

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel L. Spuck, :
Appellant :

v. :

Commonwealth of Pennsylvania, :
The following agencies or parties :
of the Commonwealth of Pennsylvania; :
In their official and individual capacities :
Fredric J. Ammerman, J. Michael :
Williamson, John K. Reilly, Jr., William :
A. Shaw, Paul E. Cherry, John Downing, :
Daniel Kamerer, Thomas W. Corbett, :
Mike Fisher, Ernie Preate, Jane/John Doe; :
Leader of the Pa. Senate, Jane/John Doe; :
Leader of the Pa. House of Representatives, :
Jane/John Doe; Leader of the Pa Legislator :
Jane/John Doe; Leader of the Pa. General :
Assembly, Jane/John Doe; Leaders of :
Clinton, Centre, and Clearfield Counties :
of Pa., Chief Justices of Pa. Superior and :
Supreme Courts, Jane/John Doe; Leader :
of Pa. Department of Corrections, :
Denny Nau, Paul Evanko, Thomas Ridge, :
Jane/John Doe; Leader of Inmate :
Accounting at S.R.C.F. Mercer, :
David Meholick, Elliot Ford, J. :
McCaffery, E. McEwen, Clearfield Co. :
Deputy Sheriff Snyder, John K. Reilly, Jr., :
Fredric J. Ammerman :

No. 1867 C.D. 2009

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Paul Evanko, Thomas Ridge, Jane/John :
Doe; Leader of Inmate Accounting at :
S.R.C.F. Mercer, David Meholick, Elliot :
Ford, J. McCaffery, E. McEwen, Clearfield : No. 1868 C.D. 2009
Co. Deputy Sheriff Snyder : Submitted: April 9, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 19, 2010

Daniel L. Spuck (Appellant) appeals from two July 30, 2008 orders of the Court of Common Pleas of Mercer County (trial court) granting the Commonwealth of Pennsylvania’s (Commonwealth)¹ preliminary objections in both

¹ Appellees in the present case, according to Appellant, include: the Commonwealth of Pennsylvania, and in their official and individual capacities: the Honorable Frederic J. Ammerman, Common Pleas Court Judge in Clearfield County; the Honorable J. Michael Williamson, Common Pleas Court Judge in Clinton County; the Honorable John K. Reilly; Jr., Common Pleas Court Judge

cases because the Commonwealth enjoys absolute sovereign immunity, and because Appellant failed to allege facts sufficient for his claims to fall under one of the exceptions to that immunity. The case was dismissed with prejudice. Appellant raises the following issues: 1) whether the trial court erred by finding that the Commonwealth enjoyed sovereign immunity; and 2) whether the trial court erred by finding that Appellant failed to allege sufficient facts for his claims to come within one of the exceptions to sovereign immunity.² For the following reasons, we affirm the trial court's orders.

Appellant is currently incarcerated in the State Regional Correctional Facility in Mercer, Pennsylvania (SRCF Mercer). On January 31, 2006, he filed a praecipe for a writ of summons in the trial court (Case No. 2006-366). Appellant filed a second action in 2007 (Case No. 2007-1994) and requested a consolidation of both matters. His consolidation request was originally denied on February 7, 2008,

in Clearfield County; William A. Shaw, Clearfield County Prothonotary; Paul E. Cherry, former Clearfield County District Attorney; John Downing, police officer; Daniel Kamerer, Pennsylvania State Police Trooper; Thomas W. Corbett, Jr., Pennsylvania Attorney General; Mike Fisher, former Pennsylvania Attorney General; Ernie Preate, former Pennsylvania Attorney General; Jane/John Doe Leader of the Pennsylvania General Assembly; Leaders of Clinton, Centre and Clearfield Counties of Pennsylvania; Chief Justices of the Pennsylvania Superior and Supreme Courts; Secretary of the Pennsylvania Department of Corrections; Denny Nau, Centre County Sheriff (Appellant refers to the Sheriff as Deny Nu in his brief); Paul Evanko, former Commissioner of the Pennsylvania State Police; Thomas Ridge, former Governor of Pennsylvania; Leader of Inmate Accounting at the state regional correctional institution at Mercer; David Meholick, former Clearfield County District Court Administrator; Elliot Ford, employer and position unknown; J. McCaffrey, employer and position unknown; E. McEwen, employer and position unknown; and Robert Snyder, Clearfield County Chief Deputy Sheriff. An attorney from the Administrative Office of Pennsylvania Courts and one from the Pennsylvania Office of the Attorney General are representing all of the appellees (collectively referred to as the Commonwealth).

² Appellant also raises the issue of whether the trial court erred when it failed to grant Appellant's answer and objection raised "therein and in the brief." There is not enough information provided by Appellant to provide a proper legal analysis of this issue, and based on the argument in his brief, it appears that this issue can be addressed in the analyses of the other two issues.

but he was given permission to renew his request once pleadings in Case No. 2006-366 were complete.³ Two years later, on January 31, 2008, Appellant filed a praecipe to reinstate the 2006 writ of summons and a complaint naming the Commonwealth of Pennsylvania as a defendant. He later amended the 2008 complaint, without seeking the leave of the court or consent from the opposing party, adding the Honorable Frederic J. Ammerman and the Honorable John K. Reilly, Jr., Common Pleas Court Judges in Clearfield County, as defendants.

The complaints, which appear to be centered around Appellant's 1968 conviction for third degree murder,⁴ alleged that the Commonwealth was liable to the Appellant for the actions of its employees,⁵ including Judges Ammerman and Reilly, on various grounds relating to the validity of his criminal conviction, the dismissal of a civil action for damages filed in Clearfield County, and the dismissal of a writ of habeas corpus.⁶ Appellant is seeking \$5,000,000.00 in compensatory damages and \$1,000,000,000.00 in punitive damages.

The Attorney General filed preliminary objections in the nature of a demurrer for both Case No. 2006-366 and Case No. 2007-1994, maintaining that the Commonwealth was immune from suit. The trial court granted the preliminary objections in both cases on July 31, 2008. Appellant filed motions for reconsideration which were denied. Appellant then filed appeals with the Pennsylvania Superior Court on August 27, 2008 (Docket Nos. 1635 WDA 2008 and

³ Although both Case Nos. 2006-366 and 2007-1994 are before this Court, the record is unclear on the exact proceedings that took place, especially in Case No. 2007-1994 which may be documented in a separate record. Since neither party raises any issues concerning the proceedings for either case, it is assumed that both cases are properly before this Court.

⁴ Appellant also mentions a 1996 trial in a supplemental brief.

⁵ Appellant referred to all officials and employees of every level of local and state government as "employees" of the Commonwealth of Pennsylvania.

⁶ These allegations were gleaned from the Complaint and Amended Complaint.

1636 WDA 2008). The Superior Court, *sua sponte*, transferred the appeals to this Court. This Court consolidated the appeals on November 6, 2009.

Appellant argues that the trial court erred when it granted the Commonwealth's preliminary objections by finding that the Commonwealth enjoyed sovereign immunity.

When reviewing an order granting preliminary objections in the nature of a *demurrer*, this Court assumes as true all material facts set forth in the complaint and all inferences reasonably deducible therefrom. The scope of review is limited to whether the law states, with certainty, that no recovery is possible.

McNichols v. Dep't of Transp., 804 A.2d 1264, 1266 (Pa. Cmwlth. 2002) (citation omitted). “[I]f it is clear from the face of the complaint that a suit is barred by the defense of immunity[,] the case may be dismissed on preliminary objections.” *Logan v. Lillie*, 728 A.2d 995, 998 (Pa. Cmwlth. 1999). Based upon the law, and the facts alleged by Appellant in this case, we hold that the trial court properly granted the Commonwealth's preliminary objections.

Section 2310 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 2310, states, in relevant part, “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.” Section 8522(a) of the Judicial Code, 42 Pa.C.S. § 8522(a), states in pertinent part:

The General Assembly . . . does hereby waive, in the instances set forth in subsection (b) only . . . sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused

by a person not having available the defense of sovereign immunity.

Section 8522(b) of the Judicial Code, 42 Pa.C.S. § 8522(b), lists the following exceptions to sovereign immunity: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and, (9) toxoids or vaccines. Moreover:

judges are immune from liability when the judge has jurisdiction over the subject matter before him and he is performing a judicial act. Judges are absolutely immune from liability for damages when performing judicial acts, even if their actions are in error or performed with malice, provided there is not clear absence of all jurisdiction over the subject matter and person.

Logan, 728 A.2d at 998 (citation omitted). Finally, “as to damages specifically, it is well settled that [s]uits which seek . . . to obtain money damages . . . from the Commonwealth are within the rule of immunity.” *Pennsylvania State Troopers Ass’n v. Commonwealth*, 606 A.2d 586, 588 (Pa. Cmwlth. 1992) (quotation marks omitted).

Appellant’s pleadings are generally comprised of verbose and convoluted statements, from which this Court has attempted to discern the nuances of Appellant’s claims. What is clear from Appellant’s pleadings is that he is seeking monetary damages from which the Commonwealth is immune. Moreover, there are no meaningful facts pled which would lead this Court to conclude that Judges Ammerman and Reilly, or any of the other named Appellees, acted beyond the scope of their official duties or that their alleged actions fall under one of the exceptions set forth in Section 8522(b) of the Judicial Code.

Finally, the prevalent argument throughout Appellant's briefs appears to be that the Pennsylvania Crimes Code⁷ under which he was convicted has no savings clause,⁸ thereby rendering it unconstitutional.⁹ A savings clause is only necessary, however, when a statute is repealed and not reenacted, not when a statute is amended or the provisions are repealed and reenacted. *See Bell v. Maryland*, 378 U.S. 226 (1964) and *In re Dandridge*, 462 Pa. 67, 337 A.2d 885 (1975). Even if Appellant's contention were true, however, since the question of the constitutionality of a statute is not a basis upon which the Commonwealth has waived its immunity, Appellant's claim must fail.

Even assuming that the material facts set forth by Appellant are true, it is certain that he is not entitled to recovery from the Commonwealth. The trial court, therefore, properly granted the Commonwealth's preliminary objections. For these reasons, the trial court's orders are affirmed.

JOHNNY J. BUTLER, Judge

⁷ 18 Pa.C.S. §§ 101-9352.

⁸ A savings clause is "[a] statutory provision exempting from coverage something that would otherwise be excluded. [It] is generally used in a repealing act to preserve rights and claims that would otherwise be lost." Black's Law Dictionary 1461 (9th Ed.). Without a savings clause, a person charged with a criminal offense that is part of a statute which is repealed while he is awaiting conviction, would have the charges automatically dismissed upon repeal of the statute under which he was charged.

⁹ The Historical and Statutory Notes for Section 2502 of the Crimes Code, 18 Pa.C.S. § 2502, state that "[t]he 1974 amendment rewrote subsecs. (a) and (b) and added subsecs. (c) and (d)." The language prior to the 1974 amendment defined what is now first and second degree murder as first degree murder, and what is now defined as third degree murder as second degree murder. 18 Pa.C.S. § 2502. There was no significant change to the definitions of the charge of murder. In addition, there is no evidence provided that Appellant's conviction was for a crime different from either the old or the amended Criminal Code.

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ORDER

AND NOW, this 19th day of May, 2010, the July 30, 2008 orders of the Court of Common Pleas of Mercer County are affirmed.

JOHNNY J. BUTLER, Judge