COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
CIVIL ACTION-LAW

CLARK WEBER Plaintiff	:	NO. S-2041-2013
vs.	:	
LT. JAMES POPSON, et. al., Defendants	:	

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PROTHONOTARY'S OFFICE
SCHUYLKILL CTY PA
17901

Clark Weber - Pro Se

Laura J. Neal, Assistant Counsel,
Pa. Department of Corrections
for Defendant Lt. James Popson

Sergeant Crenshaw - Pro Se

OPINION

Domalakes, J.

The matters before the Court are the Defendant Popson's Preliminary Objections. These were filed by Defendant Lt. James Popson (hereinafter "Popson") on February 27, 2014. He has filed a Brief in support of the objections. The Plaintiff, Clark Weber, according to the record papers presented to the Court, has not filed a response to nor a Brief in opposition to the objections. The Complaint of Weber with attachment was originally filed on October 24, 2013, and was reinstated thereafter. The Court has reviewed the foregoing and the relevant record.

The objections of Popson are three (3) in number. The first is on grounds of personal jurisdiction due to failure to properly serve the Pennsylvania Attorney General's Office. The

Court has confirmed that said office was served, however, only recently on April 1, 2014. The second objection is for failure to comply with court rule in that the notice to defend attached to the Complaint was not in accord with local rules. The third preliminary objection is in the nature of a demurrer.

The Court's ruling on the demurrer objection, if adverse to Weber, would result in the dismissal of his Complaint, and the Court, therefore, will consider this objection first. Popson sets forth the following in support of this objection.

Weber is an inmate at the State Correctional Institution (hereinafter "SCI") at Forest. He was previously incarcerated at SCI-Frackville. Popson is alleged in Weber's Complaint to have been the Unit Manager for the Restricted Housing Unit ("RHU") at SCI-Frackville during the time period relevant to Weber's Complaint. Weber filed this action pursuant to Section 1983, alleging violations of his First, Fourth, and Fourteenth Amendment rights based on an alleged retaliatory transfer to SCI-Forest and the confiscation of certain items of property after Weber filed grievances in another civil action in Schuylkill County Court. Pursuant to the preliminary objection in the nature of a demurrer, Popson first argues lack of personal involvement being alleged in Weber's Complaint against Popson. Weber asks for redress under Section 1983 for the alleged retaliatory confiscation of his property and also for his subsequent transfer to SCI-Forest. To allege a viable claim under Section 1983, a plaintiff has to demonstrate that a defendant was personally involved in the conduct of which a

plaintiff complains or that the defendant had actual knowledge of, or acquiesced in, the commission of the wrong. Liability may not be premised on a theory of respondeat superior. Popson cites the following in support of this argument: *Rizzo v. Goode,* 423 U.S. 362 (1976); *Rode v. Dellarciprete,* 845 F. 2d 1195 (3d Cir. 1988); and *Hampton v. Holmesburg Prison Officials,* 546 F. 2d 1077 (3d Cir. 1976). Weber alleges no involvement by Popson in the confiscation of his property nor his subsequent transfer to SCI-Forest.

The allegations as set forth in Weber's Complaint that are relevant to the issues of his alleged transfer and loss of property are immediately hereinafter set forth. Popson was identified as being employed at SCI-Frackville as a Lieutenant/Unit Manager of the RHU/MHU areas. On December 12, 2012, Weber went to a hearing via video conference in the case of *Weber v. Damiter*, No. S-2496-2012, another civil suit filed by Weber in Schuylkill County Court.[1] Weber alleges that approximately 20 minutes before this hearing, officers came to his cell and asked him to identify materials he needed for this hearing. One of them asked Weber if Lt. Popson had told him about his plans to "dwindle a lot of [Plaintiff's] legal property." Weber was directed to leave his materials in the conference room after the hearing. Weber was scheduled to be

[1] It is noted that Weber had filed nine (9) civil actions during the year 2013 and five (5) civil actions in the year 2012 against prison officers and officials most of which have been determined to be meritless. Although he has alleged that he has been granted IFP status to pursue another case here, there is nothing in this record of a signed order of court granting him such status and his present complaint could have been dismissed on this basis alone. However as noted the court has reached a decision on the merits of the demurrer of Popson.

transferred from SCI-Frackville to SCI-Forest on December 19, 2012. At the time of transfer, Sgt. Crenshaw told Weber that he had packed Weber's property "at the last minute" because he was not told that Weber was being transferred. Weber alleged that Sgt. Crenshaw remarked that Weber did not have much property to pack, which was "strange" given the length of Weber's incarceration. Weber's property was inventoried at SCI-Forest on December 31, 2012, after his transfer. It was at that time, Weber alleges, he became aware that several property items were missing.

Popson has provided correct citations to the relevant statutory and case law on the issues in this matter. The foregoing allegations do not demonstrate any personal involvement of Popson in the conduct complained of by Weber - that is the loss of his property and his transfer to another institution. The allegations as made are insufficient to show a connection of Popson to either the alleged loss of his property or his transfer. Additionally, as to Weber's due process claims concerning the loss of his property, neither negligent nor intentional deprivations of property constitute violations of the Due Process clause where an adequate post-deprivation remedy is available. In the case of *Hudson v. Palmer,* 468 U.S. 517, 104 S.Ct. 3194, 82 L.ED 2d 393 (1984), the United States Supreme Court's holding was that a prison inmate does not have a reasonable expectation of privacy in his prison cell entitling him to the protection of the Fourth Amendment against unreasonable searches and seizures. The court additionally held

that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the due process clause of the Fourteenth Amendment if a meaningful post-deprivation remedy for the loss is available. The Department of Correction does provide an adequate post-deprivation remedy through its inmate grievance system. *McEachin v. Beard,* 319 F. Supp. 2d 514-515 (E.D. 2004) (citing *Tillman v. Lebanon County Correctional Facility,* 221 F.3d 410 (3d Cir. 2000).

Pennsylvania's Prison Litigation Reform Act does provide that prison conditions litigation can be dismissed at any time if it fails to state a claim upon which relief may be granted. 42 Pa.C.S. §6602(e). Pennsylvania Rule of Civil Procedure 1028(a)(4) provides that a preliminary objection can be filed for legal insufficiency of a pleading.

The Court concludes that the claims of Weber, as set forth in the Complaint are meritless.

It should finally be noted that one of the captioned Defendants is Sergeant Crenshaw. There is nothing in the Complaint delineating how this Defendant violated Weber's rights and nothing of record to indicate that Crenshaw was ever served with a copy of the Complaint.

Accordingly, the Court enters the following:

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ORDER OF COURT

DOMALAKES, J.

AND NOW, this 8th day of April, 2014, the preliminary objection of the Defendant in the nature of a demurrer is SUSTAINED and GRANTED, and the reinstated Complaint of the Plaintiff against all Defendants is DISMISSED with prejudice. The other preliminary objections, those of lack of service and improper notice to defend, are DENIED as being moot due to the granting of a demurrer in this case.

The Plaintiff, Clark Weber, is hereby advised that he may appeal from this Court's Order of this date. Any such appeal must be made in writing within thirty (30) days to the Pennsylvania Superior Court.

BY THE COURT,

Domalakes J. J.