

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clay Caldwell,	:	
	:	
Appellant	:	
	:	
v.	:	No. 866 C.D. 2014
	:	Submitted: November 26, 2014
The Dept. of Corrections, J. F.	:	
Mazurkiewicz, Superintendent,	:	
Heide/Officer, Noel/Officer,	:	
Gunn/Officer, Dorin D. Hurley,	:	
Inmate Prisoner, Bussard/ Officer,	:	
Beers/Officer, Sullenburger/Officer,	:	
K. Kinnan/Officer, D. Varner/Officer,	:	
Karmizen/Officer, Lacey/ Officer,	:	
Shippley/Officer and Dept. of	:	
Correction Agency	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: January 8, 2015

In this, his second recent appeal to this Court,¹ Clay Caldwell (Caldwell), an inmate serving a life sentence and representing himself, asks whether the Court of Common Pleas of Westmoreland County (trial court) erred in sustaining the preliminary objection filed by the Department of Corrections (DOC)

¹ See Caldwell v. The Dep't. of Corr. Agency (Pa. Cmwlth., No. 631 C.D. 2014, filed November 17, 2014) (unreported). Caldwell has filed numerous suits against Department of Corrections' (DOC) employees in state and federal courts. See, e.g., Caldwell v. Fogel, Civil Action No. 08-728 (W.D. Pa. Sept. 21, 2009), 2009 WL 3048558 at *1 ("Clay Caldwell ... a frequent pro se litigator who is well known to this Court, has filed yet another prisoner civil rights complaint.")

and several other named defendants (collectively, Defendants)² and dismissing Caldwell's suit. In his complaint, Caldwell alleged he suffered retaliatory treatment, including destruction of his personal property, in response to filing prior lawsuits. Caldwell raises several issues for our review. For the reasons set forth below, we affirm.

I. Background

In May 2013, Caldwell filed a two-and-a-half page complaint, styled as a petition for writ of mandamus, purportedly pursuant to Article I, Section 26 of the Pennsylvania Constitution.³ Through his complaint, Caldwell alleged that Defendants either destroyed or allowed the destruction of his personal property, including a television, a typewriter, a denture and a religious item, a Native American medicine bag. Caldwell alleged these items were also evidence in suits he filed against Defendants and other DOC staff and employees in state and federal courts. Caldwell averred Defendants either destroyed or allowed the destruction of his property and subjected him to verbal abuse in retaliation for filing the suits. He also alleged Defendants refused to reimburse him for the destroyed property and created unsafe conditions of confinement. Caldwell further averred he exhausted all administrative remedies.

² Other named Defendants are Superintendent J. F. Mazurkiewicz, Officers Heide, Noel, Gunn, Bussard, Beers, Sullenburger, K. Kinnan, D. Varner, Karmizen, Lacey and Shippley, and fellow inmate Dorin D. Hurley.

³ Article I, Section 26 of the Pennsylvania Constitution provides: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." PA. CONST. art. I, §26.

Based on these averments, Caldwell sought: \$5,000 in damages from each Defendant; a protective order, and an order for single-cell housing for the remainder of his incarceration; and, a writ of mandamus directing submission of his complaint to a trial judge for hearing and decision.

In response, Defendants filed preliminary objections, asserting the complaint: was legally insufficient to state a claim; did not include a notice to defend; and, did not set forth sufficient factual allegations.

After the parties filed briefs, the trial court issued an order in which it sustained Defendants' preliminary objection in the nature of a demurrer. Specifically, the trial court stated:

3. In reference to [D]efendants' preliminary objection #1, in the nature of a demurrer, for legal insufficiency, pursuant to Pa. R.C.P. No. 1028(a)(4), based upon [Caldwell's] failure to state a claim upon which relief may be granted, the Court directs the following:

a. In reference to [Caldwell's] retaliatory claim for discrimination seeking monetary damages and costs, pursuant to Art. I, §26 of the Pennsylvania Constitution, is hereby SUSTAINED, as money damages are not available for a violation of the Constitution; and

b. To the extent that [Caldwell's] claims seek to impose liability under 42 U.S.C. §1983, said preliminary objection is equally SUSTAINED, as liability may not be premised on a theory of [*respondeat superior*], and [Caldwell] has failed to allege facts supporting any personal involvement by the named defendants in these matters; and

c. Finally, with respect to [Caldwell's] claim for injunctive relief under Article 1, §26, said preliminary

objection is equally SUSTAINED, as [Caldwell's] claim fails to state facts supporting a claim for his rights under Art. 1, §26; and

d. Accordingly, [Caldwell's] Complaint, in the nature of a Petition for Writ of Mandamus, is hereby dismissed with prejudice.

Tr. Ct. Order, 5/13/14, at 1-2.

Caldwell filed a notice of appeal, and the trial court directed him to file a concise statement of the errors complained of on appeal pursuant to Pa. R.A.P. 1925(b). Caldwell filed a lengthy 1925(b) Statement. The trial court issued an order reaffirming its order that sustained Defendants' demurrer. This matter is now before us for disposition.⁴

II. Discussion

Essentially, in about three pages of argument, Caldwell asserts the trial court erred in: (1) failing to grant him leave to amend his complaint; (2) failing to appoint counsel; (3) failing to address his motion for default judgment; and, (4) failing to issue an order providing for protection from unsafe conditions of confinement.

⁴ Our review of a trial court order sustaining preliminary objections in the nature of a demurrer is limited to determining whether the trial court committed an error of law. Luckett v. Blaine, 850 A.2d 811 (Pa. Cmwlth. 2004). We must accept as true all well-pled allegations of material fact in the complaint as well as any inferences reasonably deduced therefrom, resolving any doubt in favor of overruling the demurrer. Id. We need not, however, accept as true legal conclusions. Tindell v. Dep't of Corr., 87 A.3d 1029 (Pa. Cmwlth. 2014). The allegations of a self-represented plaintiff are held to a less stringent standard than that applied to pleadings filed by attorneys. Id. If a fair reading of the complaint shows the plaintiff pled facts that may entitle him to relief, the preliminary objections will be overruled. Id.

A. Leave to Amend

Caldwell does not directly challenge the trial court's ruling on Defendants' preliminary objections. Instead, he focuses on his complaint, asserting the trial court erred when it dismissed his complaint rather than granting him leave to amend.

To that end, Caldwell obliquely asserts Defendants violated his right to exercise his religious freedom, including his rights under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §2000cc-1. Caldwell argues this issue could only be addressed if the trial court would have allowed him to “[a]mend his defective complaint” in order to state a claim for which he could seek monetary and injunctive relief. Appellant's Br. at 12.

Pursuant to Rule 1028(c)(1) of the Pennsylvania Rules of Civil Procedure, “[a] party may file an amended pleading as a matter of course within twenty days after service of a copy of preliminary objections.” Pa. R.C.P. No. 1028(c)(1). Here, Caldwell did not file an amended complaint within the period prescribed by the rule. Further, he did not clearly request leave to amend the complaint before the trial court.⁵ In a document styled “Declaration of the

⁵ Caldwell maintains he reserved the right to amend his complaint “on the very first page of his responsive brief to the [Defendants'] preliminary objections.” Appellant's Br. at 10 (emphasis added). In that document, Caldwell stated: “The plaintiff also reserves the right to amend his pleadings as to any changes by the defense counsel or defendants, or the relief sought, or witnesses joined in this action.” Certified Record (C.R.), Item #23 at 1. We do not believe that the inclusion of this statement in Caldwell's brief was sufficient to place the trial court on notice that Caldwell was, in fact, requesting leave to amend his complaint, which was filed two months after the period set forth in Pa. R.C.P. No. 1028(c)(1).

In any event, as Caldwell appears to acknowledge, our review of his complaint fails to clearly disclose how any of the named Defendants violated Caldwell's right to freely exercise his
(Footnote continued on next page...)

Plaintiff,” filed over a year after Defendants filed their preliminary objections, Caldwell again “reserve[d] the right to amend pursuant to rule 1028(c).” C.R., Item #19. In this document, Caldwell indicated that he specifically “decline[d] to make further pleadings at this time.” Id. Because Caldwell never sought the remedy, he may not now complain that the trial court erred in failing to grant it. See Desanctis v. Pritchard, 803 A.2d 230 (Pa. Super. 2002) (where plaintiff did not file amended complaint within 20 days of preliminary objections or seek leave to amend, trial court did not err in failing to grant leave to amend).

B. Appointment of Counsel

Caldwell next asserts the trial court erred in failing to appoint counsel to represent him in this matter. He argues appointment of counsel would have expedited matters, served the public interest and stopped him from filing unnecessary motions and petitions as a lay person who is unfamiliar with the trial court’s practices and procedures.

A litigant does not have a right to counsel in a civil matter. Harris v. Pa. Dep’t of Corr., 714 A.2d 492 (Pa. Cmwlth. 1998). Due process does not require the appointment of counsel to an indigent inmate in a civil action because the interest at stake is financial, which commands a lower level of due process

(continued...)

religious beliefs. While Caldwell’s complaint very briefly states he seeks repayment for his “Native American Medicine Bag religious item,” the complaint lacks any other averment to support a claim that Caldwell’s religious beliefs were in any way violated. C.R., Item #1. In the absence of any such averments, we discern no error in the trial court’s failure to address the viability of such claim.

protection than life or liberty interests. Mason v. Pa. Dep't of Corr., 886 A.2d 724 (Pa. Cmwlth. 2005); Harris.

Here, Caldwell's civil complaint seeks monetary damages as well as injunctive relief so as to require a specific housing arrangement in order to prevent the alleged destruction of property. We discern no life or liberty interest at stake. Indeed, Caldwell does not assert otherwise. Rather, he concedes that the right to appointment of counsel is "not a right in civil actions" Appellant's Br. at 13. For these reasons, we discern no error in the trial court's denial of Caldwell's request for appointment of counsel.

C. Default Judgment

Caldwell also contends the trial court erred in failing to act on his motion for default judgment when Defendants did not file a timely responsive pleading to his complaint. However, as Caldwell acknowledges, his complaint did not include a required notice to defend in violation of Pa. R.C.P. No. 1018.1(a) ("Every complaint filed by a plaintiff ... shall begin with a notice to defend"). "A complaint that omits the notice to defend is facially and fatally defective." 11 STANDARD PENNSYLVANIA PRACTICE 2d §68:6 (2010 ed.) (citing Gerber v. Emes, 511 A.2d 193 (Pa. Super. 1986); Clymire v. McKivitz, 504 A.2d 937 (Pa. Super. 1986)); see also Mother's Rest., Inc. v. Krystkiewicz, 861 A.2d 327 (Pa. Super. 2004).

Pursuant to Rule 1037(b), "[t]he prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the

required time a pleading to a complaint which contains a notice to defend” Pa. R.C.P. No. 1037(b) (emphasis added). Thus, a default judgment may be entered only when the party that is required to plead is given notice of that requirement and the sanctions that may be incurred for failure to plead within the time period allowed. 11 STANDARD PENNSYLVANIA PRACTICE 2d §68:6 (2010 ed.) (citing Franklin Interiors, Inc. v. Browns Lane, Inc., 323 A.2d 226 (Pa. Super. 1974)). “[A] plaintiff[’s] filing of a notice of praecipe for the entry of default judgment does not cure the defect of the plaintiff[’s] failure to file in [his] original action a notice to defend; therefore, entry of a default judgment is precluded.” Id. (citing Gerber). A prothonotary lacks authority to enter a default judgment where a plaintiff does not include a notice to defend. Mother’s Rest.

Here, Caldwell concedes his complaint did not include the required notice to defend. Appellant’s Br. at 10. As such, default judgment could not be entered. Mother’s Rest.

D. Order for Protection/Change in Housing Assignment

Caldwell further contends that, in dismissing his complaint, the trial court “closed all doors” on his right to a court order for protection to ensure his safety while he is a party to a civil suit. Appellant’s Br. at 11. Caldwell asserts he received actual injuries at the hands of DOC employees and received no medical attention for almost a year despite the fact he filed suit in the Centre County Court of Common Pleas (No. 2014-1681). Caldwell maintains the trial court’s failure to issue an order providing for his protection allowed DOC employees to place him in unsafe conditions of confinement, including housing Caldwell with “problematic”

inmates, which, in turn, caused an altercation between Caldwell and another inmate. Appellant's Br. at 12.

Despite Caldwell's assertions in his brief regarding the physical abuse he suffered at the hands of DOC employees, Caldwell's complaint is devoid of any such allegations. Rather, it appears these new factual allegations relate to Caldwell's confinement at the State Correctional Institution (SCI) Benner Township, located in Centre County, where Caldwell was transferred shortly after filing his complaint in this matter and where, according to his brief, Caldwell filed yet another lawsuit concerning this alleged physical abuse. Appellant's Br. at 12.

In his complaint here, Caldwell sought a protective order and an order for "[s]ingle [c]ell [h]ousing[.]" C.R., Item #1, Compl. at ¶6. However, Caldwell is no longer incarcerated at SCI Greensburg, the prison in which he sought the change in housing assignment and which is located in Westmoreland County, within the trial court's jurisdiction. Because Caldwell is no longer incarcerated in the institution in which he sought the order of protection and change in housing assignment, clearly the trial court could not order the requested change in housing assignment. See, e.g., Sutton v. Rasheed, 323 F.3d 236, 248 (3d Cir. 2003) ("An inmate's transfer from the facility complained of generally moots the equitable and declaratory claims.")⁶

⁶ In any event, "it is entirely a matter of [DOC's] discretion where to house an inmate." Clark v. Beard, 918 A.2d 155, 160 (Pa. Cmwlth. 2007). To that end, under DOC regulations, an "inmate does not have a right to be housed in a particular facility or in a particular area within a facility." 37 Pa. Code §93.11.

For these reasons, we affirm the trial court's order sustaining Defendants' preliminary objections.

A handwritten signature in black ink, appearing to read "Robert Simpson", written over a horizontal line.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 8th day of January, 2015, the order of the Court of
Common Pleas of Westmoreland County is **AFFIRMED**.



ROBERT SIMPSON, Judge

Certified from the Record

JAN - 8 2015

and Order Exit