

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rodney Derrickson, :  
Appellant :  
v. : No. 838 C.D. 2009  
 : Submitted: February 5, 2010  
Chester City and Chester City Police :  
Department and John Doe and William :  
R. Welsh, C.I.D. and Delaware County :  
and Delaware County District :  
Attorney's Office and John F. X. Reilly, :  
Esq., and Mike Florio and Clayton :  
Auto :  
:

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: May 28, 2010

Rodney Derrickson (Derrickson) appeals from the orders of the Court of Common Pleas of Delaware County (trial court) which sustained the preliminary objections filed by Appellees, Chester City (City), Chester City Police Department (Police Department), John Doe (Doe), William R. Welsh, C.I.D. (Welsh), Delaware County (County), Delaware County District Attorney's Office (DA's Office), John F.X. Reilly, Esq. (Reilly), Mike Florio (Florio) and Clayton Auto and struck Derrickson's amended complaint. We affirm.

On December 14, 1994 Patrick Cassidy was found shot to death in his Nissan Sentra automobile. In 1995, Derrickson was convicted of second degree murder and robbery of Cassidy and was thereafter sentenced to mandatory life imprisonment. Derrickson appealed his conviction to the Superior Court, which affirmed the judgment of sentence. Thereafter the Supreme Court denied his request for appeal. Commonwealth v. Derrickson, 688 A.2d 1226 (Pa. Super. 1996), petition for allowance of appeal denied, 548 Pa. 644, 695 A.2d 783 (1997).

In August of 2007, Derrickson initiated a *pro se* civil action against Appellees alleging civil rights violations under 42 U.S.C. § 1983 and state law claims based on alleged malicious, intentional and/or negligent destruction of potentially highly exculpatable evidence; the automobile owned by Cassidy. Derrickson, thereafter, filed an amended complaint which was served on the parties on June 9, 2008. According to Derrickson, Appellees destroyed the vehicle owned by the victim and that such vehicle could have contained potentially exculpatory evidence. Derrickson maintained that he first learned of the destruction of the automobile during the deposition of Welsh on September 7, 2005, in a federal lawsuit that Derrickson had previously filed.<sup>1</sup>

Appellees filed preliminary objections. Florio and Clayton Auto asserted preliminary objections in the nature of a demurrer asserting that Derrickson failed to set forth any allegations against Florio and Clayton

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<sup>1</sup> The federal action was dismissed at the trial level by the Honorable Thomas N. O'Neill, Jr. of the United States District Court for the Eastern District of Pennsylvania, Civ. Action No. 04-1569. That decision was upheld on appeal, 316 Fed.Appx. 132, (C.A.3 Pa. 2009); *cert. denied*, \_\_ U.S. \_\_, 130 S.Ct. 538 (2009).

Auto, that Derrickson failed to plead a cause of action under 42 U.S.C. § 1985, that the asserted claim was outside the statute of limitations, that Derrickson could not make out a claim under 42 U.S.C. § 1983 because Derrickson's underlying conviction has not been overturned, reversed, or expunged and that Derrickson could not make out a tort claim against them for failing to preserve a vehicle owned by Derrickson's victim.

City and Police Department filed preliminary objections in the nature of a demurrer and alleged that the complaint was served outside the statute of limitations, that Derrickson's claims are barred by the popularly called Political Subdivision Torts Claim Act, 42 Pa. C.S. §§ 8541-8542, that Derrickson failed to state a claim under 42 U.S.C. § 1983, that Derrickson is collaterally estopped, that the Police Department is not a proper party and that Derrickson failed to file the amended complaint within the time permitted.

County filed preliminary objections, alleging that Derrickson failed to properly serve the complaint within the applicable statute of limitations and that Derrickson failed to timely file his amended complaint. County also objected in the nature of a demurrer, claiming that Derrickson is merely attacking the underlying conviction, that the complaint fails to set forth any factual allegations of wrongdoing by the County and fails to state a claim of constitutional conspiracy.

The DA's Office and Reilly filed preliminary objections raising the same objections as set forth by the County and also asserting that Reilly is immune from liability in the performance of his prosecutorial functions

and that the amended complaint did not contain any specific allegations as to the alleged wrongdoing by Reilly.

Finally, Welsh filed preliminary objections claiming that the complaint was not served within the statute of limitations, that Derrickson failed to set forth a claim under 42 U.S.C. § 1983 and that the same claims were previously raised in federal court and abandoned by Derrickson.

On April 3, 2009, the trial court sustained the preliminary objections of the Appellees and dismissed the complaint. This appeal followed.<sup>2</sup>

On appeal, Derrickson raises three issues. Derrickson claims that the trial court erred in sustaining Appellees preliminary objections, in denying his motion to strike Welsh's preliminary objections to the complaint as untimely and in denying his petition for an extension of time to answer the Appellees' preliminary objections.

Based on our review of the trial court's opinion in this case, we conclude that the trial court has thoroughly addressed Appellees' preliminary objections raised in response to Derrickson's amended complaint and this court adopts the trial court's well-reasoned opinion. We do, however, address Derrickson's two remaining issues.

First, Derrickson claims that the trial court erred in denying his motion to strike Welsh's answer to his complaint as untimely. Derrickson's amended complaint was filed on June 9, 2008 and Welsh filed his

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<sup>2</sup> This court's review of a trial court's decision to sustain preliminary objections and dismiss the complaint is limited to determining whether the trial court committed an error of law or abuse of discretion. Sassu v. Borough of West Conshohocken, 929 A.2d 258 (Pa. Cmwlth. 2007).

preliminary objections on November 13, 2008. Pa. R.C.P. No. 1026(a) states that all pleadings subsequent to the complaint must be filed within twenty days of the preceding pleading. “This Rule, however, has been interpreted as permissive rather than mandatory.” Mikkilineni v. Amwest Surety Insurance Company, 919 A.2d 306, 314 (Pa. Cmwlth.), petition for allowance of appeal denied, 592 Pa. 682, 932 A.2d 1290 (2007). It is within the sound discretion of the trial court to permit the late filing of a pleading where the opposing party will not be prejudiced and justice so requires. Id. “Court may accept a late pleading as justice requires and where the opposing party suffers no prejudice.” Humphrey v. Department of Corrections, 939 A.2d 987, 991 (Pa. Cmwlth. 2007). Here, the trial court properly exercised its discretion in accepting the pleading.

Finally, Derrickson complains that the trial court erred in failing to grant his *nunc pro tunc* petition for extension of time to file an answer to Appellees’ preliminary objections. A court will not be reversed for its refusal to waive noncompliance with its rules absent an “abuse of discretion” causing “manifest and palpable injury.” Gordon v. Board of Directors of West Side Area Vocational Technical School, 347 A.2d 347, 351 (Pa. Cmwlth. 1975). As the trial court has thoroughly addressed the issues before it, we find no error.

In accordance with the above, the decision of the trial court is affirmed.

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JIM FLAHERTY, Senior Judge

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**ORDER**

Now, May 28, 2010, the order of the Court of Common Pleas of Delaware County, in the above-captioned matter, is affirmed.

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JIM FLAHERTY, Senior Judge