[J-38-2021]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

BAER, C.J., SAYLOR, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

DALE E. ALBERT INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF CODY M. ALBERT, DECEASED,	:	No. 5 MAP 2021
Appellant	:	Appeal from the Order of the Superior Court dated June 30, 2020 at No. 853 MDA 2019 Affirming the Order of the Lackawanna County Court of Common Pleas, Civil Division, dated April 25, 2019 at 2016-5903.
v.	:	
SHEELEY'S DRUG STORE, INC. AND ZACHARY ROSS,	:	ARGUED: May 19, 2021
Appellees	:	

OPINION

JUSTICE WECHT **DECIDED: December 22, 2021**

The question in this appeal is whether claims brought against a pharmacy on behalf of a decedent who overdosed on illegally obtained prescription drugs are barred by the doctrine of *in pari delicto*. Because we conclude that the trial court correctly applied the *in pari delicto* doctrine, we affirm.

In late 2015, decedent Cody Albert ("Cody") reconnected with his old childhood friend, Zachary Ross ("Zachary"). Both Cody and Zachary were struggling with substance abuse issues, and the two often used OxyContin together. At the same time, Zachary's mother, April Kravchenko ("Kravchenko"), was suffering from multiple myeloma, a type of blood cancer. Kravchenko's doctors had prescribed her several opiate pain medications, which she filled at a small, independent pharmacy in Scranton called Sheeley's Drug Store ("Sheeley's").

Sheeley's is owned by pharmacist Lori Hart, but Donato Iannielli—Hart's father and the prior owner of Sheeley's—also works at the store part-time.

In early 2016, Kravchenko's health deteriorated and she was hospitalized. Kravchenko and her sister Debra Leggieri ("Leggieri") worried that Zachary would try to pick up (and use) Kravchenko's pain medication from Sheeley's while Kravchenko was in the hospital. To prevent this, Leggieri called Sheeley's and placed a restriction on who could pick up Kravchenko's prescriptions. Leggieri informed Sheeley's that Kravchenko was in the hospital and requested that her prescriptions not be released to anyone other than Kravchenko or her boyfriend.

On March 16, 2016, Cody was suffering from an unknown illness. Cody told his parents that he was experiencing flu-like symptoms, so they picked him up in Kutztown and drove him to a hospital in Scranton where he was diagnosed with a headache, given intravenous morphine, and discharged early the next morning. While Cody was in the hospital, he was simultaneously texting Zachary, saying things like "I just got a morphine drip haha try that out[.]" Sheeley's Motion for Summary Judgment, 11/30/2018, at Exh. C, p.10 (R.R. 612). Zachary told Cody that he was experiencing withdrawal symptoms, and the two exchanged text messages discussing various ways they could potentially obtain more drugs.

On the same day Cody was discharged, Zachary called Sheeley's pretending to be his mother and asked about refilling Kravchenko's OxyContin prescription. Iannielli, who was the pharmacist on-duty at the time, told "Kravchenko" that her OxyContin prescription could not be filled yet, but that she had a prescription for fentanyl patches[1] ready to be

[1] Fentanyl patches are used to manage severe, around-the-clock pain, usually in opiate-tolerant patients. Once affixed to the skin, the patches slowly release fentanyl into the bloodstream over the course of two or three days, thus providing long-lasting pain relief. Though well-suited for chronic-pain management, the patches also carry a high potential for overdose and abuse, since the gel inside them can be removed and then

picked up. "Kravchenko" told Iannielli that she wanted to send her son to pick up the patches, but stated that he did not have a driver's license or other form of identification. Iannielli told the caller that this would not be a problem, since he personally knew and would recognize Zachary.

Zachary then sent Cody a text message asking him to drive him to Sheeley's, stating, "there [sic] supposed to give me something." *Id.* at Exh. C, p.14 (R.R. at 616). Cody agreed to drive Zachary to the pharmacy, and the two exchanged several more messages discussing whether they could make it to Sheeley's before it closed at 9:00 p.m. Cody then drove Zachary to Sheeley's, where Zachary successfully picked up Kravchenko's medication even though, according to Zachary, the pharmacy receipt explicitly stated, "[d]o not give to son." Deposition of Zachary Ross, 7/19/2018, at (R.R. at 345); *see also id.* ("And then even on the bag they gave me it said do not give [it] to me because I was a drug addict."). The two then went to a nearby Sheetz, where they unsuccessfully tried to purchase drugs from Cody's friend.

On the drive back to Zachary's house, Zachary punctured one of the fentanyl patches with a knife and consumed some of the drug. After arriving at Zachary's house, Cody at some point consumed fentanyl from one of the patches, smoked marijuana, and then fell asleep on the couch. Later that night, Zachary tried to wake Cody up, but he was unresponsive. Cody was later pronounced dead at a hospital. Zachary eventually pleaded guilty to involuntary manslaughter and multiple drug offenses in connection with Cody's overdose.

In October 2016, Cody's father, Dale Albert ("Albert"), filed a negligence suit against Sheeley's—both individually and on behalf of his son's estate—in which he

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ingested or injected, giving the user two- or three-days' worth of medication all at once. *See generally Fentanyl*, DRUG ENFORCEMENT ADMINISTRATION, https://www.deadiversion.usdoj.gov/drug_chem_info/fentanyl.pdf.

sought wrongful death and survival damages. Albert's complaint alleged that Sheeley's negligently allowed Zachary to pick up his mother's fentanyl prescription, which proximately caused Cody's overdose and death. Sheeley's sought summary judgment, arguing that Albert's suit is barred by the wrongful conduct rule, otherwise known as the *in pari delicto* doctrine.

In pari delicto is an equitable doctrine that precludes plaintiffs from recovering damages if their cause of action is based, at least partially, on their own illegal conduct.[2] *Joyce v. Erie Ins. Exch*., 74 A.3d 157, 164 (Pa. Super. 2013) ("[O]ur law will not allow recovery when an action is grounded in illegal behavior."). The rule is rooted in the theory that courts should not lend their aid to a plaintiff whose cause of action stems from his or her own illegal conduct. *See Official Comm. of Unsecured Creditors of Allegheny Health Educ. & Rsch. Found. v. PriceWaterhouseCoopers, LLP*, 989 A.2d 313, 329 (Pa. 2010) ("In this Commonwealth, as elsewhere, *in pari delicto* serves the public interest by relieving courts from lending their offices to mediating disputes among wrongdoers, as well as by deterring illegal conduct.").

The trial court below entered judgment for Sheeley's, concluding that the *in pari delicto* doctrine bars recovery given that Cody's death was caused, at least partially, by his own criminal conduct: possessing and consuming a controlled substance that was not

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[2] Some jurisdictions call this doctrine the wrongful conduct rule, while others treat *in pari delicto* and the wrongful conduct rule as separate but related doctrines. Given its Latin meaning ("in equal fault"), the phrase *in pari delicto* seems most apt when the plaintiff and the defendant commit a crime together—as, for example, when two parties enter into an illegal contract. Still, many courts appear to use these terms interchangeably rather than treating *in pari delicto* as "a specific and limited application" of the general principle that "no court will lend its aid to a man who grounds his action upon an immoral or illegal act." *Feld & Sons, Inc. v. Pechner, Dorfman, Wolfee, Rounick, & Cabot*, 458 A.2d 545, 552 (Pa. Super. 1983) (quoting *Fowler v. Scully*, 72 Pa. 456, 467 (1872)).

prescribed to him.[3] Albert then appealed to the Superior Court,[4] arguing that the *in pari delicto* doctrine is inapplicable because Cody did not engage in illegal conduct. In this regard, Albert claimed that "the ingestion of controlled substances is not illegal, and [Cody] did not have any role in the fraud perpetrated by [Zachary]." *Albert v. Sheeley's Drug Store, Inc*., 234 A.3d 820, 824 (Pa. Super. 2020).

The Superior Court unanimously rejected Albert's argument. Writing for the panel, Judge Stabile observed that the undisputed evidence establishes that Cody took part in Zachary's scheme to obtain his mother's fentanyl. Specifically, the record shows that: (1) the two exchanged text messages about needing to get to Sheeley's before 9 p.m. to obtain the prescription; (2) Cody drove Zachary to Sheeley's; (3) Cody waited in the car while Zachary obtained the fentanyl; and (4) Cody consumed some of the fentanyl after arriving at Zachary's house.

Moreover, Judge Stabile explained, Albert failed to rebut (or even address) the trial court's conclusion that Cody stood *in pari delicto* with Sheeley's because he possessed a controlled substance in violation of a criminal statute. *Id.* at 824 (citing 35 P.S. § 780-113(a)(16), which prohibits an individual from "knowingly or intentionally possessing a controlled or counterfeit substance . . . unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner"). Given Cody's participation in the scheme to obtain fentanyl and his illegal possession of the drug in violation of Pennsylvania law, the court concluded that Cody "was an active, voluntary

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[3] The trial court also held that Sheeley's did not owe a duty to Cody, a conclusion which Albert does not challenge before this Court.

[4] At the pleadings stage, Sheeley's joined Zachary as an additional defendant in this action. Because Albert sought an immediate appeal of the trial court's order granting summary judgment, however, the parties stipulated that Albert would discontinue his claims against Zachary. In light of this stipulation, the Superior Court treated the appeal as being from a final order under Pa.R.A.P. 341.

participant in the wrongful conduct or transaction(s)" for which Albert sought redress and therefore bore "substantially equal or greater responsibility" for the underlying illegality as compared to Sheeley's. *Albert*, 234 A.3d at 824. Thus, the panel affirmed the trial court's decision entering judgment for Sheeley's based on the *in pari delicto* doctrine.[5]

Albert then filed a petition for allowance of appeal with this Court, which we granted to consider whether the lower courts correctly applied the *in pari delicto* doctrine.[6] Broadly speaking, Albert has three main arguments before this Court. First, Albert argues that the trial court had no basis to conclude, at the summary judgment stage, that Cody was

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[5] Judge Stabile also noted that, while Pennsylvania courts have applied the *in pari delicto* doctrine in tort cases, there do not appear to be any Pennsylvania decisions involving facts similar to those here. That said, Judge Stabile noted that other jurisdictions have applied the doctrine in factually similar cases. *See*, *e.g*., *Foister v. Purdue Pharma, L.P*., 295 F. Supp. 2d 693 (E.D. Ky. 2003) (plaintiffs who obtained and used OxyContin illegally could not recover in tort action against pharmaceutical company because plaintiffs necessarily had to rely on their own illegal actions to establish their claims); *Price v. Purdue Pharma Co.*, 920 So.2d 479 (Miss. 2006) (plaintiff's malpractice claims against doctors and pharmacy were barred by wrongful conduct rule because he obtained the OxyContin "through his own fraud, deception, and subterfuge by misrepresenting his medical history and ongoing treatment to those from whom he sought care"); *Kaminer v. Eckerd Corp*., 966 So.2d 452 (Fla. Dist. Ct. App. 2007) (wrongful conduct doctrine barred recovery by estate against pharmacy for failure to appropriately safeguard controlled substances, where decedent voluntarily ingested OxyContin stolen from a pharmacy); *Orzel v. Scott Drug Co*., 537 N.W.2d 208 (Mich. 1995) (plaintiff's claim against pharmacy for negligently filling purportedly valid prescriptions was barred because it was premised, at least in part, on drug user's own illegal conduct). The panel regarded these decisions as persuasive authority supporting the trial court's entry of summary judgment against Albert.

[6] Summary judgment is appropriate only when the record clearly demonstrates that there are no genuine issues of material fact, thus entitling the moving party to judgment as a matter of law. *Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d 811, 818 (Pa. 2017). When considering motions for summary judgment, trial courts must construe all facts and reasonable inferences from those facts in the light most favorable to the non-moving party. *Id*. In so doing, the trial court must resolve all doubts as to the existence of a genuine issue of material fact against the moving party and may only grant summary judgment "where the right to such judgment is clear and free from all doubt." *Id*. Appellate courts may reverse a grant of summary judgment only if there has been an error of law or an abuse of discretion. *Id*.

an active participant in Zachary's scheme to deceive Sheeley's into releasing Kravchenko's medication. Second, he contends that the illegal possession of a controlled substance is not the sort of crime for which the *in pari delicto* doctrine was intended to bar recovery. Lastly, Albert claims that the Superior Court's decision conflicts with comparative negligence principles, given that the lower courts essentially weighed Cody's relative blameworthiness against that of Sheeley's. *See* Brief for Albert at 25 ("[Cody] did ingest the fatal drug, but this is an issue of comparative negligence, not an absolute bar to recovery.").

Like many states, Pennsylvania follows the "classic formulation" of *in pari delicto*. *Official Committee of Unsecured Creditors*, 989 A.2d at 329 (quoting *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306-07 (1985)). As explained above, the *in pari delicto* doctrine precludes plaintiffs from recovering damages if their cause of action is based at least partially on their own illegal conduct. *Id.* The theory underlying this rule is that allowing such suits to proceed to trial would: (1) condone and encourage illegal conduct; (2) allow wrongdoers to receive compensation for, and potentially even profit from, their illegal acts; and (3) lead the public to "view the legal system as a mockery of justice." *Orzel v. Scott Drug Co*., 537 N.W.2d 208, 213 (Mich. 1995); *Official Committee of Unsecured Creditors*, 989 A.2d at 329 ("In this Commonwealth, as elsewhere, *in pari delicto* serves the public interest by relieving courts from lending their offices to mediating disputes among wrongdoers, as well as by deterring illegal conduct.").

In *Oden v. Pepsi Cola Bottling Co*., 621 So.2d 953 (Ala. 1993), for example, a man was crushed and killed by a falling vending machine while he was trying to steal drinks from it. After his death, the man's estate sued both Pepsi and the vending machine manufacturer, arguing that the machine was defective because it lacked anti-theft

mechanisms and anti-tilt brackets. In affirming the dismissal of that case, the Alabama Supreme Court explained:

> A person cannot maintain a cause of action if, in order to establish it, he must rely in whole or part on an illegal or immoral act or transaction to which he is a party. . . . This rule promotes the desirable public policy objective of preventing those who knowingly and intentionally engage in an illegal or immoral act involving moral turpitude from imposing liability on others for the consequences of their own behavior. Even so, such a rule derives principally not from consideration for the defendant, but from a desire to see that those who transgress the moral or criminal code shall not receive aid from the judicial branch of government.

Id. at 954-55 (cleaned up).

Albert does not challenge these general principles. Instead, he objects to the Superior Court's conclusion that Cody was an active participant in Zachary's scheme to secure Kravchenko's medication under false pretenses. *See* Brief for Albert at 21 ("There is absolutely no evidence in the record that [Cody] had any knowledge that [Zachary] procured the prescription illegally or how he obtained the prescription for that matter."). According to Albert, Cody easily could have believed that he was simply "giving his friend a ride to a pharmacy." *Id.* at 19. Thus, Albert argues, the Superior Court improperly drew inferences in Sheeley's favor when it concluded that Cody "took part in [Zachary's] scheme to obtain this deadly controlled substance." *Albert*, 234 A.3d at 824.

The record contains undisputed evidence, in the form of text messages, showing that Cody and Zachary jointly were attempting to obtain opiates in the days and hours before Cody's death. Yet it remains somewhat open to interpretation whether Cody knew that Zachary had deceived Iannielli into releasing Kravchenko's fentanyl prescription. Regardless, the trial court correctly applied the *in pari delicto* doctrine because it is undisputed that Cody committed a crime that directly caused his death when he possessed (and then ingested) a controlled substance that was not prescribed to him. *See* 35 P.S. § 780-113(a)(16) (prohibiting an individual from "knowingly or intentionally

possessing a controlled or counterfeit substance . . . unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner").

Indeed, Albert concedes that Cody ingested Kravchenko's prescription fentanyl sometime before his death, and that he did not possess a valid prescription for the drug. Brief for Albert at 19, 23, 24-25. In Albert's view, however, "this is not the type of mistake that '*in pari delicto*' was created to prevent[.]" *Id.* at 19. According to Albert, the Superior Court's holding below improperly expanded the *in pari delicto* doctrine and will prevent plaintiffs from recovering damages whenever their own conduct is not "perfect under the circumstances." *Id.* at 17. To illustrate, Albert offers a hypothetical involving an unlicensed motorist who is struck and killed "by a drunk driver speeding down the road at a reckless and dangerous speed." *Id.* at 22. Albert claims that the Superior Court's holding below necessarily means that this hypothetical motorist's estate would be unable to recover damages from the driver simply because she was participating in an illegal act (*i.e.*, driving without a license) at the time of her death.

Contrary to Albert's suggestion, the Superior Court's holding will not inevitably lead to DUI accident victims being thrown out of court simply because they forgot to renew their driver's licenses. Under Pennsylvania's formulation of *in pari delicto*, courts must consider: (1) the extent of the plaintiff's wrongdoing vis-à-vis the defendant; and (2) the connection between the plaintiff's wrongdoing and the claims asserted. *Official Committee of Unsecured Creditors*, 989 A.2d at 330 n.19. With regard to the former, we have said that the plaintiff must bear "substantially equal or greater responsibility" for the underlying harm as compared to the defendant. *Id.* at 329 (brackets omitted). And, as for the latter, the plaintiff's cause of action must directly arise from or be "grounded upon" an illegal act. *Joyce*, 74 A.3d at 164 (quoting *Feld & Sons, Inc.*, 458 A.2d at 552). Furthermore, our precedent is clear that *in pari delicto*, like all equitable doctrines, "is

subject to appropriate and necessary limits." *Official Committee of Unsecured Creditors*, 989 A.2d at 330.[7]

Given these clear doctrinal limits, we are unpersuaded by Albert's slippery-slope argument. Unlike in Albert's hypothetical, Cody's criminal conduct directly resulted in his death, while Sheeley's conduct—dispensing a controlled substance to Cody's friend—is several links removed in the chain of causation. In other words, the "connection between the plaintiff's wrongdoing and the claims asserted" here is far less attenuated than in the unlicensed-driver hypothetical. *Id.* at 330 n.19. Indeed, Albert does not cite, and we cannot find, a single decision from any court applying *in pari delicto* to a relatively minor status offense like driving without a license. And at least one court has explicitly declined to apply the doctrine under similar circumstances. *See Matthews v. Republic W. Ins. Co.*, 2000 WL 33406974, at *2 (Mich. Ct. App. 2000) (per curiam) ("[T]here is no dispute that plaintiff was driving with a suspended license. However, the connection between

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[7] Needless to say, we do not today nor have we ever endorsed the rule that *in pari delicto* applies "no matter the degree or seriousness of the [plaintiff's] illegality[.]" Dissenting Opinion at 5. Nor is our holding "breathtaking," "absolutist," "unwarranted," "draconian," or "irrational." *Id*. at 6, 8, 10. As we have explained, the doctrine contains clear limits that, by the Dissent's own admission, Albert does not argue apply here. *Id.* at 11, n.6. To put it succinctly, we opt today to apply the longstanding *in pari delicto* rule to the facts of this case, while the Dissent would instead create a vague and largely undefined exception to the rule for some (but not all) drug overdose cases. *See id.* at 13 ("Had the evidence demonstrated decedent's involvement in Ross's scheme to procure the release of the Fentanyl prescription, the scales would tip in favor of applying the rule.").

While the Dissent delivers a passionate plea for such an exception, it notably offers no clear limiting principle to distinguish drug overdose deaths from other criminal acts that result in death. *See*, *e.g.*, *Oden*, 621 So.2d at 953 (decedent killed by an allegedly defective vending machine that he was stealing from). Furthermore, the Dissent's arguments could just as easily apply to any of the many social ills that correlate with criminality, like poverty, lack of opportunity, and mental health issues. Accepting the Dissent's rationale wouldn't simply create a narrow exception to the rule for drug addicts; it would eviscerate the rule completely.

plaintiff's suspended license and his injuries is simply too attenuated to establish the causation requirement of the wrongful-conduct rule. . . . That plaintiff's license was suspended at the time is only incidentally or collaterally connected to his cause of action.").

That brings us to Albert's claim that the lower courts' decisions conflict with comparative negligence concepts.[8] Albert's argument appears to be that, rather than disposing of this case at the summary judgment stage, the trial court should have allowed a jury to weigh Cody's relative fault against that of Sheeley's and then apportion any damages accordingly. Brief for Albert at 24 ("Here, it seems that the Superior Court is engaged in a comparative negligence analysis which is strictly left for the province of the Jury."). In other words, Albert regards the trial court's entry of summary judgment as a judicial usurpation of the jury's fact-finding and fault-apportionment roles.

Albert misunderstands the relationship between comparative negligence and *in pari delicto*. Comparative negligence principles apply whenever a plaintiff is contributorily negligent, while *in pari delicto* applies whenever a plaintiff engages in *criminal conduct* that directly causes the harm for which he or she seeks redress.[9] As we have explained in the past, *in pari delicto* "retain[s] relevance" in "cases involving intentional wrongdoing on the part of a plaintiff" despite Pennsylvania's comparative negligence and contribution statutes. *Official Committee of Unsecured Creditors*, 989 A.2d at 329 n.17; *accord Barker*

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[8] As the Dissent notes, Albert discusses this issue several times in his appellate brief. Dissenting Opinion at 14 (collecting citations). To this we would add that Albert similarly raised the issue in his Petition for Allowance of Appeal. *See* PAA, 7/28/2020, at 18, 20, 21.

[9] *See* 42 Pa.C.S. § 7102(a) ("[C]ontributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.").

v. Kallash, 468 N.E.2d 39, 41 (N.Y. 1984) ("[R]ecovery is denied, not because the plaintiff contributed to his injury, but because the public policy of this State generally denies judicial relief to those injured in the course of committing a serious criminal act[.]"). Furthermore, nothing in Pennsylvania's comparative negligence statute suggests that the General Assembly intended to abolish the common law *in pari delicto* defense. *See generally* 42 Pa. C.S. § 7102. And courts generally should not assume that the legislature intended to preempt the common law unless the statute explicitly says so. *Metro. Prop. & Liab. Ins. Co. v. Ins. Comm'r of Pa.*, 580 A.2d 300, 302 (Pa. 1990) ("Under the [Statutory Construction] Act an implication alone cannot be interpreted as abrogating existing law."). Thus, we reject Albert's contention that the Superior Court's decision conflicts with comparative negligence concepts.

While the result here may seem harsh, this lawsuit—where a plaintiff seeks recovery for injuries caused by his own criminal act—falls squarely within the *in pari delicto* doctrine. Albert's portrayal of Cody as "a troubled youth" who made "a fatal mistake" may be entirely correct. Brief for Albert at 18. And we certainly agree that "addiction is not a question of morality[.]" *Id.* at 24. But the purpose of the *in pari delicto* doctrine is not to punish Albert or reward Sheeley's. The rule exists principally because holding otherwise would force courts to condone and perhaps even encourage criminal conduct, thus diminishing the public's perception of the legal system.[10] Litigants should

[10] *Orzel*, 537 N.W.2d at 213; *Official Committee of Unsecured Creditors*, 989 A.2d at 329 ("In this Commonwealth, as elsewhere, *in pari delicto* serves the public interest by relieving courts from lending their offices to mediating disputes among wrongdoers, as well as by deterring illegal conduct."); *see also Holman v. Johnson*, 98 Eng. Rep. 1120 (1775) ("The objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but is founded in general principles of policy, which the defendant has the advantage of, contrary to real justice as between him and the plaintiff; by accident, if I may so say.").

be well aware that "the judiciary is not tolerant of fraud and illegality, and those who come before it seeking common-law redress relative to matters in which they bear sufficient culpability may suffer disadvantage as a consequence of their own wrongdoing."[11] *Official Comm. of Unsecured Creditors*, 989 A.2d at 329.

We affirm.

Chief Justice Baer and Justices Saylor, Todd, and Mundy join the opinion.

Justice Dougherty files a dissenting opinion in which Justice Donohue joins in the result.

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[11] The Dissent contends that our ruling shields "bad actors in the healthcare industry," and it refers to Sheeley's conduct as "allegedly negligent (or even intentional)." Dissenting Opinion at 11 n.6, 12. It is worth noting, however, that the trial court explicitly held that Albert's negligence claim against Sheeley's fails on the merits, and Albert does not challenge that conclusion in this appeal. *Albert v. Sheeley's Drug Store, Inc*., No. 2016 CV 5903, 2019 WL 10301131, at *6 (Pa. Com. Pl., Aug. 29, 2019) (holding that Sheeley's did not owe a duty to Albert).