

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RICKY TEJADA

Appellant

v.

DAVID B. FARNEY AND
TIMOTHY HOLMES, ATTORNEYS AT LAW

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1021 WDA 2013

Appeal from the Order May 13, 2013
In the Court of Common Pleas of Forest County
Civil Division at No(s): 33-2013

BEFORE: BOWES, J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

FILED: December 23, 2013

Ricky Tejada, an inmate at SCI-Camp Hill, appeals from the May 13, 2013 order of the Court of Common Pleas of Forrest County denying his praecipe to enter default judgment against David Farney and Timothy Holmes, who are attorneys with the Office of General Counsel of the Department of Corrections. Tejada also appeals from the June 7, 2013 order sustaining the preliminary objections of Farney and Holmes, and dismissing Tejada's action against them.¹ After careful review, we affirm.

¹ While the filing of one notice of appeal from two separate orders is a procedural defect, it is not a fatal defect, and therefore, this Court may allow the appeal to be heard in the interest of judicial economy. **See *Sulkava v. Glaston Finland Oy***, 54 A.3d 884 (Pa. Super. 2012).

The trial court summarized the procedural history of this case as follows:

On March 14, 2013, [Tejada] filed an Affidavit of In Forma Pauperis Status and Pre-Complaint Discovery – Written Interrogatories. The Court granted [Tejada] In Forma Pauperis status by Order dated March 18, 2013, and filed of record on March 20, 2013. On April 8, 2013, [Tejada] filed a document self-styled as an “Important Notice” and a “Praecipe for Entry of Judgment by Default for Failure to Plead in Accordance with Pa.R.C.P. No. 1037” (“Praecipe for Entry of Judgment by Default”). On May 10, 2013, the Court denied [Tejada’s] Praecipe for Entry of Judgment by Default for failure to properly serve Defendants. The Court reiterated its position by Order dated May 13, 2013, filed May 14, 2013, explaining more specifically that [Tejada] failed to comply with the Pennsylvania Rules of Civil Procedure pertaining to service of original process.

On May 20, 2013, Laura J. Neal, Esquire, Assistant Counsel for the Pennsylvania Department of Corrections filed a Praecipe for Entry of Appearance on behalf of Defendants. On May 24, 2013, [Tejada] filed a “Motion to Reconsider 42 Pa.C.S.A. §§5573-5574 and Rehear the May 13, 2013 Order issued for the above Captioned Matter Pursuant to Pa.R.C.P. No. 103, 126 *id.*, and 132 *id.*” On the same date, [Tejada] filed a Writ of Execution and Praecipe for Writ of Possession. On May 30, 2013, Defendants filed . . . Preliminary Objections. On June 7, 2013, the Court sustained Defendant’ Preliminary Objections and dismissed [Tejada’s] Complaint for lack of personal jurisdiction as a result of failure to comply with the Pennsylvania Rules of Civil Procedure.

On June 14, 2013, [Tejada] filed an “Affidavit of Commercial 1 Pa.C.S.A. § 1927 Notice Pa.R.Crim.P. 576.101(c), (d),” “Affidavit Pa.R.C.P. No. 76 by Specific Averment Pa.R.C.P. No. 1019,[sic],” “Praecipe for Entry of Appearance, Secured Party as Attorney in Fact [sic],” “Praecipe for Writ of Execution upon a Confessed Judgment,” and “Notice per Pa.R.C.P. No. 2958.3 of Judgment and Execution thereon Notice of Defendants’ Rights [sic].” On June 17, 2013, [Tejada] filed a Notice of Appeal and “Order to Reproduce Original Record [sic].” On June 25, 2012, the Court directed [Tejada] to file a concise statement of errors

complained of on appeal within twenty-one (21) days. [Tejada] filed [the statement] on July 12, 2013.

Trial Court Opinion, 7/19/13, at 1-2.

Tejada raises the following issues for our review:

1. Did the trial court err and/or abuse its discretion in denying [Tejada's] praecipe for entry of judgment by default for Appellee's failure to plead being inconsistent thereby such denial [illegible] with the general rules as promulgated by the Pa. Supreme Court?
2. By the general rules promulgated by the Supreme Court, does such standard of Pa. Practice and Procedure entitle [Tejada] to defend by responsive pleading to the preliminary objection of the appellee prior to the trial court [illegible] dismissing the filing at No. 13 of 33 before the 37th Judicial District Court of Common Pleas?

Brief of Appellant, at 5.

As to Tejada's first issue, an order denying a request for entry of a default judgment is an interlocutory order that is not subject to an appeal as of right. **See** Pa.R.A.P. 311. It is not a final appealable order because it does not dispose of all claims. **See** Pa.R.A.P. 341. Accordingly, we are precluded from reviewing the May 10, 2013 order.

Our standard of review of a trial court's order granting preliminary objections challenging personal jurisdiction is as follows:

[W]hen deciding a motion to dismiss for lack of personal jurisdiction the court must consider the evidence in the light most favorable to the non-moving party. This Court will reverse the trial court's decision regarding preliminary objections only where there has been an error of law or an abuse of discretion. Once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it. Courts must resolve the question of personal jurisdiction based on the circumstances of each particular case.

Schiavone v. Aveta, 41 A.3d 861, 865 (Pa. Super. 2012) (citation omitted).

On March 14, 2012, Tejada sent pre-complaint interrogatories, by first-class mail, to Farney and Holmes. Twenty-five days later, on April 8, 2013, Tejada filed a document entitled "Important Notice," addressed to Farney and Holmes, stating that they were in default for failing to enter a written appearance or otherwise respond to the pre-complaint discovery request. The notice further stated that failure to respond could lead to entry of a judgment against them. This document was served by first-class mail, not by personal service.

On April 25, 2013, Tejada filed a Praecipe for Default Judgment in the amount of \$77,500.00. One of the bases listed for the judgment is "official oppression," under section 5301 of the Crimes Code, which provides:

§ 5301. Official Oppression

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:

- (1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

18 Pa.C.S. § 5301. Like the previous documents, Tejada served the praecipe by first class mail.

Pursuant to Pa.R.C.P. 1007, an action may be commenced by filing a praecipe for a writ of summons or a complaint. Tejada filed neither. Even if Tejada mistakenly believed that the filing of the Important Notice regarding default was an appropriate vehicle for bringing an action against Farney and Holmes, proper service could only have been made by the sheriff pursuant to Pa.R.C.P. 400 governing original process.²

Furthermore, a review of the somewhat cryptic interrogatories indicates that Tejada complains about an expedited hearing to which he was subjected, a lack of resources in the prison law library, the drawing of a blood sample, and violations of due process. This, combined with the averment that Farney and Holmes committed acts of official oppression, leads us to conclude that Tejada intended to sue them as Commonwealth officers. Pennsylvania Rule of Civil Procedure 422 provides that service of original process upon an officer of the Commonwealth “shall be made at the office of the defendant and the office of the attorney general by handing a copy to the person in charge thereof.”

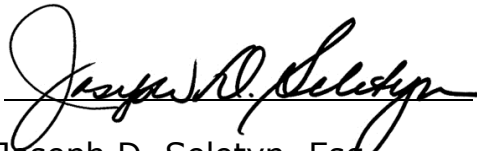
Due to improper service, the trial court lacked personal jurisdiction over Farney and Holmes, and therefore properly dismissed the action against them.

² While not defined in the Judicial Code or the Rules of Civil Procedure, “original process” is “a process issued at the beginning of a judicial proceeding.” ***Black’s Law Dictionary*** 1222 (7th ed. 1999).

Tejada correctly notes that the Commonwealth's preliminary objections, filed on May 30, 2013, included a notice to plead stating that he had twenty days from the date of service in which to file a written response. However, on June 7, 2013, the trial court sustained the preliminary objections and dismissed the action. While we agree with Tejada that it would have been prudent for the court to wait until it reviewed any answer that he filed, it is clear on the record that the trial court did not have jurisdiction over the Farney and Holmes. In light of this fact, the trial court did not err as a matter of law or abuse its discretion in dismissing the action.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013