

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JAMES VENN

Appellant

v.

DOC SCI CRESSON, GLENN WHEELER  
C.O., C. WAKSMUNSKI, R.N.,  
S. INGRAM, MEDICAL RECORDS  
SUPERVISOR, D. BOPP, CHIEF HEALTH  
CASE ADMINISTRATOR, J. LUTHER,  
DEPUTY SUPT., J. BOYLES, DEPUTY  
SUPT., J. RIEGLE, RHU LT., K. SNYDER  
RHU LT., D. GENNARO C.O., ZASBEE  
C.O., K. CAMERON, SUPERINTENDENT

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1347 WDA 2012

Appeal from the Order Entered August 1, 2012  
In the Court of Common Pleas of Cambria County  
Civil Division at No(s): No. 2010-4882

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.\*

MEMORANDUM BY MUNDY, J.:

Filed: March 11, 2013

Appellant, James Venn, appeals *pro se* from the August 1, 2012 order which dismissed his complaint filed pursuant to the Confidentiality of HIV-Related Information Act as barred by the statute of limitations.<sup>1</sup> After careful review, we affirm.

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 35 P.S. §§ 7601–7612.

A prior panel of this Court summarized the underlying incident in this case as follows.

[Appellant] was serving a sentence of seven to 15 years of incarceration when, on June 4, 2008, he threw a cup full of urine into the face of a corrections officer who was attempting to remove a food tray from [Appellant]'s cell. The liquid caused a "burning sensation" in the corrections officer's eyes. [Appellant] was subsequently charged with multiple offenses. On June 30, 2009, he entered a plea of guilty to the charge of aggravated harassment by a prisoner in exchange for a sentence of one to two years of incarceration, to run consecutively to the sentence he was already serving. On the same day, the trial court sentenced [Appellant] in accordance with the plea agreement he had negotiated with the Commonwealth. [Appellant] filed neither post-sentence motions nor a direct appeal.

***Commonwealth v. Venn***, 40 A.3d 186 (Pa. Super. 2011) (unpublished memorandum), *appeal denied*, 47 A.3d 847 (Pa. 2012). At some point, Appellant underwent a blood test for the human immunodeficiency virus, commonly known as HIV. The thrust of Appellant's complaint is that on June 23, 2008, defendant Cindy Waksmunski, a registered nurse, came to his cell escorted by a corrections officer, announced to Appellant and his entire cell block the results of his HIV antibody test. Appellant's Complaint, 11/5/10, at ¶ 15. Appellant also alleged that on July 16, 2008, he was escorted by a corrections officer to the Residential Housing Unit's multi-purpose room where Waksmunski again read the results of his HIV test in the company of

six corrections officers. *Id.* at ¶ 18. Appellant alleged violations of the Confidentiality of HIV-Related Information Act.<sup>2</sup>

Appellant alleges that on June 3, 2010, he filed a complaint in the United States District Court for the Western District of Pennsylvania. Appellant's Brief at 2.<sup>3</sup> Relevant to this appeal, on August 31, 2010, the District Court dismissed Appellant's Confidentiality of HIV-related Information Act claims without prejudice for him to file said claims in state court. District Court Order, 8/31/10, at 1. On November 5, 2010, Appellant filed a new complaint in the trial court. Subsequently, Appellant filed several *pro se* motions that are not relevant to this appeal. On July 20, 2012, the trial court entered an order giving Appellant notice that his complaint would be dismissed unless he reinstated his complaint and effectuated proper service on Appellees by August 24, 2012. On August 1, 2012, the trial court *sua sponte* dismissed Appellant's complaint with prejudice on the grounds that it was barred by the two-year statute of limitations for "civil penalty or

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<sup>2</sup> Although Appellant's complaint refers to his Fourteenth Amendment rights being violated, the only claims Appellant discusses in his brief on appeal are alleged violations of the Confidentiality of HIV-Related Information Act.

<sup>3</sup> We note that Appellant's brief does not contain pagination. As such, we have added page numbers for ease of reference.

forfeiture[.]” Trial Court Order, 8/1/12, at 1, *citing* 42 Pa.C.S.A. § 5524(5).

On August 22, 2012, Appellant filed a timely notice of appeal.<sup>4</sup>

On appeal, Appellant raises five issues for our review.

- [1.] Whether [Appellant’s] claim was timely filed[?]
- [2.] Whether [Appellant] made [a] good faith effort at [n]otice and litigation[?]
- [3.] Whether [Appellant’s] claim was a [b]reach of [p]hysician-[p]atient [c]onfidentiality[?]
- [4.] Whether [the] continuing violation doctrine applies to this case[?]
- [5.] Whether [the trial c]ourt made a [sic] error of law or [an] abuse of discretion[?]

Appellant’s Brief at 1.

At the outset, we observe that Appellant does not directly challenge the trial court’s conclusion that the two-year statute of limitations had run on his claim. Rather he argues that he timely filed and properly preserved his claim by filing it in federal court. Appellant’s Brief at 2. We note that whether the statute of limitations has run on a particular claim “is usually a question of law for the judge ....” *Ward v. Rice*, 828 A.2d 1118, 1120 (Pa.

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<sup>4</sup> On September 20, 2012, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Contrary to the Appellees’ assertions in their brief, Appellant timely filed his Rule 1925(b) statement on October 9, 2012. Additionally, by order dated October 24, 2012, the trial court adopted its August 1, 2012 order as its opinion for purposes of Rule 1925(a).

Super. 2003) (citation omitted), *affirmed*, 870 A.2d 850 (Pa. 2005). Therefore, our standard of review is *de novo* and our scope of review is plenary. *In re Novosielski*, 992 A.2d 89, 99 (Pa. 2010).

In his first issue, Appellant avers that the trial court should have considered his complaint timely filed because pursuant 42 Pa.C.S.A. § 5103(b), the trial court should have considered the date he erroneously filed his complaint in federal court as the date he filed it in state court. Appellant's Brief at 2. Section 5103 deals with the transfer of cases filed in the wrong court including actions incorrectly filed in federal court.

### **§ 5103. Transfer of erroneously filed matters**

**(a) General rule.--**If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.

**(b) Federal cases.--**

(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth. Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

...

42 Pa.C.S.A. § 5103.

Additionally, this Court has recently explained the requirements for a plaintiff to take advantage of section 5103(b).

[T]o protect the timeliness of an action under 42 Pa.C.S.A. § 5103, a litigant, upon having his case dismissed in federal court for lack of jurisdiction,

must **promptly** file a certified transcript of the final judgment of the federal court and, at the same time, a certified transcript of the pleadings from the federal action. The **litigant shall not file new pleadings in state court.**

*Chris Falcone, Inc. v. Ins. Co. of State of Pa.*, 907 A.2d 631, 637-638 (Pa. Super. 2006), quoting *Williams v. F.L. Smithe Mach. Co., Inc.*, 577 A.2d 907 (Pa. Super. 1990), *appeal denied*, 593 A.2d 422 (Pa. 1991) (emphasis in original).

In the case *sub judice*, Appellant has failed to comply with our directive in *Falcone* and instead filed a new complaint in state court. Although Appellant avers that he filed his complaint in federal court on June 3, 2010, and has included a federal court docket number, he has not fulfilled his obligations to take advantage of section 5103(b)'s transfer provision. Appellant's complaint filed in state court does not make any mention of his previous complaint filed in federal court. **See** Appellant's Complaint, 11/5/10, at ¶ 11 (stating, "[Appellant] has filed no other lawsuits dealing with the same facts involved in this action or otherwise relating to his imprisonment"). Additionally, while Appellant has attached a photocopy of the District Court's order dismissing his complaint on August 31, 2010, Appellant has not filed the actual complaint itself. As a result, section 5103 does not entitle Appellant to relief. **See Falcone, supra** at 640 (stating that an "[a]ppellant [cannot] properly transfer [his] federal case simply by filing a new complaint in state court[]").

With respect to Appellant's remaining four issues, we conclude that Appellant has either failed to properly preserve them, or they are moot because the two-year statute of limitations precludes any further review of Appellant's complaint. In his second issue, Appellant avers that he has made a good faith effort to effectuate service on Appellees. Appellant's Brief at 4. However, the trial court only dismissed Appellant's complaint with prejudice on the basis that the statute of limitations had run on his claim. Because we must confine our analysis to that issue, we express no opinion on Appellant's attempts at proper service of process in this case.

In his third issue, Appellant avers that Appellee's conduct constituted a breach of doctor-patient confidentiality, which is governed by 42 Pa.C.S.A. § 5524(7). Appellant's Brief at 4. However, Appellant does not raise any claim in his complaint regarding a breach of doctor-patient confidentiality. Additionally, if we were to assume that Appellant was correct that section 5524(7) did apply instead of 5524(5) as the trial court asserted, the two-year statute of limitations would still bar the claim. **See** 42 Pa.C.S.A. § 5524.

In his fourth question presented to this Court, Appellant argues that the "continuing violation doctrine" applies to this case. Appellant's Brief at 1. However, Appellant has not advanced any argument on this point. As a result, this claim is waived. **See** Pa.R.A.P. 2119(a) (stating, "[t]he argument [section] shall be divided into as many parts as there are



questions to be argued ... followed by such discussion and citation of authorities as are deemed pertinent[ ]”).

In his last issue, Appellant avers that the trial court erred in dismissing his claim with prejudice on August 1, 2012 before he had a chance to comply with the trial court’s previous July 19, 2012 order to reinstate his complaint. Appellant’s Brief at 4. However, this issue is underdeveloped insofar that Appellant has not cited any legal authority to support his argument.

The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities. This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority. Failure to cite relevant legal authority constitutes waiver of the claim on appeal.

***In re Estate of Whitley***, 50 A.3d 203, 209 (Pa. Super. 2012) (internal quotation marks and citations omitted). As a result, Appellant has waived this issue on appeal. ***Id.***

Based on the foregoing, we conclude that Appellant’s issues raised on appeal are either waived or devoid of merit.<sup>5</sup> Accordingly, the August 1, 2012 order dismissing Appellant’s complaint with prejudice is affirmed.

Order affirmed. Motion denied.

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<sup>5</sup> On February 5, 2013, Appellant filed a *pro se* motion “to continue action under seal and [a]nonymously.” Because our decision in this case effectively ends the litigation, Appellant’s motion is denied.