

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHAD RILEY and MARK PHILLIPS,

Plaintiffs

No. 17 - 1501

v.

MARK LUSK,

Defendant

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LYCOMING COUNTY
2019 JUL 29 AM 10:46
SUZANNE M. FEDELE
PROTHONOTARY
CLERK OF COURTS

Procedural History

In 2017 Plaintiff Chad Riley ran against Defendant Mark Lusk for Lycoming County Sheriff. Soon after Mark Lusk was elected, Plaintiff Riley was told by the Sheriff that he would no longer be getting any work from the Sheriff's office. Plaintiff Riley's Complaint alleges that other constables who had supported him were told the same thing, and that Mark Lusk communicated the same thing to the Magistrates. Plaintiff contends that Mark Lusk had no authority over the constables or to limit their work through the Magistrates. Defendant Lusk filed his Motion for Summary Judgement on April 11, 2019; Plaintiffs Riley and Phillips filed a response and brief in opposition on May 8, 2019. A reply brief was filed by Defendant Lusk on June 18, 2019, and argument was held on July 8, 2019.

Summary Judgment

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971

(citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)). "In determining the existence or non-existence of a genuine issue of a material fact, courts are bound to adhere to the rule of *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932) which holds that a court may not summarily enter a judgment where the evidence depends upon oral testimony. *Penn Ctr. House, Inc. v. Hoffman*, 520 Pa. 171, 176, 553 A.2d 900, 903 (Pa. 1989). The Pennsylvania Supreme Court held that in order to defeat a Motion for Summary Judgment, Plaintiff must show sufficient evidence on any issue essential to his case and in which he bears the burden of proof such that a jury could return a verdict in his favor. *Ertel v. Patriot-News Co.*, 544 Pa. 93, 674 A.2d 1038 (1996) rearg. den., 117 S.Ct. 512. With this standard in mind, the Court provides the following discussion.

Discussion

Rule 1907.2 of the Pennsylvania Rules of Judicial Administration provides that (a) The Court Administrator shall establish uniform policies, procedures and standards of conduct for constables who perform services for the courts. These policies, procedures and standards of conduct shall be mandatory for all judicial districts and constables engaged to perform services for any court of the unified judicial system. Section (b) of Rule 1907.2 provides that the president judge of a judicial district is authorized to enact policies and procedures consistent with those established by the Court Administrator in section (a) as local rules pursuant to Pa.R.J.A. No. 103(c). Any policies and procedures enacted by the president judge of a judicial district that may deviate from the uniform policies, procedures and standards of conduct for constables established by the Court Administrator must be approved by the Court Administrator before promulgation. *See* Pa.R.J.A. No. 505(1). Finally, Section (c) of Rule 1907.2 states that President Judges are responsible for implementing the provisions set forth in this rule within their respective judicial districts.

In the instant matter, the AOPC's rules grant authority to President Judge Butts to enact policies and procedures in relation to the management of constables. President Judge Butts has the authority to intervene if she does not agree with the Sheriff's organization of services provided by constables in Lycoming County. No such intervention has taken place. Plaintiff's

reliance on *In re Act 147 of 1990*, 528 Pa. 460, 598 A.2d 985 (1991), which held that constables are independent contractors belonging to the executive branch of government, does not impact President Judge Butts' procedural authority.

Lycoming County does not have a written rule regarding the organization of constables, but the interrogatory responses provided by President Judge Butts clearly establish that the involved parties were all aware of the organizational procedure:

"There are no policies in place giving the Sheriff jurisdiction over the constables in Lycoming County, either written or unwritten. Organizing the constables has been an issue for many years before Defendant became Sheriff, so when he offered to take on the task, I did not object. However, the system that has developed is solely in place because it has proven convenient for the parties involved, and is not the result of any Court policy."

"I neither granted any authority to, nor took any authority away from, the Sheriff with respect to the supervision and/or management of the constables. I would only get involved in constable matters, if there was some sort of problem between the Sheriff and the MDJs that could not be solved without my intervention. Otherwise, I let the Sheriff and MDJs work out any issues they may have had amongst themselves."

From President Judge Butts' answers it is clear that Lycoming County's procedure allows the Sheriff to manage the extent to which constables receive warrant work. It is undisputed that Plaintiffs Chad Riley and Mark Phillips were removed from the Sheriff's approved list. This list does not preclude the Magisterial District Judges from utilizing the services of the Plaintiffs; discovery responses revealed that Magisterial District Judge Frey continues to utilize the Plaintiffs in their capacity as constables. Plaintiffs Riley and Phillips have not provided sufficient evidence to support any contention that elected officials cannot advise other elected officials as to the budgetary impact of paying for constables out of their own budget.

Plaintiffs Riley and Phillips have conceded that they are independent contractors and not employees. Plaintiffs have not provided any law or evidence that they should be afforded any

protection in their capacity as independent contractors, nor have they provided any evidence to support the notion that this Court has the power to order the use of specific independent contractors. Said authority lies solely with President Judge Butts, who chose to delegate authority with respect to management of constables to the sheriff.

Having established Plaintiff Riley and Phillips status as independent contractors, this Court does not agree with Plaintiff's argument that constables are independent contractors acting without supervision. Plaintiff's reliance on *In re Act 147 of 1990*, 528 Pa. 460, 598 A.2d 985 (1991) does not mesh with the AOPC guidelines, which assert that constables are not permitted to act without supervision. In the *Act 147* case, the Supreme Court held that a Court's regulation of constables' work assignment was unconstitutional. However, this determination came in 1991; Rule 1907.2 of the Pennsylvania Rules of Judicial Administration and the 2013 AOPC guidelines modified this position. Rule 1907.2 provides for the establishment of uniform policies, procedures and standards of conduct for constables who perform services for the courts. Accordingly, constables performing duties on behalf of the Court must be held accountable, and are subject to related rules, policies and procedures. 42 Pa.C.S.A. § 2301(a)(2) affords President Judge Butts the opportunity to appoint personnel; those appointed are accountable to the Lycoming County Court of Common Pleas. Further to Plaintiff's reliance on the *Act 147* case, Plaintiff's also rely on Act 147 itself to support their contentions that they are entitled to protection from discipline in their capacity as constables. The *Act 147* case held Act 147 to be unconstitutional, asserting that it was "infested with unconstitutionality." 496 A.2d at 595.


It is not within this Court's purview to overturn any decisions made by a President Judge of coordinate jurisdiction. "Judges of coordinate jurisdiction should not overrule each other's decisions." *Zane v. Friends Hosp.*, 836 A.2d 25, 29 (Pa.2003). This Court does not have the authority to overrule President Judge Butts' decisions; President Judge Butts' authority over constables is bestowed by statute and the Supreme Court.

The Court enters the following order.

ORDER

AND NOW, this ²⁶20th day of July, 2019 it is ORDERED and DIRECTED that summary judgment is GRANTED in favor of Defendant Mark Lusk.

BY THE COURT,


Senior Judge, Specially Presiding

cc: Mary Kilgus, Esquire
Bret Southard, Esquire