

objections alleging, *inter alia*,³ that there was lack of proper venue in Mercer County because no facts had been averred by Spuck which would establish venue in Mercer County and no action or inaction by Sheriff Nau was alleged to have a connection to Mercer County. Spuck filed an answer to the preliminary objections arguing that they should be struck because Sheriff Nau's counsel failed to sign and date the preliminary objections.

The trial court issued an order on November 14, 2007, granting the preliminary objections regarding venue and transferring the case to Centre County. The trial court explained that because Sheriff Nau was an employee of the Centre County Sheriff's Department and the cause of action occurred in Centre County, the proper venue for the action was Centre County.⁴ This appeal by Spuck followed.⁵

(continued...)

documents and would not allow him a reasonable two weeks to copy them, overworked the jury and did not feed the jury for 11 continuous hours; 3) Judge Charles C. Brown, Jr. of Centre County in his official and individual capacity alleging that he transferred Spuck's civil matter to Clearfield County twice and did not reschedule another pre-trial conference after it was postponed, was liable and negligent and contributed to the dismissal of his civil case; 4) as well as Centre County, Pennsylvania; Clearfield County, Pennsylvania; Clinton County, Pennsylvania; and the Commonwealth of Pennsylvania. The judges filed preliminary objections arguing that they were entitled to absolute sovereign immunity in their official capacity and that Spuck's claims were barred by the doctrine of coordinate jurisdiction.

³ Sheriff Nau also raised in the preliminary objections lack of service of process and failure to state a recognized cause of action.

⁴ The trial court ordered that all other preliminary objections were moot.

⁵ Spuck originally filed an appeal in the Superior Court which transferred the matter to this Court.

Spuck first contends that the trial court erred in granting the preliminary objections regarding venue because Sheriff Nau failed to sign and date the preliminary objections as required under Pa. R.C.P. Nos. 76⁶ and 1024.

Pa. R.C.P. No. 1024(a) provides the following:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

Sheriff Nau argues that Pa. R.C.P. No. 1024 only requires that a pleading be verified when factual averments are being asserted in support of a particular claim or position, and, in this case, Spuck “made no factual contentions other than to refer to the inadequate factual predicate alleged by Mr. Spuck in his own pleading.” (Sheriff Nau’s brief at 2.) Sheriff Nau further argues that because his “preliminary objection to venue was not dependent upon a specific factual rationale outside what was pled in the complaint and considering the fact that this particular venue issue involves strictly a legal point, no verification was required.” (Sheriff Nau’s brief at 3.) We agree.

⁶ Pa. R.C.P. No. 76 defines “verified” as follows: “when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.”

Spuck's complaint alleged the following with regard to Sheriff Nau:

Denny Nau was an employee of the Centre County, Pa. Sheriff's Department and was Ordered by the Centre County Judge Brown to service the Defendants in Civil Case No. 2003-1383, however he only serviced 1 out of 12 defendants.

The Plaintiff, Daniel L. Spuck's Civil Matter was scheduled for a Pre-Trial Conference on September 16, 2004, at 10:30 am., however due to the negligence and failure to comply with the Honorable Courts Order, Mr. Deny obstructed, and impeded the Plaintiff's Civil Case, and forced the Honorable Judge Brown to Postpone the Pre-Trial conference, in which was never rescheduled, Mr. Deny actions also contributed to the dismissal of his Civil Action on July 6, 2005, and July 27, 2005 (Reconsideration).

The rest of the complaint identifies the other defendants and their misdeeds and then goes on to aver that as a result of all of the defendants' actions, Spuck suffered a loss of income of over \$5,000,000 due to their negligence, defamation of his character, the dismissal of his civil case, and the obstruction and impediment of his appeals. The preliminary objections of Sheriff Nau are specifically directed to lack of service, lack of proper venue in Mercer County, and failure to state a cause of action. They do not contain an averment or denial of fact not appearing of record in the action. *See Milford Traumbauersville Area Sewer Authority v. Approximately 0.753 Acres of Land*, 358 A.2d 450 (Pa. Cmwlth.

1976). Consequently, the trial court did not abuse its discretion by granting the preliminary objections despite the lack of verification.⁷

Spuck argues next that Sheriff Nau's preliminary objections regarding venue should not have been granted because the "cause of action" arose in Mercer County. The cause of action he refers to is that Sheriff Nau was supposed to serve all of the defendants in this matter, but only served one defendant causing an impediment and obstruction of the civil matter.

Pa. R.C.P. No. 2103(b) provides that an action against a political subdivision may **only** be brought in the county in which the political subdivision is located. A "political subdivision" is defined at Pa. R.C.P. No. 76 as "any *county*, city, borough, incorporated town, township, school district, vocational school district, county institution district or municipal or local authority." This means that Spuck was required to bring his action against Centre County in Centre County,

⁷ Spuck also argues that the trial court abused its discretion when it granted the preliminary objections despite the fact that counsel for Sheriff Nau failed to sign and date the preliminary objections. However, Pa. R.C.P. No. 126 provides that "the rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." Here, there is no dispute that the original preliminary objections that were filed with the trial court were signed and dated, and Spuck has made no argument that he was prejudiced because his copy was not signed and dated. *See Sahutsky v. H.H. Knoebel Sons*, 566 Pa. 593, 782 A.2d 996 (2001) (trial court has latitude to overlook procedural defect which does not prejudice rights of party). Because the trial court had discretion to disregard the error, Spuck's argument is without merit.

including an action against any employees of Centre County who were acting as its agents, i.e., Sheriff Nau.⁸

Accordingly, the order of the trial court is affirmed.

⁸ Spuck also argues that venue should have remained in Mercer County because he was a resident of Mercer County when he received a letter from the trial court stating that his pre-trial conference was not held because Sheriff Nau was not served with the praecipe for writ. This argument also provides no explanation why venue should not be transferred to Centre County.

