

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn Asa Murray, Jr., :
Appellant :
 :
v. : No. 687 C.D. 2007
 : Submitted: March 7, 2008
Commonwealth of Pennsylvania, :
Department of Corrections :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: April 9, 2008

Glenn Asa Murray, Jr. (Murray) appeals pro se from an order of the Court of Common Pleas of Northumberland County (trial court), sustaining the preliminary objections in the nature of a demurrer filed on behalf of the Commonwealth of Pennsylvania, Department of Corrections (Defendant) in this matter and dismissing Murray's civil complaint. We now affirm.

Murray is an inmate at SCI-Coal Township. In early August 2006, Corrections Officers Haight and Heller searched Murray's cell and confiscated certain pornographic pictures and photographs.¹ Murray filed a grievance with the Facility Grievance Coordinator, Kandis K. Dascani, and on August 25, 2006, Murray's grievance was rejected as it exceeded the two page limit as required by the Inmate Grievance System, Policy Number DC-ADM 804. Murray filed an appeal from that decision, but the appeal was denied. Murray then filed an appeal to final review, which

¹ The full names of these Corrections Officers do not appear in the record.

was dismissed by the Chief Grievance Coordinator, Sharon M. Burks, on September 14, 2006. After reviewing the entire record, Ms. Burks found that Murray's grievance was correctly rejected at the initial level due his violation of DC-ADM 804.²

Subsequently, on December 11, 2006, Murray filed a petition for review with this Court. However, because Murray was seeking money damages as redress for an alleged violation of constitutional rights pursuant to 42 U.S.C. §1983, we determined that the matter should have been commenced in the trial court. Hence, by order dated December 12, 2006, we transferred the matter to the trial court.

Murray's complaint before the trial court alleged that Officers Haight and Heller improperly confiscated his pornographic wall pictures and photographs. Murray also alleged that Defendant's grievance policy requiring a two page limit violated his rights under the Pennsylvania Constitution and common law. Murray requested a permanent injunction requiring the Defendant to terminate the employment of the two officers, prohibit the confiscation of all "home made" pornographic items produced by inmates, abolish certain regulations directly pertaining to adult publications, reincorporate all adult content cable services and require proper rationale or responses to inmate grievances regardless of the basis of the claim presented.

The trial court issued a rule to show cause for answer only on January 19, 2007. On February 7, 2007, Defendant filed an answer and asserted that it had not been properly served with the complaint.³ Defendant also contemporaneously filed preliminary objections in the nature of a demurrer.

² DC-ADM 804 (V)(7) provides, *inter alia*, that the statement of facts contained in the grievance shall not exceed two pages.

³ Defendant filed on behalf of the Department of Corrections and Officers Haight and Heller.

Defendant's preliminary objections alleged that Murray failed to state a *prima facie* claim under 42 U.S.C. § 1983 because its grievance procedures, as memorialized in DC-ADM 804, do not implicate rights under either the federal or state constitutions according to the tenets of Luckett v. Blaine, 850 A.2d 811 (Pa. Cmwlth. 2004).⁴ Defendant also alleged that Murray's claim for the denial or the destruction of his property failed because the grievance procedure was a constitutionally adequate remedy and inmates cannot bring a civil rights action under Section 1983 to vindicate a right to property if adequate remedies exist.⁵ Defendant noted that Officers Haight and Heller were protected by sovereign immunity because they were employees of a Commonwealth agency acting within the scope of their employment when they confiscated Murray's pornographic materials. Further, Defendant alleged that Murray failed to establish a cause of action because there is no statutory right for an inmate to possess pornography. Finally, Defendant alleged that Murray had failed to state cause of action for either declaratory or injunctive relief as he had requested.

On March 7, 2007, Murray filed preliminary objections to Defendant's preliminary objections.⁶ Murray asserted that all of Defendant's allegations were without merit as he alleged that he had properly served the complaint, his complaint was

⁴ To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a violation of rights secured by the United States Constitution and the laws of the United States occurred and show that the alleged deprivation was committed by a person acting under the color of state law. Owens v. Shannon, 808 A.2d 607 (Pa. Cmwlth. 2002).

⁵ The Defendant cited Hudson v. Palmer, 468 U.S. 517 (1984) and Waters v. Department of Corrections, 509 A.2d 430 (Pa. Cmwlth. 1986) for this proposition.

⁶ On the same date Murray also filed a reply to Defendant's response to "Rule to Show Cause for Answer Only", a petition for leave to amend the pending petition for review, a petition for special relief to prohibit retaliation, and an affidavit in support of his petition for special relief.

not frivolous and he was not contesting the due process adequacy of the grievance procedure or presenting a due process claim for the confiscation and destruction of his personal property. Rather, Murray asserted that he had properly alleged the willful misconduct of Officers Haight and Heller. Murray requested that the trial court strike Defendant's preliminary objections and grant his request for a preliminary injunction.

The trial court, by order dated March 9, 2007, sustained Defendant's preliminary objections in the form of a demurrer and dismissed Murray's complaint pursuant to Section 6602(e)(2) of the Prison Litigation Reform Act, 42 Pa. C.S. §6602(e)(2).⁷ Nevertheless, the trial court briefly addressed Murray's claims, concluding that it had properly dismissed Murray's complaint because the officers were acting within their scope of employment when they seized Murray's pornographic materials from his cell and were therefore protected from liability under the theory of sovereign immunity. The trial court also noted that the prison grievance policies did not implicate any rights under the federal and state constitution and such policies and procedures were more than adequate to protect Murray's rights.

⁷ Section 6602(e)(2) provides that "the court shall dismiss prison conditions litigation at any time...if the court determines...the prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief."

On appeal,⁸ Murray argues that the trial court erred when it applied the “negligence standard, 42 Pa. C.S. §8522, instead of the proper test for a commonwealth employee’s immunity defense,” which is the sovereign immunity test. (Brief of Murray at 4). Murray contends that the trial court erred because it did not make sufficient findings of fact “supported by substantial or competent evidence of the scope of employment.” Id. Finally, Murray argues that the trial court failed to address his claims regarding the misconduct of Facility Grievance Coordinator, Kandis K. Dascani, and the sufficiency of Defendant’s grievance process.

With regard to Murray’s first issue on appeal, this Court finds that he has misconstrued the trial court’s opinion. It was Defendant who raised the issue of negligence in its preliminary objections and the trial court’s opinion does not mention negligence or Section 8522 of the Judicial Code, 42 Pa. C.S. §8522. In fact, contrary to Murray’s assertion that the trial court neglected to apply the proper test of sovereign immunity, the trial court concluded that the officers were acting within their scope of employment and were therefore protected from any liability by sovereign immunity. Employees of the Commonwealth are protected by sovereign immunity when acting within the scope of their duties. See Yakowicz v. McDermott, 548 A.2d 1330 (Pa. Cmwlth. 1988), petition for allowance of appeal denied, 523 Pa. 644, 565 A.2d 1168 (1989). The proper test to determine if a Commonwealth employee is protected from

⁸ Appellate review of an order granting preliminary objections in the nature of a demurrer is limited to determining whether the trial court abused its discretion or committed an error of law. Chichester School District v. Chichester Education Association, 750 A.2d 400 (Pa. Cmwlth.), petition for allowance of appeal denied, 568 Pa. 668, 795 A.2d 980 (2000). In conducting such a review, we note that a demurrer admits every well-pleaded material fact set forth in the complaint as well as all inferences reasonably deducible therefrom. Id. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Id. Any doubt should be resolved in favor of overruling the demurrer. Id.

liability is to consider “whether the Commonwealth employee was acting within the scope of his or her employment; whether the alleged act which causes injury was negligent and damages would be recoverable but for the availability of the immunity defense; and whether the act fits within one of the nine exceptions to sovereign immunity.” La Frankie v. Miklich, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992).

In the present case, because the trial court concluded that the officers were acting within their scope of employment when they seized Murray’s pornographic materials from his cell, it properly acknowledged that they were protected by sovereign immunity from any liability for their actions.

Second, Murray argues that trial court erred because it did not make sufficient findings of fact “supported by substantial or competent evidence of the scope of employment.” (Brief of Murray at 4). Although Murray may disagree with the trial court’s opinion, his contention that it made insufficient “findings of fact” is merely a bald assertion unsupported by legal authority. The trial court does not make “findings of fact” with respect to deciding preliminary objections in the nature of a demurrer. In ruling on a demurrer, a court must consider the facts as alleged and is required to accept as true all well-pleaded allegations of material fact and all inferences reasonably deducible from them. See Kreamer v. Department of Corrections, 834 A.2d 710 (Pa. Cmwlth. 2003). In other words, the trial court merely rules on the sufficiency of the pleadings. Thus, we conclude that the trial court properly made its ruling on the preliminary objections and was not required to make findings of fact as Murray suggests.

Finally, Murray alleges that the trial court erred because it did not consider his complaints about Defendant’s grievance process or about the conduct of Facility Grievance Coordinator, Kandis K. Dascani. Contrary to Murray’s allegations, the trial

court acknowledged in its opinion that Murray was complaining about the prison grievance coordinator. The trial court also noted that because the grievance procedures and policies do not implicate rights under the federal and state constitutions, Murray had failed to state a cause of action. Indeed, we have previously held that grievance procedures established through regulations enacted by the Department of Corrections do not implicate rights under the United States or Pennsylvania Constitutions. Luckett.

Accordingly, order of the trial court is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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Commonwealth of Pennsylvania	:	
Department of Corrections	:	

ORDER

AND NOW, this 9th day of April, 2008, the order of the Court of Common Pleas of Northumberland County is hereby affirmed.

JOSEPH F. McCLOSKEY, Senior Judge