

A Summary of Recent Pennsylvania Appellate Court Decisions

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REPORTING DECISIONS THROUGH OCTOBER 31, 2014

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Litigation and Procedure

A. *Transfer of Venue - Forum Non Conveniens*

- [Lee v. Bower Lewis Thrower, 2014 PA Super 240 \(Pa.Super., October 22, 2014\)](#)

➤ **Holding:** In order to grant a Motion to Transfer Venue under Pa.R.Civ.P. 1006(d)(1), a moving party must support the petition with detailed information on the record. Thus, affidavits from witnesses addressing issues such as distance, the burden of travel, time out of the office, disruption of business operations, difficulty in obtaining witnesses, and access to proof generally, may be sufficient to warrant granting a Motion to Transfer.

All decisions are “[hyperlinked](#)” to the slip opinion. All you have to do is “[click](#)” or “[ctrl + click](#)” on the title of the case, and if connected to the Internet, your browser will open decision for you to read in

II. Substantive Law

A. *Sovereign Immunity - Liability to a Fleeing Suspect*

- [White v. City of Philadelphia, No. 650 C.D. 2013 \(Pa. Cmwlth., October 16, 2014\)](#)

➤ **Holding:** In order for sovereign immunity to bar a claim under Section 8542 of the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542(b)(1), a plaintiff must know that he is fleeing apprehension by a police officer in order for the plaintiff to be considered a "fleeing suspect" or "in flight or fleeing apprehension ... by a police officer." Thus, a prerequisite to the doctrine that an officer has no duty of care to a fleeing offender is that the officer has taken some action that would cause a reasonable person to know he is being asked to stop or otherwise realize that he is being pursued by police.

B. *Sovereign Immunity - Real Property Exception*

- [Taylor v. Northeast Bradford School District, No. 125 C.D. 2014 \(Pa. Cmwlth., October 9, 2014\)](#)

➤ **Holding:** The question of whether chattel is personalty or a fixture under Section 8542 of the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542(b)(3), is a question of the law for the court to decide. In determining whether a partition/wall that can be pulled out or collapsed depending upon the school's needs, there must be evidence about the removability of the chattel and the property owner's intent.

C. *Mental Health Procedures Act - Waiver*

□ [*Octave v. Walker, No. 28 WAP 2012 \(Pa., October 30, 2014\)*](#)

- **Holding:** A person waives the mental health records privilege under the Mental Health Procedures Act, 50 P.S. § 7111, when, judged by an objective standard, he knew or reasonably should have known his mental health would be placed directly at issue by filing the lawsuit. In this case, the Court ruled that plaintiff waived the privilege by filing a negligence suit to recover for physical injuries sustained in a motor vehicle accident. Justice Saylor filed a [dissenting opinion](#); Justice Todd also filed a [dissenting opinion](#).

D. *Mortgage Foreclosure*

□ [*Wells Fargo Bank N.A. v. Spivak, 2014 PA Super 250 \(Pa. Super., October 31, 2014\)*](#)

- **Holding:** When a residential mortgagee delivers a notice under the Loan Interest and Protection Law, 41 P.S. §§ 101, *et seq.*, commences a foreclosure action against a mortgagor, discontinues that foreclosure action, and re-files another foreclosure action against a mortgagor for the same premises, the lack of a new notice prior to the second action is fatal to the second action.

III. *Workers' Compensation*

A. *Reinstatement Following Suspension*

□ [*Dougherty v. Workers' Compensation Appeal Board \(QVC, Inc.\), No. 386 C.D. 2014 \(Pa. Cmwlth., October 14, 2014\)*](#)

- **Holding:** A claimant seeking reinstatement of benefits is entitled to the presumption of causation when he returns to work under suspension with restrictions, *i.e.*, he returns to a modified- or light-duty position. If a claimant returns to work and can perform his pre-injury job despite his restrictions, the claimant has the burden of proving causation.

B. *Traveling Employee*

□ [*Holler v. Workers' Compensation Appeal Board \(Tri Wire Engineering Solutions, Inc.\), No. 386 C.D. 2014 \(Pa. Cmwlth., October 14, 2014\)*](#)

- **Holding:** A claimant/cable technician, who is given a company van to drive to and from work, and is prohibited from using the vehicle for any non-work purpose, is entitled to benefits under the Workers' Compensation Act as a traveling employee with no fixed place of work.

C. *Special Circumstances*

□ [*Simko v. Workers' Compensation Appeal Board \(United States Steel Corp.-Edgar Thompson Works\), No. 829 C.D. 2014 \(Pa. Cmwlth., October 17, 2014\)*](#)

- **Holding:** The "special circumstances" exception to the coming and going rule does not apply to a claimant injured in a car accident while traveling to a meeting at the employer's premises. Thus, the claimant is not entitled to benefits under the Workers' Compensation Act.

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