

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Willie Stokes, :
Appellant :
v. : No. 332 C.D. 2011
COI Gehr, COI Hikes, Deputy : Submitted: July 22, 2011
Collins, Lieutenant Kerestes, :
Captain Gavin, Superintendent :
John Kerestes, Secretary Jeffrey :
Beard, and Lieutenant Yeakel :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 19, 2011

Willie Stokes, *pro se*, an inmate at SCI-Mahanoy, appeals an order of the Court of Common Pleas of Schuylkill County (trial court) dismissing Stokes' civil complaint for conversion against seven employees and officers of the Department of Corrections. In doing so, the trial court sustained the defendants' preliminary objection on the grounds of sovereign immunity. Because we agree with the trial court that the defendants were immune from suit, we will affirm.

In his complaint, Stokes averred the following facts. On March 13, 2009, officials at SCI-Mahanoy conducted an institution-wide search of the prisoners' cells. During the search, a number of items were confiscated from the cell of inmate Steve Austin, including the transcripts from Stokes' murder trial.

Stokes sought the return of his transcripts and was told by Lieutenant Yeakel that they had been returned to Austin. Upon learning that Austin did not have the transcripts, Stokes filed a grievance demanding their return. Stokes' grievance was denied, as were his appeals to Superintendent John Kerestes and Secretary of Corrections Jeffrey Beard.

On November 8, 2010, Stokes filed a complaint against Corrections Officer Gehr, Corrections Officer Hikes, Deputy Superintendent Collins, Lieutenant Yeakel, Captain Gavin, Superintendent Kerestes and Secretary Beard. Stokes averred that each defendant was guilty of conversion because his transcripts were taken during the search of Austin's cell and not returned to him.¹ He sought damages "in excess of \$35,000" from each defendant, along with costs and unspecified punitive damages. *See, e.g.*, Complaint at 5 (Count I, Prayer for Relief).

The defendants filed preliminary objections arguing that they were entitled to sovereign immunity because Stokes had accused them of committing intentional acts.²

On January 27, 2011, the trial court sustained defendants' preliminary objections and dismissed the complaint. In its order, the trial court explained that because the defendants had a valid affirmative defense of immunity which would

¹ Stokes also averred that each defendant had violated "the regulations of Pennsylvania Department of Corrections," but he did not specify which regulations had allegedly been violated. Like the trial court, we only consider Stokes' claims of conversion.

² Defendants also argued that Stokes' claims were barred by the doctrine of *res judicata* because the United States District Court for the Middle District of Pennsylvania dismissed identical claims against the same defendants in a memorandum decision issued June 4, 2010. The trial court did not address this preliminary objection.

preclude relief, it had to dismiss the complaint under the Prison Litigation Reform Act, 42 Pa. C.S. §6602(e)(2).³ The present appeal followed.

On appeal,⁴ Stokes argues that the trial court erred in holding that the defendants were entitled to immunity, thereby precluding relief. We disagree.

It is well settled that “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.” 1 Pa. C.S. §2310. Pursuant to this authority, the General Assembly has, in limited circumstances, waived 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.

³ It states:

- (e) Dismissal of litigation.—Notwithstanding any filing fee which has been paid, the court *shall dismiss prison conditions litigation* at any time, including prior to service on the defendant, *if the court determines any of the following:*

* * *

- (2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or *the defendant is entitled to assert a valid affirmative defense, including immunity*, which, if asserted, would preclude the relief.

42 Pa. C.S. §6602(e)(2) (emphasis added).

⁴ This Court’s scope of review is limited to determining whether the trial court committed an error of law or an abuse of discretion. *Wurth by Wurth v. City of Philadelphia*, 584 A.2d 403, 405 (Pa. Cmwlth. 1990). We must examine the allegations of the complaint to ascertain whether from those allegations alone it can be determined that the defense of official immunity would apply. *Swartz v. Masloff*, 437 A.2d 472, 474 (Pa. Cmwlth. 1981).

42 Pa. C.S. §8522(a) (emphasis added). Thus, “when an employee of a Commonwealth agency [is] acting within the scope of his or her duties, the Commonwealth employee is protected by sovereign immunity from the imposition of liability for intentional tort claims.” *La Frankie v. Miklich*, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992).

Applying the above principles, we agree with the trial court that the defendants were immune from Stokes’ conversion claims. Our Supreme Court has defined conversion as “an act of willful interference with a chattel, done without lawful justification, by which any person entitled thereto is deprived of use and possession.” *Norriton East Realty Corp. v. Central-Penn National Bank*, 435 Pa. 57, 60, 254 A.2d 637, 638 (1969). The Supreme Court also cited with approval Prosser’s description of the ways in which conversion can be committed:

- (a) Acquiring possession of the goods, *with an intent to assert a right to them which is in fact adverse to that of the owner.*
- (b) Transferring the goods in a manner which deprives the owner of control.
- (c) Unreasonably withholding possession from one who has the right to it.
- (d) Seriously damaging or misusing the chattel in defiance of the owner's rights.

Id. (quoting Prosser, Torts §15 (2d ed. 1955)) (emphasis added). A claim for conversion arises from an intentional and not a negligent act. Therefore, the trial court properly dismissed Stokes’ complaint on the basis of defendants’ immunity.⁵

⁵ Stokes argues that the so-called “personal property” exception to sovereign immunity is applicable in this case. *See* 42 Pa. C.S. §8522(b)(3). He is incorrect. The exceptions to **(Footnote continued on the next page . . .)**

For all of the foregoing reasons, the order of the trial court is affirmed.

MARY HANNAH LEAVITT, Judge

(continued . . .)

sovereign immunity are only applicable in situations where sovereign immunity has been waived. As explained above, immunity has not been waived for intentional acts such as conversion.

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ORDER

AND NOW, this 19th day of October, 2011, the order of the Court of Common Pleas of Schuylkill County in the above-captioned matter, dated January 27, 2011, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge