

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Albert J. Sacco, :
Appellant :
v. :
Commonwealth of Pennsylvania, :
Department of Revenue, John Baird, :
Jerome Fontana, Cheryl Mazza, : No. 379 C.D. 2010
Neil Weber, and Thomas Wolf : Submitted: October 1, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

Filed: October 28, 2010

Albert Sacco (Sacco) appeals *pro se* from an order of the Court of Common Pleas of Beaver County (trial court) granting the Commonwealth's preliminary objections in the nature of a demurrer because the defendants are entitled to sovereign immunity. Finding no error in the trial court's decision, we affirm.

On July 18, 2007, the Department of Revenue (Department) filed a personal income tax lien against Sacco in Beaver County (County) in the amount of \$360,134.24. On January 30, 2008, the Department sent a letter to the County's Prothonotary acknowledging that the lien was filed in error and requesting that it

be removed from the County's records. The lien was then expunged by court order dated February 29, 2008.

Sacco then filed a complaint in trespass against the Department and several of its individual employees alleging that the lien was entered without prior notice, was excessive, was intentionally filed without merit and fraudulently entered in disregard of his rights. According to Sacco's Complaint, the entry of the lien effectively destroyed his credit because it was entered while he was recovering from a heart attack and attempting to restructure his finances. He alleged that the lien was due to the intentional actions of the Department and several named individual defendants. Because of those actions, he sought both compensatory and punitive damages.

The Department filed preliminary objections in the nature of a demurrer¹ claiming it could not be held liable for the alleged intentional acts because they did not fall within any exception to immunity set forth in what is commonly known as the Sovereign Immunity Act (Act), 42 Pa.C.S. §§8521-8528.² In response, Sacco claimed because the acts of the individual defendants were intentional, the individual defendants were not immune because they were acting

¹ Preliminary objections in the nature of a demurrer admit as true all well-pled facts and all inferences reasonably deducible therefrom. *Norbert v. Commonwealth of Pennsylvania, State Police*, 611 A.2d 1353, 1355 (Pa. Cmwlth. 1992). To sustain such a preliminary objection, it must appear with certainty based upon the facts pled that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain the preliminary objection. *Id.*

² The Department also demurred to the claim for punitive damages because those types of damages are not recoverable against the Commonwealth, even if the claim falls within the exception to immunity.

outside the scope of their employment, and the Department was liable because it condoned and ratified that conduct.

The trial court granted defendants' preliminary objections and dismissed Sacco's complaint because the Commonwealth, its agencies and employees are entitled to sovereign immunity for intentional acts committed by employees within the scope of their employment, unless the cause of action falls within one of the exceptions specified by the General Assembly in the Act. 1 Pa.C.S. §2310;³ 42 Pa.C.S. §8522;⁴ *Yakowicz v. McDermott*, 548 A.2d 1330 (Pa. Cmwlth. 1988). This appeal followed, and Sacco again argues that individual employees were not immune because they were not acting within the scope of their authority. He alleges that the Department's employees knew the lien was excessive and illegal yet chose to file it anyway.

³ 1 Pa.C.S. § 2310 provides in pertinent part as follows:

Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly 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.

⁴ The General Assembly specifically waived sovereign immunity in the following areas: vehicle liability; medical-professional liability; care, custody or control of personal property; Commonwealth real estate, highways and sidewalks; potholes and other dangerous conditions; care, custody or control of animals; liquor store sales; National Guard activities; and toxoids and vaccines. 42 Pa.C.S. §8522(b).

Before determining whether conduct falls within any of the exceptions to immunity, the plaintiff must establish that the action was the result of negligence of the Commonwealth party or one of its employees. Once a person is determined to be an employee and acting within the scope of his or her employment, the employee stands in the same position as the governmental entity. Unlike for local agency employees, willful misconduct does not vitiate a Commonwealth employee's immunity because sovereign immunity protects a Commonwealth employee when acting within the scope of his or her employment, even for intentional acts. *See Ray v. Pennsylvania State Police*, 654 A.2d 140 (Pa. Cmwlth. 1995), *affirmed*, 544 Pa. 260, 676 A.2d 194 (1996); *Faust v. Department of Revenue*, 592 A.2d 835 (Pa. Cmwlth. 1991); *Yakowicz*.

In this case, even if Sacco had pled facts supporting the conclusion that the individual defendants intentionally filed, caused to be filed, or allowed an excessive lien to remain filed, that conduct still falls within the scope of their employment. Because that conduct does not fall within any of the exceptions to immunity, Sacco's action is not maintainable against the individual defendants or the Commonwealth.

Sacco also alleges that the preliminary objections were filed only on behalf of the Department, not the individual named employees; therefore, the trial court erred in granting the preliminary objections and dismissing the complaint as to these individual defendants. However, counsel for the Department entered his appearance on behalf of the named defendants on January 5, 2010, prior to oral

argument, and the trial court opinion specifically referred to and addressed the individual defendants. Therefore, Appellant's argument has no merit.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 28th day of October, 2010, the order of the Court of
Common Pleas of Beaver County, dated February 18, 2010, is affirmed.

DAN PELLEGRINI, JUDGE