

IN THE COURT OF COMMON PLEAS
OF THE 37th JUDICIAL DISTRICT OF PENNSYLVANIA
FOREST COUNTY BRANCH
CIVIL DIVISION

RICKY TEJADA,

Plaintiff

vs.

C.D. 18 of 2014

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS,
NANCY MCGARVIE, M.D., and
DOCTOR SUNROCK,

Defendants

OPINION IN SUPPORT OF ORDER PURSUANT TO PA.R.A.P. 1925(a)

Before the Court is Plaintiff's Statement of Matters Complained of on Appeal regarding this Court's denial of Plaintiff's in forma pauperis Petition pursuant to Pa.R.C.P. 240 and dismissal of Plaintiff's "Pa.R.C.P. No. 1001 Action," which this Court interprets as a Complaint, due to frivolity. The Court recommends upholding the Court Order of March 14, 2014 as no arguable basis in fact or law exists for relief in Plaintiff's "Complaint."

Ricky Tejada, hereinafter Plaintiff, incarcerated at SCI-Forest at the time of filing, filed a "Pa.R.C.P. No. 1001 Action," on February 21, 2014, which this Court interpreted as a Complaint. Plaintiff simultaneously filed a self-styled "Affidavit of Specific Negative Averment." Plaintiff's Complaint is long and rambling but appears to request damages of at least several hundred thousand dollars as well as interest and costs. A generous reading of Plaintiff's Complaint appears to indicate that Plaintiff, as far as is ascertainable, is complaining either about care the Plaintiff did not receive or about delivery of results of an HIV test that Plaintiff was forced to undergo. This Court issued an Order on March 14, 2014 denying Plaintiff's in forma pauperis (IFP) petition and dismissing Plaintiff's Complaint pursuant to Pa.R.C.P. 240(j) and 42 Pa.C.S. § 6602(f). In its March 14 Order, the Court noted the instant suit was prison conditions litigation that was frivolous or malicious or failed to state a claim upon which relief may be granted or that the defendant was entitled to assert a valid affirmative

defense, including immunity, which, if asserted, would preclude the relief. On March 21, 2014, Plaintiff appealed to the Superior Court from the Court's March 14 Order. The Court notes Plaintiff did not comply with the Pennsylvania Rules of Appellate Procedure, as Plaintiff failed to serve the Court with a copy of the notice of appeal as provided by Pa.R.A.P. 906. Nevertheless, the Court issues this Opinion in Support of Order in compliance with Pa.R.A.P. 1925.¹

In his Concise Statements [sic] of Error(s) Complained of on Appeal ("Concise Statement"), Plaintiff notes that "per 42 Pa.C.S.A. [§] 8522, the defendant has no sovereign immunity in medical claims [sic]," and that Defendant "violated the act codified at 35 P.S. [§] 7601...failing or refusing to treat the Plaintiff as required by 37 Pa. Code [§] 93.12." Plaintiff also writes that "[Defendants] dispensed with informed consent, falsified certification of significant exposure [sic]." That is the extent of Plaintiff's errors complained of on appeal.

Any issues not raised in a 1925(b) statement will be deemed waived. *Greater Erie Indus. Dev. Corp. v. Presque Isle Downs, Inc.*, 2014 Pa. Super. LEXIS 124 (Pa. Super., March 11, 2014). Any issues not raised by Plaintiff in his Concise Statement are therefore deemed waived and the Court will not address them.

To the extent Plaintiff's Complaint involves a claim for medical malpractice, Plaintiff did not attach a certificate of merit. Nor does Plaintiff state that a certificate of merit against each professional named will be forthcoming. Nor does Plaintiff state that no certificate of merit is needed to proceed with the action. *See* Pa.R.C.P. 1042.3(a)(3). An action in medical malpractice must have a certificate of merit attached or the case can be dismissed. Pa.R.C.P. 1042.3; *accord*, *Glenn v. Mataloni*, 949 A.2d 966 (Pa. Comm. 2008), *appeal denied* 958 A.2d 1049. Thus, as no certificate of merit was attached, the Complaint was legally insufficient with respect to any medical malpractice claims. In terms of authority to dismiss such lawsuits, 42 Pa.C.S.A. § 6602(e) states that "[t]he Court shall dismiss prison conditions litigation *at any time*, including prior to service on the defendant, if the court determines any of the following . . . [t]he prison

1. Plaintiff has substantial experience with pro se trial and appellate work stemming from actions filed in this judicial district. Plaintiff raised similar matters at Forest County Civil Docket (C.D.) 33-2013, and after a decision in favor of the Defendants at that docket, Plaintiff appealed to the Superior Court whereupon the Superior Court affirmed this Court at Superior Court docket 1021 WDA 2013. Plaintiff also attempted to file a lawsuit stemming from the same facts at Forest County C.D. 46-2013 although he never filed a Complaint. Also, twenty-two (22) days after Plaintiff filed his Concise Statement in the instant matter, he commenced another civil lawsuit in Forest County at C.D. 47-2014 on the same facts outlined herein. On the criminal side of the docket, Plaintiff has experience with appellate work as outlined in footnote 2, *infra*.

conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted.” (Emphasis added.) Because the Complaint was legally insufficient insofar as it failed to state a claim upon which relief could be granted, the Court has authority to dismiss the instant prison conditions litigation at any time, particularly, prior to service on the Defendants.

To the extent Plaintiff implicates a violation of 35 P.S. § 7601 *et seq.*, the Confidentiality of HIV-Related Information Act, as the basis for relief in his Complaint, the Confidentiality of HIV-Related Information Act does not allow for a claim when a health care worker or first responder has had significant exposure to potentially contracting the HIV-AIDS virus. 35 P.S. § 7606. Plaintiff’s Complaint includes attachments from June 2012 that seem to implicate some type of vision issue experienced by Plaintiff. However, Plaintiff’s Complaint focuses primarily on HIV testing without sufficient facts to make out a claim under the Confidentiality of HIV-Related Information Act. Particularly in confinement settings, there is a paramount concern of the health, safety and welfare of the corrections officers, staff and personnel of the state correctional institutions. Here, Plaintiff is an inmate at State Correctional Institute Forest (SCI-Forest), confined in the Restricted Housing Unit² with a history of behavioral disturbances.³ It remains Plaintiff’s burden to show that his case rests on more than a mere disagreement with the course of treatment he has been afforded. *See Ocasio v. Prison Health Services*, 979 A.2d 352, 356 (Pa. Super. 2009), citing *Estelle v. Gamble*, 429 U.S. 97 (1976). With respect to any potential claims under 37 Pa. Code § 93.12, Plaintiff has not specified exactly how Defendants may have breached any duty that was owed Plaintiff, thereby causing harm to Plaintiff. Therefore, any issues based in claims on the Pa. Code are waived.

To the extent Plaintiff protests about Defendants’ “informed consent” or “falsified certificate of significant exposure[sic],” his Complaint was vague and conclusory and did not set forth a claim for which relief could be granted. Averments of fraud or mistake shall be averred

2. On or about April 26, 2012, Plaintiff reached through a wicket hole of a shower cell he was in and used an unknown sharp cutting implement to lacerate the right forearm of a Correctional Officer at SCI Forest. Forest County Criminal Docket 46-2012, Affidavit of Probable Cause. After lacerating the victim’s forearm, Plaintiff again reached through the wicket hole and threw soap at the victim. *Id.* It is unclear if there was a sufficient exchange of bodily fluid during this interaction so as to prompt HIV-testing. However, Plaintiff was eventually convicted of disorderly conduct for this incident, and the conviction was upheld after Plaintiff appealed his conviction to the Superior Court. 1965 WDA 2012 (Pa. Super., August 8, 2013) (non-precedential decision).

3. While Plaintiff does not set forth any specific dates in his Complaint, at Forest County Criminal Docket 18-2013, Plaintiff was charged with Aggravated Harassment by Prisoner and Disorderly Conduct for spitting or expelling saliva onto the face of a Corrections Officer. The charges were eventually dismissed upon request of the victim/corrections officer.

with particularity. Pa.R.C.P. 1019. Averments of fraud are “meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation or offered simply to harass the opposing party and to delay the pleader’s own obligation.” *Bata v. Central-Penn National Bank of Philadelphia*, 224 A.2d 174 (Pa. 1966). No such sufficient facts exist in Plaintiffs’ pleadings. In any event, to the extent Plaintiff complains about receiving HIV test results, the Confidentiality of HIV-Related Information Act requires the physician that orders the HIV test to make a “good faith effort to inform the subject of the [test] result regardless of whether the result is positive or negative.” 35 P.S. § 7605(d). Even given the minimal standards of evidence required for a pleading to survive a Rule 240 frivolity analysis, Plaintiff’s Complaint fails to make out a claim based in law or fact.

Additionally, Pa. R.A.P. 1925(b)(4)(ii) requires

that an appellant’s statement of errors complained of on appeal “concisely identify each ruling or error that the appellant intends to challenge *with sufficient detail to identify all pertinent issues for the [trial] judge.*” When the trial court must “guess what issues an appellant is appealing, that is not enough for meaningful review.” *Commonwealth v. Reeves*, 907 A.2d 1, 2 (Pa. Super. 2006) [internal citations and punctuation omitted].

Commonwealth v. Yoder, 59 A.3d 1179, 1179 (Pa. Super. 2013) (unpublished decision). Here, Plaintiff’s Concise Statement has not sufficiently detailed the pertinent issues for the Court so as to enable meaningful review.

Therefore, the Court recommends affirmance of its Order of March 14, 2014 because Plaintiff’s Complaint is frivolous as it lacks an arguable basis in fact or law.

BY THE COURT:

MAUREEN A. SKERDA, P.J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

2014 JUN -3 A 9 21

Ricky Tejada,

Appellant

FOREST COUNTY
COURT HOUSE

v.

Cmwlth of Penna. Dept. of
Corrections, Nancy McGarvie MD.,
and Doctor Sunrock

No. 496 C.D. 2014

PER CURIAM

ORDER

Now, May 29, 2014, upon consideration of appellant's application for leave to proceed in forma pauperis, the application is granted.

Appellant having otherwise failed to comply with the defect correction notice dated May 8, 2014, this matter is dismissed.

Certified from the Record

MAY 30 2014

And Order Exit

IN THE COURT OF COMMON PLEAS
OF THE 37th JUDICIAL DISTRICT OF PENNSYLVANIA
FOREST COUNTY BRANCH
CIVIL DIVISION

FILED

2014 MAR 14 A 8:14

FOREST COUNTY
COURT HOUSE

RICKY TEJADA,
Plaintiff

vs.

C.D. 18 of 2014

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS,
NANCY MCGARVIE, M.D., and
DOCTOR SUNROCK,
Defendants

ORDER

AND NOW, this 12th day of March, 2014, upon consideration of the Plaintiff's "Application for Leave to Proceed In Forma Pauperis Status," the Court finds the Plaintiff's "Pa.R.C.P. No. 1001 Action," which this Court interprets as a Complaint, lacks an arguable basis in law or fact and thus it is hereby ORDERED and DECREED that the Application is DENIED and the Complaint is DISMISSED pursuant to Pa.R.C.P. 240(j) and 42 Pa.C.S. § 6602(f). The Court also finds that the prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

BY THE COURT:

Maureen A. Skender
J.