

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SIDDIQ A. ALEEM,	:	
	:	C.A. No. 02-09-0154AP
Plaintiff-Below,	:	
Appellant,	:	
	:	
vs.	:	
	:	
COMMISSIONER STANLEY TAYLOR,	:	
WARDEN RAPHAEL WILLIAMS, and	:	
SGT. ALLEN PEDRICK,	:	
	:	
Defendants-Below,	:	
Appellees.	:	

Upon Defendants' Motion to Dismiss

Date of Hearing: March 12, 2003

Date Decided: March 27, 2003

The Motion is denied.

Siddiq A. Aleem, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Pro Se Plaintiff

Stuart B. Drowos, Esquire, Department of Justice, 820 North French Street, 6th Floor, Wilmington, Delaware 19801, Attorney for the Defendants.

Trader, J.

In this appeal from the Justice of the Peace Court, the defendants have filed a motion to dismiss the appeal on the grounds that: (1) the appeal violates the mirror image rule; and (2) the complaint must be dismissed on the grounds of sovereign immunity. I hold that the appeal does not violate the mirror image rule and, based on the allegations of the complaint, the motion to dismiss should not be granted on the grounds of sovereign immunity.

The relevant facts are as follows: The plaintiff filed a complaint in the Justice of the Peace Court on June 19, 2002 against Commissioner Stanley Taylor, Warden Raphael Williams, and Sergeant (Sgt.) John Doe. The plaintiff alleges in his complaint that when he was transferred from Gander Hill to Delaware Correctional Center (DCC), he was told that he could not bring his personal property to DCC. Sgt. John Doe also told him that someone would have to pick up his property for him or the property would be destroyed. On August 28, 2002, prior to trial, the plaintiff told the presiding judge that the real name of Sgt. John Doe was Sgt. Pedrick. At that time, the magistrate did not amend the complaint and permit the plaintiff to attempt service of process on Sgt. Pedrick. Defendants' motion to dismiss the civil action was granted and the magistrate stated that the "plaintiff failed to demonstrate that the defendants acted grossly or with wanton negligence." The plaintiff has appealed that decision to this court and the defendants have filed a motion to dismiss.

The defendants first contend that the appeal violates the mirror image rule. The defendants' contention is incorrect. It has been held that if there is a discrepancy in the name or numbers of parties on appeal, it is fatal, as the parties must occupy the same positions on appeal as in the court below. *Cooper's Home Furnishings v. Smith*, 250 A.2d 507, 508 (Del. Super. 1969). However, the view that any variance in the names of

the parties will be fatal on appeal is obsolete. *Freibott v. Patterson Schwartz*, 740 A.2d 4, *6 (Del. Super. 1999). Such nicety in pleadings has become passé. *Freedman v. Aronoff*, 1994 WL 555429, Lee, J. (Del. Super.). Although Section 9571 may be exacting, it does not necessitate dismissal where it is clear that the appellant intended to include all of the parties necessary for *de novo* review. *Freibott, supra*.

In the case before the court, the plaintiff initially named Sgt. Doe as a defendant in the proceedings below because the defendant told the plaintiff his name was John Doe. It was impossible for the plaintiff to obtain service of process on a non-existent person. But when he discovered the correct name of the defendant, he brought this information to the attention of the court. The magistrate should have been amended the caption to allow the plaintiff time to obtain service of process on Sgt. Pedrick. Thus, the incarcerated plaintiff did all that he could do to bring the defendant before the court. Since the plaintiff has brought this civil action against the identical parties below, the mirror image rule is not violated.

The defendants contend that the doctrine of sovereign immunity bars the claim against the defendants in their official capacities. The defendants' contention is correct. The doctrine of sovereign immunity provides that the state may not be sued without its consent. *Doe v. Cates*, 499 A.2d 1175, 1176 (Del. 1985). The state may waive immunity pursuant to 18 Del. C. Sec. 6511 of any risk of loss covered by the state insurance coverage program. In the case, the state has filed an affidavit indicating that it has no insurance coverage pertaining to any possible tort liability for the facts alleged in the plaintiff's complaint. Therefore, the claim against the defendants in their official capacities is without merit.

The question remains as to the liability of defendants for damages when they are performing discretionary functions. The defendants have qualified immunity from civil liability if the three criteria set forth in 10 Del.C. Sec. 4001 are satisfied. *Vick v. Haller*, 512 A.2d 249, 251 (Del. Super. 1986), *aff'd in part and rev'd in part on procedural grounds*, 522 A.2d 865 (Del. 1987). When the doctrine of qualified immunity is asserted, the plaintiff must prove one or more of the following elements: (1) the alleged tortious conduct that did not arise out of or in connection with the performance of an official duty; (2) it was not performed in good faith; and (3) with gross or wanton negligence. *Scott v. Walsh*, 1996 WL 944978 *3, Quillen,J. (Del. Super.).

The plaintiff has filed in this court a document that he has denominated a written argument and I have construed this document to be the plaintiff's complaint. The plaintiff alleges in his complaint that he was told by Sgt. Pedrick that "we are not going to inventory all of this shit." He also alleges that when he said he did not have anyone to pick up his property, Defendant Pedrick replied, "If you do not give me a name, I will throw it away now."

On the above issue the plaintiff is entitled to have his day in court to determine if he can prove an absence of qualified immunity. There are questions of fact that still remain concerning the disposition of the plaintiff's property.

The motion to dismiss is denied. The defendants are directed to file an answer within ten days and the case will be scheduled for trial.

IT IS SO ORDERED.

Merrill C. Trader
Judge