

[J-42-2009][M.O. - McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

E.D.B., AN INCAPACITATED PERSON,	:	No. 78 MAP 2008
BY AND THROUGH D.B. & J.R.B., JR.,	:	
COURT-APPOINTED GUARDIANS OF	:	
THE ESTATE AND PERSON OF E.D.B.	:	Appeal from the Order of Superior Court at
	:	No. 2010 MDA 2006 dated 8/15/07,
	:	reargument denied on 10/25/07 reversing
	:	and remanding the order of Centre County
v.	:	Court of Common Pleas, Civil Division at
	:	No. 2003-2042 dated 11/6/06
	:	
GERALD CLAIR AND CENTRE	:	
COMMUNITY HOSPITAL, A	:	
CORPORATION	:	
	:	
APPEAL OF: COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
PUBLIC WELFARE	:	ARGUED: May 12, 2009

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 29, 2009

I join the majority opinion, but for its waiver analysis. See Majority Opinion, slip op. at 18-20 n.11. In this regard, DPW argues against application of the waiver doctrine based upon the “significant modification to the published case law” occasioned by Shaffer-Doan v. Commonwealth, Dep’t of Pub. Welfare, 960 A.2d 500 (Pa. Cmwlth. 2008), which “significantly alter[ed] the legal landscape [and] excuses any failure to preserve an issue.” Reply Brief for Appellant at 2 (citing Cleveland v. Johns-Mansville Corp., 547 Pa. 402, 690 A.2d 1146 (1997)). Given this stance by DPW, it should not benefit from a determination that the Bowmasters have waived the assertion that their

complaint sought only medical expenses incurred after Emily was no longer a minor. Rather, I would focus on the fact that the allegations of the complaint, which was filed two months before Emily reached the age of majority, involved both medical expenses already incurred and similar expenditures in the future. See Brief for Appellees at 11 (quoting Complaint at ¶30). The presence of such allegations supports DPW's argument that the "complaint asserted a claim for past medical expenses incurred during [Emily's] minority, and that claim remained in the case at the time of settlement." Brief for Appellant at 21.