

00-636-00
ROBERT L. HARMICK, JR. -vs- CLEARFIELD COUNTY JAIL

WAS
5-9-00

Robert L. Harnick Jr., Plaintiff } No. 00-636-cd (1)
Clearfield County Jail, Defendant }

In the Court of Common Pleas of Clearfield County Pennsylvania
In Forma Pauperis Statement

I, Robert L. Harnick Jr., state under penalties provided by 18 P.A.C.S.A. 4904 (unsworn falsification to authorities) that:

1. I am the petitioner in the above-entitled action.
2. I have read the foregoing petition and know the contents and the same are true to my own knowledge, except those matters stated to be alleged about persons other than myself, and, those matters I believe to be true.
3. This statement I made to inform the court of my status of indigency.
4. I am not presently employed.
5. I have not recently received any income from a business, profession, or other form of employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other resources.
6. I do not own any real estate, stocks, bonds or notes.
7. I do not own any cash or checking or savings account.
8. There is no one dependent upon me for financial support. I am however incarcerated for contempt of support order. I understand that a false statement of fact, pertaining to my ability to prepay costs in this statement will subject me to penalties for perjury.

5/3/00

Robert L. Harnick Jr.
Petitioner, Pro-se

FILED

JUN 01 2000
m/8:30/00
William A. Shaw
Prothonotary

In the Court of Common Pleas of Clearfield
County Pennsylvania Civil Division

Robert L. Harmick Jr., Plaintiff } No. 00-636-CO
v.
Clearfield County Jail, Defendant }

Civil Action

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. You SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET HELP.

In the Court of Common Pleas of Clearfield County
Civil Division
Commonwealth of Pennsylvania

Complaint

Robert L. Hornick Jr., Plaintiff

v
Clearfield County Jail, Defendant

Complaint

No. 00-636-C

1. Plaintiff is currently incarcerated at Clearfield County Jail, he has been incarcerated since on or about Jan. 19, 2000.
2. Plaintiff was trustee of E Block since on or about Jan. 21, 2000.
3. Plaintiff was assigned to work detail bringing in Universal Weight Station and assembly of same, which is where plaintiff initially injured back.
4. Plaintiff injured lower back, causing total immobility, severe pain, severe trauma to lower back while lifting stack of empty trays after dinner.
5. Correction Officers were summoned since plaintiff was unable to stand, walk, roll over, or crawl without experiencing extreme pain. Assistant Deputy Warden arrived and summoned wheelchair. Plaintiff was loaded onto wheelchair and was taken to holding cell. Plaintiff was given cot with 2 mattresses, small bag of ice, ibuprofen. All the while inmate was in grave pain and almost totally immobile. Plaintiff had to crawl onto wheelchair to move 10 feet (approx.) to use toilet, all the while in grave pain.
6. Plaintiff was taken to hospital approximately 12:00 noon next day, approximately 18 hours after guards were summoned.

FILED

JUN 02 2000

William A. Shaw
Prothonotary

Plaintiff had to be assisted in putting pants on, loaded into wheelchair, loaded into front seat of van, unloaded from van, wheeled into emergency room, had to stand up and sit on examining table, loaded into chair, loaded into van, unloaded into

cont'd

6. wheelchair, then placed on cot, all the while in grave pain and suffering severe trauma to lower back.
7. Plaintiff was left in holding cell approximately 5 days. Plaintiff was unable to stand, walk, roll over, or crawl. Wheelchair to toilet and nurses station was only way of conveyance. All the while in grave pain and suffering severe trauma to lower back.
8. Plaintiff saw doctor in jail approximately one (1) week after injury. Doctor diagnosed ~~plaintiff~~ as having possibly ruptured or herniated disc and severe trauma to muscles & ligaments of lower back. Ordered not to sit down as sitting greatly aggravates injury. Already had been using wheelchair for at least a week. Plaintiff was continued on medication and told to wait and see. All the while plaintiff has experienced great pain and very limited mobility.
9. Plaintiff asserts due to lack of knowledge in ~~or~~ diagnosing and treatment of back injuries, that plaintiff was subjected to unnecessary pain, suffering, trauma, and further damage to injury due to negligence.
10. Plaintiff has continually suffered great pain and limited mobility since injury. Plaintiff continues to have muscle spasms throughout lower back.
11. Plaintiff needs further treatment and therapy. Possibly surgery. By reason of the aforesaid premises, the plaintiff claims to recover from the defendant 2,000,000 (2) million dollars and therefore brings this suit. Plaintiff has suffered and continues to suffer grave pain. Injury may force plaintiff to learn another profession or unable to work.

5/3/00

Robert J. Harms Jr.
Petitioner, Pro Se

In the Court of Common Pleas of Clearfield County
Civil Division
Commonwealth of Pennsylvania

Robert L. Harnick Jr., Plaintiff }
v
Clearfield County Jail, Defendant } No. ~~00-636-CO~~

Verification

On this 3rd day of May, I declare that I have read the above stated matters, subscribed by me and know the contents thereof and that under penalties of law provided by Title 18 P.C.S.A. 4904 (unsworn falsification to Authorities) that the matters and statements therein set forth are true to the best of my knowledge and belief.

Dated: 5/3/00

Respectfully submitted:

Robert L. Harnick Jr.

FILED

02 2000

William A. Shaw
Prothonotary

In the Court of Common Pleas of Clearfield County
Civil Division
Commonwealth of Pennsylvania

Robert L. Hornick Jr., Plaintiff

v.

Clearfield County Jail, Defendant

NO. 00-686-CO

Proof of Service

The undersigned hereby certifies, under PA. R.C.P. 1915.3 that he is this date serving the foregoing documents upon the person(s) and in the manner indicated below:

Person Served: Sam Lombardo, Warden, Clearfield County Jail

Type of Service: Inmate mail

5/3/00

Respectively Submitted,
Robert L. Hornick Jr.
Robert L. Hornick Jr.

FILED

JUN 02 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ROBERT L. HARMICK, JR.,
Plaintiff

vs.

CLEARFIELD COUNTY JAIL,
Defendant

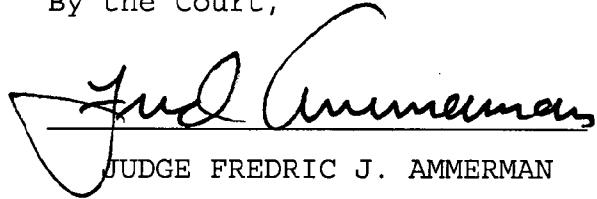
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NO. 2000- 636 -C.D.

O R D E R

NOW, this 1st day of June, 2000, the Court being in receipt of the Plaintiff's request for In Forma Pauperis status, and being aware of his incarceration it is the ORDER of this Court that request be and is hereby GRANTED. The filing fee is WAIVED.

By the Court,


JUDGE FREDRIC J. AMMERMAN

FILED

JUN 02 2000

William A. Shaw
Prothonotary

5/10/2000
MAY 10 2000

1074

FILED

FILED

10/22/00
William A. Shaw
Prothonotary
1cc CCT
1cc Keener *ea*

In the Court of Common Pleas of Clearfield County
Commonwealth of Pennsylvania

Civil Division

Robert L. Harmick Jr., Plaintiff

v.

Clearfield County Jail, Defendant

№. 00-636 - C.D.

Amendment to Complaint

I, Robert L. Harmick Jr., plaintiff, assert the following parties are jointly, severally, separately, or in the alternative, liable to the plaintiff for injuries in complaint:

1. Sam Lombardo, Warden, Clearfield County Jail
2. Christa Clarkson, Assistant Deputy Warden
3. Clearfield County Prison Board
4. Clearfield County
5. Insurers of said premises and persons which are liable for injuries to prisoners while working in/for Clearfield County Jail.

Robert L. Harmick Jr.
Petitioner, Pro Se

FILED

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WPA

FILED

JUN 12 2000

William A. Shaw
Prothonotary

FILED

JUN 12 2000

11:30 AM

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

Code No.

PRELIMINARY OBJECTIONS

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

ERIC R.I. COTTE, ESQUIRE
PA I.D. #78512

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
2000 Frick Building
Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

JURY TRIAL DEMANDED

P0545951.1

FILED

SEP 18 2000
m/11:55 AM
William A. Shaw
Prothonotary
2 c/cmt to WFTD
EAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

CIVIL DIVISION

Plaintiff,

No. 00-636-CD

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW, come defendant, Clearfield County Jail, by and through its attorneys, Meyer Darragh Buckler Bebenek & Eck, P.L.L.C., and pursuant to Pennsylvania Rules of Civil Procedure 1028, file the following preliminary objections to plaintiff's complaint stating as follows:

1. The plaintiff, Robert L. Harmick, pro se, has filed a civil action against the above named defendant for pain and suffering due to an alleged injury to his back which occurred at the defendant jail.
2. While working at the jail, the plaintiff allegedly injured his lower back while assembling a universal weight station and by lifting a stack of empty trays after dinner.
3. Although it is not clear from the complaint, plaintiff seems to allege that the defendant did not provide the proper medical care and/or treatment to these injuries.
4. Plaintiff seeks damages in the amount of \$2 million dollars for pain and suffering as a result of defendant's conduct.

I. IMPROPER FORM OF SERVICE

5. The defendants assert that the plaintiff has failed to properly serve these defendants in violation of the Pennsylvania Rules of Civil Procedure. Indeed, there is no indication on the record docket that service was effectuated properly by either the Sheriff or by a competent adult with a return of service as required by law.

6. The complaint contains a "proof of service and return" which states that the complaint was served to the warden of the Clearfield County Jail on August 10, 2000.

7. However, the complaint was mailed to the warden of the Clearfield County Jail via United States Postal Service regular mail and was not properly served as articulated in the Pennsylvania the Rules of Civil Procedure.

8. Pennsylvania Rules of Civil Procedure 400 states, in pertinent part:

RULE 400: PERSONS TO MAKE SERVICE:

(a) Except as provided in subdivision (b) (c) and rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by Sheriff.

9. This method of service is improper under the Pennsylvania Rules of Civil Procedure and therefore the complaint should be dismissed with prejudice.

WHEREFORE, the defendant, Clearfield County Jail, respectfully requests this Honorable Court issue an order dismissing the complaint with prejudice.

II. INSUFFICIENT SPECIFICITY IN THE COMPLAINT

10. The complaint is a 12 paragraph rambling narrative that states that the plaintiff injured his back while working in the prison.

11. The material facts, however, in which the plaintiff's cause of action is based is not stated in a concise and summary form as required under the rules of civil procedure. See Pa. R.Civ.P. 1019.

12. Other than the conclusionary statement that the plaintiff hurt his back, there are not facts contained within the complaint that will support a claim of negligence against the defendant.

13. In fact, negligence is not specifically plead in the complaint.

14. Plaintiffs conclusionary and narrative statements alone, without alleging any specific facts that would support a cause of action, are insufficient as a matter of law.

15. The complaint also appears to set forth a claim for punitive damages in that plaintiff's prayer for relief claims damages in excess of \$2 million dollars.

16. The complaint, however, fails to state facts sufficient to support a finding of gross negligence or willful misconduct on the part of the defendant.

17. Therefore, any claims for punitive damages must be dismissed.

WHEREFORE, the defendant, Clearfield County Jail, respectfully requests this Honorable Court issue an order dismissing the complaint with prejudice.

III. PENNSYLVANIA RULE OF CIVIL PROCEDURE 1020 REQUIRES THAT THE PLAINTIFF, INCLUDING MORE THAN ONE CAUSE OF ACTION, STATE EACH CAUSE OF ACTION IN A SEPARATE COUNT CONTAINING THE DEMAND FOR RELIEF

18. The plaintiff has not separated his claims under separate counts, but, rather, the complaint contains several claims under one cause of action, although it is unclear what that cause of action is.

19. It is respectfully submitted that plaintiff's complaint is not plead in conformity to rule or law of court which requires allegations to be set forth in separate counts.

WHEREFORE, the defendant, Clearfield County Jail, respectfully requests this Honorable Court issue an order dismissing the complaint with prejudice.

IV. DEMURRER

20. A demurrer can only be sustained when the complaint is clearly insufficient to establish the pleaders right to relief.

21. Pursuant to Pennsylvania Rule of Civil Procedure 1028 (a) (4), the defendant asserts that the complaint is insufficient as an matter of law.

22. For the purposes of testing the legal sufficiency of a pleading, a preliminary objection in the nature of the demurrer admits as true all well pleaded materials, relevant facts, and every inference fairly deductible from those facts.

23. The pleaders conclusions or averments of law are not to be considered to be admitted as true by a demurrer.

24. The bald and conclusionary statement that the plaintiff was subjected to unnecessary pain, suffering and trauma due to defendants negligence, without more, does not state a cause of action upon which relief can be granted.

WHEREFORE, the defendant, Clearfield County Jail, respectfully requests this Honorable Court issue an order dismissing the complaint with prejudice.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By:

Marie Milie Jones / ERIC
MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
CLEARFIELD COUNTY JAIL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon all parties either individually or through counsel by:

✓

Hand-Delivery
First-Class Mail, Postage Prepaid
Certified Mail-Return Receipt Requested
Facsimile
Federal Express

at the following addresses:

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: September 13, 2000

Marie Milie Jones / ECK
MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
CLEARFIELD COUNTY JAIL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2000, it is hereby ORDERED, ADJUDGED and DECREED that the Preliminary Objections filed by defendant, Clearfield County Jail, are sustained and the Complaint is dismissed against said defendant with prejudice.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

Code No.

PRAECIPE FOR ORAL ARGUMENT

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

JURY TRIAL DEMANDED

ERIC R.I. COTTLE, ESQUIRE
PA I.D. #78512

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Firm No. 198
2000 Frick Building
Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

COPY

FILED

SEP 18 2000
m/11:55 AM
William A. Shaw
Prothonotary

2 CENTS TO ATTY

E. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

PRAECIPE FOR ORAL ARGUMENT

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly place the Preliminary Objections of defendant, Clearfield County Jail, on the
next available argument list.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By:



MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
Clearfield County Jail

Copy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

Code No.

PRAECIPE FOR APPEARANCE

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
2000 Frick Building
Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

FILED

SEP 14 2000

William A. Shaw
Prothonotary

P0545558.1

N THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

No. 00-636-CD

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance on behalf of the defendant, CLEARFIELD COUNTY JAIL, in the above-captioned matter.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By:

Marie Milie Jones, Esq.

MARIE MILIE JONES, ESQUIRE

Counsel for Defendant,
CLEARFIELD COUNTY JAIL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon all parties either individually or through counsel by:

Hand-Delivery
 First-Class Mail, Postage Prepaid
 Certified Mail-Return Receipt Requested
 Facsimile
 Federal Express

at the following addresses:

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: 9/12/2000

Marie Milie Jones/CK
MARIE MILIE JONES, ESQUIRE

Counsel for Defendant,
CLEARFIELD COUNTY JAIL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

CIVIL DIVISION

Plaintiff,

No. 00-636-CD

vs.

Code No.

CLEARFIELD COUNTY JAIL,

PRAECIPE FOR ORAL ARGUMENT

Defendant.

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

ERIC R.I. COTTLE, ESQUIRE
PA I.D. #78512

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
2000 Frick Building
Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

FILED

SEP 18 2000
11:55 AM
William A. Shaw
Prothonotary

2 cent to AT&T

ES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

PRAECIPE FOR ORAL ARGUMENT

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly place the Preliminary Objections of defendant, Clearfield County Jail, on the
next available argument list.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By: 

MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
Clearfield County Jail

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading has been served upon all parties either individually or through counsel by:

✓

Hand-Delivery
First-Class Mail, Postage Prepaid
Certified Mail-Return Receipt Requested
Facsimile
Federal Express

at the following addresses:

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: September 15, 2000

MARIE MILIE JONES, ESQUIRE

Marie Milie Jones/ERA
Counsel for Defendants,
Clearfield County Jail

FILED

SEP 18 2000

William A. Shaw
Prothonotary

In the Court of Common Pleas of Clearfield County, Pennsylvania

Robert L. Hammick Jr., plaintiff

v.

Sam Lombardo, Warden CCJ

Christa Clarkson, Assistant Deputy Warden CCJ

Clearfield County Jail

No. 00-636-CD

~~REDACTED~~ Petition for Permission to Amend Complaint

The following enclosed complaint is respectfully submitted to hopefully adhere to Pennsylvania Rules of Civil Procedure so that dismissal of complaint with prejudice has been properly defeated or remedied.

October 2, 2000

Respectfully submitted,

Robert L. Hammick Jr.

petitioner pro se

FILED

OCT 04 2000

11:30 AM

William A. Shaw
Prothonotary

WU C/C EO
726

In the Court of Common Pleas of Clearfield County, Pennsylvania

Robert L. Harnick Jr., plaintiff

v.

Sam Lombardo, Warden CCJ

66-636-CD

Christa Clarkson, Assistant Deputy Warden CCJ

Clearfield County Jail

COMPLAINT

1. Plaintiff has been incarcerated at Clearfield County Jail since January 19, 2000. I was trustee of E block, did painting and small maintenance details in jail.
2. Plaintiff initially injured back while assembling Universal weight station. Plaintiff was left unsupervised and assisted by only 2 inmates in assembly of weight station. Mr. Sam Lombardo created an unsafe work environment by not requiring proper assistance, equipment, and proper supervision for work detail.
3. Plaintiff ultimately became immobile, suffering grave pain, and severe trauma while lifting trays after dinner.
4. Corrections officers were summoned since plaintiff was unable to stand, walk, roll over, or crawl, and all the while was experiencing excruciating pain. Assistant Deputy Warden arrived, questioned plaintiff, and summoned wheelchair.
5. Plaintiff alleges that A.D.W. committed gross negligence by not obtaining proper medical assistance for assessment of injury.
6. Plaintiff alleges injury was greatly aggravated by being pulled off of bed, placed in wheelchair, and transferred to holding cell where I was placed on cot with 2 mattresses while under supervision of A.D.W. Clarkson.
7. Plaintiff alleges that due to lack of experience and training in diagnosing, treating, and transporting inmates with lower back injuries, that A.D.W. Clarkson subjected plaintiff to conduct which enhanced, aggravated, and traumatized the injury already suffered. A.D.W. Clarkson subjected plaintiff to unnecessary risk and grave pain through this lack of knowledge and experience.

8. Plaintiff was taken to hospital approximately 12:00 noon the next day, approximately 18 hours after guards were summoned. Plaintiff was left on cot overnight to needless suffering and further risk of aggravating injury while under direct supervision of A.D.W. Clarkson and Warden Sam Lombardo.

9. Warden Sam Lombardo supervised transporting plaintiff to hospital. Plaintiff had to be assisted in putting pants on, loaded into wheelchair, loaded into front seat of van, unloaded from van, wheeled into emergency room, loaded back into wheelchair, loaded into van, unloaded into wheelchair, then placed on cot, all the while plaintiff was in grave pain, aggravating the injury, suffering severe trauma to lower back.

10. Plaintiff was left in holding cell approximately 5 days. Plaintiff was totally immobile and had to crawl onto wheelchair to toilet and nurses station as only conveyance. Due to this gross negligence, plaintiff was subjected to unnecessary suffering; aggravating injury, and severe trauma, due to lack of proper medical equipment available at Clearfield County Jail.

11. Plaintiff saw doctor in jail 1 week after injury. Doctor diagnosed plaintiff as possibly having a ruptured or herniated disc and severe trauma to muscles and ligaments to lower back.

12. Doctor ordered plaintiff not to sit down as sitting greatly aggravated injury. Wheelchair was only matter of conveyance provided for 1 week. Plaintiff was continued on medication and told to wait and see. Plaintiff continued to see doctor for 2 months awaiting further diagnosis of injury and treatment.

13. Plaintiff was taken to a neurologist 2 months after initial injury. I was put through limited range of motion test and diagnosed as probably not having a herniated disc. I was given a chart with exercises although he recommended some kind of physical therapy. I have followed his advice on exercises and stretching to little or no avail.

My name?
John

14 Plaintiff told Warden Sam Lombardo that although plaintiff was mobile that I still suffered extreme pain and muscle spasms throughout lower back. Plaintiff has tired of trying to get proper diagnosis as it is obviously of no interest to anyone.

15. Plaintiff needs further treatment, therapy, and diagnosis. Plaintiff continues to suffer from injury. No remedy for injury has been achieved.

16. That Warden Sam Lombardo, through his zeal to keep down costs for medical care, purposely, maliciously, and negligently failed to provide plaintiff with proper, adequate, and sufficient medical care, diagnosis, and treatment.

17. Warden Sam Lombardo, knowing the plaintiff was not a whiner or a faker, should of obtained medical remedy for injury. His intentional delay, disregard, and deprivation of medical treatment caused plaintiff great harm, suffering, and injury, should warrant punitive damages in excess of \$10,000.00.

18. Plaintiff suffered and is still suffering from injury to lower back. Defendants still have no idea of what type of injury occurred. Wherefore the plaintiff claims to recover from the defendants for compensatory damages in excess of \$10,000.00.

19. That A.D.W. Clarkson through her inexperience and lack of training in safeguarding and transporting people with lower back injuries subjected plaintiff to further injury and suffering. Wherefore the plaintiff claims to recover from the defendants, punitive damages in excess of \$10,000.00.

20. The ambulatory medical facilities unavailable, coupled with staff's inexperience and lack of training caused needless pain, suffering, and further injury. Wherefore the plaintiff claims to recover from the defendants, punitive damages in excess of \$10,000.00.

By reason of aforesaid premises the plaintiff claims to recover from the defendants in excess of \$10,000.00 and therefore brings this suit.

September 25, 2000

Robert L. Haenick Jr.
petitioner pro se

In the Court of Common Pleas of Clearfield County, Pennsylvania

Robert L. Hammick Jr., plaintiff

vs.

Warden Sam Lombardo, Assistant Deputy Warden

Christa Clarkson, Clearfield County Jail, Defendants

No. 00-636-CD

General Form of Answering Containing Admissions and Denials

1. Paragraphs 1, 2, 3 of defendant's preliminary objections are admitted.

2. Paragraph 5 of defendant's preliminary objections are denied. Plaintiff handed complaint and Return of Service to a guard via inmate mail. It was then delivered to Warden Lombardo, who then neglected to sign and return the receipt.

3. Paragraph 6 of defendant's preliminary objections are denied. This objection pertains to the other lawsuit, No. 00-881, a clerical error I guess. It is noted however Mr. Lombardo's blatant disregard of legal process.

4. Paragraph 7 of defendant's preliminary objections are denied. The plaintiff handed complaint to a guard. Complaint was not mailed. However amended complaint will be properly served.

5. The balance of paragraphs are respectively declined and denied comment until defendant has time to review amended complaint.

October 2, 2000

Respectively submitted,
Robert L. Hammick Jr.
petitioner pro se

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBERT L. HARMICK, JR.,
Plaintiff

*

*

*

vs.

* NO. 2000-636-C.D.

*

*

*

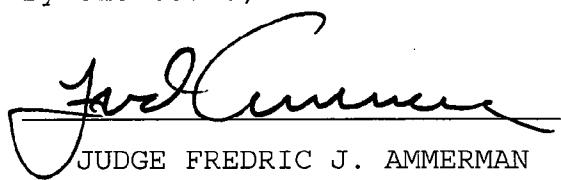
CLEARFIELD COUNTY JAIL,
Defendant

O R D E R

NOW, this 2nd day of November, 2000, due to the unavailability of the Court this date, it is the ORDER of this Court that telephone conference on Defendant's Preliminary Objections and Plaintiff's Petition for Permission to Amend Complaint scheduled for today at 11:30 a.m. be and is hereby continued.

It is the FURTHER ORDER of this Court that the Court Administrator is hereby directed to both parties of a new date and time for the Court to hear these matters.

By the Court,


JUDGE FREDRIC J. AMMERMAN

FILED

NOV 07 2000

William A. Shaw
Prothonotary

FILED

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8/10:49 AM 1cc PLS. Harnet
William A. Shaw
Prothonotary
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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBERT HARMICK, JR., : No. 00-636-CD
Plaintiff :
:

vs. :
:

CLEARFIELD COUNTY JAIL, :
Defendant :
:

FILED

JAN 23 2001

William A. Shaw
Prothonotary

OPINION AND ORDER

Robert Harmick, Jr., Plaintiff, acting *pro se*, commenced the immediate action on June 2, 2000, by filing a complaint with the prothonotary and serving the same upon Sam Lombardo, Warden of the Clearfield County Jail, via inmate mail. The Plaintiff alleges, from what can be garnered by a liberal reading of the complaint, that the Jail was negligent in its supervision of the Plaintiff and in the care the Plaintiff received following an alleged back injury. Plaintiff states that he was injured while assembling a universal weight machine and, at some later time, lifting a stack of empty trays. Plaintiff seeks two million dollars in damages. The Defendant, acting through its attorney, timely filed Preliminary Objections. Plaintiff responded by filing an amended complaint on October 4, 2000, which attempted to cure certain defects and to join additional defendants, however he failed to serve

the same. On December 15, 2000, oral arguments were heard on the preliminary objections via telephone. The Court now considers those objections.

Defendant's first objection is to improper service of the complaint. Our Supreme Court has stated that the requirements of the Pennsylvania Rules of Civil Procedure govern the validity of service of process and must be strictly followed. Sharp v. Valley Forge Medical Center, 221 A.2d 185 (Pa. 1996). Once a complaint has been filed, original process shall be served within the Commonwealth within thirty days. Pa. R.C.P. No. 401(a). Original process shall be served by the sheriff, or, in the alternative, it may be served by a competent adult who is not a party in specifically enumerated types of actions. Pa. R.C.P. No. 400(a)(b).

In the present case, Plaintiff served the original complaint upon Sam Lombardo, Warden, Clearfield County Jail via inmate mail¹. Because our rules do not permit service of process via the mail, Defendant's objection to service of the original complaint shall be granted. Similarly,

¹

Plaintiff's "Proof of Service" certifies that he served the complaint pursuant to Pa. R.C.P. 1915.3. This rule governs the procedure for filing an action for custody, partial custody and visitation of minor children. The rule does not govern service in any instance and Plaintiff's reliance on this rule may have contributed to his fatal mistake.

Plaintiff failed to serve the amended complaint in any form whatsoever. Notably, in Plaintiff's "General Form of Answering Containing Admissions and Denials," Plaintiff recognized this shortcoming at paragraph 4 and stated "...amended complaint will be properly served." Because the amended complaint was not served, and pursuant to the mandate of our Supreme Court that our rules of procedure must be strictly followed, Defendant's objection 1 is granted.

The second objection argues that Plaintiff's complaint violates Pa. R.C.P. No. 1019 which requires that the material facts on which a cause of action is based shall be stated in a concise and summary form. "Material facts" as contemplated by the rule, are ultimate facts which are essential to support the claim. Baker v. Rangos, 324 A.2d 498 (Pa. Super. 1974).

The pleadings in this matter do not satisfy this rule. The plaintiff makes several general conclusory statements that certain people were negligent, but he fails to set forth the facts upon which these allegations rest. As neither complaint sets forth the requisite material facts to support his claim, objection 2 shall be granted.

The third objection to the Plaintiff's complaint is that it fails to conform to Pa. R.C.P. No. 1020 which

requires, *inter alia*, that each cause of action be stated in a separate count containing a demand for relief. In Plaintiff's complaints, he fails to specifically set forth any cause of action, at all, including negligence. This Plaintiff repeatedly used the terms "negligence" and "gross negligence" throughout the pleadings, and it is inferred that the Plaintiff intended to aver a negligence claim. Plaintiff has also stated that two different events caused his injury, and that several persons at different times contributed to his injury. Because it appears that Plaintiff has attempted to allege more than one cause of action in nonconformity to Rule 1020, Defendant's objection number 3 shall be granted.

Defendant's fourth and final objection is to the substance of the pleadings in the form of a demurrer pursuant to Pa. R.C.P. No. 1028(a)(4). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

J.E.J. v. Tri-County Big Brothers/Big Sisters, Inc., 692 A.2d 582, 584 (Pa. Super. 1997). Where any doubt exists as to whether a demurrer should be sustained it should be resolved in favor of overruling the demurrer. Id. Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint as failing to set forth a

cause of action upon which relief can be granted under any theory of law. McCaskill v. Philadelphia Housing Authority, 615 A.2d 382 (Pa. Super. 1992).

In order to plead negligence, the plaintiff must demonstrate that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff and the plaintiff suffered an actual loss or damage. Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 40 (Pa. Super. 2000). Where the allegations are adequately set forth, a *pro se* complaint will not be dismissed just because it is not artfully drafted. ei bon ee baya ghanaee v. Black, 504 A.2d 281, 283 (Pa. Super. 1986).

Turning to the pleadings, although neither was properly served and is consequently not viable, for the purpose of ruling on this objection, the complaints shall be considered as one. Even upon a liberal reading Plaintiff has not alleged the elements necessary to support a negligence claim. The Plaintiff has not alleged that the Clearfield County Jail owed a duty to the Plaintiff, that the Jail breached the duty, or that the breach caused his injuries. Plaintiff simply rambles on for pages upon pages that he was mistreated after he allegedly hurt his back. The Plaintiff does not state that the Jail's breach of a duty caused his

injury. Furthermore, it is difficult to ascertain the actual injury. Plaintiff alleges at paragraph 8 of the original complaint, that he was diagnosed as "having possibly ruptured or herniated disc [sic]" and then later at paragraph 13 of the amended complaint that he was diagnosed as "not having a herniated disc" and at paragraph 18 of the same complaint that "Defendant's still have no idea of what type of injury occurred." It is not doubted that Plaintiff may have hurt his back, but accepting all the facts alleged in the complaint as true, this Plaintiff has not set forth the facts necessary to support a negligence claim. At best, he merely alleges that he was injured while working at the jail which is insufficient to render a recovery.

Consequently, Defendant's Exception 4 shall be granted.

ORDER

NOW, this 20th day of January, 2001, having considered the pleadings and briefs submitted in the above-captioned matter, it is the ORDER of this Court that, pursuant to the above Opinion, Defendant's Preliminary Objections be GRANTED and Plaintiff's Complaint is hereby DISMISSED.

BY THE COURT,



Fredric J. Ammerman

Fredric J. Ammerman, Judge

Dated: January 20, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

CIVIL DIVISION

Plaintiff,

No. 00-636-CD

vs.

Code No.

CLEARFIELD COUNTY JAIL,

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS**

Defendant.

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

JURY TRIAL DEMANDED

ERIC R.I. COTTLE, ESQUIRE
PA I.D. #78512

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Firm No. 198
2000 Frick Building
Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

RECEIVED

OCT 08 2000

**COURT ADMINISTRATOR'S
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

I. ARGUMENT

The plaintiff, Robert L. Harmick, pro se, has filed this civil action against the above named defendant for pain and suffering due to an alleged injury to his back which occurred at the Clearfield County Jail. Allegedly, while working at the jail, the plaintiff injured his lower back while assembling a universal weight station and lifting a stack of empty trays after dinner.

Although it is not clear from the complaint, the plaintiff seems to allege that the Clearfield County Jail did not provide the proper medical care and/or treatment for these injuries. Plaintiff seeks damages in the amount of \$2 million dollars for pain and suffering as a result of defendant's conduct.

a. Improper Service

Plaintiff has failed to properly serve the complaint on the defendant in accordance with Pennsylvania Rules of Civil Procedure. This failure is fatal to plaintiff's case. Indeed, there is not indication on the record docket that service was effectuated properly by either the Sheriff or by a competent adult with a return of service as required by law.

In Pennsylvania, an action may be commenced by the filing of a praecipe for writ of summons or by filing a complaint. Pa.R.C.P. 1007(1) - (2). In addition, service of process in a civil action must be made by the Sheriff. Pa.R.C.P. 400, 401, and 402.

Here, the complaint contains a "proof of service and return" which states that the complaint was served to the Warden of the Clearfield County Jail on August 10, 2000. The complaint, however, was mailed to the Warden of Clearfield County Jail via United States Postal Service regular mail and was not properly served as mentioned above.

This method of service is improper under rules and therefore the complaint should be dismissed with prejudice.

b. Demurrer/Insufficient Specificity in the Complaint

A demurrer can only be sustained when the complaint is clearly insufficient to establish the pleader's right to relief. Pursuant to Rule 1028(a)(4), the defendant asserts that the complaint is insufficient as a matter of law.

For the purposes of testing the legal sufficiency of a pleading, a preliminary objection in the nature of a demurrer admits is true all well pleaded materials, relevant facts, and every inference fairly deductible from those facts. The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer bald.

The complaint is a 12 paragraph rambling narrative that states that the plaintiff injured his back while working in the prison. The material facts in which plaintiff's cause of action is based, however, is not stated in a concise summary form as required under the Rules of Civil Procedure. See Pa.R.C.P. 1019. Other than the conclusionary statement that the plaintiff hurt his back, there are no facts contained within the complaint itself that will support a claim negligence against the defendant. In fact, negligence is not specifically

plead within the complaint. Plaintiff's conclusionary and narrative statements alone, without alleging any specific facts that will support a cause of action, are in sufficient as a matter of law.

In addition, the complaint appears to set forth a claim for punitive damages in that plaintiff's prayer for relief claims in excess of \$2 million dollars. The complaint, however, fails to state facts sufficient to support a finding of gross negligence or willful misconduct on the part of the defendant.

The bald and conclusionary statement that the plaintiff was subjected to is unnecessary pain, suffering and trauma due to defendant's negligence, without more, does not state the cause of action upon which relief can be granted.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By: 

MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
Clearfield County Jail

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading has been served upon all parties either individually or through counsel by:

✓

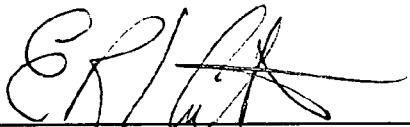
Hand-Delivery
First-Class Mail, Postage Prepaid
Certified Mail-Return Receipt Requested
Facsimile
Federal Express

at the following addresses:

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: October 4, 2000



MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendants,
Clearfield County Jail

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

CIVIL DIVISION

Plaintiff,

No. 00-636-CD

vs.

Code No.

CLEARFIELD COUNTY JAIL,

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS**

Defendant.

Filed on Behalf of Defendant,
CLEARFIELD COUNTY JAIL

Counsel of Record for this Party:

MARIE MILIE JONES, ESQUIRE
PA. I.D. #49711

JURY TRIAL DEMANDED

ERIC R.I. COTTLE, ESQUIRE
PA I.D. #78512

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Firm No. 198
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Pittsburgh, PA 15219-6194

Telephone No.: (412) 261-6600
Fax No.: (412) 471-2754

RECEIVED

OCT 06 2000

**COURT ADMINISTRATOR'S
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT L. HARMICK, JR.,

Plaintiff,

vs.

CLEARFIELD COUNTY JAIL,

Defendant.

CIVIL DIVISION

No. 00-636-CD

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I. ARGUMENT

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Although it is not clear from the complaint, the plaintiff seems to allege that the Clearfield County Jail did not provide the proper medical care and/or treatment for these injuries. Plaintiff seeks damages in the amount of \$2 million dollars for pain and suffering as a result of defendant's conduct.

a. Improper Service

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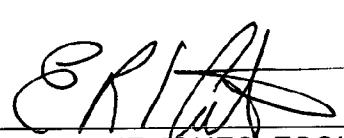
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In addition, the complaint appears to set forth a claim for punitive damages in that plaintiff's prayer for relief claims in excess of \$2 million dollars. The complaint, however, fails to state facts sufficient to support a finding of gross negligence or willful misconduct on the part of the defendant.

The bald and conclusionary statement that the plaintiff was subjected to is unnecessary pain, suffering and trauma due to defendant's negligence, without more, does not state the cause of action upon which relief can be granted.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By: 

MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendant,
Clearfield County Jail

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading has been served upon all parties either individually or through counsel by:

✓

Hand-Delivery
First-Class Mail, Postage Prepaid
Certified Mail-Return Receipt Requested
Facsimile
Federal Express

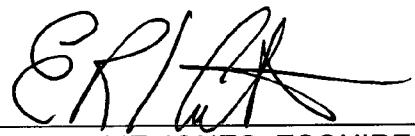
at the following addresses:

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: September

October 4, 2000


MARIE MILIE JONES, ESQUIRE
ERIC R.I. COTTLE, ESQUIRE

Counsel for Defendants,
Clearfield County Jail



(A) 12-15-00 - 1130

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

November 6, 2000

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

765/189

Marie Milie Jones, Esquire
Meyer, Darragh, Buckler,
Bebenek & Eck
2000 Frick Building
Pittsburgh, PA 15219

412/6600
261/6600

RE: ROBERT L. HARMICK, JR.
vs.
CLEARFIELD COUNTY JAIL
No. 00-636-CD

Dear Counsel:

With regard to the above matter, please be advised that argument on Defendant's Preliminary Objections and Plaintiff's Petition for Permission to Amend Complaint has been rescheduled from November 3, 2000 to Friday, December 15, 2000 at 11:30 A.M. by Telephone Conference at the initiation of the Court.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Honorable Fredric J. Ammerman
Sam Lombardo, Warden, CCJ



(A)

11-3-00 - 1130

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

October 9, 2000

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

Marie Milie Jones, Esquire
Meyer, Darragh, Buckler,
Bebenek & Eck
2000 Frick Building
Pittsburgh, PA 15219

RE: ROBERT L. HARMICK, JR.
vs.
CLEARFIELD COUNTY JAIL
No. 00-636-CD

Dear Counsel:

With regard to the above matter, Attorney Jones has filed Preliminary Objections and Brief in support thereof on behalf of Defendant. Plaintiff has filed a Petition for Permission to Amend Complaint.

Oral argument on these matters is scheduled for Friday, November 3, 2000 at 11:30 A.M. by Telephone Conference at the initiation of the Court.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Honorable Fredric J. Ammerman
Sam Lombardo, Warden, CCJ

11-3-00
12-15-00
11-28

*186 635 A.2d 186

430 Pa.Super. 551

Superior Court of Pennsylvania.

Jeffrey D. HILL, Appellant,

v.

Ralph W. THORNE, Appellee.

Submitted Aug. 23, 1993.

Filed Dec. 9, 1993.

Criminal defendant filed pro se complaint against court-appointed attorney alleging legal malpractice. The Court of Common Pleas of Lycoming County, Civil Division, No. 90-01666, Gates, J., dismissed complaint. Criminal defendant appealed. The Superior Court, No. 380 Harrisburg 1992, Olszewski, J., held that: (1) criminal defendant could properly file complaint and commence legal proceedings by sending copies of complaint to prothonotary and sheriff by certified mail, and (2) new standard for legal malpractice claims would be applied retroactively on remand to criminal defendant's complaint and criminal defendant would be permitted to amend complaint to comply with that standard.

Reversed and remanded.

West Headnotes

[1] Attorney and Client ~~☞~~ 129(1)

45 ----

45III Duties and Liabilities of Attorney to Client

45k129 Actions for Negligence or Wrongful Acts

45k129(1) In General; Limitations.

[See headnote text below]

[1] Pretrial Procedure ~~☞~~ 560

307A ----

307AIII Dismissal

307AII(B) Involuntary Dismissal

307AIII(B)2 Grounds in General

307Ak560 Process, Defects and Objections as To.

Pro se plaintiff could properly file legal malpractice complaint and commence legal proceedings by sending copies to prothonotary and sheriff by certified mail, and it was not his fault when prothonotary thereafter refused to forward copies to sheriff and sheriff refused to serve

anything which did not come from prothonotary and, thus, complaint would not be dismissed for improper service particularly when defendant received copy of complaint via certified mail, a practice which was proper service in other circumstances. Rules Civ.Proc., Rules 205.1, 400, 403, 42 Pa.C.S.A.; Const. Art. 1, § 11.

[2] Attorney and Client ~~☞~~ 129(2)

45 ----

45III Duties and Liabilities of Attorney to Client

45k129 Actions for Negligence or Wrongful Acts

45k129(2) Pleading and Evidence.

To plead legal malpractice, complaint must allege employment of attorney or other basis for duty on part of attorney; failure of attorney to exercise ordinary skill and knowledge; and negligence by attorney which was proximate cause of damage to plaintiff.

[3] Pleading ~~☞~~ 34(3.5)

302 ----

302I Form and Allegations in General

302k34 Construction in General

302k34(3.5) Pro Se or Lay Pleadings.

(Formerly 45k62)

Where the three necessary elements of cause of action for legal malpractice are adequately set forth, pro se complaint will not be dismissed just because it is not artfully drafted.

[4] Pleading ~~☞~~ 216(1)

302 ----

302V Demurrer or Exception

302k216 Scope of Inquiry and Matters

Considered on Demurrer in General

302k216(1) In General.

Any doubts about sustaining preliminary objections in nature of demurrer should be resolved in favor of overruling demurrer.

[5] Attorney and Client ~~☞~~ 129(2)

45 ----

45III Duties and Liabilities of Attorney to Client

45k129 Actions for Negligence or Wrongful Acts

45k129(2) Pleading and Evidence.

Criminal defendant stated legal malpractice cause of action against court-appointed attorney by alleging attorney had legal duty to represent him, that attorney failed to exercise ordinary skill and knowledge, and that attorney's failure to get his case dismissed resulted in prolonged incarceration and

irreversible harm to criminal defendant's reputation as well as any wrongful imprisonment and mental, physical and psychological harm and suffering.

[6] Attorney and Client  112

45 ----

45III Duties and Liabilities of Attorney to Client
45k105 In General; Negligence or Malpractice
45k112 Conduct of Litigation.

To bring malpractice action against defense attorney, criminal defendant/plaintiff must establish employment of attorney; reckless or wanton disregard of defendant's/plaintiff's interest by attorney; but for attorney's conduct, defendant/plaintiff would have attained acquittal or complete dismissal of charges; as a result of failure to acquit or dismiss, criminal defendant/plaintiff suffered damages; and defendant/plaintiff has pursued posttrial remedies and obtained relief based upon attorney's error.

[7] Courts  100(1)

106 ----

106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) In General; Retroactive or Prospective Operation.

New rule of law normally applies retroactively, although the choice is one of judicial discretion and must be made on case-by-case basis.

[8] Courts  100(1)

106 ----

106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) In General; Retroactive or Prospective Operation.

In determining retroactivity of new rule of law, Superior Court is to consider purpose to be served by new rule, extent of reliance on old rule, and effect on administration of justice by retroactive application of new rule.

[9] Courts  100(1)

106 ----

106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) In General; Retroactive or Prospective Operation.

New pleading requirements set forth by Supreme

Court in *Bailey v. Tucker* for pleading legal malpractice claim against one's criminal defense counsel would be applied retroactively on remand for pro se criminal defendant bringing action against court-appointed attorney; retroactive application of new standard furthered public policy of discouraging frivolous litigation, while leaving intact criminal defendant's access to other systemic remedies, such as appeals and postconviction proceedings, and by allowing criminal defendant opportunity to amend complaint upon remand, he would not be prejudiced by his previous reliance on older pleadings standard.

*187 [430 Pa.Super. 553] Jeffrey D. Hill, appellant, pro se.

Joseph D. Smith, Williamsport, for appellee.

Before OLSZEWSKI, POPOVICH and HESTER, JJ.

OLSZEWski, Judge:

Jeffrey Hill appeals an order dismissing his complaint against attorney Ralph Thorne. The trial court dismissed the complaint for Hill's failure "to conform to the Pennsylvania Rules of Civil Procedure." In examining the trial court's rather summary opinion accompanying the above order, we have some difficulty determining exactly how Hill failed to conform to the rules. The trial court does refer us to an opinion in a different action by Hill, in which that court more [430 Pa.Super. 554] thoroughly set forth its reasons for dismissing the action. *See Hill v. Holland, et al.*, 414 Pa.Super. 675, 599 A.2d 706 (1991). We have obtained a copy of this opinion, and can now proceed to address Hill's *pro se* appeal.

Hill's present action appears to be a malpractice claim against one of his court-appointed attorneys, Ralph Thorne. In addressing another appeal of Hill's, we discovered that Thorne had managed to get this Court's affirmation of Hill's criminal convictions reversed by the Pennsylvania Supreme Court. Despite this unusual success, Hill alleges malpractice, arguing that Thorne should have procured a complete dismissal, not merely a remand for a new trial.

We also cannot help but note that Hill has filed numerous suits against not only his court appointed counsel, but district attorneys, judges and other

county officials. Most of Hill's handwritten motions, appeals, etc. show little respect for judicial officers, but fire insults and invective in every direction. In the present appeal, Hill describes the Lycoming County Court of Common Pleas as a "Legalized Mafia." Hill's preferred epithet for this Court is "you sanctimonious hypocrites." The essence of Hill's appeal seems to be that "[t]he prothonotary, the sheriff, and the judge along with the defendant who is an officer in their court don't want me feeding the crooked Lycoming County kangaroo court anymore crow, so they conspired to stop me and are currently involved in shirking responsibility for their dirty, devious political chicanery and skullduggery." Appellant's brief at 4. At least Hill is a colorful writer.

But our task is to determine if the lower court erred in dismissing Hill's complaint. The trial court apparently based its dismissal on two grounds: lack of jurisdiction for failure to properly serve process, and failure to state a cause of action. We will address the service of process issue first.

I.

[1] Our review of the record before us indicates that Hill attempted to begin this action by sending (via certified mail) [430 Pa.Super. 555] copies of his complaint, with instructions for service, to both the prothonotary and the sheriff. The prothonotary apparently lost the original complaint, but later was given a copy by defendant Thorne. The prothonotary did not forward a copy of the complaint to the sheriff for service. Meanwhile, the sheriff did not regard the complaint which Hill mailed directly to him as process which he was required to serve. Hence, original process was never served on defendant Thorne by the sheriff, as required by Pa.R.C.P. 400.

Hill argues that under Pa.R.C.P. 205.1, he could properly file his complaint and commence legal proceedings by sending copies to *188 the prothonotary and sheriff by certified mail. It is not his fault, Hill contends, if the prothonotary refuses to forward copies to the sheriff, and the sheriff refuses to serve anything which doesn't come from the prothonotary. We agree.

Even if Hill's style of litigation might strike one as distasteful or annoying, he has a constitutional right to be heard in our courts. Article I, § 11 of the

Pennsylvania Constitution provides:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

It is difficult to determine from the record before us exactly why Hill's complaint was never served by the Lycoming County Sheriff. The trial court's opinion merely tells us that "[t]he record does not show a return of service by the Sheriff." Hill provides us with bits of affidavits and testimony which support his contention that the prothonotary refused to forward any of his complaints to the sheriff, and the sheriff refused to serve anything not forwarded from the prothonotary. The record also discloses that the Lycoming County Sheriff never notified Hill of the success or failure of service, pursuant to Pa.R.C.P. 405(g). Hill has also provided us with returns of service from Centre and Mercer Counties, to show that he has had no problems getting process served there. [430 Pa.Super. 556] Finally, Hill argues that in the face of repeated inaction by the prothonotary and sheriff, he did the only reasonable thing: he served defendant Thorne directly by certified mail. Indeed, the record indicates that when the prothonotary lost Hill's complaint, Thorne produced a copy to replenish the prothonotary's files.

In its opinion, the trial court offered no response to Hill's contention that the sheriff consistently refused to serve process for him. Rather, the trial court opined that since Hill was proceeding *pro se*, he must be "encountering difficulties in mastering and complying with the Rules of Civil Procedure." Trial court opinion, 4/15/92 at 2. The trial court, without specifying precisely what procedural rules Hill disregarded, dismissed his complaint on this basis.

We are mindful of our caselaw holding that the service requirements of Pa.R.C.P. 400 be strictly followed. *See, e.g. Sharp v. Valley Forge Medical Center*, 422 Pa. 124, 221 A.2d 185 (1966). But our review of the record, such as it is, convinces us that Hill is quite familiar with our procedural rules, and has done everything he can to comply with them. We have held that untoward circumstances, such as interference by a third party which prevents delivery of process to the sheriff, can excuse a plaintiff from

the strictures of Rule 400. *Sweet v. Ayres*, 277 Pa.Super. 236, 419 A.2d 749 (1980). Here, it appears that the prothonotary did not properly handle Hill's complaint by delivering it to the sheriff for service. When a constitutional right is at stake, we cannot avert our eyes to the apparent "untoward circumstances" which have prevented Hill from obtaining proper service of process.

At this point we might remand and order the sheriff to properly serve Hill's complaint, so as to bring Thorne into the trial court's jurisdiction. In some circumstances, however, interests of judicial economy allow us to "regard as done that which ought to have been done." *McCormick v. Northeastern Bank of Pennsylvania*, 522 Pa. 251, 254, n. 1, 561 A.2d 328, 330, n. 1 (1989). Here, defendant Thorne has received a copy of the complaint via certified mail, a practice which constitutes proper service in other circumstances. *See Pa.R.C.P. 403*. In [430 Pa.Super. 557] order to better secure a just, speedy and inexpensive determination in this action, we will regard Hill's personal service as satisfactory, since it is at most a technical defect of procedure which does not affect the substantial rights of the parties. *See Pa.R.C.P. 126*; Pa. Const. Art. I, § 11. We therefore reverse the trial court's order dismissing Hill's complaint for improper service.

II.

It appears that the trial court, by reference to an earlier opinion, also bases its dismissal on Hill's failure to state a cause of action in his complaint. The notion of an indigent criminal defendant suing his court- *189 appointed counsel for malpractice may strike us as impudent, but such a cause of action has been recognized by this Court. *Quick v. Swem*, 390 Pa.Super. 118, 568 A.2d 223 (1989) (convicted criminal defendant's suit against public defender for legal malpractice not barred by the Post Conviction Relief Act, 42 Pa.C.S.A. § 9542, *et seq.*).

[2][3][4] In order to plead legal malpractice, Hill's complaint must allege the three necessary elements of this cause of action: "(1) the employment of the attorney or other basis for a duty on the part of the attorney; (2) the failure of the attorney to exercise ordinary skill and knowledge; and (3) negligence by the attorney which was the proximate cause of damage to the plaintiff." *Quick, supra*, at 121, 568

A.2d at 224 (citations omitted). (FN1) Where these allegations are adequately set forth, a *pro se* complaint will not be dismissed just because it is not artfully drafted. *See ei bon ee baya ghananee v. Black*, 350 Pa.Super. 134, 504 A.2d 281 (1986). Any doubts about sustaining preliminary objections in the nature of a demurrer should be resolved in favor of overruling the demurrer. *Id.* at 138-39, 504 A.2d at 283.

[430 Pa.Super. 558] [5] We have obtained a copy of Hill's handwritten complaint in this matter, and we must disagree with the trial court's summary conclusion that it fails to state a cause of action. Unlike Hill's other court papers which have come before us, this complaint is organized, polite, understandable and thorough. Hill devotes one section to each of the three elements of his malpractice claim. Most of the factual allegations are supported by citations to earlier court documents and transcripts. Some of Hill's claims sound vague or mysterious, but Hill presents several straightforward claims which, if proven true, would establish a claim for legal malpractice.

The best evidence that Hill has stated a cognizable claim in his complaint is the complaint itself:

LEGAL MALPRACTICE COMPLAINT

I, Jeffrey D. Hill, the plaintiff in the above-captioned matter, respectfully present the following in my legal malpractice action against the defendant, attorney Ralph W. Thorne:

1. Attorney Ralph W. "Pat" Thorne was ordered by the Pa.Supreme Court-MD at the end of January 1989 to file a brief on my behalf for 1988 Pa.Supreme Court-MD# 28 Appeal Docket by the beginning of March 1989. He was my court-appointed appellate counsel for the 1988 Pa.Supreme Court-MD# 28 Appeal Docket.

Hill thus satisfies the first element of a malpractice claim, by alleging that defendant Thorne had a legal duty to represent him. The complaint continues:

2. Attorney Ralph W. "Pat" Thorne failed to exercise ordinary skill & knowledge possessed by an average attorney in his representation of me in 1988 Pa.Supreme Court-MD# 28 Appeal Docket.

A. He failed to thoroughly review the stewardship

of his predecessors & raise all instances of ineffectiveness of prior counsel (trial & appellate).

[430 Pa.Super. 559] B. He failed to raise issues of arguable merit along with the ineffectiveness of trial and 1st appellate counsel for failing to pursue these issues of arguable merit

At this point, Hill sets forth more than ten specific allegations, organized into categories. Some of the factual allegations are difficult to understand, but others, such as Thorne's failure to challenge allegedly perjured testimony, are clear and supported by citations to trial transcripts. Hill also alleges some very specific legal omissions, the most central being Thorne's failure to object to testimony under the "Incontrovertible Physical Facts Rule of Evidence." (FN2) Hill has thus satisfied ***190** the second element of a legal malpractice claim: specifically alleging how his attorney failed to exercise ordinary skill and knowledge.

Finally, Hill alleges in his third section that Thorne's failure to get his case dismissed for the above reasons "has resulted in my prolonged incarceration & irreversible harm to my reputation as well as my wrongful imprisonment" ... and "mental, physical, & psychological harm & suffering to me." Hill thus satisfies the third element of a legal malpractice claim: that his attorney's negligence has proximately caused him damages.

We must disagree with the trial court that Hill's complaint is too vague and disorganized to state a cause of action. On the contrary, Hill's complaint is both concise and highly specific, and alleges all the elements which at that time were [430 Pa.Super. 560] necessary to state a claim for legal malpractice. This Court has allowed far more imprecise complaints to survive a demurrer. *See ei bon ee baya ghananee, supra*. The order dismissing Hill's complaint for these reasons must therefore be reversed, and Hill's action must be remanded for further proceedings.

III.

[6] We note that our Supreme Court has recently changed the requirements for pleading a legal malpractice claim against one's criminal defense counsel. *Bailey v. Tucker*, 533 Pa. 237, 621 A.2d

108 (1993). Now, in order to bring a malpractice action against his defense attorney, a criminal defendant/plaintiff must establish the following elements: (1) the employment of the attorney; (2) reckless or wanton disregard of the defendant/plaintiff's interest by the attorney; (3) but for the attorney's conduct, the defendant/plaintiff would have obtained an acquittal or a complete dismissal of the charges; (4) as a result of this failure to acquit or dismiss, the criminal defendant/plaintiff suffered damages; and, (5) defendant/plaintiff has pursued post-trial remedies and obtained relief based upon the attorney's error. *Id.* at 250-51, 621 A.2d at 115. (FN3)

[7][8] A new rule of law, such as the new pleading requirements announced in *Bailey, supra*, normally applies retroactively, though the choice is one of judicial discretion and must be made on a case-by-case basis. *See Blackwell v. Commonwealth State Ethics Commission*, 527 Pa. 172, 183, 589 A.2d 1094, 1099 (1991). In determining retroactivity, we are to consider (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect on the [430 Pa.Super. 561] administration of justice by the retroactive application of the new rule. *Id.*

[9] The new, more rigorous pleading requirements of *Bailey* are designed to serve numerous purposes. By reducing the threat of subsequent malpractice liability, criminal defense attorneys will be better able to represent their clients fearlessly and independently; they will be less likely to compromise their professional judgment and cater to their clients' potentially unwise demands. Qualified and capable attorneys will not be discouraged from engaging in criminal defense work. Also, public policy should not allow an actually guilty defendant to profit from his crime by attacking peripherally negligent aspects of his defense attorney's performance. The heightened pleading standards ***191**. also discourage frivolous litigation, while leaving intact the criminal defendant's access to other systemic remedies, such as appeals and post-conviction proceedings. *See Bailey, supra* 533 Pa. at 245 -48, 621 A.2d at 112-13.

At least some of these purposes will be well served by applying the new *Bailey* standard to the present case. Also, by allowing Hill the opportunity to amend his complaint upon remand, he will not be prejudiced by his previous reliance on the older

pleading standard. Nor will the administration of justice be unduly burdened by retroactive application of the new *Bailey* standard, since we are remanding for further proceedings in this case. Therefore, in accordance with our general policy that new appellate rules of law should be applied retroactively, and after considering the specifics of the case before us, we choose to apply the pleading requirements set forth in *Bailey* to the present case.

The order dismissing Hill's complaint is reversed, and this case is remanded for further proceedings consistent with this opinion. Jurisdiction is relinquished.

(FN1.) Our Supreme Court has recently changed the requirements for pleading legal malpractice against a criminal defense attorney. *See Bailey v. Tucker, infra.* Our present task, however, is to determine if Hill's complaint was properly dismissed under the pleading standard then in effect.

(FN2.) *See* Maurice H. Brown, *Pennsylvania Evidence, A Handbook* (1949) at 8. The rule states that a jury will not be permitted "to find as a fact that which is contradicted by the incontrovertible physical facts and hence cannot be true." Hill alleges that testimony about his

altercation at the Muncy Post Office which resulted in his arrest and conviction (and for which Thorne was representing him on appeal) was physically inconsistent with the layout of the Post Office vestibule doors. Hill argues that Thorne should have used this evidentiary rule to get his case dismissed, or at least to get a special jury charge. Had Thorne done so, Hill argues, the testimony of the Commonwealth's chief witness would have been stricken, or at least called into doubt, and Hill would not have been falsely convicted and imprisoned for a crime he alleges was a frame-up. Hill thus satisfies the requirement that the negligence alleged be the proximate cause of the plaintiff's injuries. *See Ibn-Sadiqa v. Riester*, 380 Pa.Super. 397, 551 A.2d 1112 (1988).

(FN3.) To avoid statute of limitations problems, trial courts are directed to reserve their rulings on a defense attorney's demurrer until the criminal defendant/plaintiff's post-conviction proceedings have been resolved. *Id.*, n. 13. Even if the criminal defendant/plaintiff does establish ineffective assistance of counsel through the post-trial remedy process, this is not enough in itself to establish the requisite level of culpable conduct now required for a malpractice action. *Id.*, n. 14.



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

November 6, 2000

Robert L. Harmick, Jr.
c/o Clearfield County Jail
410 21st Street
Clearfield, PA 16830

Marie Milie Jones, Esquire
Meyer, Darragh, Buckler,
Bebenek & Eck
2000 Frick Building
Pittsburgh, PA 15219

RE: ROBERT L. HARMICK, JR.
vs.
CLEARFIELD COUNTY JAIL
No. 00-636-CD

Dear Counsel:

With regard to the above matter, please be advised that argument on Defendant's Preliminary Objections and Plaintiff's Petition for Permission to Amend Complaint has been rescheduled from November 3, 2000 to **Friday, December 15, 2000 at 11:30 A.M.** by Telephone Conference at the initiation of the Court.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Honorable Fredric J. Ammerman
Sam Lombardo, Warden, CCJ