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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

# STATE OF WEST VIRGINIA
# SUPREME COURT OF APPEALS

**West Virginia Division of Corrections and Rehabilitation,**
**Petitioner**

**v.)** **No. 25-242** (Kanawha County CC-20-2024-C-842)

**Mary F. Myers, Individually and as**
**Administratrix of the Estate of Ronald M. Myers, Respondents.**

## MEMORANDUM DECISION

Petitioner West Virginia Division of Corrections and Rehabilitation ("DCR") appeals that portion of the Circuit Court of Kanawha County's March 19, 2025, order denying its motion to dismiss Counts IV (negligence) and V (negligent training) of the complaint of Mary F. Myers, Individually and as Administratrix of the Estate of Ronald M. Myers, the respondent.[1] Upon our review, we determine that a memorandum decision vacating the circuit court's order, in part, is appropriate. *See* W. Va. R. App. P. 21.

In August 2024, the respondent filed a six-count complaint against DCR, unnamed corrections officers, Wexford Health Sources, Inc., and Nilay B. Thacker, D.O., in the Circuit Court of Kanawha County. The respondent alleged that her husband, Ronald M. Myers, was held in the Eastern Regional Jail ("ERJ") from June 23 to July 11, 2022. The respondent alleged that Mr. Myers, who was then seventy-nine years old, suffered numerous medical ailments including cardiac conditions and kidney disease. According to the allegations in the complaint, Mr. Myers displayed signs of cognitive impairment upon arriving at the ERJ. While he could not recall the name of his physician or the names of his prescribed medication, Mr. Myers did inform intake staff that his wife would have that information. The respondent alleged that medical staff did not contact her.

On the morning of July 11, 2022, the unnamed corrections officers observed Mr. Myers on his bunk, apparently asleep. According to the allegations in the complaint, Mr. Myers did not leave his bunk the remainder of the day. When corrections officers did check Mr. Myers in the afternoon, he was found to have an "altered mental state." Mr. Myers was taken to the emergency room at WVU Berkeley Medical Center, where Wexford medical staff allegedly told hospital personnel that Mr. Myers had not eaten for a week and had not taken certain prescribed medications for some time. The respondent alleged that Wexford staff also told hospital personnel that Mr. Myers's

[1] DCR is represented by Natalie C. Shaefer, Esq., Kimberly M. Bandy, Esq., and Tyler L. Rittenhouse, Esq. The respondent is represented by W. Jesse Forbes, Esq., Jennifer N. Taylor, Esq., L. Dante diTrapano, Esq., and Amanda J. Davis, Esq.

cellmate reported that Mr. Myers had been "altered for a few days." Mr. Myers suffered a stroke on July 19, 2022, and passed away.

Relevant here, in Count IV (negligence) the respondent claimed that the unnamed corrections officers were subject to "various policies, procedures, andprotocols [sic] regarding the identification of, and care for, an inmate in medical crisis." The respondent asserted that the corrections officers failed to follow those policies, procedures, and protocols, and that their negligence was the proximate cause of Mr. Myers's death. The respondent alleged that DCR was liable for the negligence of its employees, "and for their violations of clearly established duties under the law, up to the limits of applicableinsurance [sic] coverage."

In Count V (negligent training), the respondent alleged that DCR had a legal duty to train its employees to recognize an inmate's need for medical care, but that DCR failed to properly do so. The respondent alleged that DCR's failure to properly train employees was a proximate cause of Mr. Myers's injuries.

In December 2024, DCR moved to dismiss Counts IV and V of the complaint pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.[2] DCR argued that it was entitled to qualified immunity from the respondent's negligence-based claims unless the respondent demonstrated that the training offered by DCR violated a "clearly established" right or law. DCR argued that the respondent failed to identify a clearly established law violated by its employees. The respondent countered that Rules 95-1-14 and 95-1-15 of the West Virginia Code of State Rules "codified an incarcerated person's right to medical care," and referenced the Eighth and Fourteenth Amendments to the federal Constitution. The respondent also argued that the complaint contained specific allegations that DCR violated clearly established laws regarding the training and supervision of its employees, citing West Virginia Code § 15A-3-5 (2018). DCR filed a reply in January 2025, in which it asserted that the regulation cited by the respondent had expired and § 15A-3-5 contained no specific requirements as to the training of DCR employees.

The circuit court entered an order on March 19, 2025, in which it adopted the respondent's arguments and denied DCR's motion to dismiss Counts IV and V on qualified immunity grounds. Despite DCR's qualified immunity arguments, the circuit court's order did not address the "heightened pleading" requirements of *Hutchison v. City of Huntington*, 198 W. Va. 139, 149, 479 S.E.2d 649, 659 (1996), discussed i*nfra*. DCR now appeals the circuit court's denial of its motion to dismiss Counts IV and V of the respondent's complaint. *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

[2] The respondent named DCR in Count III of the complaint, "Deliberate Indifference in Violation of Clearly Established Laws." DCR also moved to dismiss Count III, arguing that it failed to state a cognizable claim under West Virginia law. The circuit court denied DCR relief as to Count III in its March 19, 2025, order. DCR then petitioned this Court for a writ of prohibition, *State of West Virginia ex rel. West Virginia Division of Corrections and Rehabilitation v. The Hon. Tera Salango and Mary F. Myers, Individually and as Administratrix of the Estate of Ronald M. Myers*, No. 25-328. On November 12, 2026, this Court granted a writ prohibiting enforcement of that portion of the circuit court's order denying DCR's motion to dismiss Count III. *See State ex rel. W. Va. Div. of Corr. & Rehab. v. Salango*, No. 25-328, slip op. at 34 (W. Va. Nov. 12, 2026).

that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine.").

We review the circuit court's order denying DCR's motion to dismiss Counts IV and V de novo. *See* Syl. Pt. 4, in part, *Ewing v. Bd. of Ed. of Cnty. of Summers*, 202 W. Va. 228, 503 S.E.2d 541 (1998) ("When 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.*"). "For 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. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)." Syl. Pt. 3, *Chapman v. Kane Transfer Co.*, 160 W. Va. 530, 236 S.E.2d 207 (1977).

DCR's motion to dismiss Counts IV and V rested on qualified immunity. "Immunities under West Virginia law are more than a defense to a suit in that they grant governmental bodies and public officials the right not to be subject to the burden of trial at all." *Hutchison*, 198 W. Va. at 148, 479 S.E.2d at 658. Thus, "in civil actions where immunities are implicated, the trial court must insist on heightened pleading by the plaintiff." *Id*. at 149, 479 S.E.2d at 659; *see also W. Va. Reg'l Jail & Corr. Facility Auth. v. Est. of Grove*, 244 W. Va. 273, 282, 852 S.E.2d 773, 782 (2020) (citing *Elwood v. Rice City*, 423 N.W.2d 671, 676 (Minn. 1988)) ("Cases implicating immunity, however, are subject to a somewhat heightened pleading standard."); *Elwood*, 423 N.W.2d at 676 (explaining that plaintiffs "should supply in their complaints or other supporting materials greater factual specificity and 'particularity' than is usually required" in claims made under 42 U.S.C. § 1983 against public officials). Despite that, "[a] plaintiff is not required to anticipate the defense of qualified immunity in his complaint . . . ." *Hutchison*, 198 W. Va. at 150, 479 S.E.2d at 660.

On appeal, DCR argues that the circuit court erroneously denied its motion to dismiss Counts IV and V of the respondent's complaint because it "is entitled to qualified immunity as a State agency for its discretionary actions." According to DCR "facility administration" and "officer training" are discretionary functions, such that it is immune from claims of mere negligence arising from such functions unless the respondent demonstrates that the actions or inactions of DCR employees or DCR, itself, were "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, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014). DCR argues that the circuit court erred when it denied the motion to dismiss Counts IV and V because the respondent failed to plead such a violation in Count IV or V, or to allege fraudulent, malicious, or oppressive conduct. The respondent counters that a prisoner's right to adequate medical care is clearly established, as is his right to be free from the deliberate indifference of his jailers to his medical needs. The respondent again highlights specific portions of the West Virginia Code of State Regulations and West Virginia Code § 15A-3-5. Finally, the respondent cites a standard issued by the National Commission on Correctional Health Care Standards and adopted by DCR as clearly established laws that were violated in this case.

Regarding qualified immunity for state agencies, this Court has held 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).

*A.B.*, 234 W. Va. at 492, 766 S.E.2d at 751, Syl. Pt. 7. Furthermore,

> [t]o the extent that governmental acts or omissions which give rise to a cause of action fall within the category of discretionary functions, a reviewing court must determine whether the plaintiff has demonstrated that such 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 accordance with *State v. Chase Securities, Inc.,* 188 W.Va. 356, 424 S.E.2d 591 (1992). In absence of such a showing, both the State and its officials or employees charged with such acts or omissions are immune from liability.

*Id.*, Syl. Pt. 11.

Turning to the parties' arguments, we first observe that the alleged action or inaction giving rise to the respondent's claims of negligence and negligent training against DCR are within DCR's discretionary functions.[3] *See* W. Va. Code § 15A-3-5(a) (2018) ("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.") (emphasis added); *A.B.*, 234 W. Va. at 514, 766 S.E.2d at 73 ("We believe that the broad categories of training, supervision, and employee retention, as characterized by respondent, easily fall within the category of 'discretionary' governmental functions."). The respondent does not contend otherwise.

As the alleged actions and inactions giving rise to the respondent's claims against DCR are discretionary, DCR is entitled to qualified immunity from the respondent's negligence-based claims *unless* the respondent "demonstrate[s] that such 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 . . . ." *A.B.*, 234 W. Va. at 507, 766 S.E.2d at 766, Syl. Pt. 11, in part. The respondent alleges in Count IV of the complaint that DCR's employees "failed to follow the applicable policies, procedures, and protocols by failing to provide or obtain proper medical care" for the respondent's decedent. The respondent does not specify the applicable policies, procedures, or protocols. The respondent alleges in Count V that DCR had a

[3] There is no allegation that DCR's insurance policy waives the defense of qualified immunity.

"legal duty to properly train its employees," but does not specify the source of that duty or its particular requirements. "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." *Hutchison*, 198 W. Va. at 149 n.11, 479 S.E.2d at 659 n.11; *see also W. Va. State Police, Dep't of Mil. Affs. & Pub. Safety v. J.H. ex rel. L.D.*, 244 W. Va. 720, 736, 856 S.E.2d 679, 695 (2021) (same); *A.B.*, 234 W. Va. at 517, 766 S.E.2d at 776 (same). The respondent has not done that in Counts IV and V of this complaint; therefore, as currently pled, the claims cannot survive the DCR's qualified immunity defense and the circuit court erred when it denied DCR's motion to dismiss them.[4]

In response to DCR's appeal, the respondent asserts that the allegations in her complaint demonstrate that DCR violated her decedent's rights secured by the Eighth and Fourteenth Amendments to the United States Constitution. The respondent did not plead Counts IV or V to assert a violation of rights guaranteed by the federal Constitution, however, and she clearly stated in her complaint that it presented "[n]o question of federal law . . . ." As such, the respondent's invocation of the Eighth and Fourteenth Amendments in her response brief is insufficient to overcome the DCR's qualified immunity defense. *See W. Va. Dep't of Hum. Servs. v. David B., ex rel. J.B.*, 251 W. Va. 217, 228 n.13, 911 S.E.2d 884, 895 n.13 (2024) (noting that plaintiffs may not raise "constitutional rights they claim [the state agency] violated and that were clearly established" when plaintiffs "declined in their complaint to rely on the United States Constitution").

The respondent also asserts that Rule 95-1-14 of the West Virginia Code of State Rules provides that, "[a]ll inmates shall have prompt access to necessary medical, dental, and psychiatric care provided in a reasonable manner by licensed personnel." The respondent cites Rule 95-1-15, as well. Those regulations, however, expired before the alleged events underlying the respondent's claims, so she cannot rely upon them to surmount DCR's assertion of qualified immunity to Counts IV and V of the complaint. *See* W. Va. Code § 15A-3-18(b) (2018) (directing that 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 expire on July 1, 2021, if not superseded sooner).

The respondent also asserts that,

> "[a] jailer owes a duty to prisoners to keep them safe, protect them from unnecessary harm, and exercise reasonable and ordinary care for their life and health. Custodians may have particular duties, depending on their knowledge of risks to inmates; thus, if an inmate's suicidal tendencies are known, the custodian's duty is elevated."

*State ex rel. W. Va. Div. of Corr. & Rehab. v. Ferguson*, 248 W. Va. 471, 481, 889 S.E.2d 44, 54 (2023) (quoting 60 Am. Jur. 2d *Penal and Correctional Institutions* § 158 (2014)). Again, qualified immunity insulates state agencies and their employees from claims of negligence arising from their performance of discretionary functions. Thus, an entry in a legal encyclopedia that

[4] Counts IV and V do not include an allegation that the actions or inactions at issue were fraudulent, malicious, or oppressive.

describes a duty of "reasonable and ordinary care" cannot function as the "clearly established statutory or constitutional rights or laws" which, in the proper circumstances, can defeat a qualified immunity defense. The entry does reference "particular duties" that a custodian may have "depending on their knowledge of risks to inmates . . . ." *Id*. However, the respondent does not identify particular duties imposed upon the unnamed corrections officers or the source of those putative duties, so this Court cannot assess whether they amount to clearly established statutory or constitutional rights or laws of which a reasonable person would have known.

The respondent also represents that DCR "adopted the National Commission on Correctional Health Care Standards (NCCHC) standards pursuant to *WVDCR Policy Directive 101.01*."[5] According to the respondent, the NCCHC Standard J-A-101 requires that "[i]nmates have access to care for their serious medical, dental, and mental health needs," and that "[u]nreasonable barriers to inmates' access to health services are to be avoided." The respondent represents that NCCHC has determined that such "unreasonable barriers" include "[h]aving an understaffed, underfunded, or poorly organized system with the result that [the system] is not able to provide appropriate and timely access to care." The respondent raises this argument for the first time on appeal; as DCR observes, the respondent failed to identify these standards in her complaint or in her response to the DCR's motion to dismiss. As such, we decline to address the respondent's argument on this point. *See* Syl. Pt. 2, *Sands v. Sec. Tr. Co.*, 143 W. Va. 522, 522, 102 S.E.2d 733 (1958) ("This Court will not pass on a nonjurisdictional question which has not been decided by the trial court in the first instance.").

The respondent next asserts that the circuit court correctly denied DCR's motion to dismiss regarding Count V, negligent training, because she "specifically alleged that WVDCR violated clearly established rights and/or laws with respect to the training and/or supervision of its employees and contractors." The respondent then cites West Virginia Code § 15A-3-5 (2018). In pertinent part, § 15A-3-5(a) authorizes the DCR commissioner to "manage and administer the . . . personnel affairs of correctional units . . . ." The statute simply vests authority in the commissioner of the DCR to manage DCR personnel; it imposes no specific mandate regarding training upon the commissioner. As such, the statute is insufficient to overcome the DCR's qualified immunity defense to Count V. *See Crawford v. McDonald*, No. 21-0732, 2023 WL 2729675, at *8 (W. Va. Mar. 31, 2023) (memorandum decision) ("As discretionary functions, it is incumbent upon [the plaintiff] to identify a clearly established law that the WVRJCFA violated in its training and/or supervision of the correctional officers.").

In sum, the respondent has failed to adequately demonstrate that the alleged actions and inactions at issue in Counts IV and V violated "clearly established statutory or constitutional rights

[5] The respondent does not reproduce the text of Policy Directive 101.01 in her brief. A version of the policy dated August 4, 2026, is available on DCR's website, however. *See* POLICIES, https://dcr.wv.gov/aboutus/Pages/Policies.aspx (last visited October 8, 2026). Policy Directive 101.01 "ensur[es] [DCR] strives to follow nationally recognized standards and best practices in the field of adult and juvenile corrections." The policy provides that DCR "is committed to the standards and/or expected practices of" NCCHC, "an independent organization whose mission it is to improve the quality of health care in jails, prisons, and juvenile confinement facilities."

or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive . . . ." *A.B.*, 234 W. Va. at 507, 766 S.E.2d at 766, Syl. Pt. 11, in part. However, given the allegations elsewhere in the respondent's complaint[6] and mindful that "[a] plaintiff is not required to anticipate the defense of qualified immunity in his complaint," we cannot say that the respondent "has pleaded . . . her best case," and "there is no need to order more detailed pleadings." *Hutchison*, 198 W. Va. at 150, 479 S.E.2d at 660. As such, we vacate rather than reverse the relevant portion of the circuit court's order of March 19, 2025, and remand this case to the circuit court. On remand, the circuit court shall afford the respondent a period not to exceed fifteen days following the entry of the mandate in this matter to amend Counts IV and V of the complaint, if possible, to satisfy the applicable pleading standard. Thereafter, DCR may file a motion asserting immunity or any other defenses it may have.

Vacated in part and remanded with directions.

**ISSUED: November 13, 2026**

**CONCURRED IN BY:**

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

[6] As noted, *supra*, we recently granted a writ (1) prohibiting enforcement of that portion of the circuit court's order denying DCR's motion to dismiss Count III of the respondent's complaint and (2) holding that "[a] claim for damages for 'deliberate indifference to clearly established law' is not a cognizable claim under the common law of West Virginia." Syl. Pt. 4, *State ex rel. W. Va. Div. of Corr. & Rehab. v. Salango*, No. 25-328, slip op. (W. Va. Nov. 12, 2026). While Count III of the respondent's complaint failed on legal grounds, it contains allegations that may relate to other claims. Therefore, we find it appropriate in these singular circumstances to vacate rather than reverse that portion of the circuit court's order denying DCR's motion to dismiss Counts IV and V of the respondent's complaint and remand this case with directions as stated in the body of this decision.