

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Sherman Coleman,	:	
Appellant	:	
	:	
v.	:	No. 110 C.D. 2011
	:	Submitted: July 22, 2011
Jeffrey A. Beard and	:	
Brian V. Coleman	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: September 19, 2011**

Appellant Sherman Coleman (Plaintiff), a state prison inmate, appeals an order of the Court of Common Pleas of Fayette County (trial court) that (1) denied Coleman’s petition to amend the caption of his complaint to include the Department of Corrections (DOC) and (2) sustained the preliminary objections of Jeffrey A. Beard, former DOC Secretary, and Brian V. Coleman, Superintendent of the State Correctional Institution (SCI) at Fayette, (collectively, Defendants). Plaintiff, representing himself, contends the trial court erred in denying him permission to amend his complaint to include DOC after the applicable limitations period expired. In light of our Supreme Court’s decision in Piehl v. City of Philadelphia, 604 Pa. 658, 987 A.2d 146 (2009), we reverse and remand for further proceedings.

In May 2008, while an inmate at SCI-Fayette, Plaintiff sustained injuries while eating lunch in a dining room. The table at which Plaintiff sat

became detached from the floor, causing him to fall and strike his head, resulting in various personal injuries.

Thereafter, Plaintiff filed a personal injury action against Defendants Beard and Coleman. In response, Defendants, represented by the Office of Attorney General, filed preliminary objections. In addition, Plaintiff filed a petition to amend the caption to include DOC as a defendant.

Through preliminary objections, Defendant Beard asserted that as DOC Secretary at the time of the incident, he is protected from Plaintiff's suit by qualified official immunity. Defendant Coleman asserted that as Superintendent of SCI-Fayette at the time of the incident, he is protected from Plaintiff's suit by sovereign immunity. The trial court agreed, sustained their objections and struck them from the complaint.

The trial court also denied Plaintiff's motion to amend the caption. It noted that an amendment which results in the addition of a new party after the statute of limitations expires is prohibited. Tork-Hiis v. Commonwealth, 558 Pa. 170, 735 A.2d 1256 (1999). The trial court found DOC was a separate and distinct party from either Defendant Beard or Defendant Coleman. Therefore, the trial court denied Plaintiff's request to amend his caption to include DOC as a defendant after the statute of limitations on Plaintiff's injury claim expired. See Hall v. Acme Markets, Inc., 532 A.2d 894 (Pa. Cmwlth. 1987) (a party may be allowed to correct the name of a party where the right person was sued but under a

wrong designation, but not where the wrong person was sued and the amendment seeks to substitute another distinct party).

Plaintiff appealed, citing Piehl and Hall. Pursuant to these cases, Plaintiff asserts his failure to name DOC in the caption is a curable technical defect. Although the statute of limitations on his injury claim expired, Plaintiff asserts he refers to DOC as a defendant throughout the complaint and DOC has been involved in the matter since Plaintiff filed suit. Thus, Plaintiff urges the trial court erred in denying his petition to amend. Piehl.

Further, the Attorney General concedes that Plaintiff is correct. Plaintiff's complaint names DOC and discusses it as if it were a named defendant in the caption. Therefore, the Attorney General asserts, Plaintiff is entitled to amend his complaint. Id.

After reviewing Plaintiff's complaint, we agree with both parties. Plaintiff's complaint discusses DOC as if it were a defendant in this matter. See, e.g., Compl. at ¶19 (DOC personnel were aware of defective table floor studs and should have replaced them earlier). Referring to DOC as a defendant in the body of his complaint renders Plaintiff's failure to name DOC in the caption a curable technical defect even after the statute of limitations expired. Piehl.

In addition, Plaintiff's complaint named Defendant Beard, Secretary of DOC at the time of the incident. See Compl. at ¶2. Naming DOC's Secretary in

the complaint warranted a conclusion that DOC was involved in the litigation since the filing of the complaint. Hall.

For the above reasons, we reverse the trial court's order and remand for further proceedings consistent with this opinion.

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ROBERT SIMPSON, Judge

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**ORDER**

**AND NOW**, this 19<sup>th</sup> day of September, 2011, the order of the Court of Common Pleas of Fayette County is **REVERSED** and the case is **REMANDED** for further proceedings consistent with the foregoing opinion. Jurisdiction is relinquished.

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ROBERT SIMPSON, Judge