

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William M. Uschock, :
Appellant :
v. :
Department of Transportation : No. 352 C.D. 2010
Submitted: September 27, 2010

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: November 8, 2010

William M. Uschock (Uschock), *pro se*, appeals the order of the Court of Common Pleas of Westmoreland County (common pleas court) that sustained the preliminary objections in the nature of a demurrer filed by the Commonwealth of Pennsylvania, Department of Transportation (DOT) and dismissed Uschock's complaint with prejudice.

In 1996, the Estate of Mary K. Smalich (Estate) filed a complaint against Uschock and DOT in the common pleas court. Smalich v. Commonwealth of Pennsylvania, Department of Transportation, No. 3253 of 1996. Mary K. Smalich was killed in an automobile accident on Route 981 near Uschock's farm when her car struck a patch of ice and collided with a railroad trestle. The complaint alleged that runoff from Uschock's land caused water and ice to accumulate on the road. The Estate's claims against DOT were dismissed based on the doctrine of sovereign immunity. The suit ended in a verdict or settlement against Uschock.

On June 1, 2006, Uschock and Irene G. Uschock (the Uschocks) commenced an action in the common pleas court against DOT and the

Commonwealth of Pennsylvania and alleged that DOT made false allegations in the Smalich lawsuit and challenged the doctrine of sovereign immunity. DOT and the Commonwealth preliminarily objected and asserted that Uschocks' claim for "false allegations" was barred by the two year statute of limitations applicable to tort claims. 42 Pa.C.S. §5524. DOT and the Commonwealth further asserted that the Uschocks' challenge to the constitutionality of the doctrine of sovereign immunity should be dismissed because sovereign immunity has already been declared constitutional. In an order dated September 14, 2006, the common pleas court sustained the preliminary objections and dismissed the complaint.

The Uschocks appealed to this Court. This Court affirmed and characterized the Uschocks' complaint as "simply an attempt to rehash the factual and legal issues related to PennDOT's liability for the accident." Uschock v. Commonwealth of Pennsylvania, Department of Transportation, Pa. Cmwlth., No. 1842 C.D. 2006, Filed March 2007, Slip Opinion at 3.

On November 9, 2009, Uschock commenced the current action in the common pleas court. The complaint alleged that DOT made false statements in the Smalich lawsuit and requested damages in excess of \$2,000,000.00. On December 24, 2009, DOT preliminarily objected in the nature of a demurrer and asserted the matter had already been dismissed. DOT asserted that the 2009 complaint was "simply the refile of an earlier dismissed cause of action which has already been decided as a matter of law, the instant case must be dismissed again for all the same reasons the Plaintiffs [sic] Complaint was dismissed" in the 2006 action. Preliminary Objections in the Nature of a Demurrer, December 24, 2009,

Paragraph No. 16 at 3. DOT asserted that the complaint must be dismissed on the basis of res judicata.¹ DOT also preliminarily objected in the nature of a demurrer

¹ In Weney v. Workers' Compensation Appeal Board (Mac Sprinkler Systems, Inc.), 960 A.2d 949 (Pa. Cmwlth. 2008), appeal denied, 601 Pa. 691, 971 A.2d 494 (2009), this Court recounted the criteria necessary to establish res judicata and collateral estoppel:

Initially, we note that technical res judicata and collateral estoppel are both encompassed within the parent doctrine of res judicata, which 'prevents the relitigation of claims and issues in subsequent proceedings.' Henion [v. Workers' Compensation Appeal Board (Firpo & Sons, Inc.)], 776 A.2d at 365 [(Pa. Cmwlth. 2001)].

Under the doctrine of technical res judicata, often referred to as claim preclusion, 'when a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded.' Id. In order for technical res judicata to apply, there must be: '(1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or sued.' Id. at 366. Technical res judicata may be applied to bar 'claims that were actually litigated as well as those matters that should have been litigated.' Id. . . . 'Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and the new proceedings.' Id.

The doctrine of collateral estoppel often referred to as issue preclusion, 'is designed to prevent relitigation of an issue in a later action, despite the fact that the later action is based on a cause of action different from the one previously litigated.' Pucci v. Workers' Compensation Appeal Board (Woodville State Hosp.), 707 A.2d 646, 647-48 (Pa. Cmwlth. 1998). Collateral estoppel applies where:

(1) the issue decided in the prior case is identical to the one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with the party in the prior case and had a full and fair opportunity to litigate the issue; and (4) the determination in the prior proceeding was essential to the judgment.

(Footnote continued on next page...)

based upon the statute of limitations and the failure to allege a cause of action that was recognized as an exception to sovereign immunity. DOT also preliminarily objected in the nature of a motion to strike based upon the improper form of the complaint.

The common pleas court sustained the first preliminary objection concerning res judicata and dismissed the complaint:

The allegations in the present Complaint reiterate the Plaintiff's [Uschock] prior claims and refer to matters that were fully litigated in both the 1996 proceeding and the 2006 lawsuit, raising the same issues although couched in slightly different language. When a court of competent jurisdiction has rendered a final judgment on the merits, the doctrine of *res judicata* bars any future suit on the same cause of action between the same parties. . . . Accordingly, because the present case presents the same issues as the previously litigated cases, the doctrines of *res judicata* and collateral estoppel preclude the Plaintiff [Uschock] from pursuing the present cause of action. (Citation omitted).

Common Pleas Court Opinion, January 8, 2010, at 2-3.

On appeal to this Court, Uschock raises the following issues:

Does the violation of constitutional rights change prior judication [sic]? Did an infringement of constitutional rights upon the Uschock family, the right to farm and earn a living occur? The Uschock farm tractor path was an existing farm path when the Uschocks purchased the

(continued...)

Id. at 648.

Weney, 960 A.2d at 954 (emphasis in original and added).

farm in 1975. It was and is a necessary access to vegetable fields and should never have been declared an unpermitted driveway. This accusation infringes on the Uschocks constitutional right to farm and earn a living. Was the lack of recognition of the waiver of sovereign immunity in the pothole clause not properly addressed?

Did this case involve the Pennsylvania Department of Transportation's unsupported, unsubstantiated, misguided blame toward the Uschocks for the February 1996 Smalich v. Uschock case?

Did this case relate to prior warnings given to the state of Pennsylvania before the 1996 Smalich v. Uschock case by William M. Uschock about the hazards of the abandoned railroad trestle and route 981?

Should the Uschock family not have been brought into the lawsuit in the first place because of the preponderance of all the PennDot deficiencies, no guard rail, potholes, no road salt, not addressing prior notice of hazards?

Does the passage of time change any fundamental truth that the Uschock tractor path had nothing to do with ice on route 981 in the February 1996 accident Smalich v. Uschock? There was no rainfall at the time of the February 1996 accident to cause water flow. Was it wrong for PennDot's legal defense to implicate the Uschocks without any shred of geological proof of water flow?

Did the lack of geological expertise by the legal system allow the case to proceed against the Uschocks without being immediately dismissed?

Did the bureaucratic weight of the state of Pennsylvania force the Uschocks into a coerced injustice? Was the false allegation by PennDOT toward the Uschocks a form of discrimination?

Uschock's Brief at 3-4.²

Uschock appealed the common pleas court's dismissal. However, a careful review of the Statement of Questions Involved reveals that not one of the issues addresses the order which was appealed. Any issue not raised in the Statement of Questions Involved is waived. See Pa. R.A.P. 2116. Uschock has waived any challenge to the common pleas court's determination.³

Accordingly, this Court affirms.

² With respect to the preliminary objections, this Court's review is to determine whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 629 A.2d 270, 271 n.3 (Pa. Cmwlth. 1993). This Court must accept as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deducible therefrom and any doubt should be resolved in favor of overruling the demurrer. Id.

³ In his reply brief, Uschock asserts that this case is exempt from res judicata due to errors in the Smalich lawsuit. There is no legal support for this theory.

