

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SHAIKH J. MUHAMMAD,
Appellant

v.

JAMES A. PRICE, JAMES
HOLLOCK, and SERGEANT
LAUBHAM, et al.

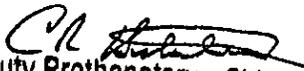
No. 579 C.D. 1998

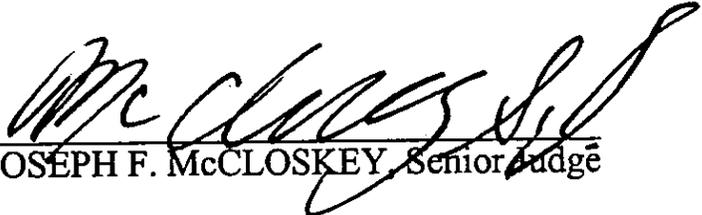
ORDER

AND NOW, this 13th day of August, 1998, it is hereby ordered that
the decision of the Court of Common Pleas of Allegheny County is AFFIRMED.

CERTIFIED FROM THE RECORD
AND ORDER EXIT

AUG 13 1998


Deputy Prothonotary - Chief Clerk


JOSEPH F. McCLOSKEY, Senior Judge

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: No. 579 C.D. 1998
: SUBMITTED: May 15, 1998
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BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: August 13, 1998

Shaikh J. Muhammad (Appellant) appeals from an order of the Court of Common Pleas of Allegheny County (trial court), dismissing his petition for leave to proceed in forma pauperis and underlying complaint as frivolous within the meaning of Pa. R.C.P. 240(j).¹ We affirm.

In January of 1996, Appellant was an inmate at the State Correctional Institution at Pittsburgh (SCI-Pittsburgh). At the time, Appellant had property

¹ This Rule states:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

stored in the property room at SCI- Pittsburgh. On January 20, 1996, there was a flood in the property room that damaged the majority of the goods therein, including Appellant's property. The damaged property was subsequently thrown away.

On or about December 1, 1997, Appellant filed a pro se complaint seeking reimbursement for personal property lost at SCI-Pittsburgh. Appellant named as defendants three employees of SCI-Pittsburgh: James A. Price, James Hollock and Sergeant Laubham (Appellees). Appellant, through his complaint, alleges that his property was in the care of defendant Laubham and that although defendant Price was not the superintendent at the time of the flood, he is the current superintendent, and is legally responsible for the overall operations and treatment of all persons at SCI-Pittsburgh. Appellant does not state in his complaint how defendant Hollock was involved.

On December 18, 1997, the trial court entered an order dismissing Appellant's action as frivolous within the meaning of Pa. R.C.P. 240(j). Appellant now appeals to this Court.²

Appellant asserts that his action was not frivolous and had an arguable basis in law and fact and that the trial court committed an error of law and abused its discretion in dismissing the action. Appellant avers that the trial court erred in dismissing his action by focusing on the merits of his complaint and not addressing his indigence. Appellant states in his brief that when a litigant presents a valid cause of action he should not be denied access to the courts because of his

² Our scope of review when reviewing a decision of a trial court is limited to a determination of whether constitutional rights have been violated, or whether the trial court abused its discretion or committed an error of law. Mann v. City of Philadelphia, 563 A.2d 1284 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 525 Pa. 622, 577 A.2d 892 (1990).

indigence. We agree with Appellant on that assertion, however, the trial court determined that Appellant's complaint did not present a valid cause of action and, therefore, dismissed it as frivolous. We agree with the trial court in its determination that Appellant did not present a valid cause of action.

Rule 240(j) of the Pennsylvania Rules of Civil Procedure governs proceedings filed in forma pauperis. The rule states that if a petition for leave to proceed in forma pauperis is filed simultaneously with the commencement of an action, the court may dismiss the complaint as frivolous prior to acting on the petition. A frivolous complaint or appeal is one that lacks any arguable basis in law or fact. Robinson v. Pennsylvania, Board of Probation and Parole, 525 Pa. 505, 582 A.2d 857 (1990).

Appellees maintain that Appellant's claim fails under a common law bailment analysis. We agree. A bailment is defined as a delivery of goods or personal property, by one person to another, in trust for the execution of a special object upon or on relation to such goods, beneficial either to the bailor or bailee. Airway Arms, Inc. v. Moon Area School District, 498 Pa. 286, 446 A.2d 234 (1982), appeal dismissed sub nom., Grant-Oliver Corp. v. Moon Area School District, 459 U.S. 1094. (1983). In the instant case, Appellees would be considered the bailees and Appellant the bailor.

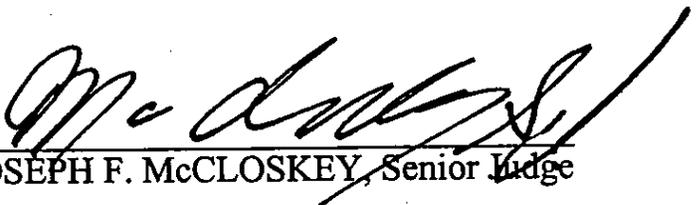
The degree of care required by the bailee will depend on the purpose of the bailment. When the bailment is solely for the benefit of the bailor, the law requires only slight diligence on the part of the bailee and makes the bailee only liable for gross neglect. Ferrick Excavating v. Senger Trucking Co., 506 Pa. 181, 484 A.2d 744 (1984). In this case, the bailment was for the sole benefit of Appellant, the bailor. Therefore, Appellees could only be liable for gross

negligence concerning Appellant's property. Appellant does not make any allegations of negligence in his complaint and does not mention gross neglect on the part of Appellees. Moreover, even if Appellant did address the negligence of Appellees in his complaint, we conclude that Appellees' conduct did not rise to the level of gross neglect. Thus, the trial court properly dismissed Appellant's complaint as frivolous.

Additionally, Appellant states that the trial court erred in denying him an opportunity to amend his complaint. We disagree.

When an appellant has failed to state a cause of action and it is apparent that the factual situation cannot be changed by amendment, no useful purpose will be served by granting leave to amend. Searfoss v. School District of Borough of White Haven, 397 Pa. 604, 156 A.2d 841 (1959). An amendment to Appellant's complaint would not have prevented its dismissal. Appellees did not act negligently in caring for Appellant's property. It was an act of God, a flood, which did the damage to Appellant's goods. A change in Appellant's complaint would not alter this fact. Thus, an amendment would be futile.

Because the trial court was correct in dismissing Appellant's complaint as frivolous, the order of the trial court is affirmed.


JOSEPH F. McCLOSKEY, Senior Judge