutory immunity is not relevant to our qualified immunity analysis. Stated differently, West Virginia Code § 9-6-2(d) does not confer a clearly established right upon a vulnerable adult, nor does it specify or define how an APS abuse and neglect investigations is to be conducted. Instead, West Virginia Code § 9-6-2(d) confers statutory immunity on an APS worker, subject to the willful, wanton and/or intentional misconduct exception. Therefore, we find that the statutory immunity conferred on an *APS worker* by West Virginia Code § 9-6-2(d) does not afford *Respondent* with a clearly established statutory right sufficient to overcome Petitioners' claim to qualified immunity.

Because Respondent has not set forth a clearly established right sufficient to overcome Petitioners' claim to qualified immunity, our final inquiry is whether Respondent

[11] *See* footnote 7.

can demonstrate that Petitioners' actions were "fraudulent, malicious, or oppressive[.]" Syl. Pt 11, in part, *A.B.*, 234 W. Va. at 507, 766 S.E.2d at 766. Respondent's complaint does not assert that Petitioners' conduct was "malicious," nor does it allege "fraudulent" or "oppressive" conduct.[12] Instead, the allegations in the complaint describe Mr. Secrist's actions and inactions, failing to remove Mr. May, failing to report to the prosecuting attorney, and closing the referral, and labels these as "willful and wanton misconduct and/or intentional misconduct." That description relates to the statutory immunity exception in West Virginia Code § 9-6-2(d); it does not address, nor does it satisfy, the "fraudulent, malicious, or oppressive" qualified immunity standard.

Even assuming arguendo that these allegations could defeat Petitioners' claim to qualified immunity under our "fraudulent, malicious, or oppressive" analysis, we note that the complaint offers no supporting factual allegations indicating how Mr. Secrist's discretionary actions, which included making multiple visits to the residence, recommending repairs and improvements, and conducting multiple interviews with Mr. May and Candus May, were made willfully, wantonly, or with intentional misconduct.

[12] There is no allegation that Mr. Secrist acted fraudulently. Further, the complaint does not allege that Mr. Secrist had an improper motive; therefore, we find no malice or oppression. *See W. Va. Dep't of Hum. Servs. v. David B., Next Friend of J.B.*, 251 W. Va. 217, 230, 911 S.E.2d 884, 897 (2024) (Addressing oppression in the context of qualified immunity and stating, "it has been observed that [q]ualified immunity is not available if a public official acted with an improper motive[.] An official will also not be entitled to qualified immunity . . . where the official demonstrates a bad or corrupt motive[.]" (Internal quotation and citation omitted)).

This Court has found that "[g]eneral allegations . . . are insufficient," and a complaint must assert more than "mere sketchy generalizations of a conclusive nature unsupported by operative facts." *Newton v. Morgantown Mach. & Hydraulics of W. Va., Inc.*, 242 W. Va. 650, 654, 838 S.E.2d 734, 738 (2019) (Quotations and citation omitted). Further, these unsupported allegations fall far short of the heightened pleading standard that is required when immunities are implicated. *See Hutchinson*, 198 W. Va. at 149, 479 S.E.2d at 659 ("[I]n civil actions where immunities are implicated, the trial court must insist on heightened pleading by the plaintiff.").

In essence, while Respondent makes the skeletal, unsupported allegation that Mr. Secrist's actions were committed willfully, wantonly, or with intentional misconduct, the gravamen of Respondent's complaint is that if Mr. Secrist had done his job properly, the harm would not have occurred. We have repeatedly rejected this argument in other qualified immunity cases, finding that this argument is insufficient to overcome immunity:

> Also, like *Payne*, in discovery, respondent made the skeletal assertion that if D.H. were properly trained and supervised, the rape would not have occurred. This illusory and languid contention is no more sufficient to overcome the State's immunity in this case than in *Payne*: "Respondents seem to argue simply that if the [DHS] defendants were doing their job properly, this incident would not have occurred. . . . Although this overly simplistic analysis may be appealing in light of these tragic events, qualified immunity insulates the State and its agencies from liability based on vague or principled notions [of government responsibility]."

Crouch, 240 W. Va. at 238, 809 S.E.2d at 708 (*quoting W. Va. Dep't of Health & Human Res. v. Payne*, 231 W. Va. 563, 574, 746 S.E.2d 554, 565 (2013)).

Finally, we emphasize that even if Respondent could satisfy either the clearly established right or "fraudulent, malicious, or oppressive" prongs of our qualified immunity analysis, Respondent has failed to explain how the alleged violations had any causal relation to Mr. May's death such that Petitioners could be held responsible. In *State v. Chase Securities, Inc.*, we stated that

> the thrust of any attempt to establish liability against a public official is the violation of some duty attendant to the official's office and a resulting harm to the plaintiff. This analysis essentially adopts the common law tort concept that liability results from the violation of a duty owed which was a proximate cause of the plaintiff's injury.

188 W. Va. at 364, 424 S.E.2d at 599.

Respondent has not identified the precise cause and nature of Mr. May's death: when it occurred, how it occurred, and how Mr. Secrist's actions or inactions proximately caused it. Instead, the record only provides that Mr. May died approximately six weeks after the referral was closed, as a result of "[c]omplications of multiple blunt force injuries" and that a contributing factor to his death was "[a]therosclerotic cardiovascular disease[.]" Thus, we find this situation analogous to our ruling in *Crouch* in which we stated:

> We are wary of allowing a party to overcome qualified immunity by cherry-picking a violation of any internal guideline irrespective of whether the alleged violation bears any causal relation to the ultimate injury. Therefore, in the absence of allegations tying the alleged violations to Raynna's death, we are unable to view this case as more than an abstract assertion that [DHS] could have investigated more thoroughly.

Crouch, 240 W. Va. at 237, 809 S.E.2d at 707.[13]

Based on all of the foregoing, we find that Petitioners are entitled to qualified immunity from Respondent's lawsuit.

IV. CONCLUSION

We reverse the circuit court's October 9, 2024, order, and remand to the circuit court for entry of an order granting Petitioners' motions to dismiss.

Reversed and Remanded.

[13] *See Markham*, 2020 WL 2735435, at *7 ("Even if we concluded that [the APS employee's] alleged failure to provide Mr. Boswell with a form from the Social Services Manual rose to the level of a clearly established statutory right, we agree with Respondents that the causal connection between the alleged [DHS] improprieties and Petitioners' damages simply do not exist.").