IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Scott Hough,	:	
Appellant	:	
	:	
v.	:	No. 1293 C.D. 2009
	:	Submitted: January 15, 2010
County of Northampton and	:	
William Hillanbrand	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: February 16, 2010

Scott Hough (Plaintiff) appeals from the order of the Court of Common Pleas of Northampton County (trial court) granting the preliminary objections in the nature of a demurrer filed by the County of Northampton (County) and William Hillanbrand (Hillanbrand). For the reasons that follow, we affirm.

Hillanbrand, a deputy sheriff employed by the County, was transporting a prisoner named Ricardo Alicea (prisoner) when the prisoner somehow broke loose. Plaintiff, a Pennsylvania state constable, was nearby and attempted to catch and restrain the prisoner. In so doing, he suffered unspecified injuries to his right leg.

Plaintiff brought suit against Hillanbrand and the County alleging that Hillanbrand was negligent and reckless in allowing the prisoner to escape and violated unspecified civil rights of Plaintiff under the Pennsylvania and United States Constitutions and state and federal statutes. Plaintiff likewise alleged that the County was negligent, reckless and violated his civil rights in failing to properly train, supervise, equip, guide and reinforce Hillanbrand and for negligently entrusting the prisoner to his control. Hillanbrand and the County filed preliminary objections, which the trial court sustained, holding that the Act commonly known as the Political Subdivision Tort Claims Act[1] provided the only circumstances for which liability could be imposed on political subdivisions and their employees acting in the scope of their duty, none of which were met in this case. The trial court also dismissed Plaintiff's unspecified civil rights claims, but gave him leave to amend his complaint to set forth the specific conduct and violations that allegedly occurred.

Plaintiff then filed an amended complaint that in substance alleged that Hillanbrand and the County were liable under §1983[2] for causing a "state-

[1] 42 Pa. C.S. §§8541-8564.

[2] 42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a

(Footnote continued on next page…)

created danger" and that they deprived Plaintiff of his 11th and 14th Amendment rights, including but not limited to the right of privacy, "substantive due process to his personal security," "procedural due process to his personal security," property rights, and "similar rights" under the Pennsylvania Constitution. The allegations against the County remained the same as in the previous complaint. Hillanbrand and the County again filed preliminary objections.

The trial court scheduled the preliminary objections hearing for June 2, 2009. Plaintiff did not attend the June 2 argument, so Hillanbrand and the County argued alone before the trial court. The trial court sustained the preliminary objections and dismissed the case.[3] This appeal followed.[4]

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> judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[3] In addition to the preliminary objections hearing, the parties were also supposed to participate in a telephone status conference on June 2 pursuant to the trial court's order of March 18, 2009. The preliminary objections hearing was in the morning and the telephone status conference was in the afternoon before a different judge. Plaintiff participated in the telephone status conference, but Hillanbrand and the County did not. Following the telephone status conference, the trial court issued an order scheduling the preliminary objections for the September 8, 2009 argument list. Because only the order sustaining the preliminary objections is before us, and because the second order only scheduled what had already been heard, there is no conflict between the orders as Plaintiff seems to suggest.

[4] Our review of an order sustaining preliminary objections in the nature of a demurrer is limited to determining whether, on the facts alleged, the law states with certainty that no recovery is possible. This court will reverse the trial court's decision only if it has committed an

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On appeal, Plaintiff contends that he pled sufficient facts in his complaint to make out a claim for a "state-created danger."[5] A plaintiff must make out each of four elements to prevail on a "state-created danger" claim. They are (1) the harm caused was foreseeable and direct; (2) the state actor acted with a degree of culpability that shocks the conscience; (3) a relationship existed between the state and plaintiff such that the plaintiff was a foreseeable victim of the defendant's acts or a member of a class of persons more likely to be harmed by the state's acts than a member of the public in general; and (4) a state actor affirmatively used his authority in a way that created the danger to the injured citizen. *Walter*, 544 F.3d at 192; *Bright v. Westmoreland County*, 443 F.3d 276, 281 (3d Cir. 2006), *cert. denied*, 549 U.S. 1264 (2007); *see also Robbins v. Cumberland County Children and Youth Services*, 802 A.2d 1239 (Pa. Cmwlth. 2002).

Here, Plaintiff clearly failed to plead the elements of a "state-created danger." While it is foreseeable that an escaping prisoner might injure someone in his escape attempt, the other elements necessary to make out a cause of action for a

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error of law or an abuse of discretion. *Swift v. Radnor Township*, 983 A.2d 227 (Pa. Cmwlth. 2009).

[5] The doctrine of "state-created danger" has been developed by a number of Circuit Courts of Appeals, but not yet recognized by the United States Supreme Court, and is "an exception to the rule that 'the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.'" *Walter v. Pike County, Pennsylvania*, 544 F.3d 182, 192 (3d Cir. 2008) (quoting *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 196 (1989)).

"state-created danger" are missing. Plaintiff pled no conduct by Hillanbrand that would "shock the conscience," but merely alleges that the prisoner broke loose from Hillanbrand's custody. Furthermore, there is no cognizable relationship between Plaintiff, a state constable, and Hillanbrand, a deputy sheriff, when cooperating to recapture a prisoner. Moreover, Plaintiff alleged nothing to suggest that Hillanbrand affirmatively used his authority in a way that created a danger to him. Most likely, Hillanbrand merely lost control, almost certainly accidentally, of a prisoner he was transporting. At most, he was negligent in failing to adequately secure the prisoner, a scenario that falls far short of creating a cause of action for a "state-created danger."

For the foregoing reasons, the order of the trial court is affirmed.

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DAN PELLEGRINI, JUDGE

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O R D E R

AND NOW, this 16th day of February, 2010, the order of the Court of Common Pleas of Northampton County, dated June 4, 2009, is affirmed.

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DAN PELLEGRINI, JUDGE