

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAWNA Z. NEALMAN, as the	:	CIVIL ACTION NO. 1:15-CV-1579
Personal Representative of the Estate	:	
of Benjamin Shelley Nealman,	:	(Chief Judge Conner)
	:	
Plaintiff	:	
	:	
v.	:	
	:	
RYAN P. LAUGHLIN, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 24th day of July, 2017, upon consideration of the motion (Doc. 53) of Nurse Tiffanie Wert (“Nurse Wert”), Nurse Carla Walters (“Nurse Walters”), and Counselor Marlin Conner (“Counselor Conner”) (collectively, the “Mifflin County defendants”) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), filed October 28, 2016, in which the Mifflin County defendants assert that plaintiff Tawna Z. Nealman (“Nealman”) fails to state a medical negligence claim against Nurses Wert and Walters and Counselor Conner, (see Doc. 54 at 2-6), and wherein the Mifflin County defendants contend that the Pennsylvania Political Subdivision Tort Claims Act (“the Act”), see 42 PA. STAT. AND CONS. STAT. ANN. §§ 8541 *et seq.*, bars Nealman’s medical negligence claim *in toto*, and the court observing that the Act immunizes employees of political subdivisions from negligence liability if they act within the scope of their employment and are not subject to a specific exemption, see id. at §§ 8542, 8545, 8546, 8550; (see also Doc. 54 at 2-6), but that the Act specifically exempts from its protections public

employees who cause injury through conduct which “constitute[s] a crime, actual fraud, actual malice or willful misconduct,” 42 PA. STAT. AND CONS. STAT. ANN. § 8550,¹ and the court having previously concluded that Nealman “fail[ed] to state any wrongdoing on the part of” Nurse Walters and Counselor Conner, Nealman v. Laughlin, No. 1:15-CV-1579, 2016 WL 4539203, at *13 (M.D. Pa. Aug. 31, 2016), but that Nealman’s first amended complaint (Doc. 32) set forth sufficient allegations to establish a plausible claim of willful misconduct against Nurse Wert, Nealman, 2016 WL 4539203, at *13 & n.7, which finding precluded Nurse Wert from invoking the Act’s protections anent Nealman’s medical negligence claim, id., and it appearing that the factual basis undergirding Nealman’s claims has not changed with the filing of Nealman’s second amended complaint, (Doc. 52), and that there is no basis for the court to depart from its prior holding that the allegations of willful misconduct allow both state law tort claims against Nurse Wert, individually, to proceed, see Nealman, 2016 WL 4539203, at *13 n.7, it is hereby ORDERED that:

¹ The Mifflin County defendants base their immunity argument in § 8542(b) of the Act. (Doc. 57 at 2-4). Section 8542(b) enumerates eight categories of acts for which the state has waived local agency immunity. 42 PA. STAT. AND CONS. STAT. ANN. § 8542(b). The Mifflin County defendants contend that medical negligence is not an enumerated exception. (Id.) As the court previously held, Nealman’s claims invoke the willful misconduct exemption for *individual* liability rather than an enumerated exception to agency liability. See Nealman, 2016 WL 4539203, at *13 n.7. Whether the *probata* ultimately substantiate Nealman’s *allegata* as pertains willful misconduct by Nurse Wert will be determined following discovery.

1. The Mifflin County defendants' motion (Doc. 53) to dismiss is GRANTED to the extent it seeks dismissal of Count 3 against Nurse Walters and Counselor Conner but is otherwise DENIED.
2. Count 3 of Nealman's second amended complaint (Doc. 52) is DISMISSED against Nurse Walters and Counselor Conner.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania