

2026 PA Super 237

ROBERT BARNES AND BRITTANY BARNES

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

Appellants

V.

ST. CLAIR HOSPITAL AND JACOB W.
MCBRIDE, D.O.

: No. 1138 WDA 2025

Appeal from the Order Entered August 28, 2025
In the Court of Common Pleas of Allegheny County
Civil Division at No: GD No. 21-014407

BEFORE: LAZARUS, P.J., STABILE, J., and NEUMAN, J.

DISSENTING OPINION BY STABILE, J.: **FILED: October 26, 2026**

I must respectfully dissent from the Majority's opinion. In my view, the "assumption of the risk doctrine" – which is part of the court's duty analysis in any negligence action – bars Appellants from recovering damages as a matter of law.

Appellants asserted a claim of gross negligence against Appellees based on their discharge of a mental health patient, George Tratras, who attacked police soon after being released from an involuntary commitment. This cause of action was enabled by the Mental Health Procedure Act (MHPA) (50 P.S. §§ 7101-7503), which has been construed as allowing a mental health care provider to be held liable to a third party “who could foreseeably be affected by a wrongful discharge.” **Goryeb v. DPW**, 575 A.2d 545, 549 (Pa. 1990);

see also 50 P.S. § 7114(a).¹ Assuming that a mental health patient has been wrongfully discharged due to a physician's "gross negligence," an emergency responder such as Appellant (Officer Robert Barnes), could, in the absence of a meritorious defense, be entitled to damages for injuries sustained while subduing the patient. **See Goryeb**, 575 A.2d at 549; **see also** 50 P.S. § 7114(a).²

Crucially, "[g]ross negligence" is a form of "negligence[.]" **Bloom v. DuBois Reg. Med. Ctr.**, 597 A.2d 671, 679 (Pa. Super. 1991); **see also Monroe v. CBH20, LP**, 286 A.3d 785, 798 (Pa. Super. 2022) (explaining that gross negligence is one of the "forms of negligence, not [an] independent cause[] of action."). This definition of gross negligence has been adopted for the purposes of the MHPA. **See Albright v. Abington Memorial Hosp.**, 696 A.2d 1159, 1164 (Pa. 1997) (quoting **Bloom**, 597 A.2d at 679).

Moreover, controlling caselaw provides that the "assumption of risk doctrine is a 'function of the duty analysis' required in **any** negligence

¹ There is no dispute in this case that, at the relevant times, Appellees were governed by MHPA procedures during the assessment and discharge of George Tratras.

² The General Assembly has, through the MHPA, created (by implication) a private cause of action for third parties injured due to a mental health care provider's grossly negligent discharge of a patient. **See generally Goryeb v. DPW**, 575 A.2d 545, 549 (Pa. 1990) (discussing section 7114(a) of the MHPA); **see also Sherk v. County of Dauphin**, 614 A.2d 226, 233 (Pa. 1992) (plurality); **Leight v. Univ. of Pitt. Physicians**, 243 A.3d 126, 130-31 (Pa. 2020) (noting that section 7114 "has been characterized as an immunity provision, as well as providing for a statutory cause of action, albeit by implication.").

action[.]” **Thompson v. Ginkel**, 95 A.3d 900, 907 (Pa. Super. 2014) (quoting **Montagazzi v. Crisci**, 994 A.2d 626, 635 (Pa. Super. 2010)) (emphasis added). The assumption of risk doctrine “eliminates a defendant’s duty of care to the plaintiff where the plaintiff has consented to relieve the defendant of that duty or the plaintiff has voluntarily participated in an activity which carries an inherent risk of the very damages which the plaintiff sustained.” **Massaro v. McDonald’s Corp.**, 280 A.3d 1028, 1037 (Pa. Super. 2022); **see also Montagazzi**, 994 A.2d at 635 (“[A]ssumption of the risk operates merely as a corollary of the absence of a duty; to the extent the injured plaintiff proceeded in the face of a known danger, he relieved those who may have otherwise had a duty, implicitly agreeing to take care of himself.”).

It follows that since a claim of gross negligence is a type of negligence action, a duty analysis of the plaintiff’s assumption of risk is required for claims of a breached duty of care arising from the MHPA. **See Thompson**, 95 A.3d at 907 (citing **Montagazzi**, 994 A.2d 626) (holding that a trial court may grant summary judgment upon a finding that the plaintiff’s assumption of the risk has eliminated the defendant’s duty of care). Nothing in the MHPA or in our decisional law says otherwise.

Analogously, in several premises liability cases, this Court has held that an emergency responder may assume the risks inherent in their profession, barring the responder from recovering damages in tort for on-the-job injuries. **See generally Mull v. Kerstetter**, 540 A.2d 951 (Pa. Super. 1988); **see also Holpp v. Fez, Inc.**, 656 A.2d 147 (Pa. Super. 1995); **Juszczyszyn v.**

Taiwo, 113 A.3d 853 (Pa. Super. 2015); **Trudnak v. Lilley**, 44 Pa. D. & C.3d 493, 1986 WL 20812 (C.P. Union County 1986). Although the “fireman’s rule” was nominally invoked by the defendants in such cases, the emergency responders’ tort claims were ultimately evaluated “under general principles of negligence law,” *i.e.*, assumption-of-the-risk concepts. **Mull**, 540 A.2d at 954; **see also Holpp**, 656 A.2d at 149; **Juszczyszyn**, 113 A.3d at 857.³

In all such cases, this Court applied the assumption of the risk doctrine to hold that a premises owner could not be held liable to an emergency responder for failing to warn of a danger on the premises which the responder was fully aware of and specifically tasked with addressing. In other words, the emergency responder could, while acting in an official capacity, assume the risk of a known danger when carrying out their duties, thereby eliminating the premises owner’s duty of care to them. **See Holpp**, 656 A.2d at 149. In

³ In these decisions, the courts rejected a “*per se* fireman’s rule” which would always preclude an emergency responder from recovering damages in tort for injuries sustained on the job, regardless of whether the damages resulted from the type of harm the responder was dispatched to address in an official capacity. The courts held instead that a responder could assume the risk in circumstances where the damages resulted from the precise harm that the responder intended to confront. As several courts in other jurisdictions have noted, the assumption of the risk doctrine, and related public policy considerations, may justify a bar to claims by first responders against third parties even where the claim does not arise out of premises liability. **See e.g., White v. State**, 19 A.3d 369, 374 (Md. App. 2011) (holding that, in cases where the law of premises liability is inapplicable, public policy would still justify a bar to an emergency responder’s recovery “if injured by the negligently created risk that was the very reason for [their] presence on the scene in his occupational capacity.”) (Citation omitted).

Juszczyszyn, this Court approved of the well-researched observation by the Court of Common Pleas that:

courts almost universally recognize that neither a fireman nor a policeman can recover when their complaint is based on the same conduct that initially created the need for the officer's presence in his official capacity.

Juszczyszyn, 113 A.3d at 857 n.4 (quoting **Trudnak**, 44 Pa. D. & C.3d at 498).⁴

The Majority nevertheless holds that our most analogous caselaw does not apply in the present case because Appellees' duty to Appellants arises from statutory law rather than premises liability (common law). **See generally** Maj. Op., at 9-15, 19. However, the Majority does not cogently

⁴ "While assumption of the risk has not been formally abolished by our Supreme Court, this Court has acknowledged that it has fallen into disfavor[.]" **Babbish v. Pixie Paradise Child Care Ctr.**, (Pa. Super. filed May 11, 2020) (unpublished memorandum decision); **see** Pa.R.A.P. 126(b) (non-precedential decisions filed after May 1, 2019, may be cited for persuasive value). This has been "evidenced by our [S]upreme [C]ourt's two . . . attempts to abolish or limit it." **Staub v. Toy Factory, Inc.**, 749 A.2d 522, 528 (Pa. Super. 2000) (*en banc*)) (citing **Howell v. Clyde**, 620 A.2d 1107 (Pa. 1993) (plurality), and **Rutter v. Northeastern Beaver County School District**, 437 A.2d 1198 (Pa. 1981) (plurality)).

However, much of the reason for this disfavor is that Pennsylvania's comparative negligence statute, 42 Pa.C.S.A. § 7102, conflicts with the notion that a plaintiff's own negligence, or fault, is a complete bar to recovery. **See generally Howell**, 620 A.2d at 1109. Where it can be shown beyond question that a plaintiff has "intelligently and voluntarily" assumed the risk of a danger, the question of the plaintiff's "fault" is irrelevant. **See id.**, at 1112. A trial court may therefore determine that a plaintiff has assumed the risk of a dangerous condition as a matter of law when the evidence conclusively establishes that fact. **See id.**; **see also Barrett v. Fredavid Builders, Inc.**, 685 A.2d 129, 131 (Pa. Super. 1996) (same); **Thompson**, 95 A.3d at 906-07 (same).

explain why this is an apt or meaningful distinction for the purposes of this case.

The Majority relies on ***Brady v. Urbas***, 111 A.3d 1155 (Pa. 2015), to infer that a physician may never invoke an assumption of the risk defense against a claim of gross negligence asserted under the MHPA. **See** Maj. Op., at 19-20. But that case is neither here nor there. It simply had to do with whether a patient's agreement to undergo a medical procedure could be relevant in a medical malpractice action. **See Brady**, 111 A.3d at 1162.

The ***Brady*** Court held that such evidence was inadmissible because it did not prove whether the physician had failed to provide treatment in accordance with the standard of care. **See id.** ("[T]here is no assumption-of-the-risk defense available to a defendant physician which would vitiate his duty to provide treatment according to the ordinary standard of care."). After all, any risks incurred by the patient were made with the assumption that the physician would *not* perform negligently. **See id.**

The reasoning of ***Brady*** does not relate to the question now before us – whether a third-party emergency responder harmed by a discharged mental health patient may assume the risks of fully known dangers, and which the responder is officially tasked with addressing. Moreover, there appears to be no legal authority which would render the assumption of the risk doctrine inapplicable in the present scenario. To the contrary, our caselaw directs us to always consider whether the plaintiff has eliminated the defendant's duty of care by assuming the risks of the very dangers which caused the plaintiff's

injuries. ***See Thompson***, 95 A.3d at 907; ***Montagazzi***, 994 A.2d at 635; ***see also Holpp***, 656 A.2d at 149.

As a matter of law, then, I would find that Officer Barnes assumed the risks of encountering George Tratras when he arrived at the Tratras residence. Officer Barnes understood that George Tratras was armed, mentally unstable, and homicidal. Further, Officer Barnes was injured by George Tratras while performing his official duties, and in a manner that was foreseeable. Since Officer Barnes' damages were sustained due to known dangers that he voluntarily encountered during a planned emergency response in his official role, the statutory duty of care owed by Appellees to Officer Barnes under the MHPA was eliminated.

Thus, for the foregoing reasons, I would hold that the trial court did not err in granting summary judgment in favor of Appellees, and that the order on review should be upheld.