

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Crockett, :
Appellant :
 : No. 2068 C.D. 2011
v. :
 : Submitted: March 9, 2012
Southeastern Pennsylvania :
Transportation Authority aka SEPTA :
and Nicholas J. Staffieri, Esquire, :
General Counsel, SEPTA Official :
Capacity and C. Neil Petersen, Open :
Records Officer, Deputy Counsel, :
SEPTA Official Capacity :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: May 23, 2012

David Crockett (Crockett) appeals from the October 21, 2011, orders of the Court of Common Pleas of Philadelphia County (trial court), sustaining the preliminary objections of the Southeastern Pennsylvania Transportation Authority, Nicholas J. Staffieri, and C. Neil Petersen (collectively, SEPTA) and dismissing Crockett's complaints in mandamus. We affirm.

On April 10, 11, and 30, 2011, Crockett submitted requests pursuant to the Right-to-Know Law (RTKL),¹ seeking to inspect SEPTA's claim files,

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101 – 67.3104.

maintenance, repair, and inspection records, and any handwritten reports and/or the actual accounts of 156 incidents/accidents. SEPTA did not respond to Crockett's requests for the claim files or the maintenance, repair, and inspection records, and these requests were deemed denied. SEPTA denied Crockett's request for the handwritten reports and/or the actual incident accounts, asserting that these records are exempt from disclosure because they contain personal health and identification information. Crockett appealed the denials to the Office of Open Records (OOR),² which granted Crockett's appeals and directed SEPTA to permit Crockett access to the requested documents subject to the redaction of any personal health or identification information contained therein.³ SEPTA appealed OOR's final determinations to the trial court.⁴

While SEPTA's appeals were pending before the trial court, Crockett filed three separate complaints in mandamus seeking to compel SEPTA to provide access to the documents in accordance with the OOR's final determinations.⁵ SEPTA thereafter filed preliminary objections in the nature of a demurrer alleging

² The appeals were docketed by OOR at Nos. AP 2011-0542, AP 2011-0543, and AP 2011-0658, respectively.

³ OOR's final determinations granting Crockett's appeals were dated May 20, May 24, and June 14, 2011, respectively.

⁴ SEPTA's appeals were docketed in the trial court at Nos. 1708, 2198, and 1375, respectively.

⁵ Crockett's mandamus complaints were docketed in the trial court at Nos. 1051, 1167, and 1747, respectively. The trial court originally consolidated Crockett's mandamus actions with SEPTA's statutory appeals, but later severed the same following a motion for coordination filed by SEPTA.

legal insufficiency, *lis pendens*, and lack of service. Regarding legal insufficiency, SEPTA noted that section 1302(a) of the RTKL provides that a party may file a petition for review of OOR's final determination with the common pleas court and that section 1302(b) provides that the filing of a petition for review stays the release of documents. 65 P.S. §67.1302(a), (b). Regarding *lis pendens*, SEPTA noted that Crockett acknowledges its appeals of OOR's final determinations in his mandamus complaints. Regarding lack of service, SEPTA noted that Crockett served its attorneys in the pending matters and that no rule of civil procedure permits original service of process on a party's attorney of record in other litigation.

By identical orders dated October 21, 2011, the trial court sustained SEPTA's preliminary objections and dismissed Crockett's mandamus complaints. The trial court noted in its orders that SEPTA had appealed OOR's final determinations, that these appeals remained pending, and that a court cannot grant mandamus while the subject of that action is under appeal. The trial court stressed that the mandamus actions were predicated upon OOR's final determinations, which were the subjects of SEPTA's statutory appeals. Crockett thereafter filed notices of appeal with the trial court.

On appeal,⁶ Crockett argues that the trial court erred and abused its discretion in sustaining SEPTA's preliminary objections and dismissing his

⁶ Our scope of review of a trial court order granting preliminary objections is limited to determining whether the trial court committed legal error or abused its discretion. Palmer v. Bartosh, 959 A.2d 508 (Pa. Cmwlth. 2008). A demurrer can only be sustained where the complaint clearly is insufficient to establish the petitioner's right to relief. Id. Since the sustaining of a demurrer results in a denial of the petitioner's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim upon which relief may be granted. Id. If the facts as pleaded state a claim for which relief may be granted under any theory of law, there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. Id.

mandamus complaints. More specifically, Crockett contends that section 1302(b) only stays the release of documents and that OOR's final determinations establish his clear and legal right to the requested information. We disagree.

Mandamus is an extraordinary remedy designed to compel the performance of a ministerial act or a mandatory duty. Evans v. Pennsylvania Board of Probation and Parole, 820 A.2d 904 (Pa. Cmwlth. 2003), appeal quashed, 580 Pa. 550, 862 A.2d 583 (2004); Bell Atlantic Mobile Systems, Inc. v. Borough of Clifton Heights, 661 A.2d 909 (Pa. Cmwlth. 1995), appeal denied, 544 Pa. 652, 676 A.2d 1194 (1996). Mandamus may only be granted where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other appropriate and adequate remedy. Bell Atlantic Mobile Systems, Inc.

In the present case, Crockett cannot establish a clear legal right to relief or a corresponding duty on the part of SEPTA. While Crockett was successful before OOR, Crockett acknowledges in his mandamus actions that SEPTA sought review of OOR's final determinations before the trial court. The trial court's review of these final determinations remained pending at the time Crockett filed his mandamus actions. Section 1302(b) of the RTKL expressly provides that the filing of a petition for review "shall stay the release of documents" until the trial court issues a decision. 65 P.S. §67.1302(b). Because Crockett's right to the requested documents has yet to be finally determined and Crockett cannot establish a mandatory duty on the part of SEPTA to permit him access to the requested documents, the trial court did not err or abuse its discretion in sustaining SEPTA's preliminary objections and dismissing Crockett's complaints in mandamus.

Accordingly, the orders of the trial court are affirmed.⁷

PATRICIA A. McCULLOUGH, Judge

⁷ Based upon our determination above, we need not reach Crockett's arguments relating to *lis pendens* or improper service, nor do we reach an argument raised by Crockett in his brief that, should this Court remand the matter, the matter must be assigned to a different common pleas court judge.

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Records Officer, Deputy Counsel,	:	
SEPTA Official Capacity	:	

ORDER

AND NOW, this 23rd day of May, 2012, the October 21, 2011 orders of the Court of Common Pleas of Philadelphia County are hereby affirmed.

PATRICIA A. McCULLOUGH, Judge