

**[J-21-2020] [MO: Todd, J.]  
IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

KATHRYN F. LEIGHT AND JOHN L. LEIGHT, HER HUSBAND,	:	No. 35 WAP 2019
	:	
Appellants	:	Appeal from the Order of the Superior Court entered December 31, 2018 at No. 1912 WDA 2017, affirming the Order of the Court of Common Pleas of Allegheny County entered December 15, 2017 at No. GD12-9942.
v.	:	
UNIVERSITY OF PITTSBURGH PHYSICIANS, UPMC, UNIVERSITY OF PITTSBURGH OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION, SUSAN SHICK, AND PHILLIP L. CLARK, ADMINISTRATOR OF THE ESTATE OF JOHN F. SHICK, DECEASED,	:	ARGUED: May 19, 2020
	:	
Appellees	:	

**DISSENTING OPINION**

**JUSTICE MUNDY**

**DECIDED: DECEMBER 22, 2020**

I dissent from the Majority’s holding that a physician is not a participant in the decision-making process under the MHPA until the physician files the required paperwork for an involuntary examination. See Maj. Op. at 22. Because the complaint alleges that the University of Pittsburgh Physicians (UPP) made an assessment that John Shick needed an involuntary mental health examination and then sought to have him examined, I conclude that the complaint pleads that UPP “participated in a decision that a person be examined or treated under this act” under Section 114 of the Pennsylvania Mental Health Procedure Act (MHPA), 50 P.S. § 7114, and thus pleads a cause of action under the MHPA.

Appellants' Third Amended Complaint<sup>1</sup> alleges that from June 22, 2011 to March 7, 2012, Shick presented to various UPP practices, approximately 33 times, seeking treatment for numerous perceived physical ailments.<sup>2</sup> Over the course of those ten months, at least eight UPP physicians concluded that Shick was suffering primarily from mental illness.<sup>3</sup> Additionally, Shick refused all of the UPP physicians' attempts to voluntarily treat his mental illness.<sup>4</sup> In early 2012, UPP physicians began to consider whether to initiate involuntary commitment for Shick, but they concluded he did not meet

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<sup>1</sup> On February 25, 2014, Appellants filed a Third Amended Complaint, which incorporated, without reproducing, the Second Amended Complaint in its entirety and modified six paragraphs. Accordingly, I cite to the incorporated averments of the Second Amended Complaint as the Third Amended Complaint.

<sup>2</sup> Third Amended Complaint, 2/25/14, at ¶¶ 147, 149, 155, 160, 172, 193, 201, 219, 221, 224, 225, 234, 235, 238, 243, 246, 250, 256, 258, 262, 264, 269, 272, 274, 278, 284, 287, 288, 292, 295, 300, 329, 351-52. As we are reviewing rulings on preliminary objections in the nature of demurrers, we take as true all material facts pled in the complaint, and any reasonable inferences we can deduce therefrom. *Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1022 (Pa. 2018).

<sup>3</sup> Third Amended Complaint, 2/25/14, at ¶ 162, 276 (averring Dr. Weiner, a UPP primary care physician, first noted Shick's pain complaints might be due to mental illness on October 17, 2011, and Shick was "floridly psychotic" on January 25, 2012); *id.* at ¶ 205 (stating on November 28, 2011, Dr. Babbar, a UPP psychiatrist at Western Psych, diagnosed Shick as schizophrenic and noncompliant with his medications); *id.* at ¶ 239 (alleging Dr. Southwick, a primary care physician, concluded Shick's problems were likely psychiatric on January 1, 2012); *id.* at ¶ 251 (stating a UPMC MedExpress UPP physician refused to treat Shick on January 9, 2012 due to psychological involvement); *id.* at ¶ 273 (averring Dr. Jarvis, a UPP internal medicine physician, refused to treat Shick on January 25, 2012 because his problems were psychiatric); *id.* at ¶ 292 (alleging Dr. Abrams, a primary care physician, sought to refer Shick to a psychiatrist on February 8, 2012); *id.* at ¶ 295 (stating Dr. Kirby, a primary care physician, noted Shick was acutely psychotic on February 9, 2012); *id.* at ¶ 332 (averring Dr. Prisk, a UPP orthopedic foot and ankle surgeon, recognized Shick displayed uncontrolled schizophrenia on February 20, 2012).

<sup>4</sup> Third Amended Complaint, 2/25/14, at ¶ 208 (averring Shick refused Dr. Babbar's recommendation to take medication and start therapy); *id.* at ¶ 228 (stating Shick refused Dr. Weiner's referral to a psychiatrist and recommendation of anti-psychotic medications); *id.* at ¶ 296 (alleging Shick refused Dr. Kirby's suggestion of psychological evaluation or medication).

the involuntary commitment criteria at that time.<sup>5</sup> Following two incidents in February 2012, however, they decided to pursue involuntary examination and commitment.

On February 10, 2012, “Shick appeared at Shadyside Family to have blood drawn for testing, and inappropriately brandished a baseball bat in a threatening manner, causing the nurse to be upset.” Third Amended Complaint, 2/25/14, at ¶ 300. On the same day, Dr. Weiner, a Shadyside Family primary care physician, contacted Jeffrey McFadden at re:solve Crisis Services, which is the Western State Psychiatric Institute and Clinic (Western Psych) program that, among other things, dispatches mobile teams to evaluate and transport individuals requiring involuntary commitments. *Id.* at ¶¶ 209, 302-03. Dr. Weiner described Shick’s behavior, stated UPMC security had removed Shick from the premises, and added “that he was afraid of the patient and did not want his name disclosed.” *Id.* at ¶¶ 302-03. In response, Jeffrey McFadden dispatched a re:solve mobile team to pick up Shick and transport him to Western Psych for a mental health wellness check and possible commitment, but Shick refused to consent to an assessment. *Id.* at ¶ 304. On February 13, 2012, “the re:solve mobile team clinician spoke with Dr. Weiner, informed him that the mobile team was unable to assist with a petition commitment for Shick due to not making contact with the witnesses at Shadyside Family, and gave Dr. Weiner contact information for re:solve,” which Dr. Weiner said he would pass on to Shadyside Family’s medical director and staff psychiatrist. *Id.* at ¶¶ 313-14.

After a February 17, 2012 meeting between Dr. Gallick (Shadyside Family’s medical director), Dr. Kirby (a UPP primary care physician), and Dr. Weiner, at which they

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<sup>5</sup> *Id.* at ¶ 276 (stating Dr. Weiner asserted Shick was “floridly psychotic” on January 25, 2012, but did not meet the criteria for an involuntary commitment); *id.* at ¶ 296 (alleging UPMC’s Director of Behavioral Science advised Shadyside Family’s director that Shick was not a candidate for involuntary mental health evaluation and commitment on February 9, 2012).

discussed treatment options for Shick, Dr. Weiner called re:solve “asking to have involuntary commitment papers faxed to him to accomplish the involuntary commitment of Shick.” *Id.* at ¶ 321. However, the re:solve clinician stated that Western Psych does not fax that paperwork and advised Dr. Weiner to go to Western Psych to fill out the forms. *Id.* at ¶ 322. That same day, one of Shadyside Family’s staff members spoke with a re:solve clinician to determine how a doctor completes an involuntary commitment form. *Id.* at ¶ 323.

On February 20, 2012, “Dr. Kirby called, on an emergent basis, and spoke with re:solve clinician Valerie Krieger, seeking assistance to have Shick involuntarily committed.” *Id.* at ¶ 335. Dr. Kirby reported that Shick had visited Shadyside Family that day with a baseball bat, intimidated staff members, and struck furniture with the bat before UPMC security officers removed him from the office. *Id.* at ¶ 336. Further, Dr. Kirby stated that in the prior week, UPMC Shadyside Hospital security personnel had drawn guns on Shick during an altercation due to Shick’s confrontational nature. *Id.* at ¶ 337. “Ms. Krieger dispatched a mobile team to meet with Dr. Kirby to assist with commitment petitioning, but advised Dr. Kirby that the call was on hold due to a lack of current mobile team availability, and advised that Dr. Kirby could go to the Western Psych emergency room as needed to complete an involuntary commitment petition.” *Id.* at ¶ 338. In two calls to re:solve later that day, Dr. Kirby stated he wanted to pick up the involuntary commitment forms instead of having a mobile team come to him, and he would fill out the commitment petition at Western Psych the next day. *Id.* at ¶ 340.

Ultimately, neither Dr. Weiner nor Dr. Kirby filed an involuntary commitment petition for Shick. On February 28, 2012, Dr. Kirby sent a letter to Shick stating that

Shadyside Family would no longer provide care to him.<sup>6</sup> On March 8, 2012, Shick carried out the mass shooting at Western Psych, killing one person and injuring several others, including Appellant Kathy Leight.

Based on the allegations summarized above, I conclude that the complaint pleads that UPP “participated in a decision that a person be examined or treated under this act” under Section 114 of the Pennsylvania Mental Health Procedure Act (MHPA), 50 P.S. § 7114, and thus pleads a cause of action under the MHPA. Section 114(a) of the MHPA provides:

(a) In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for voluntary treatment or for involuntary emergency examination and treatment, shall not be civilly or criminally liable for such decision or for any of its consequences.

50 P.S. § 7114(a). This Court has interpreted Section 114 as providing that a statutorily-specified actor “participating in a decision to examine, treat or discharge a mentally ill patient within the purview of the Mental Health Procedures Act who commits willful misconduct or gross negligence can be liable for such decision.” *Goryeb v. Commonwealth, Dep’t of Pub. Welfare*, 575 A.2d 545, 549 (Pa. 1990).

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<sup>6</sup> Shadyside Family was the second UPP practice that banned Shick. On February 10, 2012, Drs. Ganesh and Gulati, two UPP gastroenterologists, sent a letter to Shick dismissing him from the Center for Liver Diseases and Digestive Disease Center practice. Third Amended Complaint, 2/25/14, at ¶ 246 (alleging Shick was verbally aggressive with Dr. Gulati’s staff, leading to the practice banning him); ¶ 294 (averring Shick sent Dr. Ganesh a February 8, 2012 letter telling him to be careful in February); ¶ 310.

In this case, we focus on the statutory duty to abstain from willful misconduct or gross negligence when “participat[ing] in a decision that a person be examined or treated under this act[.]” I conclude that phrase encompasses the alleged conduct of the UPP physicians, who, according to the Third Amended Complaint, made an assessment that Shick needed an involuntary mental health examination and then sought to have him examined by contacting re:solve to transport him to Western Psych. Ultimately, Shick was not taken to Western Psych only because the physicians did not complete the necessary paperwork. This, in my view, does not exclude UPP from “participat[ing] in a decision that [Shick] be examined or treated under this act[.]” 50 P.S. § 7114(a).

I disagree with the Majority’s holding that Section 114 applies “only when a physician files the required documentation for involuntary emergency examination[.]” Maj. Op. at 22. Section 114(a)’s language is broad and does not contain any requirement that the physician has to file the required documentation to be considered a participant in the decision-making process. As in this case, the decision by the UPP physicians that Shick needed an involuntary mental health examination had been made, merely the paperwork was not completed. Further, the effect of the Majority’s decision is to exempt from liability physicians who failed to seek, or decided against seeking, appropriate mental health treatment for a patient in need of treatment through willful misconduct or grossly negligent actions. This is not consistent with the purpose of the MHPA, which is to assure the availability of treatment “where the need is great and its absence could result in serious harm to the mentally ill person or to others.” 50 P.S. § 7102. Permitting a cause of action here, where physicians decide a patient needs mental health treatment but fail to file the required paperwork is in line with the purpose of the MHPA and encourages physicians to secure mental health treatment for their patients who show signs of needing it.

For these reasons, I dissent to the Majority's holding that the MHPA statutory duty does not apply to physicians who participate in a decision that their patient be examined or treated under the MHPA but fail to file the required documentation.