NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TANJI CURTIS, Appellant v. PITTSBURGH POST-GAZETTE, TORSTEN OVE AND JOHN BLOCK, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1560 WDA 2012

Appeal from the Order June 19, 2012
In the Court of Common Pleas of Allegheny County
Civil Division at No.: GD 12-008700

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

MEMORANDUM BY PLATT, J. Filed: March 12, 2013

Appellant, Tanji Curtis, appeals *pro se* from the order of June 19, 2012[1], dismissing his complaint. We affirm.

On May 18, 2012, Appellant, while incarcerated at the Elkton Correctional Institution in Lisbon, Ohio, filed a *pro se* civil complaint in defamation and a petition for leave to proceed *in forma pauperis* against Appellees, the Pittsburgh Post-Gazette, Torsten Ove, and John Block. Appellees filed preliminary objections to the complaint on June 5, 2012,

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* Retired Senior Judge assigned to the Superior Court.

[1] Appellant purports to appeal from the trial court's "Statement under Pa.R.A.P. 1925(a)" filed August 1, 2012. However, his notice of appeal was properly taken from the June 19, 2012 order. We have amended the caption accordingly.

which were referred to another judge due to a clerical error. (***See*** 1925(a) Statement, 8/01/12, at 1). On June 19, 2012, the original judge to whom the complaint was assigned *sua sponte* dismissed Appellant's complaint and petition as frivolous pursuant to Pennsylvania Rule of Civil Procedure 240(j). On July 18, 2012, Appellant timely filed an appeal from the order.

On August 1, 2012, the trial court filed an opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) referencing its memorandum of June 19, 2012; the court also stated, *inter alia*, that "[Appellant] filed a Motion for Reconsideration of [the trial court's] Order on July 23, 2012, which was four days too late for [the court] to consider it. ***See*** Pa.R.A.P. 1701(b)(3)." (***Id.***). The court further deemed Appellees' objections moot. (***See id.*** at 1 n.1).

On appeal, Appellant raises two questions for our review:

> 1. Did the trial court abuse it[s] discretion when it dismissed [A]ppellant's complaint without granting him an opportunity to amend the complaint to cure any defects?
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> 2. Did the trial court erroneously find that [A]ppellant's Motion for Reconsideration was time-barred, when [A]ppellant filed the motion prior to the 30-day time limitation?

(Appellant's Brief, at 3).

In his first issue, Appellant asserts that "the trial court abused its discretion when it dismissed the complaint prior to the applicable time limitation and failed to grant the appellant an opportunity to amend the complaint to cure any defects." (Appellant's Brief at 9). We disagree.

> Appellate review of a decision dismissing an action pursuant to Pa.R.C.P. 240(j) is limited to a determination of whether an appellant's constitutional rights have been violated and whether the trial court abused its discretion or committed an error of law. Rule 240 provides for a procedure by which a person who is without the financial resources to pay the costs of litigation may proceed *in forma pauperis*. Pa.R.C.P. 240, 42 Pa. C.S.A. Subsection (j) thereof describes the obligation of the trial court when a party seeks to proceed under this Rule:
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> > (j) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed *in forma pauperis*, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.
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> Pa.R.C.P. 240(j), 42 Pa.C.S.A. A frivolous action or proceeding has been defined as one that lacks an arguable basis either in law or in fact. Under Rule 240(j), an action is frivolous if, on its face, it does not set forth a valid cause of action. As we review Appellant's complaint for validity under Rule 240, we are mindful that a *pro se* complaint should not be dismissed simply because it is not artfully drafted.

Bell v. Mayview State Hosp., 853 A.2d 1058, 1060 (Pa. Super. 2004) (case citations and quotation marks omitted). Furthermore, in a defamation case, "[i]f the court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial." ***Neish v. Beaver Newspapers***, 581 A.2d 619, 621 (Pa. Super. 1990), *appeal denied*, 593 A.2d 421 (Pa. 1991).

Here, the trial court determined that Appellant's defamation claim was frivolous pursuant to Rule 240(j) and dismissed the complaint and petition.[2]

> The Uniform Single Publication Act, 42 Pa.C.S. §§ 8341-8345, sets forth the elements of a *prima facie* case in a defamation action. The burden is on the plaintiff to prove:
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> (1) The defamatory character of the communication.
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> (2) Its publication by the defendant.
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> (3) Its application to the plaintiff.
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> (4) The understanding by the recipient of its defamatory meaning.
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> (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
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> (6) Special harm resulting to the plaintiff from its publication.
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> (7) Abuse of a conditionally privileged occasion.
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> 42 Pa.C.S. § 8343(a).

Foster v. UPMC South Side Hosp., 2 A.3d 655, 663-64 (Pa. Super. 2010), *appeal denied*, 12 A.3d 371 (Pa. 2010).

> Whether a challenged statement is capable of defamatory meaning is a question of law for the court to determine in the first instance. A communication may be considered defamatory

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[2] The trial court alternatively found that Appellant's motion for reconsideration was untimely filed. (1925(a) Statement, 8/01/12, at 1). Although this conclusion is incorrect in light of the Prisoner Mailbox Rule, ***see Smith v. Pa. Bd. of Prob. & Parole***, 683 A.2d 278, 283 (Pa. 1996), we may affirm the trial court's decision on any grounds supported by the record on appeal. ***See Lilliquist v. Copes-Vulcan, Inc.***, 21 A.3d 1233, 1235 (Pa. Super. 2011). Because the trial court provided alternative bases for its disposition, the timeliness of Appellant's motion is not dispositive of the trial court's dismissal.

> if it tends to harm the reputation of another so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.

Bell, ***supra*** at 1061-62 (citations and quotation marks omitted). However, "[m]ore is required than a bald assertion that the defamatory statements harmed a plaintiff's reputation in the social, civil, professional and political community." ***Pilchesky v. Gatelli***, 12 A.3d 430, 444 (Pa. Super. 2011). "It is not enough that the victim of the [statements] . . . be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society." ***Weber v. Lancaster Newspapers, Inc.***, 878 A.2d 63, 78 (Pa. Super. 2005), *appeal denied*, 916 A.2d 634 (Pa. 2007).

> The damage is judged by the reaction of other persons in the community, and not by the party's self-estimation. In this respect the law recognizes that every man has a right to have his good name unaffected by false statements which lower him in the estimation of the community or deter third persons from dealing with him, but the law does not protect a person from hurt feelings or individual negative reactions to a particular statement.

Rybas v. Wapner, 457 A.2d 108, 110 (Pa. Super. 1983).

> A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him . . . [a]nd to be defamatory, it is not necessary that the communication actually cause harm to another's reputation or deter third persons from associating or dealing with him. Its character depends upon its general tendency to have such an effect. In a particular case it may not do so . . . because the other's reputation is so hopelessly bad . . . .

Corabi v. Curtis Pub. Co., 273 A.2d 899, 904 (Pa. 1971). "The fact that a communication tends to prejudice another in the eyes of even a substantial group is not enough if the group is one whose standards are so anti-social that it is not proper for the courts to recognize them." Restatement (Second) of Torts § 559 cmt. e.

Here, Appellant alleged in his complaint that Appellees defamed him by falsely stating that he "had agreed to testify before a federal grand jury in an ongoing drug case and that [Appellant] had cooperated in a drug investigation." (Complaint, 5/18/12, at 4). Appellant claimed that the statements were "false, injurious and potentially life-threatening" because "a fellow inmate who is a resident of the city of Pittsburgh . . . did not want [Appellant] sitting at the same dining room table as him because he 'didn't eat with snitches.'" (***Id.***). The trial court found that, pursuant to the Restatement (Second) of Torts § 559, the prison population amongst whom he claimed to be defamed was not "respectable society," ***Weber***, ***supra*** at 78, but instead a group "whose standards are so anti-social that it is not proper for the courts to recognize them." Restatement (Second) of Torts § 559 cmt. e; ***see also Corabi***, ***supra*** at 904. Therefore, the trial court did not abuse its discretion in determining that Appellant had failed to state a *prima facie* claim for defamation and dismissing his complaint and petition as frivolous. ***See Bell***, ***supra*** at 1060; ***Neish***, ***supra*** at 621. Appellant's first issue is without merit.

In his second issue, Appellant asserts that the trial court erred in determining his motion for reconsideration was untimely filed. (***See*** Appellant's Brief, at 14). We agree; however, in light of the trial court's alternative disposition that Appellant's complaint was frivolous, we deem it harmless error.

> It is well settled that an appellate court has the ability to affirm a valid judgment or verdict for any reason appearing as of record. As we explained in ***Commonwealth v. Thornton***,
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> > [t]he doctrine of harmless error is a technique of appellate review designed to advance judicial economy by obviating the necessity for a retrial where the appellate court is convinced that a trial error was harmless beyond a reasonable doubt. Its purpose is premised on the well-settled proposition that [a] defendant is entitled to a fair trial but not a perfect one.
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> 494 Pa. 260, 266, 431 A.2d 248, 251 (1981). This Court may affirm a judgment based on harmless error even if such an argument is not raised by the parties.

Commonwealth v. Allshouse, 36 A.3d 163, 182 (Pa. 2012) (some citations and quotation marks omitted). "To constitute reversible error, a ruling on evidence must be shown not only to have been erroneous but harmful to the party complaining. An evidentiary ruling which did not affect the verdict will not provide a basis for disturbing the . . . judgment." ***Hart v. W.H. Stewart, Inc.***, 564 A.2d 1250, 1252 (Pa. 1989) (citations omitted).

It is well-settled that "[d]enial of reconsideration is not subject to appellate review." ***Erie Ins. Exch. v. Larrimore***, 987 A.2d 732, 743 (Pa. Super. 2009) (citation omitted). Therefore, had the trial court considered Appellant's motion on its merits, we would be unable to review its decision.

Moreover, the trial court also provided the alternative disposition that Appellant's petition was frivolous pursuant to Rule 240(j). (***See*** 1925(a) Statement, 8/01/12, at 1; ***see also*** Order, 6/19/12). Accordingly, any error committed by the trial court when it deemed the motion was untimely is harmless. ***See Allshouse***, ***supra*** at 182; ***Hart***, ***supra*** at 1252. Appellant's second issue is without merit.

Order affirmed.