

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TREMEL FAVORS	: No. 02-01789
Plaintiff	:
	:
vs.	:
	:
	:
WEST BRANCH DRUG and ALCOHOL:	:
ABUSE COMMISSION, FIRETREE,	:
INC., and CROSSROADS, INC.,	:
Defendants	: 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order docketed December 2003, which dismissed the plaintiff's complaint with prejudice. The relevant facts follow.

On October 2, 2002, the plaintiff filed a pro se complaint against West Branch Drug & Alcohol Abuse Commission (hereinafter "West Branch"), Firetree, Inc. (hereinafter "Firetree"), Connewago Wernersville (hereinafter "Connewago") and John Doe. The plaintiff captioned his complaint as one for medical professional liability. The Sheriff served the complaint on West Branch, Firetree and Connewago on October 23, 2002.

Firetree and West Branch filed preliminary objections to the plaintiff's complaint on October 29, 2002 and November 12, 2002, respectively. On November 6, 2002, the plaintiff filed a request for leave to amend his complaint and attached thereto was an amended complaint. Since Rule 1028(c)(1) allows a party to file an amended pleading as of course within twenty days after service of preliminary objections, the Court granted the

plaintiff's request to amend and deemed the original preliminary objections moot in an Order dated November 13, 2002 and docketed November 14, 2002.

On November 19, 2002, the plaintiff filed a withdrawal of his complaint and amended complaint. On that same date, the plaintiff filed a second amended complaint and an addendum to the second amended complaint. Both filings contained the label "medical professional liability" in the caption. In these pleadings, the plaintiff only brought claims against West Branch and Firetree. Neither Connewago nor John Doe was named as a defendant. Although Crossroads was mentioned in the complaint, it also was not named as a defendant.

West Branch and Firetree filed preliminary objections to the plaintiff's second amended complaint and addendum on December 2, 2002 and December 4, 2002, respectively.

On December 6, 2002, the plaintiff filed a second addendum to his second amended complaint. On December 26, 2002, the plaintiff filed a third amended complaint. On December 30, 2002, the plaintiff filed an addendum to his third amended complaint.

On January 13, 2003, Firetree filed a motion to set aside all filings by the plaintiff. The motion noted the frequency with which the plaintiff filed pleadings and other documents and the inability of the defendants to respond to each of the plaintiff's numerous, incomprehensible filings. The motion was a response to all the plaintiff's filings and a 're-filing' of the previous preliminary objections. Firetree also sought a stay of any further proceedings until the Court could rule on the issues raised in the preliminary objections.¹

¹ Firetree's concern, which was shared by West Branch and the Court, was the plaintiff kept filing amendments and addendums that did not correct the deficiencies the defendants' pointed out in their preliminary objections.

On March 3, 2003, the plaintiff filed a motion to join Crossroads, Inc. (hereinafter “Crossroads”) as a defendant and attached a ‘superseding amendment complaint.’ On March 12, 2003, the plaintiff filed an addendum to the superseding amendment complaint.

On March 28, 2003, the Court held an argument on Firetree’s motion to set aside and the preliminary objections previously filed by Firetree and West Branch. During the argument, which was not on the record, the Court noted that a plaintiff in a professional liability case would need to present expert testimony regarding negligence and causation. The plaintiff acknowledged he did not have an expert witness. See Order docketed May 6, 2003. The Court urged the plaintiff to consult with an attorney and gave him thirty days to file a final amended complaint that complied with the Rules of Civil Procedure.

On April 24, 2003, the plaintiff filed an amended complaint. The sheriff served this complaint on West Branch and Crossroads on April 30, 2003. Firetree was served on May 5, 2003. West Branch and Firetree filed preliminary objections to the plaintiff’s amended complaint.

On May 23, 2003, Christopher Reeser, Esquire entered his appearance on behalf of Crossroads. On that same date, Mr. Reeser filed a notice of stay because the Commonwealth Court placed Crossroad’s insurance carrier, Legion Insurance Company, in rehabilitation effective April 2, 2002. Pursuant to the Commonwealth Court’s Order all actions against an insured of Legion were stayed from the effective dated of the Order. In light of this notice filed by Crossroads, the Court continued the argument on West Branch

If the Court did not do something, plaintiff’s filings would continue to moot the defendants’ preliminary objections, see Pa.R.Civ.P. 1028(c)(1), even though the plaintiff’s filings were not correcting the issues and

and Firetree's preliminary objections and stayed all proceedings in this case until the Commonwealth Court's stay order was no longer in effect.² See Order docketed May 30, 2003.

Despite the stay order, the plaintiff continued to file and/or attempted to file more pleadings and documents in this case. The plaintiff filed a document titled "Affidavit" on July 11, 2003. In addition, there are two undocketed addendums in the file dated June 5, 2003 and July 8, 2003.

On October 28, 2003, Crossroads filed preliminary objections to the plaintiff's amended complaint of April 24, 2003.

The plaintiff filed an "amended complaint nunc pro tunc" on November 26, 2003.

On December 9, 2003, Firetree filed a praecipe for judgment of non pros against the plaintiff for failing to file a certificate of merit. Pa.R.Civ.P. 1042.3, 1042.6. Since the Court had stated in its previous orders that it found the plaintiff's pleadings incomprehensible and the case was scheduled for argument on the defendants' preliminary objections, the Prothonotary did not enter a judgment of non pros and indicated the request for non pros should be addressed by the Court. Later that morning, the Court held an argument on all the defendants' preliminary objections. The Court granted the preliminary objections, noted the plaintiff did not file a certificate of merit as required by Rule 1042.3, and dismissed the plaintiff's complaint with prejudice.

On January 6, 2004, the plaintiff filed a notice of appeal. The Court issued an

problems raised by the defendants in their preliminary objections.

² The stay remained in effect until October 27, 2003. See Crossroads' preliminary objections, para. 2.

Order directing the plaintiff to file a concise statement of matters complained of on appeal. On February 2, 2004, the plaintiff filed a document purporting to be a concise statement of matters complained of on appeal, but which does not state the plaintiff's appeal issues. Instead, it appears to be another attempt at amending his complaint. Since the Court is unsure of the issues the plaintiff is raising in his appeal, it will merely offer a brief explanation of why it granted the defendants' preliminary objections and dismissed the plaintiff's complaint.

The Court granted the defendants' preliminary objections and dismissed the plaintiff's complaint for several reasons. First, despite having several opportunities to amend his complaint as a matter of course within twenty days of the filing of the preliminary objections and through leave of Court pursuant to the Order docketed May 6, 2003, the plaintiff failed to set forth sufficient **facts** (as opposed to legal conclusions) to state a claim against the defendants upon which relief could be granted. The original complaint and the first couple of amendments/addendums only contained negligence claims. For a negligence claim, the plaintiff must allege facts that would establish: (1) duty; (2) breach; (3) causation; and (4) damages. Although the plaintiff made conclusory allegations that the defendants owed a duty to him to provide mental health care free of charge, he did not assert any facts to support such a duty. Apparently the plaintiff was referred to West Branch for drug and alcohol evaluation and treatment. West Branch then referred him to Firetree. The plaintiff, however, fails to explain how a drug and alcohol referral creates a duty on the defendants to evaluate or treat him for depression or to provide him with prescription medications for depression free of charge.

Even if the Court were to assume for the sake of argument that the defendants

had such a duty, the Rules of Civil Procedure require a plaintiff asserting a professional liability claim to file a certificate of merit. Pa.R.Civ.P. 1042.3. As is evidenced by the Order docketed May 6, 2003, the Court informed the plaintiff of the need for expert testimony on the issues of liability and causation. The plaintiff acknowledged he did not have any expert testimony. The Court gave the plaintiff an opportunity to amend to comply with Rules of Civil Procedure, including Rule 1042.3, but he failed to do so. Although the Court only gave the plaintiff thirty days to amend, due to the stay order the plaintiff actually had nearly six months to address the deficiencies in his complaint and to obtain a certificate of merit. If a plaintiff fails to comply with Rule 1042.3, judgment may be entered against him. Here, the plaintiff failed to comply with Rule 1043.3. Therefore, it was proper to dismiss his complaint.

In an apparent attempt to avoid the need for expert testimony, the plaintiff began to attempt to add other causes of action to his complaint, such as breach of contract, promissory or equitable estoppel, breach of fiduciary duty, misrepresentation and fraud. As with his original claims, the plaintiff pleaded legal conclusions and not facts. For example, the plaintiff claimed there was a contract between West Branch and Firetree to which he was an intended third party beneficiary, but he failed to state the substance of the relevant terms or provisions of the contract or how he was an intended third party beneficiary. Not only did the failure to allege these facts result in the failure to state a claim, but it also resulted in a violation of Rule 1019(h) and (i). With each amendment, the plaintiff pleaded fewer facts and more legal jargon. Due to the scarcity of facts in the plaintiff's complaint, the defendants could not file an answer and had to keep filing preliminary objections to try to get the plaintiff to comply with the Rules of Civil Procedure.

Making matters worse, the plaintiff repeatedly violated Rule 1020 by failing to separate each cause of action against each defendant into a separate count. Despite repeated preliminary objections raising this issue, the plaintiff failed or refused to separate his claims against West Branch from his claims against Firetree and to separate his claims against Firetree from his claims against Crossroads.

The combination of the plaintiff's failure to plead facts and failure to comply with Rules 1019, 1020 and 1042.3, resulted in pleadings that were incomprehensible and impossible for the defendants to answer.

The plaintiff filed his first complaint on October 2, 2002. Over the course of a year, he filed ten complaints, amendments and/or addendums. None of them were in compliance with the Rules of Civil Procedure, none of them pleaded facts to establish a cause of action against the defendants, and none of them were comprehensible enough for the defendants to file an answer and defend the case. After ten pleadings, the Court felt the defendant either could not or would not correct the deficiencies and the case should be dismissed with prejudice.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Tremel Favors, FC-0205
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