

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Douglas Seville, :
Appellant :
v. : No. 102 C.D. 2010
: Submitted: February 12, 2010
Paul J. Stowitzky, Warden; :
Jacqueline S. Marquardt Records Office :
Supervisor :

**BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: April 23, 2010

Douglas Seville (Seville) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court) that granted the motion for summary judgment filed by Paul Stowitzky, Warden of the State Correctional Institution at Mercer (SCI-Mercer), and Jacqueline Marquardt, SCI-Mercer's Records Office Supervisor. For reasons unrelated to the merits of either party's position, we reverse the trial court's decision and remand this matter to the trial court.

On November 5, 2007, Seville filed a complaint (Complaint) with the trial court, asserting, among other things, that the SCI-Mercer officials were unlawfully detaining him, and that, as a consequence of the detention, he had suffered and was continuing to suffer from life threatening health problems.

Seville further asserted that the actions of the SCI-Mercer officials violated several of his United States and Pennsylvania constitutional rights. He sought damages based upon his alleged injuries for each day the SCI-Mercer officials allegedly held him in unlawful confinement and for the time those officials allegedly required him to perform work details assigned to inmates at SCI-Mercer.

Seville urged in the Complaint that the alleged unlawful confinement and conditions associated with his confinement implicated violations of the Thirteenth Amendment (slavery and involuntary servitude), Fourteenth Amendment (deprivation of liberty without due process), Eighth Amendment (cruel and unusual punishment), and Article 1, Sections 9, 13 and 26 of the Pennsylvania Constitution (respectively relating to right to due process, prohibition against cruel and unusual punishment, and prohibition of violation of civil rights). Based upon the same allegations, Seville also sought damages under a negligence theory. Seville sought only monetary damages for the alleged misconduct of the SCI-Mercer officials. He did not seek any relief in the Complaint in the form of release from incarceration.

The trial court docket indicates that the defendants filed an answer to the Complaint with new matter on February 25, 2008. However, the document, identified on the docket as No. 7, and numbered No. 7 in the record, while date-stamped February 25, is a filing captioned “Answer with New Matter to Petition for Writ of Habeas Corpus.” The numbered paragraphs in this document clearly do not correspond with the numbered averments in the Complaint, and, consequently, it appears plainly to this Court that this purported answer to the Complaint is actually an answer to a petition for a writ of habeas corpus that is neither reflected in the docket, nor the subject of the summary judgment now

before this Court.¹ The next pertinent docket entry, No. 9 consists of a Reinstatement/Reissue of the Complaint, which is dated May 22, 2008. On May 23, 2008, Seville apparently responded to the defendants' response to the petition for writ of habeas corpus and new matter, which as noted above, was never docketed with the trial court at the Complaint's docket number. Another Reinstatement/Reissue of the Complaint was docketed on July 11, 2008.

On July 16, 2008, the trial court's docket entries indicate that the defendants removed the Complaint to federal court. This removal action clearly refers to the federal civil rights claims included in the Complaint. Despite the July removal action, on August 12, 2008, the defendants filed with the trial court a summary judgment motion making peripheral mention of a petition for writ of habeas corpus purportedly filed with the trial court on September 18, 2007. This is, perhaps, the Petition for Writ of Habeas Corpus to which defendants filed the above-noted answer and new matter, but we cannot discern if this conjecture is correct. According to the docket entries, the defendants apparently filed a motion to withdraw the summary judgment motion on September 15, 2008. The federal court remanded the Complaint to the trial court on April 23, 2009. On June 17, 2009, despite the lack of any indication in the record that the defendants had filed an answer to the Complaint, the defendants filed their second summary judgment motion referring again to a writ of habeas corpus. On July 17, 2009, Seville filed an answer to the summary judgment motion. Finally, on August 6, 2009, the trial

¹ Additionally, a document identified by the trial court as No. 10, filed on or around May 23, 2008, is captioned "Answer With New Matter to Respondents Answer to Petition for Writ of Habeas Corpus."

court, without having ever received an answer to the *Complaint*, issued its order granting the defendants' motion for summary judgment.

Although in his appeal Seville seeks review of the trial court's decision on the merits of the summary judgment motion, given the state of the proceedings below, we do not believe we are in a position to exercise our powers of appellate review. As indicated above, the Commonwealth's motion for summary judgment refers to and relies upon a writ for habeas corpus, the Commonwealth's answer and new matter to that petition, and Seville's reply to the Commonwealth's new matter. Although there is the possibility that the writ for habeas corpus is part of the docket, we cannot determine if that is true, and frankly we perceive that possibility as unlikely. Consequently, that pleading is not part of the record, and we cannot accept that the answers apparently erroneously accepted and filed to the trial court's docket relating to *this* matter enable us to consider any pleading relating to the habeas corpus petition in analyzing the Commonwealth's summary judgment motion.

In order to entertain a motion for summary judgment, a court must be in a position to conclude that no material issues of fact remain. In this case, Seville has asserted that the parole documents upon which the Commonwealth relies for support are falsified. The record before us contains no parole documents, and we cannot engage in a meaningful review of materials that are not part of the record. We note that, generally, before a trial court can act on a motion for summary judgment, the pleadings must be closed. Pa. R.C.P. No. 1035.1. In this case, the pleadings were never closed because the defendants never filed an answer to the *Complaint*.

Based upon the state of the record, we are unable to effectively engage in appellate review of this matter. Accordingly, we reverse without prejudice the trial court's order granting the Commonwealth's motion for summary judgment and remand the matter to the trial court so that the trial court may correct the record and/or allow the necessary pleadings to be completed and closed. Following such actions, the trial court may reconsider the Commonwealth's summary judgment motion.

P. KEVIN BROBSON, Judge

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ORDER

AND NOW, this 23rd day of April, 2010, the order of the Court of Common Pleas of Philadelphia County (trial court) is reversed without prejudice, and we remand the matter to the trial court so that the trial court may correct the record and/or allow the pleadings to be completed or closed. Following such actions, the trial court may reconsider the Commonwealth's summary judgment motion.

Jurisdiction relinquished.

P. KEVIN BROBSON, Judge