



Doe #3, C.E.R.T. Team Correction :  
Officer John Doe #4, and any and :  
all other person not name but involved :  
with the action at hand, :  
: :  
: :  
Respondents :

OPINION NOT REPORTED

**MEMORANDUM OPINION  
PER CURIAM**

**FILED: April 9, 2010**

Before this Court are the Preliminary Objections (POs) in the nature of a demurrer filed by the Pennsylvania Department of Corrections (Department); Harry E. Wilson, Ex-Superintendent of the State Correctional Institute at Fayette (S.C.I. Fayette); D.P. Burns, Deputy Superintendent of S.C.I. Fayette; Rhonda House, Superintendent Assistant II at S.C.I. Fayette; Cindy G. Watson, Chief Grievance Officer of the Department; Mary Ann Krushner, Administrative Office at S.C.I. Fayette; Charles Powley, Ex-Unit Manager at S.C.I. Fayette; Lt. Crump at S.C.I. Fayette; Dale Hostovich, C.I. Supervisor at S.C.I. Fayette; Mike Howard, Employment Official at S.C.I. Fayette; Brian V. Coleman, Superintendent at S.C.I. Fayette; Tammy Cesarino, Unit Manager at S.C.I. Fayette; Judy Camino, Employment Official Assistant at S.C.I. Fayette; Summer Dugan, Counselor at S.C.I. Fayette; Leon (or Lee) Johnson, C.O. 1 at S.C.I. Fayette; Lt. Clarence Blakeley at S.C.I. Fayette; C.O. 1 Moats at S.C.I. Fayette; Lt. Hooper at S.C.I. Fayette; Capt. Manchas at S.C.I. Fayette; Unit Manager Tuggle at S.C.I. Fayette; Central Emergency Response Team (C.E.R.T.) Correctional Officer Varner; C.E.R.T. Team Correctional Officer John Doe #1; C.E.R.T. Team Correctional Officer John Doe #2; C.E.R.T. Team Correctional Officer John Doe #3; C.E.R.T. Team Correctional Officer John Doe #4; and any and all other persons not named,

but involved with the action at hand, (collectively, Respondents), to the “Civil Action Complaint in Replevin Without Bond” (Complaint) filed by Christopher Caldwell (Caldwell), a death-row inmate currently incarcerated at SCI-Graterford. (Comp. ¶¶ 69, 86.) Because we conclude that this Court lacks original jurisdiction in this matter, we dismiss the Complaint as required by Hill v. Pennsylvania Department of Environmental Protection, 545 Pa. 38, 679 A.2d 773 (1996).

On April 7, 2009, Caldwell filed the Complaint with the Court of Common Pleas of Fayette County (trial court), seeking: compensatory and punitive damages from each of the Respondents in their official and individual capacities for damages allegedly caused by the violation of Caldwell’s constitutional rights, the return of various items of personal property, and declaratory and injunctive relief. (Compl. at 2.) The trial court transferred the matter to this Court pursuant to Section 761(a)(1) of the Judicial Code (Code), 42 Pa. C.S. § 761(a)(1), holding that this Court had exclusive jurisdiction because Caldwell’s action was filed against a government agency and its officials and that none of the exceptions to Section 761 were applicable.

Caldwell essentially alleges six causes of action arising from: (1) a search of his cell during a lockdown on December 23, 2007, which resulted in the alleged seizure, damage, and/or destruction of some of Caldwell’s personal property, and his refusal to settle a grievance related to the search and seizure (Property Grievance); (2) his subsequent removal from his prison job, and other employment-related sanctions, following his refusal to settle the Property Grievance, and his filing a grievance related to his removal from his prison job (Job Grievance); (3) his being placed in the “hole” without cause or reason

following his filing of the Job Grievance; and (4) his transfer to S.C.I. Graterford, a prison on the opposite side of the state from where his family lives, following his continued refusal to settle the Property Grievance, the filing of the Job Grievance, and the successful appeal of his being placed in the “hole.”

In Count I of the Complaint, Caldwell alleges:

The respondents used their professional status to commit civil conspiracy, conspiracy, fraud, fraudulent misrepresentation, theft of property, destruction of property, professional malpractice, breach of oath of office, falsification of documents, obstruction of justice all for violation of [Caldwell’s] Pennsylvania and United States Constitutional rights under Article I, § 11 of the Pennsylvania Constitution, and the 1<sup>st</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution.

(Compl. ¶ 88.) In Count II, Caldwell avers:

The respondents willfully, knowingly and deliberately distorted the facts concerning [Caldwell’s] personal property and the theft and destruction of it to conceal the conspiracy which has deprived [Caldwell] of his personal property, thus [their] actions are deliberate indifference, failure to report criminal actions, obstruction of justice, aiding and abetting, breach of oath of occupation, denial of due process and equal protection of the law, and failure to follow prison policies and regulations, all in violation of [Caldwell’s] Pennsylvania and United States Constitutional rights under Article I, § 11 of the Pennsylvania Constitution and the 1<sup>st</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution.

(Compl. ¶ 89.) In Count III, Caldwell asserts that:

The respondents willfully, deliberately, and knowingly ignored the facts and [Caldwell’s] actions for redress and also had [Caldwell] removed from his prison job and then transferred to another state prison after subjecting him to being thrown in the hole because [Caldwell] would not settle his action for redress at the monetary value the [respondents] offered, which was retaliation, negligence,

gross negligence, failure to protect, [mental] anguish, wanton and unnecessary infliction of emotional distress, cruel and unusual punishment, wanton and unnecessary [] infliction of hardship, civil conspiracy and conspiracy all in violation of [Caldwell's] Pennsylvania and United States Constitutional rights under Article I, § 11 of the Pennsylvania Constitution and the 1<sup>st</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution.

(Compl. ¶ 90.) In Count IV, Caldwell contends:

The respondents settled with other prison inmates for their actions of redress at fair and reasonable amounts but not with [Caldwell] which is discrimination in violation of [Caldwell's] Pennsylvania and United States Constitutional rights under Article I, § 11[] of the Pennsylvania Constitution and the 1<sup>st</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution.

(Compl. ¶ 91.) In Count V, Caldwell asserts that he is entitled to equitable relief, stating:

[Caldwell] has no plain, adequate, or complete remedy at law to redress the wrongs described herein. [Caldwell] brings this civil action complaint action in replevin without bond to sue the defendants in their individual and professional capacities. [Caldwell] has been and continues to be irreparably injured and deprived personal property by the conduct of the respondents unless the court grants the damages, declaratory, and injunctive relief which [Caldwell] seeks.

(Compl. ¶ 92.) In what is essentially Count VI, Caldwell lists the items he alleges were taken from his cell and which he seeks the return of through his replevin action.<sup>1</sup> (Compl. Section XIII.) Respondents have now filed POs.

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<sup>1</sup> For example, Caldwell seeks the return of, or compensation for: approximately forty pieces of his artwork; his personal journal; art supplies, including paints, paint brushes, and canvases; personal mail; personal photographs, including photographs of his younger sister, photographs of his deceased father, brother and nephew, and the only two photographs he had of his mother; typewriter ribbon; and a radio. (Compl. Section XIII.)

Before we address Respondents' POs, however, we first must determine whether this Court has original jurisdiction over this matter. After the Complaint was transferred to this Court, Caldwell filed a "Motion to Transfer Case Back to Court of Common Pleas" (Motion to Transfer) asserting, *inter alia*, that his Complaint sounds as an action in the nature of trespass and falls within the exception to this Court's exclusive jurisdiction found at Section 761(a)(1)(v) of the Code, 42 Pa. C.S. § 761(a)(1)(v). (Motion to Transfer (June 15, 2009) at 2.) Caldwell further asserted that his request for compensatory and punitive damages places this matter squarely in Section 761(b) of the Code, 42 Pa. C.S. § 761(b), which grants concurrent jurisdiction with the courts of common pleas. (Motion to Transfer at 2.) This Court denied the Motion to Transfer without prejudice on October 29, 2009. Caldwell v. Department of Corrections, (No. 251 M.D. 2009, filed October 29, 2009).

Caldwell did not file another motion to transfer this matter to the trial court but, in an answer to one of Respondents' POs, Caldwell reasserts that he filed this matter in the proper forum originally and that this Court does not have original jurisdiction. (Caldwell's Br. at 11.) For support, Caldwell relies on Owens v. Shannon, 808 A.2d 607, 611 n.8 (Pa. Cmwlth. 2002), which states:

Where a prisoner makes a claim for money damages and injunctive relief under Section 1983, the claim remains in the trial court, but if the claim is only for injunctive relief, the claim remains with this Court in our original jurisdiction. See Buehl v. Horn, 761 A.2d 1247[, 1250 n. 7] (Pa. Cmwlth. 2000).

Based on Caldwell's assertions that he is seeking monetary damages from each of the Respondents pursuant to 42 U.S.C. § 1983,<sup>2</sup> in addition to declaratory relief, we conclude that Caldwell has renewed his request to have this matter transferred back to the trial court because this Court lacks original jurisdiction. Moreover, even if Caldwell had not renewed his contention that this Court lacked original jurisdiction, it is well settled that our Court may raise the issue of jurisdiction sua sponte. Department of Labor and Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (Surgest), 742 A.2d 221, 222 (Pa. Cmwlth. 1999).

This Court's original jurisdiction is set forth in Section 761 of the Code, which provides, in relevant part:

**§ 761 Original Jurisdiction**

**(a) General Rule.** – The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings:

(1) Against the Commonwealth government, including any officer thereof, acting in his official capacity, except:

.....

(v) actions or proceedings in the nature of trespass as to which the Commonwealth government formally enjoyed sovereign or other

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<sup>2</sup> Section 1983 states, 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.

immunity and actions or proceedings in the nature of assumpsit relating to such actions or proceedings in the nature of trespass.

.....  
(c) **Ancillary matters.** – . . . . To the extent prescribed by general rule the Commonwealth Court shall have ancillary jurisdiction over any claim or other matter which is related to a claim or other matter otherwise within its exclusive original jurisdiction.

42 Pa. C.S. § 761. It is well settled that a civil action seeking monetary damages for the deprivation of civil rights under Section 1983 is considered an action in the nature of trespass for the purposes of this Court’s jurisdiction. Stackhouse v. Commonwealth, 574 Pa. 558, 562, 832 A.2d 1004, 1007 (2003); Hill, 545 Pa. at 40, 679 A.2d at 774; Balshy v. Rank, 507 Pa. 384, 394-96, 490 A.2d 415, 419-21 (1985); Miles v. Beard, 847 A.2d 161, 164 (Pa. Cmwlth. 2004); Owens, 808 A.2d at 611 n. 8. Thus, where a plaintiff is seeking monetary damages pursuant to Section 1983, that action falls outside this Court’s original jurisdiction pursuant to Section 761(a)(1)(v). Where, however, the complaint seeks both monetary damages and injunctive relief, the courts of common pleas will have original jurisdiction where the “core of the complaint is a tort action . . . regardless of an ancillary request for declaratory relief.” Wilson v. Marrow, 917 A.2d 357, 362 (Pa. Cmwlth. 2007) (citing Stackhouse).

In Stackhouse, the plaintiff (Stackhouse) filed a three count complaint against her employer, the Pennsylvania State Police, and her supervisors, alleging that her constitutional rights were violated by an improper internal investigation undertaken in connection with her application for a job promotion. In addition to monetary damages and attorney’s fees, Stackhouse sought a declaration that her privacy and reputational interests were harmed by the investigation and an injunction restraining the use of her private information for any purpose or



preventing the defendants from engaging in similar investigative processes in the future. Stackhouse, 574 Pa. at 560, 832 A.2d at 1005-06. Concluding that it lacked jurisdiction over the complaint, the court of common pleas transferred the matter to this Court. Id. at 561, 832 A.2d at 1006. This Court dismissed the matter pursuant to Hill, noting that Stackhouse’s complaint was essentially a “tort action in the nature of trespass for money damages as redress for an unlawful injury” and, therefore, outside our Court’s original jurisdiction. Stackhouse, 574 Pa. at 561, 832 A.2d 1005-06. On appeal, our Supreme Court considered Stackhouse’s assertion that this Court could have considered the action in trespass pursuant to its ancillary jurisdiction described in Section 761(c) of the Code because she sought declaratory relief in addition to monetary damages. Id. at 563, 832 A.2d at 1007. The Supreme Court rejected this argument, stating:

*the sum and substance of Stackhouse’s complaint*, then, is that her privacy and reputational interests were invaded when state police officials unlawfully delved into her intimate inter-personal relationship during an internal affairs investigation, and that she is entitled to compensation accordingly. In these circumstances, we do not believe the inclusion of a count for declaratory or injunctive relief premised upon the same events can properly be understood to transform the complaint from one sounding in trespass into the type of matter contemplated by Fawber<sup>3</sup>, or by the Legislature, as belonging within the Commonwealth Court’s original jurisdiction.

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<sup>3</sup> Fawber v. Cohen, 516 Pa. 352, 532 A.2d 429 (1987). In Fawber, the Supreme Court held that the courts of common pleas do not have original jurisdiction over actions against state officials for civil rights violations that seek equitable or declaratory relief, as those actions are not in the nature of a trespass. Id. at 354-55, 532 A.2d at 430-31. However, unlike the plaintiff in Stackhouse and Caldwell here, the plaintiffs in Fawber did not seek money damages; rather, they sought a declaration that certain administrative regulations were unconstitutional and an order precluding the enforcement of the regulations. Id. at 359, 532 A.2d at 433. The Supreme Court, in Stackhouse, further distinguished Fawber, noting that, unlike the constitutional challenge to the administrative regulations in Fawber, Stackhouse’s “request for judicial redress stems from a series of events specific to a single departmental inquiry, and is explicitly  
(Continued...)”

Id. at 564, 832 A.2d at 1008 (emphasis added). The Supreme Court further reasoned that “permitting jurisdictional questions to turn solely upon the styling of claims within a complaint would arguably permit forum shopping through pleading.” Id. Accordingly, the Supreme Court remanded the matter to the court of common pleas for further proceedings. Id. at 565, 832 A.2d at 1009.

In Miles, an inmate (Miles) filed an action in a court of common pleas against, among others, the Secretary of Corrections, asserting that his constitutional rights were violated when the Department failed to provide him with kosher meals. Id., 847 A.2d at 163. In addition to an order directing the Department to serve him kosher meals, Miles requested compensatory and punitive damages under Section 1983, declaratory and injunctive relief, and any other relief the common pleas court deemed just. Id. The court of common pleas dismissed the complaint, in relevant part, for lack of jurisdiction. Id. at 163-64. On appeal, this Court considered the Supreme Court’s holding in Stackhouse and concluded that, even though Miles sought equitable relief, the substance of Miles’ complaint was based on the Section 1983 claim for monetary damages. Miles, 847 A.2d at 164-65. In so concluding, we noted that the allegations Miles relied upon for his equity and Section 1983 actions were clearly the same and that Miles had specifically included a request for money damages in his complaint. Id. at 165.

Here, as in Miles, the allegations upon which Caldwell’s equitable and Section 1983 constitutional tort claims rest are the same. First, we note that

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predicated upon the lack of any regulatory or other legal foundation for such actions.” Stackhouse, 574 Pa. at 564, 832 A.2d at 1008.

Caldwell is seeking compensatory and punitive damages in varying degrees against each of the Respondents, in their professional and individual capacities, for the violation of his Pennsylvania and United States constitutional rights.<sup>4</sup> (Compl. ¶¶ 93(4)-93(12).) Although Caldwell sets forth essentially six different counts, all but one asserts a violation of constitutional rights or seeks damages from the Respondents in their individual and professional capacities. (Compl. ¶¶ 88-92 and Section XIII.) The majority of Caldwell’s averments are based on conduct that arose *after* the search of his cell and seizure, damage and/or destruction of his property, mainly the alleged retaliation he suffered as a result of his filing the Property Grievance, Job Grievance, and his refusal to settle those grievances. Moreover, a review of the equitable relief Caldwell requests reveals that most of that relief is associated with his constitutional claims. For example, Caldwell seeks: (1) a declaratory judgment that the Respondents violated Caldwell’s Pennsylvania and United States Constitutional rights; (2) an injunction that “holds/freezes all assets of the Respondents until judgment is declared and [Caldwell] is fully compensated for all of the violations of his constitutional rights and for his personal property”; (3) an injunction that orders that Caldwell be transferred to an institution that is close to his home and family in western Pennsylvania; (4) an order of “restraint from oppression from all [Department] officials in retaliation of this action”; and (5) an order that the “Respondents be prohibited from the authoritative [sic] professional positions of correctional officials due to their imminent danger to prisoners within the Pennsylvania State

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<sup>4</sup> Caldwell seeks from the Department \$125,000.00 in compensatory damages and \$125,000.00 in punitive damages or the return of all of the properties taken from Caldwell. (Complaint at ¶ 93(4).) With regard to the remaining Respondents, Caldwell requests both compensatory and punitive damages from each Respondent in both their professional and individual capacities. (Compl. ¶¶ 93(6)-93(12).)

Correctional Institutions in Pennsylvania.” (Compl. ¶¶ 93(1), 93(2)(a), (c)-(d), 93(3)(b).) Thus, we conclude that the core of Caldwell’s complaint is a tort action seeking monetary damages pursuant to Section 1983 and, as such, is an action in the nature of trespass over which this Court lacks original jurisdiction under Section 761(a)(1)(v) of the Code.

However, we will not transfer this matter back to the trial court because our Supreme Court disapproves the “retransferring” of a matter to the courts of common pleas once this Court determines that it does not have original jurisdiction. Balshy, 507 Pa. at 388, 490 A.2d at 416; Hill, 545 Pa. at 41 n.1, 679 A.2d at 774 n.1. Accordingly, we follow the procedure described by the Supreme Court in Hill, in which the Supreme Court stated:

The Commonwealth Court was procedurally correct in not ordering this matter retransferred to the [court of common pleas] once it determined that it lacked original jurisdiction over Hill’s complaint. In Balshy, this Court noted that it disapproved of one court being transferred a case and then attempting to retransfer the matter back to the court where the matter was originally filed because of lack of jurisdiction. Instead, the proper practice in such cases would be to dismiss the action and for the parties to take an appeal. Balshy at 388, 490 A.2d at 416.

Hill, 545 Pa. at 41 n.1, 679 A.2d at 774 n.1.<sup>5</sup> Following the Supreme Court’s

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<sup>5</sup> We note that, as this matter is being considered in our original jurisdiction, the matter is appealable as of right to the Supreme Court. Blount v. Philadelphia Parking Authority, 600 Pa. 277, 294 n.5, 965 A.2d 226, 237 n.5 (2009) (noting that matters in the Commonwealth Court’s original jurisdiction are appealable to the Supreme Court as of right). Moreover, we note that, in Hill, the Supreme Court remanded the matter to the court of common pleas for further proceedings after concluding that the court of common pleas, not the Commonwealth Court, had original jurisdiction. Hill, 545 Pa. at 41 n.1, 679 A.2d at 774 n.1.

directive in Hill, we dismiss Caldwell’s Complaint for lack of jurisdiction.<sup>6</sup>

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<sup>6</sup> We also question whether this Court would have original jurisdiction over the majority of the Respondents here pursuant to Section 761 of the Code. The term “officer” as used in Section 761(a) of the Code has not been defined by the Legislature. Balshy, 507 Pa. at 389, 490 A.2d at 417. However, this Court has held, and the Supreme Court has approved, the distinction between Commonwealth “officers” and ordinary Commonwealth “employees” for the purpose of this Court’s original jurisdiction. Id.; Forney v. Harrisburg State Hospital, 336 A.2d 709, 711 (Pa. Cmwlth. 1975). Commonwealth “officers,” over whom this Court would have original jurisdiction, are “those persons who perform state-wide policymaking functions and who are charged with the responsibility for independent initiation of administrative policy regarding some sovereign function of state government.” Balshy, 507 Pa. at 390, 490 A.2d at 417 (quoting Opie v. Glasgow, Inc., 375 A.2d 396, 398 (Pa. Cmwlth. 1977)). In contrast, Commonwealth “employees” are persons “who merely exercise subordinate ministerial functions.” Balshy, 507 Pa. at 389, 490 A.2d at 417. It appears from the work titles of the majority of the Respondents and Caldwell’s allegations that the majority of the Respondents would be considered Commonwealth “employees,” and not Commonwealth “officers.”

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Christopher Caldwell,

Petitioner

v.

No. 251 M.D. 2009

Pennsylvania Department of :  
Corrections, Harry E. Wilson, :  
Ex-Superintendent of S.C.I. Fayette, :  
D.P. Burns, Deputy Superintendent of :  
S.C.I. Fayette, Rhonda House, :  
Superintendent Assistant II at S.C.I. :  
Fayette, Cindy G. Watson, Chief :  
Grievance Officer of Pennsylvania :  
Department of Corrections, Mary Ann :  
Krushner, Administrative Office at :  
S.C.I. Fayette, Charles Powley, :  
Ex-Unit Manager at S.C.I. Fayette, Lt. :  
Crump, at S.C.I. Fayette, Dale :  
Hostovich, C.I. Supervisor at S.C.I. :  
Fayette, Mike Howard, Employment :  
Official at S.C.I. Fayette, Brian V. :  
Coleman, Superintendent at S.C.I. :  
Fayette, Tammy Cesarino, Unit :  
Manager at S.C.I. Fayette, Judy :  
Camino, Employment Official Assistant :  
at S.C.I. Fayette, Summer Dugan, :  
Counselor at S.C.I. Fayette, Leon :  
(or Lee) Johnson, C.O.1 at S.C.I. :  
Fayette, Lt. Clarence Blakeley at S.C.I. :  
Fayette, C.O. 1 Moats, at S.C.I. Fayette, :  
Lt. Hooper at S.C.I. Fayette, Capt. :  
Manchas, at S.C.I. Fayette, Unit :  
Manager Tuggle, at S.C.I. Fayette, :  
C.E.R.T. Team Correctional Officer :  
Varner, C.E.R.T. Team Correctional :  
Officer John Doe #1, C.E.R.T. Team :  
Correctional Officer John Doe #2, :

C.E.R.T. Team Correction Officer John :  
Doe #3, C.E.R.T. Team Correction :  
Officer John Doe #4, and any and :  
all other person not name but involved :  
with the action at hand, :  
:  
Respondents :

**PER CURIAM**

**ORDER**

**NOW**, April 9, 2010, the petition for review/complaint filed by Christopher Caldwell in the above-captioned matter is hereby **DISMISSED** due to the lack of original jurisdiction.