

SUPERIOR COURT OF PENNSYLVANIA

CVS Pharmacy, Inc., CVS Rx Services, Inc., CVS Indiana, L.L.C.,
Pennsylvania CVS Pharmacy L.L.C., Albertson's LLC, and Acme
Markets, Inc. v. The City of Philadelphia, Pennsylvania

CVS Pharmacy, 2026 Pa. Super. 36 (Superior Court of Pennsylvania 2026) · No. 3093 EDA 2024 · Decided
February 27, 2026

SUMMARY

The Pennsylvania Superior Court affirmed an interlocutory order overruling CVS and Albertsons' preliminary objections to Philadelphia's public nuisance claim concerning the alleged distribution and dispensing of prescription opioids. The court held that the City's allegations of opioid-related impacts on public streets, public spaces, public safety, and the community at large sufficiently pleaded interference with a public right. The court distinguished *Atlantic Richfield Co. v. County of Montgomery* and relinquished jurisdiction.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Olson, J.; Beck, J.; Ford Elliott, P.J.E.
JURISDICTION	Pennsylvania Superior Court
DECIDED	February 27, 2026
DOCKET	3093 EDA 2024
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants obtained permission to appeal an interlocutory order overruling their preliminary objections in the nature of a demurrer to the City's public nuisance complaint.
STANDARD OF REVIEW	Review of an order overruling preliminary objections in the nature of a demurrer is plenary and determines whether the trial court committed an error of law. The appellate court applies the same standard as the trial court, accepts well-pleaded material facts and reasonable inferences as true, and sustains a demurrer only when it is clear and free from doubt that the plaintiff cannot prove legally sufficient facts.
PRECEDENTIAL VALUE	Published and precedential decision of the Superior Court of Pennsylvania

PARTIES

CVS Pharmacy, Inc., CVS Rx Services, Inc., CVS Indiana, L.L.C., Pennsylvania CVS Pharmacy L.L.C., Albertson's LLC, Acme Markets, Inc. v. The City of Philadelphia, Pennsylvania

TOPICS

torts appellate procedure interlocutory appeal motions to dismiss municipal law

PRACTICE AREAS

torts civil procedure appellate procedure municipal law health law

QUESTIONS PRESENTED

1. Whether the City sufficiently pleaded a violation of a public right, as required for a public nuisance claim, by alleging that the pharmacies' distribution and dispensing of prescription opioids contributed to communal harms involving public health, public safety, public streets, and public spaces.
2. Whether the pharmacies' argument that the City alleged only an aggregation of individual harms required dismissal at the demurrer stage.

HOLDINGS

1. The City sufficiently pleaded an interference with a public right. Allegations that the opioid epidemic led to the obstruction and contamination of public streets, a public drug encampment, increased crime, and collective harm to community safety alleged injury to interests common to the public rather than merely aggregated individual injuries.
2. At the pleading stage, the pharmacies' assertion that they could not be liable for another person's use or misuse of a lawful product did not defeat the claim because the City alleged unlawful or regulation-violating distribution practices and resulting interference with public health and safety.

KEY QUOTATIONS

"Accepting as true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts, we conclude that the City properly pleaded the violation of a public right." (-15- to -16-)

"In the case at bar, the City did not merely allege that the conduct of the Appellant Pharmacies injured individual people. Rather, the City alleged that the conduct of the Appellant Pharmacies injured Philadelphians in the collective sense, by harming their collective safety in the community." (-14-)

FACTUAL BACKGROUND

Philadelphia alleged that the appellant pharmacies distributed and dispensed large quantities of prescription opioids while failing to report or halt suspicious orders and otherwise violating duties imposed by Pennsylvania law. The City claimed that this conduct contributed to an opioid epidemic, addiction, overdoses, deaths, increased crime, and public-health and public-safety burdens. It also alleged communal injuries, including public

streets littered with used needles and a large open-air drug market and encampment in the Kensington area. The City sought abatement of the alleged public nuisance and recovery of associated treatment, public-safety, law-enforcement, and other economic costs.

PROCEDURAL HISTORY

Philadelphia sued the appellant pharmacies in 2021, alleging that their distribution and dispensing of prescription opioids created a public nuisance and caused extensive public health, safety, and economic harms. The trial court overruled the pharmacies' preliminary objections, concluding that the City sufficiently pleaded a public nuisance affecting the public estate. After the trial court denied immediate certification, the Superior Court granted permission to appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004)
- *Bargo v. Kuhns*, 98 A.3d 686, 689 (Pa. Super. 2014)
- *Machipongo Land and Coal Co. v. Commonwealth*, 799 A.2d 751, 773 (Pa. 2002)
- *Atlantic Richfield Co. v. County of Montgomery*, 294 A.3d 1274, 1277-89 (Pa. Cmwlth. 2023)
- *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 725, 731 (Okla. 2021)
- *Lynn v. Aria Health System*, 227 A.3d 22, 32 (Pa. Super. 2020)
- *Commonwealth v. MacDonald*, 347 A.2d 290, 303 (Pa. 1975) (plurality)
- *Presbyterian Hospital v. City of Philadelphia*, 198 A. 53, 54 (Pa. 1938)