

authorizing, upholding, and/or enforcing the Department of Correction's (Department) healthcare policies and by failing to prevent or control ectoparasitic infestations. Buehl alleged that the Medical Defendants acted with reckless indifference and negligence in addressing his medical needs. Buehl also claimed that Defendant Beard, Secretary of the Department of Corrections (Department), acted negligently in establishing the Department's hernia policy. Based upon these claims, Buehl sought declaratory, mandamus and injunctive relief,¹ as well as compensatory and punitive damages.²

In response, the Correction Defendants and Medical Defendants filed preliminary objections. By order dated January 29, 2009, the trial court sustained

¹ Although Buehl prays for "injunctive relief," Buehl does not seek to prohibit Defendants from acting, but rather seeks to compel them to take affirmative action.

² Notwithstanding the declaratory relief demanded, Buehl's action against Defendant Beard and the Medical Defendants seeking compensatory damages for negligence is in the nature of common law trespass and, therefore, jurisdiction was properly vested in the court of common pleas. Section 761(a)(1) of the Judicial Code, 42 Pa. C.S. §761(a)(1) (The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings: (1) Against the Commonwealth government, including any officer thereof, acting in his official capacity, except: ... (v) actions or proceedings in the nature of trespass as to which the Commonwealth government formerly enjoyed sovereign or other immunity and actions or proceedings in the nature of assumpsit relating to such actions or proceedings in the nature of trespass.); Stackhouse v. Commonwealth, 574 Pa. 558, 565, 832 A.2d 1004, 1009 (2003) (Where "the core of Appellant's complaint is an action in trespass, original jurisdiction lies in the court of common pleas notwithstanding the injunctive/declaratory label attached to Count I."); Balshy v. Rank, 507 Pa. 384, 396, 490 A.2d 415, 420-421 (1985) ("We hold today the clear intent of the General Assembly is that actions against the Commonwealth or its officers acting in their official capacity for money damages based on tort liability are outside the original jurisdiction of Commonwealth Court and are properly commenced in the Courts of Common Pleas."); Fawber v. Cohen, 516 Pa. 352, 360, 532 A.2d 429, 433-434 (1987) (quoting Philadelphia Life Insurance Company v. Commonwealth, 410 Pa. 571, 576, 190 A.2d 111, 114 (1963)) ("Suits which seek to compel affirmative action on the part of state officials or to obtain money damages or to recover property from the Commonwealth are within the rule of immunity; suits which simply seek to restrain state officials from performing affirmative acts are not within the rule of immunity.").

the Correction Defendants' preliminary objections in the nature of demurrer, but dismissed the Medical Defendants' preliminary objections, but for their objection to Buehl's request for punitive damages, which the trial court sustained. The case against the Medical Defendants proceeded before the trial court. On December 9, 2009, Buehl filed a praecipe to discontinue his action against the Medical Defendants. Buehl then filed a timely notice of appeal of the trial court's January 29, 2009 order sustaining the Correction Defendants' preliminary objections.³ In this appeal, Buehl raises the following issues for our review:

1. Does the Amended Complaint state a constitutional claim that the Correction Defendants were deliberately indifferent to Buehl's serious medical needs when they established and enforced Department clinical practice guidelines which limited and delayed medical professionals' treatment of Buehl's inguinal hernia?
2. Does the Amended Complaint state a viable negligence claim, within the medical-professional immunity exception set forth in 42 Pa. C.S. §8522(b)(2), that Defendant Beard acted with reckless indifference and/or failed to exercise reasonable care in establishing, signing and implementing Department clinical practice guidelines which limited and delayed medical treatment for Buehl's inguinal hernia?
3. Did the trial court override, disregard or ignore facts pleaded in the Amended Complaint when it found that Correction Defendants lacked actual or imputed knowledge that their actions subjected Buehl to a substantial risk of harm, which is necessary to establish the scienter element of a constitutional claim of deliberate indifference to serious medical needs?

³ Our scope of review of a trial court order sustaining preliminary objections in the nature of a demurrer is limited to determining whether the trial court abused its discretion or committed an error of law. Larry Pitt & Associates v. Long, 716 A.2d 695 (Pa. Cmwlth. 1998).

We conclude that the trial court thoroughly and correctly analyzed these issues and that this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Judge Stewart Kurtz. Accordingly, we affirm on the basis of Judge Kurtz's opinion in Buehl v. Beard, et al. (No. 07-1496, filed March 12, 2010).

JAMES R. KELLEY, Senior Judge

