

J-A05031-22

2022 PA Super 84

ELLISON O. JORDAN

Appellant

v.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

THE PENNSYLVANIA STATE
UNIVERSITY, SANDY BARBOUR,
CHARMELLE GREEN, JAMES
FRANKLIN, ANDY MUTNAN, RENEE
MESSINA, SCOTT A. LYNCH, M.D.,
PETER H. SEIDENBERG, M.D., JOHN
S. REID, M.D., BRENDAN M. CARR,
TIM BREAM, WES SOHNS, PENN
STATE HEALTH, MILTON S. HERSHY
MEDICAL CENTER, PENN STATE
HERSHY MEDICAL GROUP, AND
MOUNT NITTANY HEALTH

No. 76 MDA 2021

2023 JUL 10 AM 10:24
JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

Appeal from the Order Entered December 4, 2020
in the Court of Common Pleas
of Centre County Civil Division at No(s): 20-0028

BEFORE: OLSON, J., KUNSELMAN, J., and STEVENS, P.J.E.*

OPINION BY STEVENS, P.J.E.:

FILED: MAY 9, 2022

Appellant, Ellison O. Jordan, appeals *pro se* from the December 4, 2020¹ order sustaining the preliminary objections filed by Appellees, The Pennsylvania State University, Sandy Barbour, Charmelle Green, and James Franklin (hereinafter, "University Appellees"); granting the petitions filed by Appellees, Scott A. Lynch, M.D., Mount Nittany Health, Andy Mutnan, Renee

* Former Justice specially assigned to the Superior Court.

¹ Appellant erroneously refers to this order as having been entered on December 8, 2020.

Messina, Brendan M. Carr, Tim Bream, Wes Sohns, Peter H. Seidenberg, M.D., John S. Reid, M.D., Penn State Health, Milton S. Hershey Medical Center, and the Penn State Hershey Medical Group (hereafter, "Healthcare Appellees"), to hold Appellant in contempt of court; and dismissing Appellant's amended complaint and supplemental amended complaint with prejudice. Appellant also appeals from the December 23, 2020 order denying his motion to recuse President Judge Pamela A. Ruest from this case. For the following reasons, we affirm.

The trial court summarized the relevant facts and lengthy procedural history of this case as follows:

This case arises from injuries [Appellant] allegedly sustained during his time as a student-athlete on the Penn State University football team between June 2016 and August 2019. [Appellant's] cause of action specifically focuses on his treatment following a December 27, 2017 surgery to repair a right knee patellar fracture he suffered while practicing for the Fiesta Bowl in Phoenix, Arizona. [Appellant] alleges he reinjured his knee on January 8, 2018 while receiving treatment from Wes Sohns, which required [Appellant] to undergo surgery on January 12, 2018. In April 2018, [Appellant] reported feeling pain and discomfort in his right knee. In September 2018, [Appellant] was evaluated for reported pain and swelling in his right knee, which was attributed to tendinitis and the prominence of the plate placed during surgery, but did not rule out the possibility of an infection.

Between September and November 2018, [Appellant] continued to experience right knee pain and [Appellant] underwent a right knee arthroscopy on November 21, 2018. On November 25, 2018, [Appellant] and his parents attended a meeting with

fifteen (15) representatives of Penn State University, who asked [Appellant] to sign a document voluntarily withdrawing himself from the football team. On December 30, 2018, [Appellant] was taken to the Emergency Room due to extreme knee pain and swelling. [Appellant] informed James Franklin on January 5, 2019 that his right knee was infected and [Appellant] underwent surgery to address the infection on January 8, 2019. On August 19, 2019, [Appellant] was removed from the Penn State football team.

[Appellant] originally filed a complaint on January 31, 2020 based on a theory of medical malpractice. University [Appellees] filed preliminary objections on February 24, 2020. [Appellant] filed a certificate of merit for each [Appellee] on February 28, 2020, but failed to file a written statement from an appropriate licensed professional with the certificates of merit. All of the named [Appellees] other than the University [Appellees] filed a Notice of Intention to Enter Judgment of Non Pros for Failure to File a Written Statement from an Appropriate Licensed Professional between March 4 and March 11, 2020. [Appellant] filed an Answer to [Appellees'] Notices on April 17, 2020. On May 12 and May 13, 2020, the Centre County Prothonotary's Office entered Judgment of Non Pros in favor of all [Appellees] other than the University [Appellees].

On June 1, 2020, [Appellant] filed a Petition for Relief of Judgment of Non Pros requesting the court strike the judgments and restore [Appellant's] complaint in its entirety. Between June 12 and June 22, 2020, each of the [Appellees] filed a response seeking to uphold their Judgment of Non Pros. A hearing was held on June 25, 2020. On July 15, 2020, the court entered an opinion and order denying [Appellant's] petition for relief, sustaining the University [Appellees'] preliminary objections, and dismissing [Appellant's] medical malpractice claims with prejudice. The court dismissed [Appellant's] complaint and allowed [Appellant] to file an amended complaint within twenty (20) days against only the

University [Appellees] and only raising potential claims of intentional or negligent infliction of emotional distress and ordinary negligence. [Appellant] filed a petition for reconsideration on July 24, 2020, which was denied by the court on July 30, 2020.

[Appellant] filed an amended complaint on August 3, 2020, and a supplemental amended complaint on August 12, 2020, both of which included claims against all of the [Appellees] from [Appellant's] original complaint. Between August 7 and August 14, 2020, counsel for all of the [Appellees] except for the University [Appellees] sent letters to [Appellant] requesting that he remove them from his amended complaint or they would seek to hold [Appellant] in contempt of court. [Appellant] failed to respond and [Appellees Scott A. Lynch, M.D., Mount Nittany Health, Andy Mutnan, Renee Messina, Brendan M. Carr, Tim Bream, Wes Sohns, Peter H. Seidenberg, M.D., John S. Reid, M.D., Penn State Health, The Milton S. Hershey Medical Center, and the Penn State Hershey Medical Group] each filed a petition to hold [Appellant] in contempt of court.

On August 24, 2020, [Appellant] filed notices of intention to enter default judgments against each [Appellee] because they allegedly failed to enter a written appearance and file in writing with the court their defenses or objections to [Appellant's] amended complaint. University [Appellees] file preliminary objections and a brief in support on August 31, 2020. [Appellant] filed a praecipe for determination on September 3, 2020 alleging University [Appellees'] preliminary objections were not filed in accordance with Pennsylvania law for failing to serve [Appellant] a copy of their preliminary objections. [Appellant] filed a response in opposition to University [Appellees'] preliminary objections on September 16, 2020, and an answer to order to show cause on October 9, 2020. [Appellant] also filed a statement of support on October 19, 2020. A hearing was held on October 12, 2020.

Trial court opinion, 12/4/20 at 2-4 (extraneous capitalization omitted).

On December 4, 2020, the trial court entered an opinion and order sustaining the University Appellees' preliminary objections; holding Appellant in contempt of court; and dismissing Appellant's amended complaint and supplemental amended complaint with prejudice. On December 15, 2020, Appellant filed a motion to recuse P.J. Ruest from this case, which was denied by the trial court on December 23, 2020.

On January 6, 2021, Appellant filed a notice of appeal. Although not ordered to do so, Appellant filed an eight-page Pa.R.A.P. 1925(b) statement on May 12, 2021. The trial court filed its Rule 1925(a) opinion on May 20, 2021, indicating that it was relying on the reasoning set forth in its prior opinion and orders entered December 4 and 23, 2020.

Appellant raises the following issues for our review:

1. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion in issuing the correspondence, in identifying the case as only medical malpractice, in processing the case on an "aggressive fast track" without any established written local procedures, in not providing definitive goals and objects and making them known to all parties involved and denying [Appellant] a right to jury trial as demanded?
2. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning all pleadings, notices, judgments, opinions and orders concerning the Certificate of Merit of the

original Complaint, Amended Complaint and Supplemental Amended Complaint?

3. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning the service of process?
4. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning Preliminary Objections?
5. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning her personal interest in the outcome of the case and potential appearance of conflict of interest and bias?
6. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning "special relationship", "duty of care", "standard of care", "preventative measures", "heightened duty of care", "unreasonable risk of harm", "foreseeability of harm", "duty to convey", "duty to exercise reasonable care", "affirmative duty", "an act within scope of employment", "nondelegable duty", "breach of duty", "breach of duty was more likely than not (i.e., probably") the cause of the injury" and "proper medical treatment" [?]
7. Did the [trial] court ignore the law, errored [sic] in applying the law, misinterpreted [sic] the law and/or abuse its discretion concerning processing the civil complaint?

Appellant's brief at 5-7.

Our standard of review of a challenge to a trial court's decision to grant preliminary objections is as follows:

Our standard of review of an order of the trial court overruling or granting preliminary objections is to determine whether the trial court committed an error of law. When considering the appropriateness of a ruling on preliminary objections, the appellate court must apply the same standard as the trial court.

Feingold v. Hendrzak, 15 A.3d 937, 941 (Pa.Super. 2011) (citation omitted).

This Court has explained our standard of review for a civil contempt order as follows:

When considering an appeal from an Order holding a party in contempt for failure to comply with a court Order, our scope of review is narrow: we will reverse only upon a showing the court abused its discretion. The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason.

Harcar v. Harcar, 982 A.2d 1230, 1234 (Pa.Super. 2009) (citations omitted).

Preliminarily, we must address whether Appellant has properly preserved all of his claims on appeal. Our review of the disjointed "Argument" section in Appellant's 68-page ***pro se*** brief reveals that a number of his claims take issue with the trial court's entry of Judgments of Non Pros for Failure to File Written Statement from Appropriate Licensed Professional. See Appellant's brief at 24-37.

As discussed, on May 12 and 13, 2020, Judgments of Non Pros were entered in favor of all Appellees other than the University Appellees. Appellant subsequently filed a petition for relief from the Judgments of Non Pros requesting the trial court strike the judgments and restore his complaint in its

entirety. Thereafter, each of the Appellees filed a response seeking to uphold their Judgment of Non Pros. Following a hearing, the trial court entered an opinion an order on July 15, 2020 denying Appellant's petition for relief; dismissing the medical malpractice claims in his complaint with prejudice; and directing Appellant that his amended complaint could only raise claims against the University Appellees for intentional or negligent infliction of emotional distress and ordinary negligence. **See** "Opinion and Order," 7/15/20 at 12-13. Appellant filed a petition for reconsideration which was denied on July 30, 2020.

This Court has long recognized that "[a]ny appeal related to a judgment of non pros lies not from the judgment itself, but from the denial of a petition to open or strike." **Cardona v. Buchanan**, 230 A.3d 476, 479 (Pa.Super. 2020) (citation omitted). Under Pa.R.A.P. 311(a)(1), an appeal from an interlocutory order refusing to open, vacate or strike off a judgment is deemed final and subject to attack on appeal without reference to Pa.R.A.P. 341(c). **Hammel v. Hammel**, 636 A.2d. 214, 217 (Pa.Super. 1994) (citation omitted). Notably, the "[f]ailure to timely appeal from an order denying a petition to open, vacate, or strike off a judgment renders any attack of that order untimely and waived." **Blackburn v. King Inv. Grp., LLC**, 162 A.3d 461, 464 (Pa.Super. 2017) (citation omitted).

Instantly, the record reflects that Appellant's January 6, 2021 notice of appeal makes no mention of the trial court's July 15, 2020 order denying his

petition for relief from Judgment of Non Pros, nor the July 30, 2020 order denying his petition for reconsideration of relief from Judgment of Non Pros.² Although Appellant baldly contends in his brief that he is seeking "reversal of **all the lower court's opinions and orders ... and judgments,**" his notice of appeal indicates that he is only appealing from the trial court's December 4 and December 23, 2020 orders. **See** Appellant's brief at 1 (emphasis added); Appellant's "Notice of Appeal," 1/6/21.

Appellant's failure to appeal from the trial court's July 15, 2020 order renders his appeal procedurally deficient because neither of the trial court's December 2020 orders directly addresses the Judgments of Non Pros Appellant purports to challenge on appeal.

Pennsylvania Rule of Appellate Procedure 904 requires a petitioner to specifically identify in his notice of appeal the order from which he wishes to appeal. Pa.R.A.P. 904(a). Moreover, this Court has long recognized that,

although [we are] willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing."

² We note that any attempt by Appellant to appeal from the July 30, 2020 order denying the petition for reconsideration would have nonetheless been improper. An order denying a motion for reconsideration is not appealable. **See** *Huntington Nat. Bank v. K-Cor, Inc.*, 107 A.3d 783, 787 (Pa.Super. 2014) (stating, "Pennsylvania case law is absolutely clear that the refusal of a trial court to reconsider, rehear, or permit reargument of a final decree is not reviewable on appeal."), **appeal denied**, 117 A.3d 1281 (Pa. 2015).

Wilkins v. Marsico, 903 A.2d 1281, 1284–1285 (Pa.Super. 2006) (citations and internal quotation marks omitted), **appeal denied**, 918 A.2d 747 (Pa. 2007).

Accordingly, Appellant’s failure to appeal the trial court’s July 15, 2020 order denying his petition for relief from Judgment of Non Pros renders all his claims related to this order waived. **See Blackburn**, 162 A.3d at 464; **see also** Pa.R.A.P. 302(a) (stating, “[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal.”).

We now turn to Appellant’s claim that the trial court’s December 23, 2020 order denying his motion to recuse P.J. Ruest from this case was improper because of her “impartiality, bias, and a personal interest in the outcome of [this] case.” Appellant’s brief at 38-41; **see also** “Motion to Recuse,” 12/15/20 at ¶ 1. For the reasons that follow, we find that this claim is time barred.

It is well settled that “a party may not raise the issue of judicial prejudice or bias for the first time in post[-]trial proceedings.” **Ware v. U.S. Fid. & Guar. Co.**, 577 A.2d 902, 905 (Pa.Super. 1990) (citation omitted). On the contrary, “a party seeking recusal or disqualification on the basis of judicial bias or impartiality “[is required] to raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred.” **In re Lokuta**, 11 A.3d 427, 437 (Pa. 2011) (citations omitted; brackets in original), **cert. denied**, 565 U.S. 878 (2011). “The timeliness of such an

application is particularly troubling where a party seeks disqualification only after receiving adverse judgment." ***League of Women Voters of Pa. v. Commonwealth***, 179 A.3d 1080, 1086 (Pa. 2018) (citation omitted).

Instantly, the record reflects that Appellant failed to raise his claim of judicial bias at the earliest possible opportunity. Appellant's motion to recuse was filed on December 15, 2020, more than 7 months after P.J. Ruest entered her first order in this case on May 12, 2020, and only eleven days after P.J. Ruest entered an order dismissing Appellant's amended complaint and supplemental amended complaint with prejudice. Based on the foregoing, Appellant's recusal claim was clearly time-barred and its denial by the trial court was warranted.

Appellant's remaining claims concern the trial court's December 4, 2020 order sustaining the University Appellees' preliminary objections; granting the Healthcare Appellees' petitions to hold Appellant in contempt of court; and dismissing his amended complaint and supplemental amended complaint with prejudice. **See** Appellant's brief at 38-59.

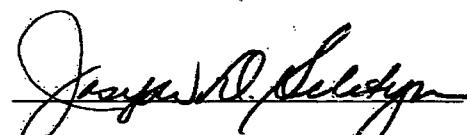
As best we can discern from his somewhat befuddling and convoluted appellate brief, Appellant takes issue with the trial court's rejection of his claims for negligent or intentional infliction of emotional distress and ordinary negligence against the University Appellees, as well as the court's determination that he should be held in contempt of court for continuing to pursue action against the Healthcare Appellees in his supplemental amended

complaint after the trial court explicitly ordered him not to do so.

Following our careful review of the record, including the briefs of all the parties and the applicable case law, and in light of this court's scope and standard of review, it is our determination that there is no merit to Appellant's remaining claims on appeal. We agree with the trial court that all of Appellant's cognizable issues on appeal were adequately disposed of in its December 4, 2020 opinion and order. Accordingly, we adopt the well-reasoned opinion of the Honorable Pamela A. Ruest as our own for purposes of this appellate review and affirm on the basis of the reasoning stated therein.

Orders affirmed.³

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 05/09/2022

NOTICE OF ENTRY OF
ORDER OR DECREE,
PURSUANT TO PA. R.C.P.
236 NOTIFICATION. THIS
DOCUMENT HAS BEEN
FILED IN THIS CASE.

PROTHONOTARY, CENTRE
COUNTY, PA.

DATE: July 12, 2023

³ We note that it is well-settled law that "a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court." *Ebbert v. Mest*, 2016 WL 5266540, at *1 (Pa.Super. 2016), citing *Commonwealth v. Lyons*, 833 A.2d 245, 251-252 (Pa.Super. 2003).

J-A05031-22

ELLISON O. JORDAN

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellant

v.

THE PENNSYLVANIA STATE
UNIVERSITY, SANDY BARBOUR,
CHARMELLE GREEN, JAMES
FRANKLIN, ANDY MUTNAN, RENEE
MESSINA, SCOTT A. LYNCH, M.D.,
PETER H. SEIDENBERG, M.D., JOHN
S. REID, M.D., BRENDAN M. CARR,
TIM BREAM, WES SOHNS, PENN
STATE HEALTH, MILTON S. HERSHEY
MEDICAL CENTER, PENN STATE
HERSHEY MEDICAL GROUP, AND
MOUNT NITTANY HEALTH

No. 76 MDA 2021

Appeal from the Order Entered December 4, 2020
In the Court of Common Pleas of Centre County Civil Division at No(s):
20-0028

BEFORE: OLSON, J., KUNSELMAN, J., and STEVENS, P.J.E.*

ORDER

AND NOW, this 28th day of April 2022, to the extent Appellant's Application requests publication, it is **GRANTED**. This Court's Memorandum decision of April 12, 2022 is **WITHDRAWN**. A new Opinion shall issue from this Panel.

* Former Justice specially assigned to the Superior Court.

To the extent the Application seeks reconsideration and in all other aspects, the Application is otherwise **DENIED AS MOOT.**

PER CURIAM

ELLISON O. JORDAN

Appellant

v.

THE PENNSYLVANIA STATE
UNIVERSITY, SANDY BARBOUR,
CHARMELLE GREEN, JAMES
FRANKLIN, ANDY MUTNAN, RENEE
MESSINA, SCOTT A. LYNCH, M.D.,
PETER H. SEIDENBERG, M.D., JOHN
S. REID, M.D., BRENDAN M. CARR,
TIM BREAM, WES SOHNS, PENN
STATE HEALTH, MILTON S. HERSHEY
MEDICAL CENTER, PENN STATE
HERSHEY MEDICAL GROUP, AND
MOUNT NITTANY HEALTH

: IN THE SUPERIOR COURT OF
PENNSYLVANIA

: Centre County Civil Division
: 20-0028

:

: : No. 76 MDA 2021

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

ORDER

Upon consideration of Appellant's April 19, 2022 Application for Panel Reconsideration and the April 25, 2022 addendum thereto, the following is hereby **ORDERED**:

In light of this Court's April 28, 2022 Order granting Appellant's April 18, 2022 Application for Publication of Memorandum Decision, the Application for Panel Reconsideration and addendum are **DENIED AS MOOT**.

PER CURIAM

APPENDIX D

J-A05031-22

ELLISON O. JORDAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

THE PENNSYLVANIA STATE : No. 76 MDA 2021
UNIVERSITY, SANDY BARBOUR, :
CHARMELLE GREEN, JAMES :
FRANKLIN, ANDY MUTNAN, RENEE :
MESSINA, SCOTT A. LYNCH, M.D., :
PETER H. SEIDENBERG, M.D., JOHN :
S. REID, M.D., BRENDAN M. CARR, :
TIM BREAM, WES SOHNS, PENN :
STATE HEALTH, MILTON S. HERSHEY :
MEDICAL CENTER, PENN STATE :
HERSHEY MEDICAL GROUP, AND :
MOUNT NITTANY HEALTH :

Appeal from the Order Entered December 8, 2020
In the Court of Common Pleas of Centre County Civil Division at No(s)
20-0028

ORDER

AND NOW, this 17th day of August, 2022, upon consideration of
Appellant's ***pro se*** "Application for Reconsideration" of this court's prior July
13, 2022 order denying his motion for reargument of the decision dated May
9, 2022, on the basis this court did not issue an opinion in support of said
order, it is hereby ordered that said motion is DENIED.

PER CURIAM

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ELLISON O. JORDAN,

No. 410 MAL 2022

Petitioner

Application for Reconsideration

v.

THE PENNSYLVANIA STATE
UNIVERSITY, SANDY BARBOUR,
CHARMELLE GREEN, JAMES FRANKLIN,
ANDY MUTNAN, RENEE MESSINA,
SCOTT A. LYNCH, M.D., PETER H.
SEIDENBERG, M.D., JOHN S. REID, M.D.,
BRENDAN M. CARR, TIM BREAM, WES
SOHNS, PENN STATE HEALTH, MILTON
S. HERSHEY MEDICAL CENTER, PENN
STATE HERSHEY MEDICAL GROUP, AND
MOUNT NITTANY HEALTH,

Respondents

ORDER

PER CURIAM

AND NOW, this 22nd day of June, 2023, the Application to Amend and Application
for Reconsideration are **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 06/22/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ELLISON O. JORDAN,

: No. 410 MAL 2022

Petitioner

: Petition for Allowance of Appeal
from the Order of the Superior Court

v.

THE PENNSYLVANIA STATE
UNIVERSITY, SANDY BARBOUR,
CHARMELLE GREEN, JAMES FRANKLIN,
ANDY MUTNAN, RENEE MESSINA,
SCOTT A. LYNCH, M.D., PETER H.
SEIDENBERG, M.D., JOHN S. REID, M.D.,
BRENDAN M. CARR, TIM BREAM, WES
SOHNS, PENN STATE HEALTH, MILTON
S. HERSHEY MEDICAL CENTER, PENN
STATE HERSHEY MEDICAL GROUP, AND
MOUNT NITTANY HEALTH,

Respondents

ORDER

PER CURIAM

AND NOW, this 25th day of April, 2023, the Petition for Allowance of Appeal and
the Application to Supplement Petition for Allowance of Appeal are DENIED.

A True Copy Elizabeth E. Zisk
As Of 04/25/2023

Elizabeth E. Zisk
Attest:
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX G

STATEMENT OF PLACE OF ISSUES RAISED AND PRESERVED

Statements of issues raised or preserved during pre-trial proceedings are as follows:

1. Plaintiff's February 26, 2020 NOTICE, RULE 237.5, *NOTICE OF PRAECIPE TO ENTER JUDGEMENT BY DEFAULT.*
2. February 28, 2020, CERTIFICATE OF MERIT,
 - a. The COURT accepted the Certificate of Merits and CONFIDENTIAL DOCUMENT FORM which included written statements.
 - b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 "Plaintiff filed a Certificate of Merit for each Defendant on February 28, 2020, but failed to file a written statement from an appropriate licensed professional with the Certificate of Merit."
 - c. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 "On May 12, 2020 and May 13, 2020, the Centre County Prothonotary's Office entered Judgment of Non Pros in favor of the Defendants other than the University Defendants."
3. PLAINTIFF'S ANSWER TO THE RELIMINARY OBJECTIONS with FILED FOR RECORD 2020FEB 28 P 1:46.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 did not acknowledge Plaintiff's answer.

4. Plaintiff's March 9, 2020 *PRAECIPE FOR JUDGEMENT*. The COURT returned the UNSTAMPED Praecipe via correspondence dated March 18, 2020.

a. The COURT did not identify any specific rules the UNSTAMPED Praecipe failed to comply with.

b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 did not acknowledge Plaintiff's praecipe.

5. April 17, 2020, Plaintiff filed via email to Prothonotary orders@centrecountypa.gov at 1:38 am, *SUPPLEMENTAL CERTIFICATE FOR SERVICE OF THE CERTIFICATE OF MERIT*.

a. The COURT did not acknowledge receipt of Supplemental Certificate; and

b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 did not acknowledge Plaintiff's supplemental certificate.

6. April 17, 2020, Plaintiff filed via email to Prothonotary orders@centrecountypa.gov at 1:46 am, *PLAINTIFF'S ANSWER TO DEFENDANTS NOTICE OF INTENTION TO ENTER JUDGEMENT OF NON PROS FOR FAILURE TO FILE A WRITTEN STATEMENT FROM AN APPROPRIATE LICENSED PROFESSIONAL*.

7. May 13, 2020, Plaintiff filed via email to Prothonotary-
orders@centrecountypa.gov at 9:58 PM, Filed for Record , ANSWER
TO THE PRELIMINARY OBJECTIONS FILED BY COUNSEL FOR
DEFENDANTS ANDY MUTNAN, RENEE MESSINA AND WES SOHNS.

8. May 14, 2020, Filed for Record AM 9:12, PLAINTIFF'S RESPONSE TO
DEFENDANTS' PRAECIPE FOR ENTRY OF JUDGEMENT OF NON PROS
FOR FAILURE TO FILE WRITTEN STATEMENT FROM AN APPROPRIATE
LICENSED PROFESSIONAL concerning Rule 1042.3, and Certificate of
Merit dated 2020 FEB 28 P 1:39.

9. May 29, 2020, Filed for Record P 2:07, Plaintiff's letter to Jeremy S,
Breon, Prothonotary, concerning Praecipes, Notices and Judgements of
Non Pros, and Certificate of Merit. The letter states:
*"As stated in my response and as documented on record, I
submitted a timely Certificate of Merit with required statements
on February 28, 2020. To my knowledge, your office has
accepted the Certificate of Merit as timely and meeting the
necessary requirements of Rule 1042.3. Given the facts
concerning the Certificate of Merit, it was my understanding that
you 'may not enter judgment if the written statement has been
filed prior to the filing of the Praecipe.' Since the Certificate of
Merit with written statements was recorded by your office on
February 28, 2020 and a Praecipe was not filed until on or about*

March 9, 2020, an error concerning the Judgments and Notices for Non Pros has occurred. I respectfully request that a review of the above be conducted as soon as possible. ..."

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4

PM 1:58 did not acknowledge Plaintiff's letter.

10. June 1, 2020, Filed for Record PM 4:05, PETITION FOR RELIEF OF JUDGEMENT OF NON PROS FOR FAILURE TO FILE WRITTEN STATEMENT FROM AN APPROPRIATE LICENSED PROFESSIONAL, concerning Non Pros Notices and Judgments, Rule 236, Certificate of Merit with written statements, Supplemental Certificate of Service of the Certificate of Merit, Answer to Defendant's Notice of Intention to Enter Judgement of Non Pros for Failure to File Written Statement from an Appropriate Licensed Professional. The petition states:

"As a Pro Se, it is the Plaintiff's belief and understanding the defendants were expected to put a priority on the health and safety of all their students and adhere to reasonable standard of safety particularly with regard to student-athletes who can be injured in competitive athletics. Therefore, as a student-athlete, the Plaintiff asserts a special relationship existed between the Plaintiff and the defendant's which required a duty of reasonable care. The defendants were negligent in providing and/or ensuring that reasonable care was provided to the Plaintiff. In

addition, the defendants intentionally covered up individual and/or collective failure to provide reasonable care to the Plaintiff. This failure resulted in a yearlong knee infection unknown by the Plaintiff and undisclosed by the defendants which had the potential to result in the Plaintiff's death. Without the care of outside medical physicians, the Plaintiff would not have been informed of the infection until he either lost a limb or died. Although, the Plaintiff understands the underlying purpose of Rule 102.3 is to prevent the filing of FRIVOLOUS Professional liability claims, the Plaintiff asserts this claim is NOT FRIVOLOUS. However, if the Court upholds the judgement and the complaint is not allowed to go to trial, the defendants will be in bolden to continue to abuse and negligent the safety and health of student-athletes because they are keenly aware no student-athlete has the financial standing to sue for medical and professional malpractice without an attorney. ..."

- a. The COURT issued ORDER FILED FOR RECORD 2020JUN 4 PM 1:49 ordering a hearing on June 25, 2020.
- b. The COURT DENIED Plaintiff's petition for relief on 15th day of July, 2020.
- c. The COURT mentioned Plaintiff's Petition on page 3 of ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58.

11. June 10, 2020, Filed for Record AM 8:35, *PLAINTIFF'S RESPONSE IN OPPOSITION TO THE PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT* concerning documentation from counsel to Plaintiff, Filed for Record Documentation, Exhibits to Preliminary Objections, and Statement of Facts (Limited Summary).

a. The COURT did not acknowledge Plaintiff's response in the ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58.

12. June 12, 2020, Filed for Record PM 4:35, *PRAECIPE FOR JUDGEMENT* concerning non receipt of counsel McNees Wallace & Nurick "Praecipe of Entry of Appearance", Plaintiff's March 9, 2020 "Praecipe for Judgement", Court's March 18, 2020 letter returning Plaintiff's praecipe for judgement unfiled, Plaintiff's unfiled June 12, 2020 "Praecipe for Judgment", Court's letter dated June 18, 2020, and counsel McNees Preliminary Objections.

a. The COURT returned Plaintiff's Praecipe as "unfiled" in correspondence dated June 18, 2020 stating "...it fails to comply with the Pennsylvania Rules of Civil Procedure."

b. The COURT did not acknowledge Plaintiff's June 12, 2020 Praecipe for Judgement in any ORDERS or DETERMINATIONS.

13. June 19, 2020, FILED FOR RECORD 2020JUL 19 AM 10:36, *PLAINTIFF'S RESPONSE TO DEFENDANTS REPLY BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT* concerning

Complaint Exhibits 3, 5, 6, 18, 21, 22, 24, 27, 28, 30, 36, 47, 49, 50, 51, 53, 54,; Certificate of Merit, Confidential Document Form Attachments 13,14,23-1,26,29,30,32,33,34,35; and Standard of Care Colleges Owe Student-Athletes.

14. June 19, 2020, *PLAINTIFF'S RESPONSE TO AFFIDAVIT OF NON-INVOLVEMENT FILED ON BEHALF OF DEFENDANT CHARMELLE GREEN* concerning Defendant's Green role as stated in Exhibit "1 of the response. Exhibit 1 states "In her role, she is also responsible for the management, supervision, and evaluation of Intercollegiate Athletics Sport Performance unit, which includes medical services, athletic training, strength & condition, sports nutrition, and sports psychology. She manages, supervises and evaluates the Intercollegiate Athletics Student Welfare and Development unit, which develops and implements life skills programs, and resources for student-athletes." complete copy of his medical records from June 2016-June 2020.",

15. June 23, 2020, Filed for Record AM 9:04, *PLAINTIFF'S CASE MANAGEMENT CONFERENCE MEMORANDUM* concerning "possible unknown serious injuries which may be disclosed during Discovery given the Defendants' have failed to provide the Plaintiff with a several statements of "Discovery required", Rule 1042.3 and dismissal of judgement.

16. June 25, 2020, Filed for Record AM 8:30, *PRAECIPE FOR ORAL ARGUMENT* concerning non receipt of counsel McNees Wallace & Nurick "Praecipe of Entry of Appearance", Plaintiff's March 9, 2020 "Praecipe for Judgement", Court's March 18, 2020 letter returning Plaintiff's praecipe for judgement unfiled, Plaintiff's unfiled June 12, 2020 "Praecipe for Judgment", Court's letter dated June 18, 2020, and counsel McNees Preliminary Objections.

17. June 24, 20, *PLAINTIFF ELLISON O. JORDAN (PRO SE) PRAECIPE FOR ORAL ARGUMENT ON PLAINTIFF'S PRAECIPES FOR JUDGEMENTS* concerning non-receipt of counsel McNees Wallace & Nurick "Praecipe of Entry of Appearance", Plaintiff's "Praecipe for Judgement" submitted on March 9, 2020, court's March 18, 2020 letter returning Plaintiff's praecipe for judgement unfiled, Plaintiff's unfiled June 12, 2020 "Praecipe for Judgment", and court's letter dated June 18, 2020.

18. June 24, 2020, received via email by Ms. Wanda K. Andrews at 4:53 PM, Filed for Record June 25, 2020 AM 8:30, *PLAINTIFF'S REPLY TO RESPONSE OF DEFENDANT SCOTT A. LYNCH TO PLAINTIFF'S PETITION FOR RELIEF OF JUDGEMENT OF NON-PROS FOR FAILURE TO FILE WRITTEN STATEMENT FROM AN APPROPRIATE LICENSED PROFESSIONAL* concerning Defendant Scott A. Lynch's August 23, 2019 civil complaint, Plaintiff's Certificate of Merit and written statements.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 did not acknowledge Plaintiff's response.

19. July 20, 2020, email to Ms. Kimberly B. Fornicola at 2:41 AM, concerning electronic copy of judge's decision. Mr. Breon replied via email at 9:00 AM "*This email is in response to your request for an electronic copy of an order. We are unable to send orders via email at this time (at the direction of my solicitor). This policy is under review and may change in the future. The order was filed in my office on July 15, 2020 at 4:47 pm. Ellison's copy was mailed on July 16, 2020 ...*". However, on June 22, 2020 at 2:12 PM, the Court via email from Ms. Wanda K. Andrews forwarded an ORDER issued by Judge Ruest to all parties without any request from the parties.

20. July 24, 2020, Filed for Record P 4:22, ***PETITION FOR RECONSIDERATION OF RELIEF OF JUDGEMENT OF NON PROS FOR FAILURE TO FILE WRITTEN STATEMENT FROM AN APPROPRIATE LICENSED PROFESSIONAL concerning July 15, 2020 OPINION and ORDER, Writ of Summon, Complaint, Certificate of Merit, Confidential Document Form, Written Statements, Exhibits from Complaint, Plaintiff Praecipe for Judgement, May 15, 2020 ORDER, Rule 1042.7 and 1042.12, Rule 236, the Corporation, Insitiution Medical Services, Institution Control and Responsibility, Medical Care of Student-Athletes, Institution Duty of Care, errors and omission in the July 15,***

2020 OPINION and ORDER, Plaintiff's Petition for Relief of Judgement of Non Pros, and University Defendant's Preliminary Objections. Some of the reliefs requested were (d) *Accept the Plaintiff's Certificate of Merit as substantially being submitted pursuant to Rule 1042.39(e);* (f) *Grant Plaintiff opportunity to cure defects of Certificate of Merit if not submitted pursuant to Rule 1042.3(e);* and (j) *Grant extension to correct defects of Certificate of Merit until 120 days after receipt of complete medical records from all Defendants alleged in the complaint.*

- a. The COURT issued ORDER, FILED FOR RECORD 2020JUL 30 PM 4:07, which DENIED Plaintiff's Petition for Reconsideration.
21. July 28, 2020, Filed for Record A 8:32, *MOTION TO EXTEND TIME TO FILE AMENDED COMPLIANT concerning July 15, 2020 OPINION and ORDER, July 24, 2020 PETITION FOR RECONSIDERATION OF RELIEF FROM JUDGEMENT OF NON PROS, Preliminary Objections, Certificate of Merit, and receipt of all medical records.*
 - a. The COURT issued ORDER, FILED FOR RECORD 2020AUG 4 AM 10:03 with a GRANTED Plaintiff's Motion to Extend Time to File Amended Complaint to August 19, 2020.
22. August 3, 2020, Filed for Record P 4:27, *AMENDED COMPLIANT- CIVIL ACTION with Jury Trial Demanded, Notices to defend and Certificate of Merit indicating "expert testimony of an appropriate*

licensed professional is unnecessary for prosecution of the claim against this defendant."

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 DISMISSED with prejudice Plaintiff's amended complaint.

23. August 12, 2020, Filed for Record A 8:08, *SUPPLEMENTAL AMENDED COMPLAINT* with Jury Trial Demanded, Notices to defend and Certificate of Merit indicating "expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant."

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 DISMISSED with prejudice Plaintiff's Supplemental amended complaint.

24. August 24, 2020, Filed for Record P 4:00, *NOTICE OF INTENTION TO ENTER DEFAULT JUDGEMENT*. Rule 231 Pa. Code Rule 3.9 allows for amended pleading without consent of another party or the court, within 20 days after service of the preliminary objections. The original objections shall be deemed moot upon filing of the amended pleading.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentions notice on page 4.

25. September 2, 2020, Filed for Record A 11:21, *PRAECIPE FOR DEFAULT JUDGEMENT with NOTICE OF INTENTION TO ENTER DEFAULT JUDGEMENT.*

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentioned Praecipe on page 4.

b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 DENIED Plaintiff's Praecipe for Judgment.

26. **** CHECK EMAIL FOR STAMPED INFO**** "The Plaintiff was not served by Defendants' counsel via "Electronic Mail..." as stated in the Certificate of Service signed by Carol Steinour Young, McNees Wallace & Nurick LLC. The Plaintiff asserts copies of the Preliminary Objections and Brief were received from the U. S. Post Office on September 5, 2020.

27. September 3, 2020, Filed for Record A 8:45, *PRAECIPE FOR DETERMINATION* concerning ORDER dated September 2, 2020, and 31st of August 2020 Preliminary Objections to Plaintiff's Supplemental Amended Complaint and Brief.

a. The COURT issued ORDER, FILED FOR RECORD 2020SEP 9 PM 12:34, added Praecipe to hearing dated October 12, 2020.

b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentioned Praecipe on page 4.

c. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 DENIED Plaintiff's Praecipe for Determination.

28. September 8, 2020, Filed for Record A 8:34, MOTION FOR E-MAIL FILINGS OF ALL OURT DOCUMENTATION concerning 19th day of March 2020, ADMINISTRATIVE ORDER allowing e-mail filings of all documents with the Court, March 27, 2020 letter from counsel April C. Simpson, McQuaide Blasko, US Postal Service and COVID-19 issues.

a. The COURT issued ORDER, FILED FOR RECORD 2020SEP 11 PM 3:31, added Motion to hearing dated October 12, 2020.

29. September 16, 2020, Filed for Record P 2:29, PLAINTIFF'S *RESPONSE IN OPPOSITION TO DEFENDATN'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S SUPPLEMENTAL AMENDED COMPLAINT* concerning ORDER dated 2nd day of September 2020, counsel McNees 31st day of August 2020 Preliminary Objections and Brief, Motion for E-Mail Filing of all Court Documentation, August 12, 2020 Supplemental Amended Complaint, Defendant PSU dba, Supreme Court decision in Scampone v. Highland Park Care Center which states "Once the requisite relationship (i.e., employment, agency) is demonstrated, the innocent victim has recourse against the principal, even if the ultimately responsible agent is unavailable or lacks the ability to pay.", special relationship between student-athlete and university, university's control and supervision of the student-athlete, university's

impact on a student-athlete's health, university's duty owed to student-athlete, university's nondelegable duty to student-athletes, collegiate coaches, courts view on the special relationship between universities and student-athletes, standard of review, preliminary objections to plaintiff's supplemental amended complaint of defendants the Pennsylvania State University, Sandy Barbour, Charmelle Green and James Franklin, and ID Ortho Inpatient Consultation Report dated 01/13/18.

- a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentioned Plaintiff's response on page 4.
- b. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 DISMISSED prejudice Counts I through XXI and Plaintiff's Supplemental Amended Complaint.

30. ***CHECK EMAIL FOR STAMPED INFO ****it states "The Plaintiff was not served by Defendants' counsel via "Electronic Mail.," as stated in the Certificate of Service signed by Carol Steinour Young, McNees Wallace & Nurick LLC. The Plaintiff asserts copies of the Preliminary Objections and Brief were received from the U. S. Post Office on September 5, 2020. ... In fact, the Judge had received copies of the filings five days prior to the Plaintiff's receipt. Therefore, the Plaintiff filed a *PRAECIPE FOR DETERMINATION* with the court on September 3, 2020 for emergency determination concerning the

validity of the ORDER DATED 2nd day of September 2020. As of today September 16, 2020, the Court has not responded to the Plaintiff's Praeclipe."

31. October 9, 2020, Filed for Record P 2:55, *PLAINTIFF'S ANSWER TO ORDER TO SHOW CAUSE* concerning Supplemental Amended Complaint, Amended Complaint, Order dated 2020JUL 30 4:07 and mailed 08/03/20, special relationship, Res Ipsa Loquitur in Medical Malpractice Actions, Fessenden v. Robert Parker Hospital in which Judge Wecht ruled "the doctrine of res ipsa loquitur applied in a narrow category of medical malpractice cases that do not require expert testimony to prove an accident would not happen absent negligence.", Restatement (Second) of Torts, Court of Common Pleas of Dauphin case No. 2019cv6337cv, May 5, 2020 OPINION and ORDER in case No. 2019-4067.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentioned Plaintiff's answer on page 4.

32. October 19, 2020, Filed for Record A 9:54, *STATEMENTS OF SUPPORT* concerning oral arguments held on October 12, 2000, University Defendants The Pennsylvania State University, Sandy Barbour, Charmelle Green James Franklin and Scott Lynch, special relationship, mental health, and counsel Carol Steinour Young.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 4 PM 1:58 mentioned Plaintiff's statements on page 4.

33. December 14, 2020, Filed for Record A 10:13, *MOTION FOR ELECTRONIC RECEIPT OF OPINION and ORDER* concerning December 4, 2020 OPINION and ORDER.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 23 AM 11:50 DENIED Plaintiff's motion.

34. December 14, 2020, Filed for Record P 3:43, *MOTION FOR TIME EXTENSION TO PLEAD RESPONSE TO OPINION AND ORDER* concerning OPINION and ORDER dated December 4, 2020, and Reservation of Rights.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 23 AM 11:50 DENIED Plaintiff's motion.

35. December 15, 2020, Filed for Record P 4:01, *MOTION TO RECUSE* concerning Presiding Judge Ruest's prior partnership in McQuaide Blasko who are counsel to defendants in this case.

a. The COURT stated in ORDER, FILED FOR RECORD, 2020DEC 23 AM 11:50 DENIED Plaintiff's motion.

36. December 28, 2020, Filed for Record A 8:44, *DETERMINATION OF FINALITY* concerning no trial by jury as demanded, bias rulings and decisions by Judge Ruest, Motion to Recuse, December 4, 2020

OPINION and ORDER, Rule 341(b), Rule 236(b), recusal, new trial, change in venue, trial by jury and other rights.

- a. The COURT stated in ORDER "AND NOW, THIS 4TH DAY OF January, 2021 DENIED Plaintiff's determination.
- 37. December 28, 2020, Filed for Record P 4:31, *SUPPLEMENTAL DETERMINATION OF FINALITY* concerning jury trial demanded, August 12, 2020 Certificate of Merit, special relationship, bias, recusal, December 4, 2020 OPINOIN and ORDER, Supplemental Amended Complaint, misuse of discretion, new trial and change in venue.
 - a. The COURT stated in ORDER "AND NOW, THIS 4TH DAY OF January, 2021 DENIED Plaintiff's determination.
- 38. January 6, 2020, Filed for Record A 9:53, *NOTICE OF APPEAL* concerning orders entered on 8th and 23rd of December 2020 with *PETITION TO PROCEED IN FORMA PAUPERIS & AFFIDAVIT*, and request for transcript.
 - a. The COURT stated in ORDER "AND NOW, THIS 13TH day of January, 2021, GRANTED Plaintiff's Forma Pauperis Petition.
- 39. February 16, 2021, File for Record P 4:07, *MOTION FOR TIME EXTENSION FOR STATEMENT OF ERRORS*.
 - a. The COURT stated in ORDER "AND NOW, THIS 22nd day of February, 2021, GRANTED Plaintiff's motion and stated Plaintiff

had "21 days to after the transcript is filled with the Prothonotary to file his statement."

40. April 5, 2021, File for Record P 3:18, *MOTION FOR TIME EXTENSION FOR STATEMENT OF ERRORS* concerning ORDER dated 22nd day of February, 2021, Rule 1922(b) and transcripts.

a. The COURT stated in ORDER "AND NOW, this 14th day of April, 2021, was issued.

41. May 12, 2021, Filed for Record A 10:46, *STATEMENT OF MATTERS COMPLAINED OF ON APPEAL*.

a. The COURT issued OPINION IN RESPONSE TO MATTERS COMPLAINED OF ON APPEAL, FILED FOR RECORD, 2020MAY 20 PM 4:16.