

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CHARLES PICARELLA JR.,

Appellant

v.

JORDAN DETALENTE,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1418 MDA 2013

Appeal from the Order Entered May 13, 2013
In the Court of Common Pleas of Northumberland County
Civil Division at No(s): CV-2013-623

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY OLSON, J.:

FILED MAY 07, 2014

Appellant, Charles Picarella, Jr., appeals from an order entered on May 13, 2013 in the Civil Division of the Court of Common Pleas of Northumberland County that denied his petition to proceed in *forma pauperis* and dismissed his complaint. We affirm.

Appellant is an inmate in the state correctional facility in Frackville, Pennsylvania. On April 3, 2013, Appellant filed a complaint sounding in slander against Jordan Detalente in the Northumberland County Court of Common Pleas. Appellant's complaint alleged that, in September 2012, Ms. Detalente falsely reported to a law enforcement officer that he had exposed himself and that he was in possession of a firearm. Appellant included a petition to proceed in *forma pauperis* with his complaint. By order filed on May 13, 2013, the trial court determined that Appellant's complaint was

frivolous; hence, the court denied Appellant's request to proceed in *forma pauperis* and dismissed his complaint. Trial Court Order, 5/13/13. This appeal followed. The trial court did not order Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Appellant alleges in his brief that the trial court erred in its May 13th ruling because his complaint possessed a foundation in both law and fact and, therefore, could not be deemed frivolous. **See** Appellant's Brief at 9. We disagree.

Where a litigant petitions the court to proceed in *forma pauperis*, Pennsylvania Rule of Civil Procedure 240(j) permits the court to dismiss the party's action where his allegation of poverty is untrue or if the court is satisfied that the action is frivolous. In relevant part, Rule 240(j) states:

Rule 240. In Forma Pauperis

* * *

(j)(1) 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.

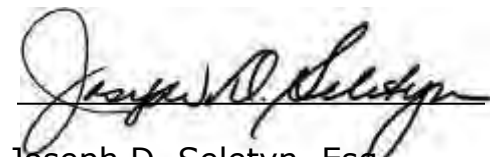
Note: A frivolous action or proceeding has been defined as one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Pa.R.C.P. 240(j).

The trial court correctly denied Appellant's petition and dismissed his complaint on grounds that the claims he advanced were frivolous. This Court has previously held that a defendant's statements to law enforcement officials, accusing the plaintiff of criminal activity and uttered for the purpose of convincing proper authorities to institute criminal proceedings against the plaintiff, are absolutely privileged as statements preliminary to judicial proceedings. ***Pawlowski v. Smorto***, 588 A.2d 36, 42-43 (Pa. Super. 1991); Restatement (Second) Torts § 587 cmt. b (judicial proceedings privilege applies "to information given and informal complaints made to a prosecuting attorney or other proper officer preliminary to a proposed criminal prosecution whether or not the information is followed by a formal complaint or affidavit"). Because the statements alleged in Appellant's complaint to be defamatory fall within the scope of the absolute judicial privilege, the trial court properly denied Appellant's petition to proceed in *forma pauperis* and dismissed his complaint as frivolous. Thus, we affirm.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/7/2014