

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

TROY BAYLOR

Appellant

v.

CITY OF PHILADELPHIA AND  
DETECTIVE PATRICIA WONG

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2212 EDA 2013

Appeal from the Order July 8, 2013  
In the Court of Common Pleas of Philadelphia County  
Civil Division at No(s): CP-51-CV-0042-2011

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

**FILED MAY 01, 2014**

Appellant Troy Baylor appeals from the order of the Court of Common Pleas of Philadelphia County sustaining Appellee Detective Patricia Wong's preliminary objections. For the reasons set forth below, we affirm.

On December 5, 2011, Baylor filed a complaint against the City of Philadelphia and Detective Wong, a Philadelphia Police Detective assigned to the Philadelphia District Attorney's Office.<sup>1</sup> Detective Wong filed preliminary objections. Baylor filed an amended complaint, and Detective Wong filed preliminary objections to the amended complaint. The trial court sustained the preliminary objections and dismissed the amended complaint without

---

<sup>1</sup> Jurisdiction is proper in the Superior Court because Baylor's second amended complaint does not raise statutory claims and Detective Wong did not raise a sovereign immunity defense. 42 Pa.C.S.A. §§ (a)(4), (7).

prejudice. Baylor filed a second amended complaint, alleging state law tort claims and constitutional claims against Detective Wong.<sup>2</sup>

Detective Wong filed preliminary objections to the second amended complaint, maintaining Baylor failed to state a claim and failed to file within the statute of limitations. Baylor filed preliminary objections, arguing Detective Wong waived her objections. Baylor also filed a motion to disqualify assistant district attorney Brad Bender and the Philadelphia District Attorney's Office due to an alleged conflict of interest.

The trial court sustained Detective Wong's preliminary objections and dismissed Baylor's claims against her. The court overruled Baylor's preliminary objections and denied his motion to disqualify. Baylor appealed.

Baylor raises the following issues on appeal: (1) whether the trial court erred in dismissing Baylor's case against Detective Wong with prejudice; (2) whether the trial court erred in denying Baylor's motion to disqualify and recuse assistant district attorney Brad Bender and the Philadelphia District Attorney's Office from representing Detective Wong due to a conflict of interest; and (3) whether the trial court erred in overruling Baylor's preliminary objections to Detective Wong's preliminary objections.<sup>3</sup>

---

<sup>2</sup> Baylor did not properly serve the City of Philadelphia and the City did not respond to the complaints. Because Baylor did not serve the City, we regard the order sustaining Detective Wong's preliminary objections as a final, appealable order.

<sup>3</sup> The trial court issued an opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) without requesting a statement of matters complained of (*Footnote Continued Next Page*)

Baylor's second amended complaint alleges he was a Pennsylvania state prisoner, in the custody of the Pennsylvania Department of Corrections. Baylor maintains Detective Wong "savagely and verbally attacked" him while sitting in a city vehicle outside the 15<sup>th</sup> Police District on September 9, 2009 by using the word "Negro," and stating: "I guess your black aa thourgh [sic] that, I wasn't going to get you." Baylor maintains Detective Wong used "racial intimidation, threats, ethnic intimidation and abuse of her authority as a force against Baylor." In addition, Baylor contends that, "shortly after the September 9, 2009, assault," Detective Wong went to Baylor's residence, where she intimidated and harassed his fiancée and family. Baylor claims Detective Wong was off duty and did not have a search warrant.

Baylor alleges the above constituted an assault and battery and negligence under Pennsylvania law and violated his rights under the United States Constitution. He maintains he continues to experience pain and suffering and the constitutional violations caused him pain and suffering and emotional distress. He also maintains the "verbal harassment, racial intimidation, ethnic intimidation and harassment" constituted unconstitutional retaliation and "caus[ed] [him] injury . . . under the assault

*(Footnote Continued)* \_\_\_\_\_

on appeal from Baylor pursuant to Rule 1925(b). Therefore, although the 1925(a) opinion does not address whether the trial court properly denied Baylor's motion to disqualify and whether the court properly overruled Baylor's preliminary objections, Baylor did not waive the issues.

and battery claims." Baylor sought \$950,000 in compensatory damages and \$750,000 in punitive damages.

Pennsylvania is a fact pleading state. **Foster v. UPMC South Side HILsz**, 2 A.3d 655, 666 (Pa.Super.2010). Complaints must be pled with the factual specificity to "not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but . . . also formulate the issues by summarizing those facts essential to support the claim." **Id.** (citing **Lerner v. Lerner**, 954 A.2d 1229, 1234-35 (Pa.Super.2008)). A defendant may challenge the sufficiency of a pleading through preliminary objections in the nature of a demurrer. Pa.R.Civ.P. 1028(a)(4).

This Court reviews a trial court's decision sustaining or overruling preliminary objections for an error of law. **O'Donnell v. Hovnanian Enterprises, Inc.**, 29 A.3d 1183, 1186 (Pa.Super.2011). "In so doing, [the Court] employ[s] the same standard as the trial court, to wit, all material facts set forth in the Amended Complaint and inferences reasonably drawn therefrom are admitted as true." **Knight v. Springfield Hyundai**, 81 A.3d 940 (Pa.Super.2013). "Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief." **Richmond v. McHale**, 35 A.3d 779,783 (Pa.Super.2012).

Baylor's second amended complaint fails to state a claim under Pennsylvania tort law or the United States Constitution. He alleges Detective Wong committed assault and battery. "Assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person." **Renk v. City of Pittsburgh**, 641 A.2d 289, 293 (Pa.1994) (citing **Cohen v. Lit Brothers**, 70 A.2d 419, 421 (Pa.Super.1950)). "Words in themselves, no matter how threatening, do not constitute an assault; the actor must be in a position to carry out the threat immediately, and he must take some affirmative action to do so." **Cucinotti v. Otto**, 159 A.2d 216 (Pa.1960) (citing **Bechtel v. Combs**, 70 Pa.Super. 503 (1918)). Baylor's second amended complaint alleges Detective Wong used words to threaten him. He does not allege any physical contact or affirmative action and does not allege he feared immediate physical contact. Therefore, the second amended complaint fails to state an assault and battery claim.

The opening paragraph of Baylor's second amended complaint mentions negligence. He fails to state a negligence claim, which requires a plaintiff to allege: "(1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages." **Estate of Swift v. Northeastern Hosp. of Philadelphia**, 690 A.2d 719, 722 (Pa.Super.1997). Baylor does not raise

the negligence claim later in the second amended complaint, and the facts outlined in the second amended complaint fail to state a negligence claim.

Similarly, Baylor's second amended complaint fails to state a constitutional claim. The alleged conduct cannot rise to the level of a constitutional violation.<sup>4</sup> As with assault and battery, verbal threats cannot raise a constitutional violation. **See, e.g., Santos v. Beggs**, 2013 WL 5931420, at \*2 (W.D.Pa. Nov. 5, 2013); **Maclean v. Secor**, 876 F. Supp. 695, 698 (E.D.Pa.1995) ("It is well established that verbal harassment or threats . . . will not, without some reinforcing act accompanying them, constitute a constitutional claim."); **Murray v. Woodburn**, 809 F. Supp. 383, 384 (E.D.Pa.1993) ("Mean harassment . . . is insufficient to state a constitutional deprivation.").

Baylor's complaint, amended complaint and second amended complaint all failed to allege facts sufficient to state a claim, and it is clear Baylor is unable to prove facts legally sufficient to establish any right to relief. Therefore, the trial court properly dismissed Baylor's claims against

---

<sup>4</sup> It appears a prior version of Baylor's Complaint alleged Detective Wong searched his residence "shortly after the September 9, 2009, assault" when she also "intimidat[ed] and harass[ed]" his fiancée. As the trial court found, these claims cannot state a Fourth Amendment claim, as he makes no allegation of what was searched and what, if anything, was taken. Trial Court Opinion 9/4/2013 at 6.

Detective Wong with prejudice. **See *Richmond v. McHale***, 35 A.3d 779,783 (Pa.Super.2012).<sup>5</sup>

We apply the abuse of discretion standard when reviewing trial court opinions regarding motions to disqualify. **See *Commonwealth v. Mack***, 850 A.2d 690, 694 (Pa.Super.2004). Baylor argued the district attorney's office and assistant district attorney Bender should be disqualified from representing Detective Wong because they were potential witnesses in the case. The court properly denied this motion as moot due to the complaint's failure to state a cause of action. Further, Baylor failed to explain why assistant district attorney Bender, or any one from the district attorney's office, would need to testify.

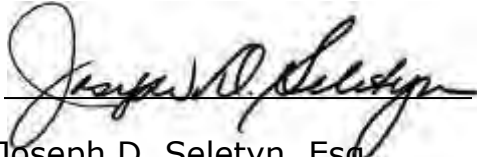
Accordingly, based on the reasoning set forth above, we affirm the trial court.

---

<sup>5</sup> The trial court also properly overruled Baylor's preliminary objections, which argued Detective Wong waived her preliminary objections. Detective Wong preserved her objection to the sufficiency of the pleadings by filing preliminary objections to both the complaint and the amended complaint. We note Detective Wong raised the statute of limitations in her preliminary objections, which the Rules prohibit her from doing. See Pa.R.Civ.P. 1030; Note, Pa.R.Civ.P. 1028. The court, however, did not rely on the statute of limitations in sustaining her preliminary objections.

J-S12039-14

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: 5/1/2014