

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

Diana M. Jordan v. Ryan McWreath et al.

Jordan · No. 2:23-cv-00772 · Decided January 29, 2026

SUMMARY

The United States District Court for the Western District of Pennsylvania adopted a magistrate judge’s report and recommendation with modification and ruled on defendants’ partial motion to dismiss. The court dismissed certain Section 1983 claims with prejudice, dismissed another claim without prejudice with leave to amend, and denied the motion without prejudice as to specified negligence, substantive due process, wrongful death, and survival claims. The court overruled the defendants’ objections without prejudice and returned the action to the magistrate judge for further proceedings.

CASE DETAILS

COURT	United States District Court for the Western District of Pennsylvania
WRITING FOR THE COURT	Mark R. Hornak
JURISDICTION	United States District Court for the Western District of Pennsylvania
DECIDED	January 29, 2026
DOCKET	2:23-cv-00772
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation addressing defendants' partial motion to dismiss the Second Amended Complaint and defendants' objections to that recommendation.
STANDARD OF REVIEW	De novo review of the objections to the Report and Recommendation; motions under Rule 12(c) are evaluated under the same standards as motions to dismiss under Rule 12(b)(6).
PRECEDENTIAL VALUE	Unknown
PARTIES	Diana M. Jordan v. Ryan McWreath, Washington County, Andronas, Vittone, Romano, Walsh, other defendants

TOPICS

- motions to dismiss
- motion for judgment on the pleadings
- section 1983
- due process
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

constitutional law

torts

QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 12(g)(2) barred certain defendants from seeking dismissal of claims that had been involved in an earlier motion to dismiss.
2. Whether the magistrate judge properly applied Rule 12(g)(2) sua sponte in recommending partial dismissal.
3. Whether the partial motion to dismiss should be granted as to the Section 1983 claims in Count III and as to defendants Vittone, Romano, and Walsh.
4. Whether the remaining claims should be dismissed at that stage of the proceedings.

HOLDINGS

1. The magistrate judge acted within prevailing Third Circuit law by applying Federal Rule of Civil Procedure 12(g)(2) to bar consideration at that stage of certain grounds that could have been raised in an earlier motion, and the court could consider the rule sua sponte.
2. The Section 1983 claims in Count III were dismissed with prejudice as to defendants Vittone and Romano, dismissed without prejudice as to defendant Walsh, and otherwise left pending as specified in the order.
3. Walsh was granted leave to amend the specified Section 1983 claims in Count III within 21 days; absent a timely amendment, the dismissal would convert to dismissal with prejudice without further notice or order.
4. The partial motion to dismiss was denied without prejudice as to the remaining claims, including specified negligence, substantive due process, wrongful death, and survival claims.

KEY QUOTATIONS

“The Court has considered the entire record in this case, along with the R&R and the Objections upon de novo review as required by applicable law, and here is how the Court sees things.” (-2-)

“The PMTD is GRANTED as to Plaintiff’s Section 1983 claims at Count III of the SAC and as to Defendants Vittone and Romano, and those claims are dismissed with prejudice as amendment would be futile;” (-3-)

“The Objections (ECF No. 75) are otherwise OVERRULED without prejudice, and the action is returned to the Magistrate Judge for further proceedings.” (-3-)

FACTUAL BACKGROUND

Plaintiff filed a Second Amended Complaint asserting negligence, Section 1983, Fourteenth Amendment substantive due process, wrongful death, and survival claims against multiple defendants. The Second Amended Complaint added defendants and included substantially expanded factual allegations and Pennsylvania State

Police reports and documents. Defendants sought dismissal of specified claims, including claims previously involved in an earlier partial motion to dismiss.

PROCEDURAL HISTORY

The action was referred to Magistrate Judge Christopher B. Brown for pretrial proceedings. Defendants filed a partial motion to dismiss, the magistrate judge recommended granting it in part and denying it in part, and defendants objected to the recommendation's application of Federal Rule of Civil Procedure 12(g)(2). The district court conducted de novo review, adopted the Report and Recommendation as modified, partially granted and partially denied the motion, overruled the objections without prejudice, and returned the action to the magistrate judge for further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The action was returned to Magistrate Judge Christopher B. Brown for further proceedings. Walsh could amend the specified Section 1983 claims in Count III within 21 days of the order; no other amendments could be filed without advance leave of court.

CASES CITED

- *Leyse v. Bank of America National Association*, 804 F.3d 316, 322 n.5 (3d Cir. 2015)
- *Munro v. Ten Oaks Management LLC*, No. 24-1041, 2025 WL 1124369, at *2-3 (D. Del. Apr. 16, 2025)
- *Clark v. Sweeney*, No. 25-52, 2025 WL 3260170 (U.S. Sup. Ct. Nov. 24, 2025) (per curiam)
- *Oxford House, Inc. v. Township of North Bergen*, 148 F.4th 486, 490 (3d Cir. 2025)
- *Wolfington v. Reconstructive Orthopedic Associates II PC*, 935 F.3d 187, 197 (3d Cir. 2019)
- *Revell v. Port Authority*, 598 F.3d 128, 134 (3d Cir. 2010)
- *Bedrosian v. IRS*, 42 F.4th 174, 181 (3d Cir. 2022)
- *PDX North, Inc. v. Commissioner, New Jersey Department of Labor & Workforce Development*, 978 F.3d 871, 881 n.10 (3d Cir. 2020)
- *Drippe v. Gotoweski*, 434 F. App'x 79, 82 (3d Cir. 2011)