

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Abdel Fattah, :
 :
 Appellant :
 : No. 258 C.D. 2011
 v. :
 : Submitted: June 24, 2011
 Moore Smeal, Marirosa Lamas, :
 Robert Marsh, William T. Williams, :
 Horton, John Symons, Burke and Doll :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: July 8, 2011

Abdel Fattah appeals pro se from the orders of the Court of Common Pleas of Centre County (trial court), dated January 7, 2011, and January 10, 2011, denying Fattah's emergency motion for injunctive relief and his motion for appointment of counsel, respectively.¹

The following facts are garnered from the trial court's opinion. Fattah currently is an inmate at the State Correctional Institution at Rockview. Since 2002, Fattah has been incarcerated at several different state correctional institutions. Fattah has an extensive history of refusing to eat, and the Department of Corrections (Department) has obtained injunctions to involuntarily feed and treat Fattah from the

¹ By order dated April 25, 2011, this Court granted a motion filed by Fattah to expedite this appeal.

Courts of Common Pleas of Greene, Wayne, and Cumberland Counties. Fattah has consistently maintained that, rather than engaging in a hunger strike, he suffers from an eating disorder stemming from depression and a psychotic disorder involving delusions and paranoia. (Trial court op. at 1-2.)

On August 11, 2010, the Department filed a complaint, a motion for preliminary injunction, and an application for an *ex parte* preliminary injunction with the trial court naming Fattah as the defendant.² The Department sought an injunction permitting it to administer medical treatment to Fattah. By order dated August 16, 2010, the trial court granted the Department a preliminary injunction. By order dated November 12, 2010, the trial court granted the Department an indefinite injunction permitting it to administer medical treatment, including supplying nutrition and hydration, as necessary to preserve Fattah's life. (Trial court op. at 2.)

On December 10, 2010, Fattah filed a complaint with the trial court alleging that the Department violated his civil rights by denying him proper medical treatment.³ More specifically, Fattah alleged that the Department ignored the opinion of a medical expert that he suffered from an eating disorder and refused to treat him for the same.⁴ At the same time, Fattah filed an emergency motion for injunctive relief, seeking an order directing the Department to send him to a specialized medical center. On December 22, 2010, Fattah filed a motion for appointment of counsel. By orders dated January 7 and 10, 2011, respectively, the trial court denied Fattah's motions. Fattah then filed a notice of appeal with the trial court. Id.

² Commonwealth v. Fattah, (Centre County, No. 2010-3634).

³ Fattah v. Moore Smeal, et. al., (Centre County, No. 2010-5566).

⁴ This medical expert had been appointed by the trial court to offer an opinion in conjunction with the Department's August, 11, 2010, action.

In an opinion in support of its orders, the trial court explained that it denied Fattah's emergency motion for injunctive relief because Fattah failed to establish the necessary elements for a preliminary injunction. The trial court noted that while Fattah averred that his life was in imminent danger if he did not receive proper medical treatment, the real issue was Fattah's disagreement with the proper method of treating his underlying psychological disorder. The trial court concluded that Fattah's right to relief was not clear, his need for relief was not immediate, particularly in light of its prior order granting the Department an indefinite injunction to provide medical treatment, and the relief he sought was not of a nature which would prevent irreparable injury and preserve the status quo. With respect to the denial of Fattah's motion for appointment of counsel, the trial court noted that its order in this regard was not a final, appealable order and, hence, Fattah's appeal should be dismissed as interlocutory.

Although the trial court addressed these issues, the trial court additionally questioned whether or not it had subject matter jurisdiction or whether this matter should have been brought before this Court in our original jurisdiction. The trial court cited our recent decision in Chruby v. Department of Corrections, 4 A.3d 764 (Pa. Cmwlth. 2010), wherein we held that our Court has original and exclusive jurisdiction in a suit against a Commonwealth party and a non-Commonwealth party when the Commonwealth party is indispensable.

Section 761(a)(1) of the Judicial Code vests this Court with original and exclusive jurisdiction over civil suits filed against the Commonwealth government, with delineated exceptions not applicable here. 42 Pa. C.S. §761. In Chruby, we held that said jurisdiction includes matters in which the Commonwealth party is an indispensable party. We explained in Chruby that an indispensable party is one

whose interests are so connected with the litigant's claim that no relief can be granted without infringing upon that party's rights and that a Commonwealth party is indispensable when meaningful relief cannot conceivably be afforded without the Commonwealth party's direct involvement in the action.

In the present case, Fattah's complaint names "Moore Smeal" as a defendant. At the time Fattah filed his complaint, Shirley Moore Smeal was the acting Secretary of the Department. Additionally, Fattah seeks relief in the nature of an order directing the Department to transfer him to a specialized medical center, which cannot be achieved without the Department's direct involvement in the action. Hence, we conclude that the Department is an indispensable party to these proceedings. As a consequence, we further conclude that jurisdiction properly rests with this Court and that the trial court lacked jurisdiction to enter the orders denying Fattah's motions.⁵

Accordingly, the orders of the trial court are vacated. We shall treat the complaint filed by Fattah with the trial court as a petition for review addressed to this Court's original jurisdiction.⁶ The named defendants are directed to file a responsive pleading within thirty days of the date of our order below.

PATRICIA A. McCULLOUGH, Judge

⁵ Because the trial court lacked jurisdiction to consider Fattah's respective motions, the motions are nullity and Fattah is free to re-file the motions with this Court. However, we note that Fattah previously sought appointment of counsel by motion filed with this Court on February 3, 2011, which we denied by order dated May 12, 2011.

⁶ We note that the trial court's original file was transferred to this Court on April 20, 2011.

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ORDER

AND NOW, this 8th day of July, 2011, the orders of the Court of Common Pleas of Centre County (trial court), dated January 7, 2011, and January 10, 2011, are vacated. The complaint filed by Abdel Fattah with the trial court shall be treated as a petition for review addressed to this Court's original jurisdiction. The named defendants are directed to file a responsive pleading within thirty days of the date of this order.

PATRICIA A. McCULLOUGH, Judge