

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Aaron Sloan,	:	
	:	
Appellant	:	
	:	
v.	:	No. 539 C.D. 2014
	:	Submitted: December 12, 2014
Brian Coleman, R. Workman,	:	
Stephen Buzas, Jane Doe,	:	
Officer Hawkinberry, Officer	:	
Bogucki, Officer Zueger,	:	
Officer Anderson, C.A. Yauger,	:	
J. B. Skrobacz and Officer	:	
Prescott	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: June 5, 2015

Aaron Sloan (Plaintiff), *pro se*, appeals the February 21, 2014 order of the Fayette County Court of Common Pleas sustaining the Preliminary Objections of Superintendent Brian Coleman, Unit Manager Stephen Buzas, Captain Richard Workman and Corrections Officers Joseph Skrobacz, Chad Yauger, John Anderson, and James Zueger (collectively Defendants), and dismissing Plaintiff’s June 24, 2013 complaint on the grounds that: (i) the statute of limitations has run and (ii) the Defendants are entitled to sovereign immunity as employees of the Pennsylvania Department of Corrections (DOC) at State Correctional Institution (SCI)—Fayette. We affirm.

Our review of a trial court's order sustaining preliminary objections in the nature of a demurrer is limited to determining whether "the trial court abused its discretion or committed an error of law." *Schrier v. Kissleback*, 879 A.2d 834, 835 n.4 (Pa. Cmwlth. 2005). In reviewing preliminary objections in the nature of a demurrer, this Court has stated:

Preliminary objections in the nature of a demurrer are deemed to admit all well-pleaded material facts and any inferences reasonably deduced therefrom, but not the complaint's legal conclusions and averments. The allegations of a *pro se* complainant are held to a less stringent standard than that applied to pleadings filed by attorneys. If a fair reading of the complaint shows that the complainant has pleaded facts that may entitle him to relief, the preliminary objections will be overruled. A demurrer should be sustained only in cases that are clear and free from doubt and only where it appears with certainty that the law permits no recovery under the allegations pleaded.

Danysh v. Department of Corrections, 845 A.2d 260, 262-263 (Pa. Cmwlth. 2004) (citations omitted).

Plaintiff alleges in his complaint that on April 26, 2012, May 19, 2012, and June 21, 2012, his personal property was in the possession of Defendants, Defendants knew the property was Plaintiff's, and Defendants refused to return, repair or replace any of his property and instead disposed of it in the garbage. (Complaint ¶¶66-67.) Plaintiff identifies the property at issue and its value. (*Id.* ¶65.)

Plaintiff's complaint sets forth the following factual averments. Plaintiff is an inmate at SCI-Fayette. (*Id.* ¶3.) On April 22, 2012, Plaintiff was informed he was being transferred to SCI-Fayette from SCI-Somerset. (*Id.* ¶37.) During preparation for transfer to SCI-Fayette, Plaintiff's property was inventoried

at SCI-Somerset; it was determined that Plaintiff's property filled six (6) boxes, that two (2) boxes would travel with him to SCI-Fayette, and that four (4) boxes would be shipped separately to SCI-Fayette. (*Id.* ¶38 & ¶¶39-40 (describing contents of the 6 boxes).) On April 26, 2012, Plaintiff arrived at SCI-Fayette with the two (2) boxes and a paper bag containing additional property. (*Id.* ¶42.) Plaintiff was taken to the property room at SCI-Fayette for an inventory of his property, at which point Plaintiff discovered some of his property was missing and/or damaged. (*Id.* ¶¶42-43.) Plaintiff refused to sign a form stating "all property accounted for" and requested to speak with the Unit Manager about his property as well as the missing forms that documented his property, which had been completed at SCI-Somerset prior to his transfer. (*Id.* ¶¶45-47.)

Plaintiff further alleges that on May 18, 2012, Plaintiff's remaining four (4) boxes arrived at SCI-Fayette and on May 19, 2012, he was taken to the property room to inventory his property. (*Id.* ¶48.) Plaintiff discovered that a substantial amount of his property was missing and upon registering a complaint, the property inventory form that had accompanied his property was destroyed by Officer Yauger, and a new inventory form was created by Officer Anderson. (*Id.* ¶¶48-50.) Plaintiff filed multiple grievances in an attempt to locate or replace his property, which Defendants refused to assist him in and prevented him from making timely corrections to. (*Id.* ¶¶51-53, 56.)

Plaintiff further alleges that on June 21, 2012, Plaintiff was taken to the property storage room in order to exchange legal materials and he discovered that his property still was or had become missing. (*Id.* ¶54.) Plaintiff again grieved the loss of his property and on September 18, 2012, one or more of the Defendants searched Plaintiff's cell to determine if he was in possession of the

missing property. (*Id.* ¶56.) Defendant Buzas accused Plaintiff of fabricating his claims of lost property, threatened Plaintiff in an attempt to make Plaintiff withdraw his grievance, and left the property taken from Plaintiff's cell during the search in the garbage. (*Id.* ¶57.) Plaintiff further alleges that after the September 18, 2012 search, Captain Workman provided a review of Plaintiff's grievance, during which Officers Yauger and Anderson provided false information and accused Plaintiff of wrongdoing related to his property. (*Id.* ¶¶58-61.) Defendants "did encourage, condone, & participate in the loss/destruction of and refusal to locate and return, replace & fix Plaintiff's property." (*Id.* ¶62.)

Plaintiff also alleges that the destruction of his property prevented him from being able to access the courts in order to file a claim for denial of his 8th Amendment right to be free from cruel and unusual punishment. (*Id.* ¶69.)

Plaintiff further alleges that upon becoming an inmate, Plaintiff informed DOC officials that he is allergic to beans and seafood. (*Id.* ¶13.) On February 19, 2009, Plaintiff was temporarily transferred from SCI-Somerset to Erie County Prison and his medical records were altered to indicate that he did not suffer from food allergies. (*Id.* ¶20.) On April 29, 2009, Plaintiff's medical records were again altered to show that he had no food allergies, but that he was to receive a diet that did not include beans and seafood. (*Id.* ¶21.) Plaintiff did not receive a diet without beans and seafood and became ill, which included, among other symptoms, severe abdominal pain and rashes; DOC Bureau of Health Services alleged that the diet was being followed and that Plaintiff was only allergic to pinto beans. (*Id.* ¶¶22-23.) Plaintiff began to research and to prepare a complaint in order to bring a claim for denial of adequate medical care in violation of the 8th Amendment guarantee against cruel and unusual punishment secured by

the United States Constitution. (*Id.* ¶¶25-26.) Plaintiff alleges that he was unable to file his claims prior to the expiration of the statute of limitations because of Defendants’ actions. (*Id.* ¶69.)

In response to Plaintiff’s allegations in his complaint concerning his property and his inability to access the courts, Defendants filed preliminary objections in the nature of a demurrer. First, Defendants objected to Plaintiff’s claim that he was prevented from accessing the courts because of Defendants’ conduct on the grounds that his complaint demonstrated that his access to the courts was prevented not by Defendants’ conduct, but by the statute of limitations on his underlying claim. Second, Defendants objected to Plaintiff’s claim that his property was destroyed on the grounds that his claim for conversion was barred by sovereign immunity. The Trial Court agreed with Defendants and sustained their preliminary objections.

Before this Court, Plaintiff argues that the Trial Court erred by permitting Defendants to raise the affirmative defenses of statute of limitations and sovereign immunity by preliminary objection. Plaintiff argues that even if Defendants were permitted to raise the issue of statute of limitations by preliminary objections, the statute had not run. Plaintiff also argues that his access to courts claim falls under 42 U.S.C. § 1983¹ and therefore cannot be barred by state statute.

¹ Section 1983 provides, in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....” 42 U.S.C. § 1983

Plaintiff's access to courts claim is legally insufficient. Prisoners have a fundamental constitutional right of access to the courts and measures must be in place in correctional settings to insure that this access is adequate, effective, and meaningful. *Bounds v. Smith*, 430 U.S. 817, 822 (1977). In order to bring a claim alleging that access to the courts has been denied, an inmate must allege an actual injury or "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or present a claim." *Lewis v. Casey*, 518 U.S. 343, 351-352, 358 (1996). Plaintiff has failed to allege an actual injury because the claim Plaintiff alleged he was prevented from bringing by Defendants' tortious actions was barred by the applicable statute of limitations.

When bringing an 8th Amendment claim under 42 U.S.C. § 1983 for denial of adequate medical care, the statute of limitations is determined by the state statute of limitations the claim most resembles: a personal injury claim. *See Wilson v. Garcia*, 471 U.S. 261, 276-280 (1985), *superseded by statute on other grounds*, as stated in *Jones v. R.R. Donnelley & Sons Company*, 541 U.S. 369, 377-378 (2004). In the Commonwealth of Pennsylvania, personal injury claims have a two year statute of limitations. 42 Pa. C.S. § 5524.

The facts pled by Plaintiff in his complaint state that his claim under 42 U.S.C. § 1983 for inadequate medical care in violation of the 8th Amendment protection from cruel and unusual punishment came into existence as a legal claim on February 19, 2009 at the earliest and on April 29, 2009 at the latest, at which time Plaintiff knew of the harm to his health. The conduct that Plaintiff alleges denied him the ability to bring this claim in court occurred, according to Plaintiff's allegations, on April 26, 2012, May 19, 2012, and June 21, 2012, which was well beyond the date when Plaintiff was required to file his 42 U.S.C. § 1983 claim in

order to comply with the statute of limitations. As a result, actions taken by Defendants on April 26, 2012, May 19, 2012, and June 21, 2012 could not have prevented Plaintiff from bringing the claim that is described in his complaint as the contemplated litigation. Therefore, the inability to bring the contemplated underlying action cannot serve as the actual injury necessary for Plaintiff to state a claim for denial of his constitutionally guaranteed right of access to the courts.

Moreover, the Trial Court did not err in concluding that the statute of limitations could be asserted as a part of Defendants' preliminary objections. Statute of limitations is an affirmative defense that must be asserted by new matter and may not be raised by preliminary objection. Pa. R.C.P. Nos. 1028(a)(4), 1030; *Borough of Nanty Glo v. Fatula*, 826 A.2d 58, 64 (Pa. 2003). Here, Plaintiff alleged that Defendants committed tortious conduct that prevented him from accessing the courts to bring an 8th Amendment Claim. The statute of limitations was not raised as, and did not provide, an affirmative defense to this claim. Rather, Plaintiff's admission in his complaint that the statute had run on his underlying 8th Amendment claim when the alleged tortious conduct took place demonstrated that he had not pled a sufficient access to courts claim. Accordingly, the Trial Court did not err in granting the demurrer where the statute of limitations was addressed as a factual admission and it was apparent on the face of the complaint that Plaintiff could not make out his claim for denial of access to the courts. Pa. R.C.P. No. 1028(a)(4); *Borough of Nanty Glo*, 826 A.2d at 64.

The Trial Court also did not err in permitting Defendants to assert that Plaintiff's claims concerning his property were barred by sovereign immunity. Unlike other affirmative defenses, the affirmative defense of sovereign immunity may be raised by preliminary objection in the nature of a demurrer where it is

apparent on the face of the complaint that sovereign immunity bars the claim. *Wurth v. City of Philadelphia*, 584 A.2d 403, 407 (Pa. Cmwlth. 1990). In the instant matter, the Trial Court properly considered at the preliminary objection stage of the proceedings whether sovereign immunity rendered Plaintiff's complaint facially deficient.

Next, we discern no error in the Trial Court's conclusion that sovereign immunity barred Plaintiff's claims concerning his property. Contrary to Plaintiff's argument on appeal, the Trial Court did not conclude that the Commonwealth of Pennsylvania's sovereign immunity statute barred Plaintiff's 42 U.S.C. § 1983 claim. Rather, the Trial Court concluded that Plaintiff was attempting to allege a state law claim for conversion of his property by Defendants and that sovereign immunity prevented Plaintiff from being able to bring this claim.

The General Assembly has waived sovereign immunity for claims of negligence where a party can establish: (1) a common law or statutory cause of action under which damages would be recoverable if not for the immunity defense; and (2) the alleged negligent act falls within one of the specifically enumerated exceptions provided by statute. 1 Pa. C.S. § 2310; 42 Pa. C.S. § 8522; *La Chance v. Michael Baker Corporation*, 869 A.2d 1054, 1057 (Pa. Cmwlth. 2005). A claim made by an inmate for negligent damage to the inmate's personal property while the property is within the possession of Commonwealth parties falls within the personal property exception to sovereign immunity. 42 Pa. C.S. § 8522(b)(3); *Williams v. Stickman*, 917 A.2d 915, 918 (Pa. Cmwlth. 2007). However, sovereign immunity protects an employee of the Commonwealth acting within the scope of

his or her employment from the imposition of liability for intentional torts. 42 Pa. C.S. § 8521; *LaFrankie v. Miklich*, 618 A.2d 1145 (Pa. Cmwlth. 1992).

Plaintiff has not alleged that Defendants caused damage to his property through negligence. Plaintiff has alleged that Defendants committed an intentional tort: conversion.² Because Plaintiff has alleged that the acts committed by Defendants were intentional, the personal property exception to sovereign immunity does not apply to permit Plaintiff's claim. To overcome the bar of sovereign immunity and state a cognizable claim for the commission of an intentional tort, Plaintiff must allege that Defendants were acting outside the scope of their employment or that the allegations did not involve Defendants' duties or powers as employees of SCI-Fayette. *Kull v. Guisse*, 81 A.3d 148, 154-159 (Pa. Cmwlth. 2013); *La Frankie*, 618 A.2d at 1149. Plaintiff has not done so.

Accordingly, the order of the Trial Court is affirmed.

JAMES GARDNER COLINS, Senior Judge

² Conversion is defined under Pennsylvania law as “the deprivation of another’s right of property in, or use or possession of, a chattel, or other interference therewith, without the owner’s consent and without lawful justification.” *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 659 n.3 (Pa. Super. 2000).

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Prescott	:

ORDER

AND NOW this 5th day of June, 2015, the order of the Court of Common Pleas of Fayette County sustaining preliminary objections in the above-captioned matter is hereby AFFIRMED.

JAMES GARDNER COLINS, Senior Judge