

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Lucas, :  
Appellant :  
v. : No. 2667 C.D. 2010  
Pennsylvania Department of : Submitted: August 5, 2011  
Transportation, Allen D. Biehler, :  
P.E., Amar C. Bhanjandas, P.E., :  
Louis S. Chunko and Frank Shipert :

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

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: September 15, 2011

William Lucas appeals from an order of the Court of Common Pleas of Northampton County (trial court) sustaining the preliminary objection filed by the Pennsylvania Department of Transportation, Allen D. Biehler, P.E., Amar C. Bhanjandas, P.E., Louis S. Chunko and Frank Shipert (hereinafter collectively referred to as “Employer”) based upon the statute of limitations and dismissing Lucas’ complaint. We affirm.

Lucas filed an action against Employer on March 3, 2010, asserting causes of action for intentional infliction of emotional distress, invasion of privacy/false light, and wrongful discharge. The facts giving rise to the foregoing complaint are as follows.

Lucas alleges that on or about July 1, 2006, the boyfriend of Lucas' ex-wife made a complaint with the police alleging harassment and stalking on the part of Lucas. Because Lucas was on parole from a 1985 rape conviction, Lucas was arrested and held in the Lehigh County Prison from July 30, 2006 until October 26, 2006, when all of the charges against him were dismissed.

Employer fired Lucas on August 18, 2006, for absenteeism, less than twenty days after his first absence from work. Lucas alleges that Employer fired him for absenteeism during his incarceration and ignored his request for reinstatement after the charges were dismissed. Specifically, Lucas alleges that Employer "engaged in a practice of dismissing such employees without sufficient review of the actual merits, without providing sufficient periods for unfounded claims to resolve and without any subsequent review of other procedural protection." See Reproduced Record (R.R.) at RR-26 - Complaint at Paragraph 63. Further, Lucas alleges that Employer allowed him to be harassed by various employees regarding his prior rape conviction that went as far as the posting of a Megan's Law picture of Lucas in an open work area.

Employer filed preliminary objections to Lucas' complaint on March 23, 2010. Therein, Employer asserted that all of Lucas' claims are barred by the applicable statute of limitations and sovereign immunity. In addition, Employer asserts that the fact pattern alleged in support of the claims for intentional infliction of emotional distress, invasion of privacy/false light, and wrongful discharge is legally insufficient to support those claims.

On May 28, 2010, Lucas filed a response to Employer's preliminary objections. Therein, Lucas asserts that this matter was first filed as a federal action in the United States District Court of the Eastern District of Pennsylvania (Federal

District Court) on July 24, 2008. Lucas asserts further that by order of the Federal District Court dated November 9, 2009, Lucas' second amended complaint was dismissed without prejudice to Lucas to pursue counts II, III, IV, and V of the second amended complaint in the appropriate state court.

Upon review, the trial court sustained Employer's preliminary objection based on the statute of limitations.<sup>1</sup> The trial court stated that Section 5524 of the Judicial Code, 42 Pa.C.S. §5524, requires that actions for intentional infliction of emotional distress and wrongful discharge must be commenced within two years. The trial court stated further that pursuant to Section 5523 of the Judicial Code, 42 Pa.C.S. §5523, actions for invasion of privacy must be commenced within one year.

The trial court determined that Lucas requested reinstatement to his job with Employer by letter dated November 7, 2006; therefore, the latest date that the statute of limitations began to run in this action was November 7, 2006. Lucas did not file his complaint with the trial court until March 3, 2010, nearly sixteen months after the two year limitation expired and twenty-eight months after the one year limitation period expired.

The trial court rejected Lucas' contention that the statute of limitations was tolled because this action was initially filed with the Federal District Court. The trial court pointed out that the complaint that Lucas filed with the trial court fails to mention the dismissed federal action and there is nothing cited in the complaint that

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<sup>1</sup> The trial court noted that normally it is improper to raise a statute of limitations defense in preliminary objections; however where a party asserts a substantive defense in preliminary objections rather than raise the defense by answer or new matter and the opposing party fails to file preliminary objections to the defective preliminary objections, the opposing party has waived the procedural defect thereby permitting the trial court to rule on the preliminary objections. See Borough of Nanty Glo v. Fatula, 826 A.2d 58 (Pa. Cmwlth. 2003).

suggests a tolling of the statute of limitations. In addition, the trial court noted that Lucas failed to provide any argument or case law to support his assertion that the November 9, 2009 order of the Federal District Court tolled the statute of limitations.

Accordingly, the trial court dismissed Lucas' complaint. This appeal followed.

Herein, Lucas presents the following issue for our review: whether Lucas' claims are time barred when he initially filed his complaint in Federal District Court on July 24, 2008, and the order of the federal court dismissing those claims was without prejudice to pursue the claims in state court all of which was done after the two year statute of limitations was properly tolled.

Our scope of review of a trial court order sustaining preliminary objections on the basis that the law will not permit recovery is whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 629 A.2d 270 (Pa. Cmwlth. 1993). We must accept as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deductible therefrom and any doubt should be resolved in favor of overruling the demurrer. Id.

In support of his appeal, Lucas contends that it is undisputed that he initially filed his complaint with the Federal District Court within the applicable statute of limitations for wrongful discharge. Lucas points out that he was terminated from his employment with Employer on August 18, 2006, and his complaint was filed in the Federal District Court on July 24, 2008. Lucas contends that the issue in this matter is his admitted failure to comply with the requirements of Section 5103 of the Judicial Code, 42 Pa.C.S. §5103, and whether such failure prejudiced the parties.

Lucas contends that since the Pennsylvania Rules of Civil Procedure<sup>2</sup> permit a court to disregard any error or defect of procedure which does not affect the substantial rights of the parties, his failure to comply with Section 5103 should be disregarded given the length of this case and the judicial resources which have been expended to date. Lucas argues that it would be an injustice to simply allow this matter to be dismissed without affording Lucas an appropriate day in court.

Section 5103 of the Judicial Code governs the transfer of erroneously filed matters and provides, in pertinent part, as follows:

(a) General rule. --If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.

(b) Federal cases. –

(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In

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<sup>2</sup> See Pa. R.C.P. No. 126 and Pa. R.C.P. No. 127.

order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth. Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

42 Pa.C.S. §5103. Accordingly, “[a] party may transfer a case from federal court to the appropriate state court, where the federal court lacks diversity. The date of the federal filing becomes the date of the state filing for purposes of the applicable statute of limitations.” Chris Falcone, Inc. v. The Insurance Company of the State of Pennsylvania, 907 A.2d 631, 636 (Pa. Super.), petition for allowance of appeal denied, 591 Pa. 679, 917 A.2d 312 (2007).

Section 5103 preserves a claim or cause of action timely filed in federal court on the ground that the claimant should not lose the opportunity to litigate the merits of his or her cause of action simply because the federal court lacks jurisdiction. Id. at 637. Thus, pursuant to Section 5103, where a federal court dismisses a cause

of action due to lack of jurisdiction, the claimant should file a certified transcript of the final judgment of the federal court and a certified transcript of the pleadings from the federal action. Id. “The litigant shall not file new pleadings in state court.” Id. at 638.

In view of the foregoing, it was incumbent upon Lucas to protect the federal filing date by complying with Section 5103 of the Judicial Code. Lucas admits that he failed to comply with this statutorily mandated duty. However, Lucas contends that his failure to comply was merely a procedural error that the trial court should have disregarded in the same spirit that such errors are disregarded pursuant to the Pennsylvania Rules of Civil Procedure if substantial rights have not been affected. We disagree.

Herein, Lucas did not merely violate a rule of civil procedure. Instead, he failed to comply with the clear and mandatory statutory requirements set forth in Section 5103 of the Judicial Code. The courts are bound by the laws of this Commonwealth. “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” Section 1921(b) of the Statutory Construction Act of 1972, 1 Pa.C.S. §1921(b). Therefore, Lucas’ claim that his cause of action filed with the trial court is protected by the federal filing date of July 24, 2008, is meritless.

As such, the trial court did not err in sustaining Employer’s preliminary objection on the basis that Lucas’ claims were barred by the applicable statute of limitations. The trial court’s order is affirmed.

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JAMES R. KELLEY, Senior Judge

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**ORDER**

AND NOW, this 15th day of September, 2011, the order of the Court of Common Pleas of Northampton County entered in the above-captioned matter is affirmed.

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JAMES R. KELLEY, Senior Judge