

injunction and return of money deducted to date. For the reasons that follow, we dismiss Secretary Beard's preliminary objection.²

The facts as related in the petition are as follows. Petitioner appeared in the Court of Common Pleas of Philadelphia County (trial court) and entered a guilty plea to forgery, identity theft, receiving stolen property, and several other related offenses. At a sentencing hearing on September 11, 2007, he was sentenced to a term of four to eight years incarceration. The sentencing judge never stated during this hearing that court costs were being imposed and Petitioner alleges he was never ordered to pay court costs of any kind. Despite these facts, the clerk of court sent a DC-300B form to the Department indicating that Petitioner owed \$1,327 in court costs and a non-waivable fine of \$60 for the Crime Victim's Compensation Fund. When Petitioner started serving his sentence at SCI-Laurel Highlands, the Department began deducting 20% from his inmate account each month to satisfy these alleged fines and costs.

According to Petitioner, the Department was without authority to make such deductions because a valid court order specifying the amount of court costs and fines was never issued as required by Section 9728(b)(5) of the Sentencing Code, 42 Pa.C.S. §9728(b)(5), commonly referred to as Act 84.³

² Secretary Beard is the sole objecting respondent in this matter. To date, no attorney has entered an appearance on behalf of Respondent Vivian T. Miller, Clerk of Court for Philadelphia County, and she has yet to file any response in this matter.

³ Act 84 addresses the collection of court costs, fines and fees ordered in connection with criminal actions and proceedings. It states, in pertinent part, "[t]he county correctional facility to which the offender has been sentenced or the Department of Corrections shall be authorized to make monetary deductions from inmate personal accounts for the purpose of collecting restitution or any other court-ordered obligation." 42 Pa. C.S. §9728(b)(5). Given the use of the **(Footnote continued on next page...)**

Therefore, on April 5, 2010, Petitioner filed a “petition for review of governmental action” with this Court seeking an order that the Department cease taking funds out of his inmate account.⁴ The petition also sought reimbursement for all money deducted from Petitioner’s account to date.

Secretary Beard filed preliminary objections in the nature of a demurrer alleging that the Department had the authority to take deductions from Petitioner’s inmate account because it was in possession of a DC-300B form and a valid sentencing order outlining the court costs and fines Petitioner was ordered to pay. In support of its demurrer, the Department attached what it claimed to be a copy of the sentencing judge’s court order along with an unsworn declaration of Delores Chaney, an Accountant at SCI-Laurel Highlands, stating that the court order was transmitted directly from the sentencing court. Petitioner filed a response in opposition and the preliminary objections were briefed by both parties.

Initially, we note that in ruling on preliminary objections in the nature of a demurrer, we must admit all well-pleaded material facts and any inferences reasonably deduced therefrom. *Danysh v. Department of Corrections*, 845 A.2d 260, 262 (Pa. Cmwlth. 2004) (citing *Reider v. Bureau of Corrections*, 502 A.2d 272 (Pa. Cmwlth. 1986)). A demurrer should only be sustained in cases that are

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term “court-ordered obligation” in this provision, we recently adopted the Superior Court’s stance that a DC-300B form completed by the clerk of courts is not, in and of itself, enough to authorize the deduction of waivable costs from an inmate’s account – an actual court order is necessary. *Spotz v. Lebo*, 972 A.2d 125, 134 (Pa. Cmwlth. 2009).

⁴ By order dated April 21, 2010, the matter is being treated as a petition for review addressed to this Court’s original jurisdiction. *See* 42 Pa. C.S. §761; Pa. R.A.P. 1502.

clear and free from doubt and only where it appears with certainty that the law will not permit recovery. *Danysh*, 845 A.2d at 263. However, it is also well-established that when considering a demurrer, a court must limit itself to matters contained within the complaint itself. *Stilp v. Commonwealth*, 910 A.2d 775, 791 (Pa. Cmwlth. 2006). A demurrer which avers the existence of facts not apparent from the face of the challenged pleading is considered an improper speaking demurrer and is not permitted. *Smith v. Pennsylvania Employees Benefit Trust Fund*, 894 A.2d 874, 877 n.3 (Pa. Cmwlth. 2006) (citing *Martin v. Department of Transportation*, 556 A.2d 969 (Pa. Cmwlth. 1989)). Secretary Beard's demurrer alleged the existence of a valid court order outlining the court costs and fees imposed, a fact that is not apparent from Petitioner's initial pleading and which it expressly denies.

There is a limited exception to the rule against speaking demurrers. However, this exception only allows a defendant to file a document in support of his demurrer when a plaintiff has specifically averred the existence of that written document and has premised his cause of action upon the document. *Barndt v. Department of Corrections*, 902 A.2d 589, 591 n.2 (Pa. Cmwlth. 2006). Petitioner did not aver the existence of a sentencing order in his complaint. Rather, he expressly denied that such an order was ever issued and, therefore, the exception does not apply. Secretary Beard also requested in his demurrer that we take judicial notice of the alleged sentencing order. However, we cannot take judicial notice of the attached court order when Petitioner challenges its validity.⁵ In any

⁵ Petitioner in his brief contends that the sentencing order is not valid because it does not contain the sentencing judge's signature, was entered after his sentence was imposed, and the signature line contains only a handwritten, cursive "J" rather than the sentencing judge's full signature.

event, we are constrained from taking judicial notice of any document, outside of the sole exception outline above, when ruling on a demurrer because the purpose of a demurrer is to challenge the *legal* basis for a complaint, not the factual issues or its truthfulness. *Stilp*, 910 A.2d at 791 (citing *Martin*, 556 A.2d at 972).

Accordingly, because Secretary Beard's demurrer went outside the matters contained within the petition and sought to introduce additional facts and evidence in the form of a court order and unsworn declaration, his preliminary objection is dismissed as an improper speaking demurrer.

DAN PELLEGRINI, Judge

