IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alfie Coats,	:	
Appellant	:	
	:	
v.	:	
	:	
Mary Lou Showalter, Ms. Beaver,	:	
Mrs. P. Fortney, Dr. Peurerkailpus,	:	No. 1028 C.D. 2011
Brian Corbin, and Raymond Lawler	:	Submitted: November 4, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: December 1, 2011

Alfie Coats (Coats) appeals *pro se* from an order of the Court of Common Pleas of Huntingdon County (trial court) sustaining the preliminary objections filed by Mary Lou Showalter, Brian Corbin and Raymond Lawler (collectively, Corrections Defendants)[1] and dismissing Coats' amended complaint. Finding no error in the trial court's decision, we affirm.

[1] Mary Lou Showalter is the Corrections Health Care Administrator at the State Correctional Institution (SCI) at Huntingdon. Raymond Lawler is the Superintendent and Brian Corbin is a Deputy Superintendent at SCI Huntingdon.

Coats initiated this action by filing a complaint on June 12, 2008.[2] However, the Corrections Defendants were not served in this matter until May 27, 2009, almost one year later. In accordance with the trial court's order, Coats filed an amended complaint alleging that the Corrections Defendants violated his civil rights, were negligent with regard to his medical treatment, and intentionally refused to comply with his prescribed medical treatment. All of these allegations stem from the Corrections Defendants' alleged failure to provide Coats with tinted glasses prescribed as a result of his glaucoma. According to Coats, the Corrections Defendants' failure to provide him with tinted glasses constitutes cruel and unusual punishment, and caused him to suffer pain, constant headaches, runny eyes and excessive pressure in his eyes. The Corrections Defendants filed preliminary objections to the amended complaint, claiming that the action is time barred because Coats failed to file the complaint and serve the Corrections Defendants within the applicable two-year statute of limitations. They also demurred to all of the claims[3] stating the allegations in the complaint do not rise to the level of a constitutional violation because they constitute, at most, mere negligence rather than deliberate indifference to a serious medical need; and the Corrections Defendants are entitled to immunity under what is commonly known as the Sovereign Immunity Act (Act), 42 Pa.C.S. §§8521-8528, and none of the exceptions to sovereign immunity apply.

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[2] Coats originally filed his complaint with the Court of Common Pleas of Schuylkill County, which sustained an objection based on improper venue and transferred the case to the trial court by order dated August 28, 2009.

[3] Preliminary objections in the nature of a demurrer admit as true all well-pled facts and all inferences reasonably deducible therefrom. *Norbert v. Commonwealth of Pennsylvania, State Police*, 611 A.2d 1353, 1355 (Pa. Cmwlth. 1992). To sustain such a preliminary objection, it
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The trial court found the action to be time barred under the two-year statute of limitations for tort and civil rights claims. The trial court also noted that "deliberate indifference" is the legal standard by which it must adjudicate cases, such as this, concerning alleged unconstitutional conditions of confinement. *Jochen v. Horn*, 727 A.2d 645, 649 (Pa. Cmwlth. 1999). In order to establish that the Corrections Defendants were deliberately indifferent to Coats' health and safety, he "must, at a minimum, allege that [they] knew of and disregarded an excessive risk to [Coats'] health or safety." *Id.* However, the Corrections Defendants did not disregard Coats' complaints; they merely disagreed with his alleged need for the tinted lenses and followed the directions of an ophthalmologist who concluded that the lenses were not medically necessary. Finally, the trial court found the Corrections Defendants are entitled to sovereign immunity because they are not medical professionals and, therefore, none of the exceptions to immunity apply. For all of these reasons, the trial court sustained the preliminary objections and dismissed Coats' amended complaint. This appeal followed.

It is difficult to ascertain the arguments Coats attempts to raise on appeal as his brief to this Court contains checklists of the elements necessary to prove various claims, many of which are not raised in the amended complaint, followed by summaries of and random excerpts from case law. Even giving Coats every benefit of the doubt, he fails to make out an argument regarding the trial court's ruling on the statute of limitations. Coats' brief merely outlines what a

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must appear with certainty based upon the facts pled that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain the preliminary objection. *Id.*

statute of limitations is, in general, and the fact that in civil rights cases the statute of limitations is determined by the state's general personal injury statute, which in Pennsylvania is two years. However, Coats does not address the trial court's ruling or make any argument regarding when the time period for the statute of limitations should begin to run in this case. Therefore, this issue is waived.

Even if the action is not time-barred, Coats' arguments on appeal must fail. Coats' brief to this Court appears to argue that the trial court erred in sustaining the preliminary objections because the Corrections Defendants are not entitled to sovereign immunity. We disagree.

The Commonwealth, its agencies and employees are entitled to sovereign immunity for acts committed by employees within the scope of their employment, unless the cause of action is based in negligence and falls within one of the exceptions specified by the General Assembly. 1 Pa. C.S. §2310;[4] *Yakowicz v. McDermott*, 548 A.2d 1330 (Pa. Cmwlth. 1988). The General Assembly has specifically waived sovereign immunity in the following areas: vehicle liability; medical-professional liability; care, custody or control of personal property;

[4] This section provides in pertinent part as follows:

> Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.

1 Pa. C.S. §2310.

Commonwealth real estate, highways and sidewalks; potholes and other dangerous conditions; care, custody or control of animals; liquor store sales; National Guard activities; and toxoids and vaccines. 42 Pa. C.S. §8522(b). Coats clearly alleges that the Corrections Defendants were acting within the scope of their employment. The only exception to sovereign immunity which could even potentially be considered is that regarding medical-professional liability. However, the Corrections Defendants include the Superintendent and Deputy Superintendent of SCI Huntingdon, both of whom clearly are not medical professionals. Mary Lou Showalter works as the Health Care Administrator at SCI Huntingdon. Her position is entirely administrative and she herself does not directly provide medical care to inmates; therefore, she is not a medical professional for purposes of 42 Pa. C.S. §8522(b). The trial court correctly determined that none of the exceptions apply. Moreover, intentional tort claims are not within the narrow exceptions outlined in 42 Pa. C.S. §8522(b). Therefore, the trial court properly found that the Corrections Defendants were entitled to immunity regarding the negligence and intentional tort claims in Coats' amended complaint. *See Faust v. Department of Revenue*, 592 A.2d 835, 839-40 (Pa. Cmwlth. 1991).

While sovereign immunity does not act as a defense to claims of cruel and unusual punishment brought under 42 U.S.C. §1983,[5] that claim also fails. As

[5] 42 U.S.C. § 1983 provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... 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,

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the trial court noted, to make out a claim for lack of medical treatment, a plaintiff has to prove deliberate indifference on the part of prison officials. *See Estelle v. Gamble*, 429 U.S. 97 (1976). In order to make out a claim of deliberate indifference, Coats must allege, at a minimum, that the Corrections Defendants "knew of and disregarded an excessive risk to [his] health or safety." *Jochen*, 727 A.2d at 649 (citing *Farmer v. Brennan*, 511 U.S. 825 (1994)). Coats alleges the Corrections Defendants ignored his complaints for medical care and disregarded his prescribed treatment by not letting him wear tinted glasses. However, in his amended complaint, Coats admits that he was seen by two different ophthalmologists and that while these doctors may have indicated to him that he should wear tinted glasses, they did not prescribe them for him. Instead, at least one of these physicians reported to SCI Huntingdon that tinted lenses were not medically necessary. The Corrections Defendants did not deny Coats access to medical care or disregard an excessive risk to his health. Coats was admittedly seen by two ophthalmologists for his eye condition and the Corrections Defendants reasonably relied upon their professional expertise. Even assuming that not having tinted glasses constituted an excessive risk to his health, the mere fact that Coats disagreed with this line of treatment does not mean the Corrections Defendants were deliberately indifferent.

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> shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

To set forth a claim under Section 1983, a plaintiff must "1) allege a violation of rights secured by the United States Constitution and the laws of the United States, and 2) show that the alleged deprivation was committed by a person acting under the color of state law." *Owens v. Shannon*, 808 A.2d 607, 609 n.6 (Pa. Cmwlth. 2002).

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, Judge

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O R D E R

AND NOW, this 1st day of December, 2011, the order of the Court of Common Pleas of Huntingdon County, dated February 24, 2011, is affirmed.

DAN PELLEGRINI, Judge