

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Holland, Jr., :
Petitioner :
 :
v. : No. 4 M.D. 2011
 : Submitted: June 17, 2011
Commonwealth of Pennsylvania, :
Pennsylvania Game Commission :
Pennsylvania Board of Probation :
and Parole, :
Respondents :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: September 14, 2011

Before this Court, in its original jurisdiction, is a preliminary objection of the Pennsylvania Game Commission and the Pennsylvania Board of Probation and Parole (Respondents) to a petition for review filed, *pro se*, by Charles Holland, Jr. Holland contends that a search of his property in 2009, which revealed evidence of probation and game law violations, was illegal. He seeks, *inter alia*, the return of property seized and a refund of fines that he paid. Because Respondents are immune from suit, we dismiss the petition for review.

On May 6, 2009, officers of the Game Commission, Board of Probation and Parole, and the Jim Thorpe Police Department went to Holland's residence pursuant to a report that he had an unregistered bear pelt nailed to the

outside of a wooden shed on his property. Holland was on parole at the time and, as a condition of parole, was prohibited from possessing alcohol or firearms. Upon arrival Holland's parole officer noticed several beer cans in the yard and in a recycling container. Based upon this observation, the officers conducted a search of Holland's property.

The officers searched the shed and, in addition to the unregistered bear pelt, seized a deer fetus, deer antlers, multiple sets of hawk talons, a machete and several signs belonging to the Game Commission, the State Correctional Institution at Mahanoy, and agencies of other states. The officers recovered alcohol and three knives from Holland's residence. Holland was charged with, and pled guilty to, several summary offenses under the Game and Wildlife Code, 34 Pa. C.S. §§101-2965. He also admitted to violating his parole and was recommitted as a technical parole violator.¹

In his petition for review, Holland alleges the search of his property was conducted without a warrant and violated his constitutional rights. He also alleges that he was not given an inventory of the items seized, some of which have been destroyed. Holland asks this Court to

find that the search of his property on [May 6, 2009] was illegal and a violation of [his] rights; compel ... Respondent[s] to return all property seized; refund [him] \$1,885, or so in fines; restore [his] trapping privileges; and hold Respondent[s] liable, in whole or in part, for the 616 days [he] was incarcerated, all as a result of an illegal search.

Petition for Review at 6.

¹ Holland has since served his sentence and been released.

Respondents preliminarily object on the ground that this Court lacks subject matter jurisdiction because they are immune under the act commonly referred to as the Sovereign Immunity Act, 42 Pa. C.S. §§8521-8527.² Respondents further allege that the acts Holland complains of do not fall within one of the narrow exceptions to sovereign immunity. Holland counters that his claim falls under the personal property exception to sovereign immunity.

It is well-settled that preliminary objections in the nature of a demurrer require this Court to resolve the issues solely on the basis of the pleadings. *Smith v. Pennsylvania Employees Benefit Trust Fund*, 894 A.2d 874, 879 (Pa. Cmwlth. 2006) (emphasis omitted). Thus, we are required to accept as true all well-pled averments set forth in the petition for review and all inferences reasonably deducible therefrom. *McCord v. Pennsylvania Gaming Control Board*, 9 A.3d 1216, 1218 n.3 (Pa. Cmwlth. 2010). However, we need not accept conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. *Id.* Finally, for a preliminary objection to be sustained, it must appear, with certainty, that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party by refusing to sustain the objection. *Smith*, 894 A.2d at 881.

As a general rule, the Commonwealth and its employees, “who are not high public officials ... [when they act] within the scope of their employment and not in an intentionally malicious, wanton or reckless manner,” are immune from

² In Pennsylvania, “the affirmative defense of governmental immunity may be raised by preliminary objections in the nature of a demurrer where that defense is apparent on the face of the pleading; that is, that a cause of action is made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity.” *Wurth v. City of Philadelphia*, 584 A.2d 403, 407 (Pa. Cmwlth. 1990).

suit in tort. *McCool v. Department of Corrections*, 984 A.2d 565, 570 (Pa. Cmwlth. 2009) (quoting *Walter v. Commonwealth*, 350 A.2d 440, 442 (Pa. Cmwlth. 1976)). The General Assembly has waived sovereign immunity in certain limited circumstances. 42 Pa. C.S. §8522. The nine exceptions to sovereign immunity are for claims for damage caused by: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property;³ (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. 42 Pa. C.S. §8522(b).

Generally, the personal property exception to sovereign immunity only applies if personal property in the Commonwealth's care, custody, or control actually caused the loss that gave rise to the cause of action. *Pyeritz v. Commonwealth*, 956 A.2d 1075, 1079 (Pa. Cmwlth. 2008), *appeal granted*, 600 Pa. 640, 969 A.2d 1183 (2009). *See also Pennsylvania State Police v. Klimek*, 839

³ It provides:

- (b) Acts which may impose liability.--The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

- (3) Care, custody or control of personal property.--The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radioactive equipment, devices and materials.

42 Pa. C.S. §8522(b).

A.2d 1173, 1175 (Pa. Cmwlth. 2003). That is not the case here. Holland does not claim that his loss was caused by personal property in the care, custody, or control of the Commonwealth. Nor does Holland's prayer for relief seek damages for the destruction of any of his personal property in Respondents' possession. *See, e.g., Williams v. Stickman*, 917 A.2d 915 (Pa. Cmwlth. 2007) (waiving sovereign immunity under the personal property exception where the injury sued for was injury to the property itself that occurred while it was in the Commonwealth's care, custody and control). Holland seeks damages for alleged violations of his constitutional rights and the imposition of unwarranted fines. The personal property exception to sovereign immunity simply does not pertain.⁴

Because Respondents are immune from suit and no exception to sovereign immunity is applicable, we sustain Respondents' preliminary objection and dismiss the petition for review.

MARY HANNAH LEAVITT, Judge

⁴ We note that this Court is not the proper forum for Holland to challenge the validity of Respondents' search of his premises. If he believed the search was improper he needed to move to suppress the evidence in his criminal proceeding or raise the issue at his parole revocation hearing. Furthermore, to the extent Holland seeks the return of any items of his personal property in Respondents' possession, he should have filed a motion for return of property in the trial court pursuant to PA. R. CRIM. P. 588. *See, e.g., Boniella v. Commonwealth*, 958 A.2d 1069, 1072 (Pa. Cmwlth. 2008)(noting a motion for the return of property seized during an arrest is quasi-criminal in nature and governed by PA. R. CRIM. P. 588, but is civil in form).

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and Parole,	:	
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ORDER

AND NOW, this 14th day of September, 2011, the Pennsylvania Game Commission and Pennsylvania Board of Probation and Parole's preliminary objection in the above-captioned matter is hereby SUSTAINED, and the Petition for Review is DISMISSED with prejudice.

MARY HANNAH LEAVITT, Judge