

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Parker,	:
Appellant	:
	:
v.	:
	: No. 981 C.D. 2008
David Bodnar	: Submitted: August 1, 2008

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BUTLER**

FILED: September 4, 2008

Paul Parker (Parker) appeals from an order of the Court of Common Pleas of Schuylkill County (trial court) sustaining preliminary objections filed by David Bodnar (Bodnar). We now affirm.

Parker, an inmate at the state correctional institution at Mahanoy, was assigned to work at the prison canteen in September, 2003. He alleges that he lost this assignment in December, 2006 because Bodnar, his supervisor, told his unit manager that Parker was involved in a theft ring. On August 20, 2007, Parker filed an action against Bodnar for defamation on the basis of that statement.

Bodnar filed preliminary objections to Parker's complaint on the basis of sovereign immunity.¹ The trial court issued an order dated February 21, 2008, sustaining Bodnar's preliminary objections and dismissing Parker's complaint with prejudice. Parker filed a notice of appeal to the Superior Court on March 17, 2008. The appeal was subsequently transferred to this Court.²

On appeal, Parker contends the trial court erred in sustaining Bodnar's preliminary objections and dismissing his action on the basis of sovereign immunity. We disagree.

Parker argues that sovereign immunity is inapplicable because his defamation claim falls within an exception to sovereign immunity. *See* Section 8522(a) of the Judicial Code, 42 Pa.C.S. §8522(a). Specifically, he contends his defamation suit is an action against a Commonwealth party for damages arising out of a negligent act where the damages would be recoverable if the injury were brought by a person not having available the defense of sovereign immunity. However, it is well established that "defamation is an intentional tort, and Appellees, acting within the scope of the[ir] duties, are protected by sovereign

¹Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provisions of Title 42 (relating to judiciary and judicial procedure) or 62 (relating to procurement) unless otherwise specifically authorized by statute." 1 Pa. C.S. §2310, *as amended*.

²In reviewing a decision of a lower court on preliminary objections, this court considers a pure question of law and its standard of review is plenary. *Banacol Mktg. Corp. v. Penn Warehousing & Distrib.*, 904 A.2d 1043 (Pa. Cmwlth. 2006).

immunity from the imposition of liability for intentional torts.” *Wilson v. Marrow*, 917 A.2d 357, 365 (Pa. Cmwlth. 2007).

There is no dispute that Parker’s complaint alleged defamation as his cause of action, nor is there a dispute that Bodnar was Parker’s supervisor at the prison canteen. As an inmate’s supervisor at a state correctional facility, Bodnar is clearly an employee of a Commonwealth agency, and therefore a “Commonwealth party.” See Section 8501 of the Judicial Code, 42 Pa.C.S. §8501, *as amended*. Further, as the alleged statement was made by Bodnar to Parker’s unit manager, it was made within the scope of Bodnar's employment. Hence, Bodnar is protected by sovereign immunity from the imposition of liability.

Parker further contends that his defamation suit is an action for deprivation of rights under 42 U.S.C. §1983 (section 1983) and sovereign immunity is inapplicable because it would not apply if the action had been brought in federal court. Section 1983 refers to “the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. §1983. An inmate’s interest in keeping a prison job does not amount to a property right under section 1983. *Miles v. Wiser*, 847 A.2d 237 (Pa. Cmwlth. 2004). And although a citizen need not hold a protected property interest in order to state a claim for a violation of his right to equal protection under the law, Parker has not asserted an equal protection violation. He states only that defamation is replete with First Amendment implications. In the instant matter, however, the First Amendment is not implicated as Parker has not asserted that prison officials acting under the color of state law deprived him of a right to free speech. In fact, Parker's cause of action does not relate to his speech at all. His cause of action is based upon Parker's supervisor informing a unit manager that Parker was involved in a theft ring.

Parker's case is not about a violation of rights secured by the United States Constitution or federal statutes. It is simply a claim for defamation. Parker's action, therefore, does not raise a valid claim under section 1983.

Accordingly, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 4th day of September, 2008, the order of the Court of Common Pleas of Schuylkill County in the above-captioned matter is affirmed.

JOHNNY J. BUTLER, Judge