

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Purcell Bronson,	:	
Petitioner	:	
	:	
v.	:	No. 245 M.D. 2008
	:	
Office of Chief Counsel;	:	Submitted: October 31, 2008
Jeffrey A. Beard; Robert	:	
Gimble; Cindy G. Watson,	:	
Respondents	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: January 9, 2009**

Before this Court in our original jurisdiction are the preliminary objections filed by the Pennsylvania Department of Corrections (DOC) to a petition for review filed by inmate Purcell Bronson, representing himself. Through his petition, Bronson avers certain DOC employees withheld an incoming check payable to him. We sustain the preliminary objection challenging this Court's original jurisdiction, and we transfer the case to the appropriate common pleas court for disposition of the remaining preliminary objections.

After identifying the Respondents<sup>1</sup> to this suit, Bronson avers the following facts in his petition for review:

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<sup>1</sup> Named respondents are DOC's Office of Chief Counsel, Jeffrey A. Beard, Ph.D., Secretary of DOC, Robert Gimble, business manager at SCI-Camp Hill, and Cindy G. Watson, **(Footnote continued on next page...)**

7. On or about Dec. 7, 2007 Respondent Office of Chief Counsel, directed Respondent Gimble to withhold, and not return to the [s]ender, or [Bronson's] designated agent, his incoming check for \$501.03[.]

8. Respondents did not have [Bronson's] signed power of attorney form on file, which would have enable[d] them to accept said funds. They were mandated to reject said mail.

9. With intent to obstruct [Bronson's] access to the court, Respondents refused to release said funds, because they knew said funds would be used to pay for court filing fees, for civil actions against them and DOC officials.

10. Respondents are intentionally holding [Bronson's] funds hostage, for purpose of harassment, and as retaliation, in direct response to [Bronson's] litigation activities against them.

11. As a result of Respondents' acts and actions, [Bronson] has been deprived of property without due process of law, and made to suffer unnecessary anxiety and stress.

12. [Bronson's] attempts at informal resolution with Respondents Beard and Watson were of no avail.

13. As a result of Respondents' acts and actions, and reckless disregard of [Bronson's] rights, he has been deprived of his rights under the 1<sup>st</sup> and 14<sup>th</sup> [A]mendments to the U.S. Constitution and under state laws.

Pet. for Review at ¶¶7-13.

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**(continued...)**

chief grievance officer for the Secretary's Office of Inmate Grievances and Appeals (collectively, Respondents).

As to the relief requested, Bronson seeks: a declaratory judgment that Respondents' actions are unlawful; a preliminary and permanent injunction requiring Respondents to release his funds; and, compensatory and punitive damages.

In response, DOC filed preliminary objections, asserting: this Court lacks original jurisdiction; Bronson did not exhaust his administrative remedies; Bronson's petition is legally insufficient to state a claim; and, Bronson's suit is barred by sovereign immunity.

### **I. Mandamus**

As to Bronson's mandamus claim, we note mandamus is an extraordinary remedy designed to compel the performance of a ministerial or mandatory duty and will not lie to compel a discretionary act. Weaver v. Pa. Bd. of Prob. & Parole, 688 A.2d 766 (Pa. Cmwlth. 1997). "To obtain relief, a plaintiff must prove that he or she has a clear legal right in the relief requested, that there is a corresponding duty on the part of the governmental body to grant that relief, and that there is no other adequate and appropriate remedy at law." Id. at 776 (emphasis added).

Based on the facts averred in Bronson's petition, mandamus is inappropriate. More specifically, Bronson alleges DOC employees intentionally withheld an incoming check payable to him. Because Bronson's claim alleges DOC employees committed an intentional tort, sounding in either trespass to

chattel or conversion,<sup>2</sup> he has an appropriate remedy at law, a tort claim. Indeed, through his petition, Bronson seeks, among other things, monetary damages for Respondents alleged wrongful withholding of the check. Because there is an adequate remedy at law, mandamus is not an appropriate remedy. See Bronson v. Investigations Div., Bureau of Special Servs., Dep't of Corr., 650 A.2d 1160 (Pa. Cmwlth. 1994) (mandamus inappropriate when pleadings evidenced an adequate remedy at law sounding in breach of contract); see also Maute v. Frank, 670 A.2d 737 (Pa. Cmwlth. 1996).

## II. Declaratory Judgment

Likewise, Bronson's claim for declaratory relief fails. Petitions for declaratory judgments are governed by the provisions of the Declaratory Judgments Act (DJA), 42 Pa. C.S. §§7532-7551. The granting of a petition for declaratory judgment is a matter lying within the sound discretion of a court of original jurisdiction. Gmerek v. State Ethics Comm'n, 751 A.2d 1241 (Pa. Cmwlth. 2000), aff'd, 569 Pa. 579, 807 A.2d 812 (2002). An action seeking declaratory judgment is not an optional substitute for established or available remedies and should not be granted where a more appropriate remedy is available. Pittsburgh Palisades Park, LLC v. Pa. Horse Racing Comm'n, 844 A.2d 62 (Pa. Cmwlth. 2004) (en banc).

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<sup>2</sup> Pennsylvania law defines conversion as “the deprivation of another’s right of property in, or use or possession of, a chattel, without the owner’s consent and without lawful justification.” Brinich v. Jencka, 757 A.2d 388, 403 (Pa. Super. 2000). The elements of trespass to chattel are essentially the same and require proof that a defendant is “intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another.” Restatement (Second) of Torts §217 (1965); Pestco, Inc. v. Assoc. Prods., Inc., 880 A.2d 700 (Pa. Super. 2005).

As explained above, Bronson has a more appropriate remedy, a tort action sounding in trespass to chattel or conversion. Because a more appropriate remedy exists, we decline to exercise our jurisdiction regarding declaratory relief.

### **III. Injunction**

With regard to Bronson's injunctive relief request, we note "a court of equity lacks jurisdiction to entertain a cause of action for which there exists a full, complete and adequate remedy at law." Tulio v. State Horse Racing Com., 470 A.2d 645, 647 (Pa. Cmwlth. 1984). In determining whether a remedy is "adequate," we must look to its availability and not the likelihood of its success. Willing v. Mazzocone, 482 Pa. 377, 393 A.2d 1155 (1978); Ragano v. Rigot, 360 A.2d 779 (Pa. Cmwlth. 1976). Whenever the existence of a legal remedy becomes apparent, a court may, on its own motion, raise the issue of whether the action should be transferred to the law side of the court. Myshko v. Galanti, 453 Pa. 412, 309 A.2d 729 (1973); Carelli v. Lyter, 430 Pa. 543, 244 A.2d 6 (1968).

Here, Bronson seeks monetary damages as a result of the alleged tortious conduct of certain DOC employees. Thus, by his own averments, Bronson has an adequate remedy at law. As such, injunctive relief is inappropriate.

In summary, it is clear that any claim stated by Bronson is essentially an intentional tort claim sounding in either trespass to chattel or conversion, despite the styles of mandamus, declaratory and injunctive relief.

#### **IV. Jurisdiction**

Because Bronson’s petition alleges an intentional tort, we must determine whether original jurisdiction lies in this Court. This Court has jurisdiction to hear only a narrow class of cases in its original jurisdiction. See, e.g., Stackhouse v. Pa. State Police, 574 Pa. 558, 832 A.2d 1004 (2003); Jones v. Peterman, 743 A.2d 537 (Pa. Cmwlth. 1999). Of particular import here, our jurisdictional statute provides:

#### **§ 761. Original Jurisdiction**

**(a) General Rule.**--The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings:

(1) Against the Commonwealth government, including any officer thereof, acting in his official capacity, except:

\* \* \*

(iii) actions or proceedings conducted pursuant to Chapter 85 (relating to matters affecting government units) [dealing with sovereign, governmental and official immunity];

42 Pa. C.S. §761(a)(1)(iii). Any action to which immunity is a defense is outside our original jurisdiction and must be commenced in the appropriate court of common pleas. See Bonsavage v. Borough of Warrior Run, 676 A.2d 1330 (Pa. Cmwlth. 1996). See also G. Ronald Darlington, et al., 20 Pennsylvania Appellate Practice, §40:315 (2007-2008 Ed.).

Further, our Supreme Court instructs “[t]he clear intent of the General Assembly is that actions against the Commonwealth or its officers acting in their

official capacity for money damages based on tort liability are outside the original jurisdiction of Commonwealth Court and are properly commenced in the Courts of Common Pleas.” Balshy v. Rank, 507 Pa. 384, 396, 490 A.2d 415, 420-21 (1985).

Of further note, this Court holds:

[W]hen 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. Yakowicz v. McDermott, 120 Pa. Commonwealth Ct. 479, 548 A.2d 1330 (1988), *appeal denied*, 523 Pa. 644, 565 A.2d 1168 (1989). In Yakowicz, an employee of the Pennsylvania Department of Treasury acting within the scope of his duties was deemed to be protected by sovereign immunity from the imposition of liability for defamation emanating from a written performance evaluation of McDermott which was circulated to appellant's superiors within the Department. See also Faust v. Department of Revenue, 140 Pa. Commonwealth Ct. 389, 592 A.2d 835 (1991), *appeal denied*, 530 Pa. 647, 607 A.2d 257 (1992) (sovereign immunity protects a Commonwealth employee acting within the scope of his duties from liability for intentional acts which cause emotional distress).

La Frankie v. Miklich, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992) (emphasis added); see also Williams v. Stickman, 917 A.2d 915 (Pa. Cmwlth.), *appeal denied*, 594 Pa. 683, 932 A.2d 1290 (2007).

Here, Bronson avers Respondents improperly withheld an incoming check payable to him. Because the complaint sounds in tort, and Respondents seek to invoke their protection under the sovereign immunity statute, this case falls within 42 Pa. C.S. §761(a)(1)(iii). This matter would therefore be subject to our

appellate review under 42 Pa. C.S. §762(a)(1)(i), not our original jurisdiction. As such, this action is properly commenced in the appropriate court of common pleas.

Additional support for this conclusion is found in Miles v. Beard, 847 A.2d 161, 164 (Pa. Cmwlth. 2004) in which we held “this Court lacks original jurisdiction over tort actions for money damages that are premised on either common law trespass or a civil action for deprivation of civil rights under 42 U.S.C. §1983.”<sup>3</sup> In Miles, an inmate filed suit seeking an order directing certain DOC employees to provide him with kosher meals. The inmate also sought, among other things, compensatory and punitive damages and declaratory and injunctive relief. Ultimately, this Court concluded it lacked original jurisdiction over the inmate’s petition. More particularly, relying on our Supreme Court’s decision in Stackhouse, we explained:

In [Stackhouse], as here, the plaintiff sought injunctive relief *in addition to* money damages. In that case Diane Stackhouse filed suit against the Pennsylvania State Police (State Police), Commissioner Paul J. Evanko and Deputy Commissioner Thomas K. Coury. She alleged that employees of the State Police had undertaken an investigation of her in connection with a job

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<sup>3</sup> In this case, Bronson also avers, by improperly withholding the check, Respondents deprived him of his rights under the First and Fourteenth Amendments to the U.S. Constitution. Therefore, Bronson’s petition could support a 42 U.S.C. §1983 claim based on a violation of his right to petition the courts, U.S. CONST., amend. I (“Congress shall make no law ... prohibiting ... the right of the people ... to petition the Government for a redress of grievances.”), as well his Fourteenth Amendment right to due process, U.S. CONST., amend. XIV (“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of ... property without due process of law ....”).

As noted above, however, a claim for money damages that is premised on a civil action for deprivation of civil rights under 42 U.S.C. §1983, is not properly within this Court’s original jurisdiction. Miles.



application she had filed. She asserted, specifically, that certain State Police employees were permitted to delve improperly into her personal affairs, including her private inter-personal relationships. She did not allege that the two individuals named as defendants had personally inquired into private matters; she merely contended that they had failed to insure that those who did conduct the investigation were properly trained to inquire only into matters that were appropriate and relevant to it. She also alleged that after she informed Commissioner Evanko of what had occurred, he did not take any corrective action. She sought both declaratory/injunctive relief and monetary damages. ... [The Supreme Court] noted that the equity cause of action rested upon the same factual allegations as the tort claims for defamation and invasion of privacy. The Court held that, in such a circumstance, the inclusion of a count of declaratory or injunctive relief does not operate to transform the matter into the type of case envisioned by, *inter alia* Section 761 of the Judicial Code. Further, it noted that were it to conclude otherwise, the result would be to permit a jurisdictional determination to turn “solely on the styling of claims within a complaint” and this would “arguably permit forum shopping through pleading.” *Id.* at 564, 832 A.2d at 1008. In addition, it observed that traditionally this Court and others have determined jurisdictional questions based upon *substance*, rather than on the form of the action. It, thus, concluded that the matter had properly been filed in the common pleas court.

Here, as in *Stackhouse*, the allegation upon which the equity and 1983 actions rest are clearly the same. [The inmate] does not even attempt to separate the causes of action by denominating specific counts in his complaint. Accordingly, we conclude that *Stackhouse* controls here.

Miles, 847 A.2d 164-65 (emphasis in original).

Similar to Miles and Stackhouse, the allegations upon which Bronson’s equity and tort actions rest are the same. As in Miles, Bronson does not

even attempt to separate the causes of action into specific counts in his petition. Accordingly, the references to equitable relief in the petition do not “transform the matter into the type of case envisioned by ... Section 761 of the Judicial Code.” Miles, 847 A.2d at 165.

Although we lack jurisdiction over this matter, Section 5103(a) of the Judicial Code, 42 Pa. C.S. §5103(a), states this Court shall not dismiss an erroneously filed matter for lack of jurisdiction, but shall transfer the case to the proper tribunal. See Szymanski v. Allegheny County Court, Criminal Div., 465 A.2d 1081 (Pa. Cmwlth. 1983). Because Bronson’s cause of action arose in Cumberland County, we transfer the matter to the Cumberland County Court of Common Pleas for disposition of the remaining preliminary objections.

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ROBERT SIMPSON, Judge

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Respondents	:	

**ORDER**

AND NOW, this 9<sup>th</sup> day of January, 2009, the preliminary objection challenging this Court's original jurisdiction is **SUSTAINED**, and the case is **TRANSFERRED** to the Cumberland County Court of Common Pleas for disposition of the remaining preliminary objections.

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ROBERT SIMPSON, Judge