

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Douglas Mitchell,	:	
Appellant	:	
	:	
v.	:	
	:	
Sgt. John Doe Webb	:	No. 1304 C.D. 2010
and Department of Corrections	:	Submitted: December 10, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: January 11, 2011

Douglas Mitchell (Mitchell) appeals from the May 13, 2010 order of the Court of Common Pleas of Cumberland County (trial court) granting the Motion for Judgment on the Pleadings filed by Sgt. John Doe Webb (Sgt. Webb) and the Department of Corrections (collectively, Department). There are three issues before the Court: (1) whether Mitchell’s claim fell within the applicable statute of limitations, (2) whether sovereign immunity applies, and (3) whether Mitchell is entitled to relief. For reasons that follow, we affirm the order of the trial court.

Mitchell filed a Complaint on March 24, 2009, alleging that an employee of the State Correctional Institution at Camp Hill improperly confiscated certain items of his clothing on July 25, 2006. The Department filed an Answer and New Matter raising the issues of the statute of limitations and sovereign immunity. Mitchell did not file an Answer to the New Matter. The Department filed a Motion

for Judgment on the Pleadings. On May 13, 2010, the trial court granted the Department's motion. Mitchell appealed pro se to this Court.¹

Mitchell argues that his claim fell within the applicable statute of limitations.² We disagree.

An action for "taking, detaining or injuring personal property" must be commenced within two years. 42 Pa.C.S. § 5524. Here, the action complained of, i.e., the prison guard confiscating Mitchell's clothing, occurred on July 25, 2006, and Mitchell did not file his complaint until March 24, 2009. Clearly, Mitchell's action is barred by 42 Pa.C.S. § 5524.

Mitchell next argues that sovereign immunity does not apply.³ We disagree.

"This court has held that, 'when an employee of a Commonwealth agency was acting within the scope of his or her duties, the Commonwealth employee is protected by sovereign immunity from the imposition of liability for intentional tort claims.'" *Williams v. Stickman*, 917 A.2d 915, 917 (Pa. Cmwlth. 2007) (quoting *La Frankie v. Miklich*, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992)). Here, Mitchell

¹ "In reviewing trial court's decision to grant judgment on pleadings, the scope of review of appellate court is plenary; reviewing court must determine if the action of trial court was based on clear error of law or whether there were facts disclosed by pleadings which should properly go to jury." *Newberry Twp. v. Stambaugh*, 848 A.2d 173, 175 n.1 (Pa. Cmwlth. 2004).

² Although this issue is listed in Mitchell's Statement of Questions in his brief, his argument is void of any mention of the statute of limitations which renders the argument waived. *In re Condemnation of Land for S. E. Cent. Bus. Dist. Redevelopment Area No.1 (405 Madison Street, City of Chester)*, 946 A.2d 1154 (Pa. Cmwlth. 2008). Notwithstanding, we are addressing it for the sake of completeness since Mitchell appealed pro se.

³ Although this issue is listed in Mitchell's Statement of Questions in his brief, his argument is void of any mention of sovereign immunity which renders the argument waived. *In re Condemnation of Land for S. E. Cent. Bus. Dist. Redevelopment Area No.1 (405 Madison Street, City of Chester)*, 946 A.2d 1154 (Pa. Cmwlth. 2008). Notwithstanding, we are addressing it for the sake of completeness since Mitchell appealed pro se.

alleged in his complaint that he was “subject to have personal clothing dropped off,” and that while he requested to have his clothes mailed home, Sgt. Webb refused and confiscated his clothing. Original Record at 4. As dealing with prisoners’ clothing is within Sgt. Webb’s duties and the alleged taking would be an intentional tort, sovereign immunity applies such that no liability may be imposed upon Sgt. Webb in the instant matter.

Lastly, Mitchell argues that he is entitled to relief for the humiliation subjected upon him by being forced to surrender his personal clothing. Based on the above, Mitchell’s action is barred by the statute of limitations and the doctrine of sovereign immunity. Accordingly, Mitchell is not entitled to relief.

For all of the above reasons, the trial court’s order is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Douglas Mitchell,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
Sgt. John Doe Webb	:	No. 1304 C.D. 2010
and Department of Corrections	:	

ORDER

AND NOW, this 11th day of January, 2011, the May 13, 2010 order of the Court of Common Pleas of Cumberland County is affirmed.

JOHNNY J. BUTLER, Judge