

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NORMAN E. JOHNSON,	:	NO. 02-00,800
Plaintiff	:	Civil Action - Law
	:	Preliminary Objections
V.	:	
	:	
ANGELA HAAS, M.D., WILLIAM	:	
KEENAN, M.D., JEFFREY	:	
VERZELLA, M.D., AJAY KOSHEY,	:	
M.D., KIM POORMAN, Nurse, and	:	
JOYCE FAIRFAX, Nurse	:	
Defendants	:	

**Date: April 6, 2004**

**ORDER**

The background of this Order is that on May 13, 2002, the action was commenced by the filing of a complaint. Thereafter, on June 11, 2002, an amended complaint was filed. On October 8, 2002, Defendant Haas filed an affidavit of non-involvement, and the Court entered an Order filed October 21<sup>st</sup> indicating that if there was no response to the affidavit of non-involvement, that the action against Defendant Haas would be dismissed. The Court also notes that in the interim, on June 6, 2002, the Plaintiff filed a notice of intent to take a default judgment. Thereafter, no further action occurred in this case until preliminary objections were filed by the Defendants, Haas, Keenan, Verzella, and Koshey, on February 3, 2004, raising as a preliminary objection that there had never been any service effected in accordance with Pennsylvania Rules of Civil Procedure 400(a). No response to the preliminary objections has been filed. At argument today, which was held on the record, the Plaintiff has acknowledged the accuracy of the factual pleadings of the preliminary objections to the extent that service by a sheriff was never made, nor was service ever accepted, but, rather, that service had been attempted by the Plaintiff through mailing copies of the complaint to counsel for the Defendants, who

have filed the motion, and, also, attempted service was made on the remaining Defendants, Poorman and Fairfax, by mailing a copy to their counsel, with the Court noting that by reference to counsel, we are referring to the fact that in a federal action that had been dismissed before this case was filed, the same parties were involved, and the Plaintiff sent the complaint in this case to the counsel that were involved in the federal litigation on behalf of the named defendants.

Also at argument today, counsel for the Defendants, Poorman and Fairfax, has made an oral motion to dismiss in the way of a preliminary objection based upon the same failure to effect service.

The Court notes that, typically, preliminary objections have to be filed in writing. However, in oral argument, the Plaintiff has acknowledged the statement of counsel for Poorman and Fairfax as would regard their intention that they also were never properly served.

Given the foregoing, this Court finds that the Plaintiff has failed to effect in a timely manner service upon the parties. The Court also has heard the Plaintiff state on the record this date his acknowledgment that rather than follow through with service in this action, that he chose to file a new action, which is docketed to No. 02-01,253, against the same defendants. The Court believes, therefore, that in the interest of justice and appropriate minimization of legal proceedings, that it is appropriate to entertain the motion to dismiss made today by Defendants Poorman and Fairfax, as well as the preliminary objections of the other named defendant physicians.

It is clear from the pleadings filed by Plaintiff and his on-the-record statements of this date that:

- 1.) Plaintiff alleges he has suffered a personal injury resulting from inappropriate medical care rendered to him in the

months of July through December 2000 while he was incarcerated in the Lycoming County Prison.

2.) Plaintiff was aware at least as early as January 2001 that he had suffered an injury as a result of the asserted medical care.

3.) Plaintiff has taken no action since July 2002 to effect service on the Defendants or to seek any re-issuance of process in this action.

As a result of the foregoing undisputed facts, it is clear that the statute of limitations has expired as to the Defendants named in this litigation. Accordingly, this Order is entered:

Based upon the Defendants not being served in a timely manner and Plaintiff's acknowledgment made on the record this date that rather than pursue service in this action, that he instituted another action to No. 02-01,253, it is hereby ORDERED AND DIRECTED that the within action captioned above is hereby DISMISSED with prejudice. Each party shall pay their own costs.

BY THE COURT:

William S. Kieser, Judge

cc: Norman E. Johnson, ES 6785 -  
SCI-Somerset, 1600 Walters Mill Road, Somerset, PA 15510  
R. Read, Esquire  
B. Bluth, Esquire  
G. Weber, Esquire  
No. 02-01,253  
WSK/lb