

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

FREDDIE BATTLE, ADMINISTRATRIX FOR THE ESTATE OF ERIC BATTLE, DECEASED,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
	:	
Appellant	:	
	:	
v.	:	
	:	No. 1864 WDA 2013
PRISON HEALTH SERVICES, INC.,	:	
MHM CORRECTIONAL SERVICES, INC.	:	

Appeal from the Order, October 30, 2013,
in the Court of Common Pleas of Greene County
Civil Division at No. A.D. No. 552, 20093942

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN AND ALLEN, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED FEBRUARY 24, 2015**

Appellant appeals from various orders below which granted summary judgment in favor of appellees in appellant's negligence and breach of contract action. Finding no merit in the issues on appeal, we affirm.

Appellant is the administratrix for the Estate of Eric Battle. Tragically, Battle died on June 4 or 5, 2005, of untreated diabetes while incarcerated at the State Correctional Institution at Greene ("SCI Greene"). Mental health issues contributed to Battle's death as they apparently caused him to refuse insulin treatment. Appellees are the general health services provider and the mental health services provider, respectively, at SCI Greene.

On July 30, 2007, appellant commenced her action against appellees with the filing of a Writ of Summons. In a subsequently filed complaint, appellant raised a breach of contract count and multiple negligence-based counts. Ultimately, upon the filing of serial preliminary objections and amended complaints, summary judgment was granted in favor of both appellees as to all counts of the complaint.

On August 28, 2009, the court sustained appellees' preliminary objections as to the breach of contract claim. In an accompanying opinion of the same date, the court explained that appellant's claim, based upon a theory of third party beneficiary, was untenable because the contracts between the Department of Corrections and each of the appellees, using identical language, contained a clause specifically declaring that the parties did not intend to create any third party beneficiary rights.

On June 12, 2012, the trial court entered an order granting summary judgment to appellee MHM Correctional Services, Inc., on appellant's negligence claims. In an accompanying memorandum of the same date, the court explained that appellant's negligence claims were all barred by the two-year statute of limitations as Battle died no later than June 5, 2005, and suit was not commenced until July 30, 2007. The court dismissed appellant's discovery argument by noting that discovery does not toll the statute of limitations because death is a definitely established event putting survivors on notice to determine the cause of death, citing ***Pastierik v.***

Duquesne Light Co., 526 A.2d 323 (Pa. 1987). Finally, the court examined the basis for estopping the invocation of the statute of limitations, fraudulent concealment. The court found no fraudulent concealment on the part of appellee MHM Correctional Services, Inc., and observed that appellant had at all times diligently pursued her inquiry into her son's death.

Finally, on October 30, 2013, the trial court entered an order granting summary judgment in favor of appellee Prison Health Services, Inc., as to all of appellant's negligence claims. In an accompanying memorandum of the same date, the court again explained that appellant's negligence claims were all barred by the two-year statute of limitations at 42 Pa.C.S.A. § 5524(2). After again rejecting discovery as tolling the statute of limitations, the trial court systematically examined in detail each instance of alleged fraudulent concealment raised by appellant, and gave reasons why none were valid.

We find no error with the trial court's analysis. After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion and memoranda of the trial court, it is our determination that summary judgment was properly granted. The breach of contract claim was untenable because the underlying contract specifically decreed that the parties did not intend to create third party beneficiaries. The negligence claims were barred by the statute of limitations. The trial court's opinion, filed on August 28, 2009, and its two memoranda, filed June 12, 2012 and October 30, 2013, comprehensively discuss and properly

analyze the bases for summary judgment. We will adopt them as our own and affirm on those bases.

Finally, we review an argument of appellant not fully addressed by the trial court. Therein, appellant contends that another clause of the contracts between appellees and the Department of Corrections confers third party beneficiary status to inmates:

ARTICLE 2

SERVICES

2.1 The PROVIDER shall deliver general health care and specialized medical services to inmates incarcerated at the FACILITIES.

2.1 The PROVIDER shall deliver mental health services to inmates incarcerated at the FACILITIES.

Medical Services Agreement (upper); Mental Health Services Agreement (lower).

Appellant argues that because appellees cannot fulfill their contracts without treating inmates, such factor confers third party beneficiary status on appellant's decedent. We disagree.

Article 25 of both agreements, in identical language, clearly and unambiguously declares that it is the intent of the parties not to create third party beneficiaries:

ARTICLE 25

THIRD PARTY RIGHTS

25.1 The only parties to this AGREEMENT are the DEPARTMENT and PROVIDER. The parties understand that this AGREEMENT does not create or intend to confer any rights in or on persons or entities not a party to this AGREEMENT.

Medical Services Agreement and Mental Health Services Agreement.

The intent of the parties is manifest. Clause 2.1 of each agreement merely describes what the basic duties of the provider are. To the extent that the clause suggests that third party beneficiary status may be available to inmates, Clause 25.1 clearly and unambiguously declares that that is not the case.

In support of her position, appellant cites and quotes ***Scarpitti v. Weborg***, 609 A.2d 147 (Pa. 1992), a case in which our supreme court expanded the rule designating third party beneficiary status:

The current rule in Pennsylvania for designation of a party as a third party beneficiary was first articulated in the seminal case of ***Spires v. Hanover Fire Insurance Co.***, 364 Pa. 52, 70 A.2d 828 (1950) (plurality opinion). In ***Spires***, we held that in order for a third party beneficiary to have standing to recover on a contract, both contracting parties must have expressed an intention that the third party be a beneficiary, and that intention must have affirmatively appeared in the contract itself.

. . . .

Accordingly, we hold that a party becomes a third party beneficiary only where both parties to the

contract express an intention to benefit the third party in the contract itself, ***Spires, supra, unless***, the circumstances are so compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Scarpitti, 609 A.2d at 149, 150-151 (emphasis in original).

Appellant argues that the circumstances here are so compelling that recognition of third party beneficiary status is appropriate. We find that ***Scarpitti*** is inapposite in this case.

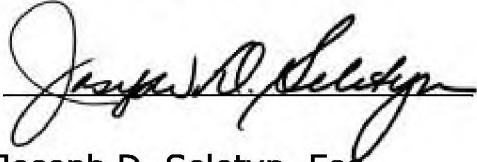
Scarpitti set out parameters for conferring third party beneficiary status where the parties to the underlying agreement failed to explicitly do so, but which agreement by its other terms clearly evinced an intention to create third party beneficiaries. The instant agreement did not merely fail to create third party beneficiaries; rather, the parties explicitly agreed that by their agreement they intended to create no third party beneficiaries. In the face of such an explicit directive in the underlying contract, it would be wholly improper even under ***Scarpitti*** to find that the contract actually did create third party beneficiaries. We find that appellant does not have third party beneficiary status.

Accordingly, having found that the trial court properly entered summary judgment against appellant, we will affirm the order below.

J. S50014/14

Orders of June 12, 2012 and October 30, 2013, granting summary judgment, are affirmed. Order of August 28, 2009, sustaining preliminary objections as to the breach of contract claim, is affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath the name.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/24/2015

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA

FREDDIE BATTLE, Administratrix
for the Estate of Eric Battle, deceased,

Plaintiff,

vs.

PRISON HEALTH SERVICES, INC. and
MHM CORRECTIONAL SERVICES, INC.,

Defendants.

A.D. No. 552, 2009

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OPINION

Before the Court are preliminary objections filed by two health care providers in response to a complaint filed by the estate of a person who died at a time when the defendants were providing him care.

From the amended complaint we learn that Eric Battle was an inmate at SCI-Greene. He suffered from diabetes and was perhaps mentally ill. In June of 2005, he died in his cell. The plaintiff is Freddie Battle, the decedent's mother, who is administratrix of his estate. Defendants are Prison Health Services, Inc. (PHS) and MHM Correctional Services, Inc. (MHM). The amended complaint describes both as Delaware corporations. Each is a contractor with the Pennsylvania Department of Corrections and each provides health care to Pennsylvania inmates. PHS provides medical services and MHM furnishes mental health services. Plaintiff's contention is that her decedent's death was entirely preventable and was due to medical neglect and indifference.

Defendants have raised several preliminary objections to the amended complaint. We will discuss those objections count by count.

COUNT ONE
STATE CONSTITUTIONAL CLAIMS

Plaintiff alleges that the quality of care provided to Pennsylvania inmates by these defendants is so deficient and is so well known by prison authorities to be deficient that it violates rights guaranteed to inmates by the Pennsylvania Constitution. Both Defendants point out that Pennsylvania recognizes no right to sue for damages for violations of the Commonwealth's constitution, citing Jones vs. Philadelphia, 890 A.2d 1188 (Pa. Cmwlth. 2006). They are correct, but the amended complaint also requests mandamus and injunctive relief. We will sustain the objection as to the request for damages, but overrule it as to the prayer for equitable relief.

COUNT TWO
NEGLIGENCE

Here, both Defendants object to the allegations in this count, or rather to the lack of allegations. Plaintiff has not set forth the cause of action for negligence; rather she has given us the hornbook definition of negligence. Pennsylvania is a fact pleading jurisdiction and the complaint must contain the facts essential to support the claim. Pa. R.C.P. 1019, Miketic vs. Baron, 675 A.2d 324 (Pa. Super. 1996).

The preliminary objections to Count Two are sustained.

COUNT THREE
BREACH OF CONTRACT CLAIM

Here, Plaintiff alleges that her decedent was a third party beneficiary of the contract between the defendants and the Department of Corrections. PHS objects, and attaches to its preliminary objections a copy of the contract between the DOC and PHS (which should have been attached to the complaint, Pa. R.C.P. 1019(i)), which provides in relevant part

(Article 25): "The parties understand that this AGREEMENT does not create or intend to confer any rights in or on persons or entities not a party to this agreement." In Guy vs. Liederbach, 459 A.2d 744 (Pa. 1983), our Supreme Court adopted the Restatement (Second) of Contracts, Section 302, Intended and incidental beneficiaries.

In discussing this section in Scarpitti vs. Weborg, 609 A.2d 147 (Pa. 1999), the Court stated the test as follows:

Accordingly, we hold that a party becomes a third party beneficiary only where both parties to the contract express an intention to benefit the third party in the contract itself ... *unless* [emphasis in original] the circumstances are so compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties ... and the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Here, even if we assume that the circumstances are so compelling that we should give inmates standing to enforce the contract, we cannot find that the circumstances indicate that anyone intended to give an inmate the benefit of the performance, because the express language of the contract excludes that intention.

We therefore sustain the preliminary objections to Count Three.

COUNT FOUR WRONGFUL DEATH AND SURVIVAL ACTION

The defendants object because, they argue, Plaintiff has not stated a claim for which relief can be granted. As we have found that the amended complaint does not state a cause of action for negligence, these objections will be sustained. Presumably in some future

version of this complaint Plaintiff will be able to revive this Count if she adequately states a cause of action.

COUNT FIVE CONSPIRACY

The Amended Complaint alleges that the defendants "... engaged in a conspiracy to commit unlawful or tortious acts" (Par. 91) and that "[t]hese acts were a conscious, intentional and concerted effort to gain from misleading state correctional agencies and the inmate community they served." (Par. 92). Defendants argue that to state a cause of action for civil conspiracy a plaintiff must allege a combination of two or more persons acting with a common purpose to do an unlawful act. The claim must allege an underlying tort. Nix vs. Temple University, 596 A.2d 1132 (Pa. Super. 1991). Here, Plaintiff seems to be saying that the underlying tort involve "misleading state correctional agencies" which sounds like fraud. Because we know that allegations of fraud must be pleaded with particularity, Pa. R.C.P. 1019(b) we find that Plaintiff has not adequately pleaded the tort underlying alleged conspiracy and we will therefore sustain the preliminary objections to this Count.

COUNT SIX FRAUDULENT CONCEALMENT

Pennsylvania recognizes no cause of action for "fraudulent concealment". This Preliminary Objection is sustained.

COUNT SEVEN NEGLIGENT MISREPRESENTATION

This Count repeats the barebones outline of the tort of negligence and then argues that "Defendants negligently failed to disclose the true cause of the death of Eric Battle by ... knowingly withholding information from Freddie Battle, the coroner, and others". Par.

107. We are aware of no duty on healthcare providers to disclose the true cause of death to a decedent's next of kin. To the extent a healthcare provider has a duty to communicate with the coroner, the proper person to complain about a failure to disclose would be the coroner. Plaintiff has no standing to raise that issue.

If the reason Plaintiff brings this suit is the negligent care or lack of care that her son received while an inmate at SCI-Greene, acts subsequent to his death can have no relevance.

The Preliminary Objections to Count Seven are sustained.

MOTION TO STRIKE FOR VIOLATION OF PA. R.C.P. 1028(a)(2)

Defendant MHM objects to the scandalous and impertinent matter contained in the complaint. The objection might as well include relevancy. For instance, paragraphs 41 through 49, inclusive, of the Amended Complaint have nothing whatsoever to do with any cause of action Plaintiff is attempting to state. Any future version of this complaint shall omit scandalous, impertinent and irrelevant details.

PUNITIVE DAMAGES

At this stage of the proceeding, we overrule the preliminary objection to the demand for punitive damages.

In general, we sustain the objections of the defendants of the continuing failure, by Plaintiff, to comply with Pa. R.C.P. 1020. Each Count should specify which Defendant it is directed toward.

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA

FREDDIE BATTLE, Administratrix)
 for the Estate of Eric Battle,)
 deceased,)

Plaintiff,)

v.)

No. 552 AD 2009

PRISON HEALTH SERVICES, INC. and)
 MHM CORRECTIONAL SERVICES, INC.)

Defendants.)

MEMORANDUM

Before the Court is Defendant MHM Correctional Services, Inc.'s (MHM) Motion for Summary Judgment.

The facts of this case are tragic. Eric Battle, the decedent in the subject action, died while incarcerated at the State Correctional Institute at Greene (SCI-Greene) on June 5, 2005. Mr. Battle suffered from severe diabetes and mental health issues. The Plaintiff, Freddie Battle, is the mother of Eric Battle. It is Plaintiff's contention that her son's death was avoidable.

Defendant MHM requests summary judgment in its favor and dismissal of all claims against it with prejudice because Plaintiff failed to institute her lawsuit within the applicable statutory period. In its motion MHM argues that the discovery rule does not apply to wrongful death actions to

bar a statute of limitations defense, and therefore Plaintiff should be forever barred from pursuing this cause of action.

Plaintiff asserts that the case should not be dismissed because it is the doctrine of fraudulent concealment, not the discovery rule that has tolled the statute of limitations.

Plaintiff argues that Eric Battle's death was preventable and prison officials have acted to conceal the true facts and circumstances surrounding his death.

In a tort action the statute of limitations is two years, which begins to run on the date the injury occurred. In a wrongful death action the date of injury is the date of the decedent's death. Pastierik v. Duquesne Light Co., 514 Pa. 517, 524-525 (1987). The Pennsylvania Supreme Court has further held that there is no basis to regard the cause of action for death as accruing at any time other than at death. Id. See also Kaskie v. Wright, 589 A,2d 213 (Pa.Super. 1991).

This means that in the instant case the statute of limitations ran out on June 5, 2007. Since this action against Defendant MHM was filed on December 14, 2007, it is clear that the complaint was filed untimely. Therefore, the sole issue now before the Court is whether the statute of limitations was tolled by the discovery rule or doctrine of fraudulent concealment, or both.

The discovery rule "originated in cases in which the injury or its cause was neither known nor reasonably knowable." Fine v. Checcio, 582 Pa. 253, 266 (2005), citing Lewey v. H.C. Frick Coke Co., 31 A. 261 (Pa. 1895). It is well-settled law that the discovery rule is not applicable in wrongful death actions because "death is a definitely ascertainable event," and it is the date of death that puts survivors on notice if they wish to pursue a cause of action related to the death. Pastierik at 524-525.

The doctrine of fraudulent concealment, which does apply to wrongful death actions, provides that a defendant may not invoke the statute of limitations where, "through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts." Krapf v. St. Luke's Hospital, 4 A.3d 642, 650 (Pa.Super. 2010). See also Fine v. Checchio, *supra*, Nesbitt v. Erie Coach Co., 416 Pa. 89 (1964), Molineux v. Reed, 516 Pa. 398 (1987), Gravinese v. Johns-Manville Corp., 471 A.2d 1233, 1238 (Pa.Super. 1984). This doctrine is broad and encompasses both intentional fraud and unintentional deception. The Plaintiff carries the burden of proof and must show fraudulent concealment by "clear, precise, and convincing evidence." Id. Unlike the discovery rule, the doctrine of fraudulent concealment may extend to

actions taken by a defendant after the date of death. (See e.g., Krapf v. St. Luke's Hospital, cited above, where Plaintiffs relied on death certificate issued by Defendant after decedents' death.)

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA

The cornerstone of the doctrine of fraudulent concealment, though, is an action by the defendant which causes the plaintiff to relax her vigilance or deviate from her right of inquiry. The conduct complained of must be "something amounting to an affirmative inducement to plaintiff to delay bringing the action." Gravinese at 1238. In the case at bar Plaintiff contends that it is the actions of prison officials after Eric died that constitute fraudulent concealment - the autopsy reporting the cause of death as natural, denial of a coroner's inquest, undue delay in turning over medical records, and then deliberately providing the medical records in a disorganized state to make it nearly impossible to discover any wrong-doing.

Even if all of Plaintiff's allegations are true, we see no actions on the part of the Defendant that caused Plaintiff to relax her vigilance or deviate from her right of inquiry into Eric's death. In fact, Plaintiff clearly continued her inquiry even after receiving the allegedly falsified autopsy report by requesting a coroner's inquest. When the inquest

was denied she again continued her investigation by requesting Eric's medical records. Even the delay in receiving the medical records did not delay her bringing of this action because the lawsuit against the co-defendant was initiated by writ of summons on July 30, 2007 and Plaintiff did not receive the medical records until September 2007. While her pursuit of Eric's medical records may have been significantly delayed for various reasons, Plaintiff had ample opportunity to preserve her rights and stay within the statutory period, but failed to do so.

THEREFORE, for the foregoing reasons we find that the doctrine of fraudulent concealment does not apply and all claims against Defendant MHM must be dismissed with prejudice.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, PENNSYLVANIA
CIVIL DIVISION

FREDDIE BATTLE, Administratrix)
for the Estate of Eric Battle, deceased,)

Plaintiff,)

vs.)

A.D. No. 552, 2009

PRISON HEALTH SERVICES,)
INC., et al., n/k/a)
CORIZON HEALTH, INC.,)

Defendants.)

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GREENE COUNTY, PA

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MEMORANDUM

Before the Court is a Motion for Summary Judgment filed by Prison Health Services, now known as Corizon Health, Inc.

Eric Battle, Plaintiff's decedent, died in June of 2005 while an inmate at SCI-Greene. He suffered from severe diabetes and he also had mental health issues. His mother, Freddie Battle, Plaintiff, was granted letters of administration by the Register of Wills of Greene County in June of 2006. She initiated this lawsuit by filing a writ of summons with the Court of Common Pleas of Philadelphia County on July 30, 2007, over two years after the death of Eric Battle. As the statute of limitations for personal injury actions or for a death caused by the wrongful and negligent act of another is two years, 42 Pa. C.S.A. §5524(2), Defendant has moved for summary judgment.

Plaintiff does not dispute that she began this proceeding over two years after the death, but she believes that under the facts of this case her lawsuit is timely. She argues that one or the other or both of the exceptions to the statute of limitations apply here. Those two exceptions are the discovery rule and fraudulent concealment. Fine v. Checchio, 870 A.2d 850 (Pa. 2005). The discovery rule excludes from the running of the statute of limitations any time during which a party does not know he has been injured, as when coal is unlawfully removed from beneath the surface or when an instrument or sponge is left inside a patient after an operation. But the discovery rule does not apply in death cases, such as this one. “ ‘[D]eath’ is a ‘definitely established event’. Upon the death of an individual, survivors are put on clear notice thereof, and they have the opportunity to proceed with scientific examinations aimed at determining the exact cause of death so that a wrongful death action, if warranted, can be filed without unreasonable delay”. Pastierik v. Duquesne Light Company, 526 A.2d 323 (Pa. 1987). The discovery rule does not toll the statute of limitations in this case.

The other exception and the rule on which Plaintiff hopes to proceed is fraudulent concealment. Fraudulent concealment is a species of estoppel which provides that a defendant may not invoke the statute of limitations if by fraud or concealment, even inadvertent concealment, he causes the plaintiff to deviate from his right of inquiry. Fine v. Checchio, *supra*. A plaintiff has the burden of showing by clear and convincing evidence that even with the exercise of reasonable diligence, she

could not have learned of the cause of injury. *Id.* It is for the court to determine if estoppel results from established facts, but it is up to the jury to establish the facts. *Id.*

What facts does Plaintiff argue raise an estoppel? According to her response to the Motion for Summary Judgment, there were three: the death certificate, the autopsy report and the phone call from an unknown employee of Defendant advising her of her son's death. We will discuss them individually.

The Death Certificate

Plaintiff argues that the death certificate signed by the Greene County Deputy Coroner misled her because it listed the cause of death as diabetes mellitus. Whether or not she was misled by this document is immaterial; the fact is that Plaintiff had nothing to do with its production. According to 35 P.S. §450.503, a death certificate is produced by the coroner on the basis of information supplied by "the person in charge of internment," the funeral director. That person's name (illegible in a copy furnished by Plaintiff) appears in box 22A of the death certificate included as exhibit 9 in Plaintiff's Brief in Opposition. That information was most likely obtained from the autopsy report dated June 5, 2005. It will be noted that Eric Battle was pronounced dead at 12:17 a.m. June 5, 2005 at Greene County Memorial Hospital (Ex. 8). His body was taken from the hospital to Carlow University where the autopsy was performed at 2:00 p.m. on June 5, 2005. The death certificate was signed by the Deputy Coroner on July 1, 2005. There was absolutely no evidence to suggest that Defendant had anything to do with the generation of the death certificate or the results of the autopsy.

The Autopsy

Plaintiff makes this rather remarkable statement in her Brief in Opposition: "It is entirely possible that PHS hired and paid for Dr. Wecht's report. Dr. Falor's treatment records certainly provide information. That is an inference that Plaintiff is entitled to." 16 P.S. §4236 requires the coroner where death is sudden or of a suspicious nature to investigate the circumstances and to cause an autopsy to be made. Plaintiff implies something underhanded in the employment of Cyril Wecht to perform that autopsy. Plaintiff may not be aware that the elected coroner of Greene County at the time (and still), Gregory Rohanna, is not a pathologist or medical doctor of any kind. This is typical in most of the counties of Pennsylvania, certainly in rural ones. Mr. Rohanna, again like many coroners, is in fact a funeral director.

When an autopsy is required, the coroner contracts with a pathologist to perform the actual autopsy. In this case, the contract was with Cyril Wecht, M.D., J.D., a nationally known forensic pathologist. Plaintiff in several places reminds us that shortly after he performed the autopsy in this case, Dr. Wecht was indicated by the U.S. Attorney. She does not tell us that the U.S. Attorney, following a mistrial, withdrew all remaining charges on June 2, 2009, U.S. v. Wecht, 26-2006 (WD Pa), nor does she tell us that the charges against him did not question his professional expertise.

Nothing in the records suggests that Defendant had anything to do with the selection of Dr. Wecht by Greene County's Coroner to perform the autopsy of Eric Battle, or with the production of the autopsy report.

Plaintiff suggests that the signature of Defendant's employee, Stanley Falor, M.D., on a report (Ex. 3) issued by the Coroner's Office indicates Defendant's improper involvement in that office. The attached exhibit is a photocopy of an undated form signed by Gregory Rohanna. The information on the form is substantially the same as on the death certificate. The form, or the photocopy of the form that was attached to the Brief, contains the subscription "Reviewed 8-18-05/1400/Stanley E. Falor, M.D." Whatever the purpose of this signature, it is dated two months after the death. The signature in no way suggests that Dr. Falor had anything to do with completion of the form. If anything, it indicates that he reviewed it two months later. In no way could that signature have caused Plaintiff to deviate from her right of inquiry.

Plaintiff argues that the language of the death certificate describing "diabetes mellitus" as the cause of death lulled her into thinking that Eric Battle's death was from natural causes. It is only when she received a copy of Dr. Wecht's June 5, 2005, report in December of 2005 which expressed the opinion that death was "due to uncontrolled diabetes mellitus with apparent hyperglycemia" [emphasis added] that she became sufficiently alarmed to investigate further. With respect, is not the death of a 37 year old man, not obese, an indication that his diabetes was "uncontrolled"? If it was controlled, if one's blood sugar was maintained in the normal range, diabetes would not normally be fatal. In other words, is not any death from diabetes by definition from uncontrolled diabetes?

The Phone Call

Plaintiff received a call from an unknown female on the morning of June 5, 2005, to inform her of the death of her son. Apparently, the caller identified

herself as an employee of the Defendant, but Plaintiff did not get her name. Plaintiff says nothing about the phone call to suggest there was any misstatement of fact. Plaintiff suggests in her Response to the Motion for Summary Judgment "[s]he was not told there was anything unusual about the death." This hardly amounts to clear and convincing evidence that the phone call caused her to deviate from her inquiry.

Furthermore, the statement is inadmissible hearsay when Plaintiff cannot identify the person with whom she spoke. Pa.R.E. 803(25)(D)

Plaintiff's Exhibits

Plaintiff argues she "has presented a number of documents showing the direct involvement of Defendant, PHS, with her as well as with other officials giving false information about Eric Battle's true cause of death." We will discuss her exhibits individually.

She begins with a report, Exhibit 3, from the Greene County Coroner's Office which was obviously generated in June of 2005. It apparently came to the attention of Dr. Falor, a PHS employee or agent, in August of 2005. He reviewed and signed it. Because Defendant had no part in the creation of this document, regardless of when it came to Plaintiff's attention, it does not amount to fraudulent concealment.

Exhibit 4 is the first page of the Coroner's report authored by Dr. Wecht. As we have seen, this report is not the act of Defendant, and therefore cannot amount to fraudulent concealment.

Exhibit 5 is a regulation of the Department of Corrections "Management and Administration of Health Care". This regulation is not the act of Defendant and therefore cannot amount to fraudulent concealment.

Exhibits 6 and 7 are portions of medical notes, presumably made by Defendant's employees. These were obtained by Plaintiff from the Department of Corrections (DOC) on September 2, 2007. She did not even request them until August 28, 2007, over two months after the statute of limitations ran. These documents were not wrongfully withheld by Defendant. At all relevant times they were in the custody of the DOC. In any event, she initiated this lawsuit before she had them, so their unavailability could not have possibly have amounted to fraudulent concealment.

Exhibit 8 is a copy of DQC-509, REPORT OF INMATE DEATH, prepared and signed by Dr. Falor. This was among the records obtained from DOC after the lawsuit was commenced. Once again, its unavailability could not have been the cause of any delay, because Plaintiff filed the lawsuit without having seen it.

Exhibit 9 is Plaintiff's decedent's death certificate. It was not generated by Defendant and therefore could not have amounted to fraudulent concealment.

Plaintiff relates that there is much discovery yet to do. It may be that results of the discovery would show that the care afforded Eric Battle in his final days fell below the standard of care that he should have received, but it is difficult to conceive of how something in that outstanding discovery could have been the cause of Plaintiff's failure to file the lawsuit in a timely manner.

We are aware that our Supreme Court in Scampone v. Highland Park Care Center, 57 A.3d 582 (Pa. 2012), broadened the inquiry that should be made in a claim of corporate negligence against a nursing home, but we need not address the issue, because it certainly has nothing to do with fraudulent concealment. Undeniably, the circumstances of Eric Battle's death are troubling, and it is unfortunate that the law

requires this resolution. It is also unfortunate that over a year lapsed between the date of his death and the date letters of administration were issued to Plaintiff and that over a year lapsed between the grant of letters of administration and Plaintiff's request for medical records from the DOC. The record does not explain these delays and it certainly does not show by clear and convincing evidence that any act of Defendant caused Plaintiff to deviate from her right of inquiry into the circumstances surrounding the death of Eric battle.

Because there is no basis to toll the statute of limitations based on any fraudulent concealment on the part of Defendant its Motion for Summary Judgment will be granted.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA