

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAWN BALL,	:	DOCKET NO. 11-01,420
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	
	:	
LT. SAVAGE, <i>et. al.</i>	:	
Defendants.	:	PLRA

OPINION AND ORDER

Before the Court are the following motions and petitions: Plaintiff's motion for judgment on the pleadings, Defendants' petition to open a default judgment, petition to revoke Plaintiff's in forma pauperis (IFP) status and dismiss the complaint as a frivolous prisoner lawsuit pursuant to Pennsylvania Prison Litigation Reform Act (PLRA), 42 Pa. C.S. § 6601, et. seq. and motion to stay or amend the scheduling Order.¹ Upon consideration of arguments and briefs in this matter, and for the reasons that follow, Defendant's petition to strike the default judgment is GRANTED; Plaintiff's motion for judgment on the pleadings is DENIED; Defendants' petition to revoke IFP status and dismiss complaint pursuant to PRLA, 42 Pa. C.S. § 6602(f), is GRANTED as follows.

Procedural Background

Plaintiff Dawn Ball filed a complaint on August 19, 2011 against Lt. Savage, Lt. Hummel, Major Bechdel, Deputy Smith, Lt. Sisley, Lt. Sipe, Troy Edwards, Nancy Giroux and

¹ The motions/petitions were filed as follows. On June 20, 2014, Defendants filed a petition to open or strike the default judgment. On July 16, 2014, Plaintiff filed a motion for judgment on the pleadings for Defendants' failure to file a pleading in response to her "new matter." On July 28, 2014, Defendants' petitioned to revoke Plaintiff's IFP status and dismiss the complaint as a frivolous prisoner lawsuit pursuant to PLRA. On August 4, 2014, Defendants filed a motion to stay or amend the scheduling order. Argument was held on August 29, 2014. After argument, on November 10, 2014, plaintiff filed a motion to compel discovery. Though not pending at the time of argument the motion will be addressed in this Order. Additional briefing was afforded subsequent to argument but nothing further was submitted.

Lt. Barto, for \$18,000 plus costs for allegedly destroying her personal property.² On August 25, 2011, an Order was entered granting Plaintiff leave to proceed in forma pauperis pursuant to Pa. R.C.P. 240.³ Without any motion to amend, approval by the Court, or consent by the Defendants, Plaintiff added Maurica George's name as a defendant listed in the caption of her praecipe to reinstate the complaint and added Maurica George to the caption and ¶ 2 to the copy of her original complaint and filed those documents on March 10, 2014. On March 13, 2013, the Sheriff served Lt. Savage, Lt. Hummel, Superintendent Robert Smith F/K/A deputy Smith, Lt. Sisley, Edwards Troy, Lt. Barto, George Maurica, Lt. Sipe, Major Bechdel, Nancy A. Giroux. On April 1, 2014, Defendants filed an answer to Plaintiff's complaint with new matter. In their new matter, Defendants raised sovereign immunity. On April 8, 2014, Plaintiff filed an Answer to Defendant's new matter and included "with new matter by the plaintiff" in the title. This document included allegations under the heading "new matter" and included a notice to plead. Defendants never filed any pleading in response. On May 16, 2014 a default judgment was entered against Maurica George by the Prothonotary.

Factual Background

Plaintiff, Ms. Dawn Ball, is an inmate incarcerated at the State Correctional Institution at Muncy (SCI-Muncy). Defendants are employees of SCI-Muncy. On September 17, 2010, Ms. Ball was transferred from SCI-Muncy to SCI-Cambridge Springs. Prior to her transfer,

² On March 21, 2013, Counsel entered an appearance on behalf of the defendants Lt. James Savage, Lt. Hummel, Major Bechdel, Deputy Superintendent Robert Smith, Lt. George Sisley, St. Sipe, Troy Edwards, Superintendent Nancy Giroux and Lt. Barto and demanded a jury trial.

³ A summary of further procedural background follows. The docket reflects no activity from date of the Order granting IFP status until March 14, 2013, when Plaintiff filed a notice of intent to enter a default judgment. The file suggests that there was correspondence between the Plaintiff and the Prothonotary during that time period but nothing was docketed. On May 28, 2013, an Order was entered striking the default judgments entered by the Prothonotary on May 8, 2013 because the record did not disclose that the defendants were properly served with the complaint. By Order entered July 9, 2013, the court dismissed Plaintiff's objection and motion for reconsideration to the striking of the default judgment. The Court noted that Plaintiff was required to have the Sheriff serve original process. Plaintiff received Orders with respect to the Sheriff being required to serve the complaint without requiring fees or costs.

employees of SCI-Muncy packed and inventoried Ms. Ball's personal property. Ms. Ball's property totaled five boxes. Ms. Ball avers that she was told her property would be sent home. Ms. Ball contends that she was later told that the property would be sent to SCI-Cambridge Springs, and then told it would remain at SCI-Muncy. Defendants contend that Ms. Ball did not have enough money in her prison account to ship the property to SCI-Cambridge. On March 14, 2011, Ms. Ball returned to SCI-Muncy and learned that some of her personal property was destroyed.⁴ Ms. Ball filed a grievance. After an investigation, Defendants concluded that 3 and ½ boxes of Ms. Ball's property were destroyed. The grievance was upheld in part and denied in part, with Ms. Ball being awarded "reasonable replacement costs" consistent with her expenditures on commissary purchases. Ms. Ball was not allowed reimbursement or compensation for items that she may not have purchased herself or which were gifted to her by various organizations. Defendants aver that they credited Ms. Ball's inmate account in the amount of \$144.69. Ms. Ball is claiming \$18,000, plus the costs of suit.

⁴Ms. Ball's Exhibit "A" lists 105 items identified as all of Ms. Ball's property destroyed. The items are as follows: 1 pair of shorts, 3 commissary t-shirts, 2 commissary panties, 5 pairs of commissary socks, 1 shower cap, 1 crocheted hat, 1 robe, 2 crocheted scarves, 1 pair of Reebok shower-shoes, 1 razor, 2 petroleum jellies, 1 nail clippers, 2 mirrors, 8 eye liners, 8 Lubriderm lotions, 8 lipsticks, 20 bobby pins, 1 hair pick, 1 hair gel, 2 face make ups (compacts w/ blush, eye shadows & lipsticks), 6 eye make-ups (3 mascaras, 3 eye shadows), 4 commissary Deodorants (2 suave – 2 lady clear gel), 2 boxes of Oral-b dental floss, 3 hair conditioners (1 Pantene, 2 Next1), 6 commissary combs (4 were side hair combs, 2 were big combs), 2 vent brushes, 1 long john top, 1 long john bottom, 1 sweat shirt, 1 sweat pants, 36 hair rollers (soft green ones), commissary sanitary napkins, 4 shampoos (1 Pantene, 3 Next1), 1 shaving cream (Neet), 6 commissary soaps, 1 soap dish, 1 Tide soap powder, 2 baby powders, 1 box of tampons, 2 commissary toothbrushes, 4 tooth pastes, 10 soups (6 cups – 4 bags), 1 cigg roller, 3 boxes of cake, 2 lighters, 1 squeeze cheese, 4 bags of chili, 10 commissary greeting cards, 10 crocheted items (2 head bands, 7 hair scrunches, 1 afghan), 2 hair clips, 1 personal eye glasses worth \$150 from Nazareth Optical, 20 postage paid commissary envelopes, 2 dictionaries, 2 cups, numerous colored pencils, 2 packs of carbon paper, 1 commissary white laundry bag, 1 box of tea bags, 2 bags of sugar, 1 bag of pretzels, 10 bags of pretzels, 10 bags of peanuts and cashews, 1 box of hot chocolate, 2 peach drink mixes, 1 creamer, 2 boxes of cheese Ritz crackers, 3 packages of cookies, 1 bag of coffee, 6 bags of chips, 4 meats, 10 candy bars, 2 bags of candy-chocolate, 4 crocheted key chains, 10 legal packs, 20 magazines, 2 sewing needles, 4 commissary notebooks, 10 comm. Pencils, 1 pencil sharpener, 8 comm. Pens, 1 deck of paying cards, 2 poster, 1 rug, 2 commissary spoons, 2 no sarys (sic), 2 scapulars, 6 pads of yellow paper, 1 thread and needle kit, 2 packs of tissue, 1 green big wash tub, 2 packs of whit commissary typing paper, 1 pack of white writing paper from commissary, 2 face creams, 44 hair ties, 1 bowl, 1 journal sent from a friend, 33 commissary journals, 3 date books, 20 shampoo packs, 6 wall calendars, tons of mail, cards, photos sent to me by family and friends, letters I wrote – tons, legal work – tons, 3 manila envelopes filled with my drawings, 14 bookmarks, 53 books gone – including legal books.

1. DEFAULT JUDGMENT AGAINST MAURICA GEORGE

The Court concludes that the Defendants' petition to open/strike the default judgment entered against Maurica George should be granted. The original complaint filed in this matter did not include Maurica George in the caption, nor was Maurica George identified as a defendant in the complaint. *See, Plaintiff's Original Complaint, ¶ 2.* Almost three years after the original complaint was filed, on March 10, 2014, Plaintiff praeciped to reinstate her complaint. In her praecipe to reinstate the complaint, Ms. Ball added Maurica George to the caption. Ms. Ball also filed a copy of the handwritten complaint - with Maurica George added to the caption and to ¶ 2 – as the reinstated complaint. Plaintiff provided this altered reinstated complaint to the Sheriff for service and Maurica George was served. However, no petition to amend the caption or complaint was ever filed in this matter. No leave to amend the caption or complaint was ever granted in this matter. Nothing purporting to be an amended complaint was ever filed. Defendants' answer specifically denied that Maurica George was a defendant. *See, Defendants' Answer, April 1, 2014, ¶ 2.* The Court concludes that George Maurica was never properly a defendant in this matter. Therefore a default judgment entered is a fatal defect apparent upon the record. The Default Judgment against George Maurica shall be stricken.⁵

2. PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants did not file a responsive pleading to Plaintiff's pleading filed on April 8, 2014 titled "Plaintiff's Answer to defendant's new matter with new matter by the Plaintiff." That document included a notice to plead. As the Court believes that the new matter portion of the document filed by Plaintiff on April 8, 2014 was not a permissible pleading under the

⁵Even had a petition to amend been filed, the Court would not have permitted the addition of a defendant after the expiration of the statute of limitations. Moreover, even had Maurica George been a defendant in this matter, Plaintiff failed to fully comply with Pa. R.C.P. Rule 237.1 and 237.5 requiring certification that the notice of intent to file the praecipe was mailed or delivered at least 10 days in advance. The ten day notice and certification filed by Plaintiff did not include Maurica George among the defendants listed.

Pennsylvania Rules of Civil Procedure, Defendants were under no obligation to reply. See, Pa. R.C.P. Rules 1017; 1030; 1031; 1031.1, 1029(d), 1034. As a result, the allegations in Plaintiff's New Matter are deemed **denied** pursuant to Pa. R.C.P. 1029(d) and are not admitted pursuant to Pa. R.C.P. 1034. Therefore, Plaintiff is not entitled to a judgment on the pleadings.

3. PLRA

Defendants seek dismissal of this Complaint pursuant to PLRA as a prison conditions lawsuit barred because of abusive prior prison conditions litigation pursuant to 42 Pa. C.S. § 6602(e) and (f). PLRA defines "Prison conditions litigation" as:

--A civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the **effects of actions by a government party on the life of an individual confined in prison**. The term includes an appeal. The term does not include criminal proceedings or habeas corpus proceedings challenging the fact or duration of confinement in prison. 42 Pa. C.S. § 6601 (emphasis added).

The present case falls within the definition of prison conditions litigation. Instantly, Plaintiff alleges and Defendants admit that prison officials destroyed some of Ms. Ball's personal property while Ms. Ball was an individual confined in prison. As a result, this action is subject to the limitations prescribed in 42 Pa. C.S. § 6602(e) and (f).

In pertinent part, the PLRA requires the dismissal of prison conditions litigation as follows.

(e) Dismissal of litigation. --Notwithstanding any filing fee which has been paid, the court **shall dismiss prison conditions litigation** at any time, including prior to service on the defendant, **if the court determines any of the following**:

(2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

(f) Abusive litigation. --If the prisoner has previously filed prison conditions litigation and:

(1) three or more of these prior civil actions have been dismissed pursuant to subsection (e)(2) ***

42 Pa. C.S. § 6602 (f) is commonly referenced as the “three strikes rule” under PLRA. In determining whether to revoke IFP status under the three strikes rule, Pennsylvania Commonwealth Courts have considered whether the plaintiff had filed at three or more prison conditions cases that have generally been dismissed as frivolous or malicious, for failure to state a claim or for other reasons set forth in 42 Pa. C.S. § 6602(e) such as immunity. *See, e.g., Brown v. Pa. Dep’t of Corr.*, 58 A.3d 118, 121 (Pa. Commw. 2012); *Lopez v. Haywood*, 41 A.3d 184, 185 (Pa. Commw. 2012); *Jae v. Good*, 946 A.2d 802, 805 (Pa. Commw. 2008).

In the present case, Ms. Ball has previously filed three or more prison conditions civil actions that have been dismissed for reasons set forth in 42 Pa. C.S. § 6602(e). *See*, Exhibits A-D of Defendants Motion to Revoke Plaintiff’s IFP Status and Dismiss Complaint.⁶ The case does not involve any allegations of imminent danger of serious bodily injury to Ms. Ball. As a result, the Court concludes that Ms. Ball’s IFP status should be revoked and upon failure to pay the filing fee within 60 days, the instant matter should be dismissed pursuant to 42 Pa. C.S. § 6602 (f).

⁶ *Ball v. Counselor Hartman, et. al.*, 1: CV 09-0844 (dismissed a defendant as immune), *Ball v. C.O. Oden, et. al.*, 1: CV – 09-847 (dismissed for failure to state a claim); *Ball v. Butts*, 1:CV-11-1068 (dismissed on grounds of absolute immunity); appeal dismissed by the Third Circuit as frivolous, *Ball v. Butts*, No. 11-2862 (3rd Cir. September 21, 2011).

ORDER

AND NOW, this **21st day of November, 2014**, it is ORDERED and DIRECTED as follows.

1. Plaintiff's motion for judgment on the pleadings is DENIED;
2. Defendant's petition to open/strike a default judgment is GRANTED; The default judgment against Maurica George is stricken. Maurica George is not properly a defendant in this matter and any reference to Maurica George shall be stricken;
3. Defendants' petition to revoke IFP status and dismiss pursuant to PRLA § 6602 (f), is GRANTED as follows;
 - a. The Prothonotary shall compile a list of the filing fees and costs associated with this matter that Ms. Ball would have had to pay had she not been granted IFP status and mail that information to Ms. Ball within **20 days** of this Court's Order; Ms. Ball shall pay those fees and costs **within 60 days** of receiving the information from the Prothonotary or this matter is DISMISSED.
4. Defendants' motion to alter the scheduling Order is GRANTED; all case management scheduling is stayed pending payment of the costs or dismissal. Specifically, Plaintiff's motion to compel discovery is stayed pending the payment of costs in this matter. Upon payment of costs by Plaintiff, the Court will issue an amended scheduling Order.

BY THE COURT,

November 20, 2014
Date
(see attached distribution list)

Richard A. Gray, J.

cc: **Dawn Ball, OL-0342**
SCI-Muncy
BOX 180, Route 405
Muncy, PA 17756-0180

Raymond W. Dorian, Esq.
Pa. Dept. of Corrections
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

Prothonotary (Please see Order, ¶ 3a: “The Prothonotary shall compile a list of the filing fees and costs associated with this matter that Ms. Ball would have had to pay had she not been granted IFP status and mail that information to Ms. Ball within 20 days of this Court's Order[.]”