IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rafal Chruszczyk,	:	
Appellant	:	
	:	
v.	:	No. 513 C.D. 2014
	:	Argued: October 7, 2014
City of Philadelphia and William Nagy	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: November 6, 2014**

In this negligence case, Rafal Chruszczyk (Plaintiff) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court)[1] that granted a motion for judgment on the pleadings filed by the City of Philadelphia (City) and William Nagy (collectively, Defendants). The trial court, after reviewing our Supreme Court's decisions in Lamp v. Heyman, 366 A.2d 882 (Pa. 1976) and McCreesh v. City of Philadelphia, 888 A.2d 664 (Pa. 2005), determined Plaintiff failed to establish he made a good-faith effort to timely serve Defendants with a writ of summons, or provide them with actual notice of the commencement of litigation, within 30 days of the expiration of the applicable two-year statute of limitations. For the reasons that follow, we reluctantly affirm.

[1] The Honorable Rosalyn K. Robinson presided.

I. Background

On September 28, 2010, Plaintiff and Defendant Nagy, a City employee, were involved in a vehicular collision at the intersection of Vine and 16th Streets in the City. As a result of the accident, Plaintiff sustained injuries to his head, neck, back, chest, left arm and left leg.

In October 2010, less than 30 days after the accident, Plaintiff provided Defendants with statutory notice of an action against a government unit as required by 42 Pa. C.S. §5522(a) (any person who is about to commence a civil action for damages on account of any injury to person or property shall, within six months of the injury, file a statement in writing setting forth various information including the names of plaintiffs, names of the person injured, date, hour and location of the accident, and the name and address of any attending physician). On the same date, Plaintiff also delivered a letter to Defendant City asking it to preserve and produce certain evidence.

On September 24, 2012, within two years of the September 28, 2010 accident, Plaintiff filed a praecipe to issue a writ of summons, and a writ issued against Defendants. About a month later, on October 22, 2012, Plaintiff filed a praecipe to reissue a writ of summons, and the trial court reissued the writ.

On November 15, 2012, more than two years from the date of the accident, Plaintiff served the writ on Defendant City and filed an affidavit of service. On November 20, 2012, Plaintiff served Defendant Nagy with the writ of summons.

On December 20, 2012, Plaintiff filed a complaint against Defendants. On January 10, 2013, Defendants filed an answer and new matter. On the same date, Defendants served Plaintiff with interrogatories and a request for production of documents. The next day, the trial court held a case management conference and issued a case management order.

In February 2013, Defendants filed a motion for judgment on the pleadings, averring Plaintiff served the writ outside the two-year limitations period for negligence actions in 42 Pa. C.S. §5524(2), and that such a violation is a complete bar to suit. Defendants further averred Plaintiff made no attempts at service of the writ until approximately two months after the statute of limitations expired. Absent any effort to serve the writ within 30 days of the expiration of the statute of limitations, the limitations period is not tolled or extended. McCreesh; Farinacci v. Beaver Cnty. Indus. Dev. Auth., 511 A.2d 757 (Pa. 1986).

Plaintiff filed an answer alleging he acted in compliance with Pennsylvania Rule of Civil Procedure (Rules) No. 401 (relating to time for service, reissuance, reinstatement and substitution of original process). Plaintiff further argued the trial court should deny Defendants' motion in accord with McCreesh, wherein the Supreme Court rejected the dismissal of claims where the defendants had actual notice of the commencement of the litigation and were not otherwise prejudiced. In McCreesh, Plaintiff argued, the Court adopted a flexible approach rendering dismissal appropriate only where the plaintiffs' actions indicate their intent to stall the judicial machinery. Plaintiff also argued Defendants failed to establish prejudice by any purported delay.

In April 2013, the trial court issued an order that granted Defendants' motion for judgment on the pleadings. In an opinion in support of its order, the trial court observed that the Supreme Court, in its 1976 decision in Lamp, recognized the existence of a potential for abuse in commencing litigation under Rules No. 401 and No. 1007 (providing that an action may be commenced by filing either a praecipe for writ of summons or a complaint). A plaintiff could essentially toll the statute of limitations indefinitely under Rules No. 401 and No. 1007 by timely filing a praecipe for a writ of summons, and then reissuing the writ numerous times thereafter without serving the writ on the defendant. In Lamp, the Supreme Court stated (with emphasis added):

> [W]e now conclude there is too much potential for abuse in a rule which permits a plaintiff to keep an action alive without proper notice to a defendant merely by filing a praecipe for a writ of summons and then having the writ reissued in a timely fashion without attempting to effectuate service. In addition, we find that such a rule is inconsistent with the policy underlying statutes of limitations of avoiding stale claims, and with that underlying our court rules of making the processes of justice as speedy and efficient as possible. Accordingly, we believe that the rule must now be qualified, but prospectively in fairness to the plaintiffs who have relied on the language of Rule 1007 and our previous interpretations of it. Our purpose is to avoid the situation in which a plaintiff can bring an action, but, by not making a good faith effort to notify a defendant, retain exclusive control over it for a period in excess of that permitted by the statute of limitations.
>
> Accordingly, pursuant to our supervisory power over Pennsylvania courts, we rule that henceforth, i.e., in actions instituted subsequent to the date of this decision, a writ of summons shall remain effective to commence an action only if the plaintiff then refrains from a course

> of conduct which serves to stall in its tracks the legal machinery he has just set in motion.

Lamp, 366 A.2d at 888-89 (footnotes and citations omitted).

In the present case, the trial court determined Plaintiff submitted no evidence of any good-faith effort to effectuate service within 30 days of the expiration of the two-year limitations period. "Plaintiff's complete failure to suggest any reason as to why service was not effectuated is fatal to his case; plaintiff's assertion that he had no evil intent is insufficient to meet his burden." Tr. Ct., Slip. Op., 4/10/13 at 2 (emphasis added).

The trial court also rejected Plaintiff's argument that the short number of days by which he exceeded the Lamp rule warranted a denial of Defendants' request for a dismissal. The court explained that an issue of timing, by itself, cannot constitute a good-faith reason to permit late service. "The question of how long after the statute of limitations a party was served has no place in the analysis under Lamp." Tr. Ct., Slip. Op., at 3.

In addition, the trial court noted Plaintiff's reliance on McCreesh was misplaced. In McCreesh, the plaintiff served the defendants by certified mail, a procedurally invalid method. The defendants moved for dismissal under Lamp based on the technically improper service. However, the McCreesh Court determined the defendants received actual notice of the commencement of the lawsuit as a result of the plaintiff's service by mail. Nonetheless, the Supreme Court remanded the case to the trial court for a determination as to whether the

defendants were prejudiced by the plaintiff's failure to issue service in a way that complied with the Rules.

Here, unlike in McCreesh, Defendants did not receive actual notice of the start of the litigation until they were served in November 2012. Therefore, the trial court found McCreesh inapplicable.

Having determined that Defendants received no actual notice of the commencement of litigation prior to being served beyond the statute of limitations, and that Plaintiff failed to meet his burden of showing he made a good-faith effort to serve the writ of summons on Defendants within 30 days of the expiration of the statute of limitations, the trial court entered judgment for Defendants. Plaintiff appeals.[2]

II. Issues

Plaintiff raises two primary issues. Plaintiff contends the trial court erred in granting Defendants' motion for judgment on the pleadings where they failed to demonstrate that he intended to the stall the judicial machinery. Plaintiff asserts he acted in good faith by complying with the Rules by timely filing the writ of summons before the expiration of the statute of limitations, timely reissuing it and serving it less than 30 days thereafter. In addition, Plaintiff contends, even

[2] Our scope of review of a trial court order granting a motion for judgment on the pleadings is limited to determining whether the trial court erred as a matter of law or whether questions of fact remain outstanding. Trib Total Media, Inc. v. Highlands Sch. Dist., 3 A.3d 695 (Pa. Cmwlth. 2010). Our standard of review granting a motion for judgment on the pleadings is plenary. Id.

assuming Plaintiff failed to comply with the Rules, Defendants were not prejudiced by any delay as required by the flexible approach adopted by the Supreme Court in McCreesh.

III. Discussion

A. Plaintiff's Good-Faith Efforts at Service

1. Argument

Under Rule No. 1007, an action may be commenced by filing a praecipe for a writ of summons or a complaint. Filing a praecipe for writ of summons will toll the statute of limitations. Lamp. Pursuant to Lamp and Rule No. 401(b), a writ may be reissued at any time within an additional time period equal to the statute of limitations. Young v. Dep't of Transp., 690 A.2d 1300 (Pa. Cmwlth. 1997). Here, Plaintiff contends the trial court erred in granting Defendants' motion for judgment on the pleadings where the court acknowledged Plaintiff complied with Rule No. 401, which pertinently provides (with emphasis added):

> (a) Original process shall be served within the Commonwealth within thirty days after the issuance of the writ or filing of the complaint.
>
> (b)(1) If service within the Commonwealth is not made within the time prescribed by subdivision (a) of this rule … the prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint ….
>
> (2) A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint.

* * * *

> (4) A reissued, reinstated or substituted writ or complaint shall be served within the applicable time prescribed by subdivision (a) of this rule ….

Pa. R.C.P. No. 401(a), (b)(1), (2) and (4).

Plaintiff asserts he timely filed a praecipe for writ of summons four days before the expiration of the two-year limitations period on September 28, 2012. The prothonotary then continued the validity of the original process by reissuing the writ on October 22, 2012. Within 30 days of that date, Plaintiffs properly served Defendants. Plaintiff contends his effort to reinstate the writ demonstrates due diligence, not a course of conduct intended to stall the proceedings.

In support of his position, Plaintiff cites City of Philadelphia Water Revenue Bureau v. Towanda Properties, Inc., 976 A.2d 1244 (Pa. Cmwlth. 2009), for the proposition that a period in excess of eight months between filing and service of the writ or complaint is reasonable. In Towanda Properties, the plaintiff, a municipal water bureau, filed a complaint against a property owner for unpaid services. Over a six-month period, the plaintiff made several unsuccessful attempts to serve the defendant. In short, the plaintiff could not find the defendant's operative address for personal service. Consequently, the trial court granted plaintiff's motion for alternative service by ordinary mail. The defendant, however, argued the trial court should have dismissed the complaint based on the plaintiff's lack of good faith in its actions prior to requesting alternative service. Ultimately, we upheld the trial court's determination that the plaintiff acted in good faith in its efforts to serve the defendant under the circumstances.

Plaintiff also cites Young, where the plaintiff filed a praecipe for a writ of summons on April 29, 1994 against the driver of a vehicle involved in a May 9, 1992 accident. On May 4, 1994, the plaintiffs unsuccessfully attempted to serve the defendant at an address listed in the accident report. Ultimately, the plaintiff reinstated his complaint and served the defendant in September 1994. We determined the plaintiff, by attempting service before the expiration of the statute of limitations, and by making continuing efforts at service thereafter, demonstrated a good-faith effort to effectuate service.

In addition, Plaintiff cites Ramsay v. Pierre, 822 A.2d 85 (Pa. Super. 2003), where the plaintiff in a motor vehicle accident case filed a complaint against defendant three days prior to the expiration of the limitations period in January 2000. The plaintiff immediately tried to serve the defendant, without success, at his last known address. In February 2000, the municipal court dismissed the action, without prejudice, for lack of service. About 10 days later, the plaintiff obtained an address from the U.S. Postmaster and enlisted a constable to attempt service at the new address. However, the constable returned service as "not found." The court again dismissed the case without prejudice. In July 2000, the plaintiff again obtained the same address from the Postmaster. Ultimately, the trial court granted the plaintiff's request for alternative service by certified mail. In October 2000, the plaintiff effected service. In Ramsay, the Superior Court determined the plaintiff's actions during the nine months between his filing of the complaint and the eventual service unequivocally demonstrated his good-faith efforts in attempting service.

Here, Plaintiff argues, he instituted the suit by writ as in Young, reinstated the writ, and served the writ within 30 days of the reinstatement. Citing Young, Plaintiff asserts his reinstatement of the writ shows diligence, not a course of conduct to stall the proceedings.

Plaintiff further argues timeliness is a factor. In Towanda Properties, this Court found a period of time in excess of eight months between filing and service reasonable. In Ramsay, the Superior Court found a period of nine months between filing and service reasonable. Here, Plaintiff served the reissued writ on Defendants in November 2012, less than two months after receiving the writ in September 2012. Thus, Plaintiff urges, the trial court erred or abused its discretion in entering judgment for Defendants and dismissing the case absent any evidence that Plaintiff intended to stall the judicial machinery. McCreesh; Lamp.

2. Analysis

Following the Supreme Court's decision in Lamp, where a plaintiff institutes an action by writ of summons, the plaintiff must make a good-faith effort to serve the defendants in a timely manner in order to toll the statute of limitations. Although there is no mechanical approach to determine what constitutes a good-faith effort, the plaintiff bears the burden demonstrating his efforts were reasonable. Bigansky v. Thomas Jefferson Univ. Hosp., 658 A.2d 423 (Pa. Super. 1995). However, an overt attempt at delay is not necessary to constitute bad faith. Ferrara v. Hoover, 636 A.2d 1151 (Pa. Cmwlth. 1994). "Simple neglect and mistake to fulfill the responsibility to see that requirements for service are carried

out may be sufficient to bring the rule in Lamp to bear." Id. at 1152 (citation omitted).

For example, where the plaintiffs failed to deliver the writ of summons to the sheriff and writ expired, an action was barred by the statute of limitations. Delphus v. Kastenak, 405 A.2d 1285 (Pa. Super. 1979) (service effected by reissued writ several days after statute of limitations ran). Also, the statute of limitations was not tolled where the plaintiff failed to deliver the writ to the sheriff for service within 30 days of its issuance, even though the plaintiff's inaction was not due to bad faith or an overt attempt to delay, and the defendants did not allege that they were prejudiced by the delay. Watts v. Owens-Corning Fiberglass Corp., 509 A.2d 1268 (Pa. Super. 1986).

Nonetheless, in the event of timely but improper service, a plaintiff may satisfy the purpose of the statute of limitations by supplying a defendant with actual notice of the commencement of the lawsuit. McCreesh (plaintiff's service by certified mail two days prior to the expiration of the statute of limitations, although technically improper under the Rules, satisfied the plaintiff's obligation under Lamp to make a good-faith effort to provide notice of the commencement of the lawsuit). Whether a plaintiff made a good-faith effort to serve the defendant must be decided on a case-by-case basis. Id. Further, an inquiry into whether a plaintiff acted in good faith lies within the sound discretion of the trial court. Id.

Notably, the plaintiff in McCreesh served the defendant by certified mail prior to the expiration of the statute of limitations. In contrast, in Daniel v.

City of Philadelphia, 86 A.3d 955 (Pa. Cmwlth. 2014), the plaintiff filed a personal injury complaint against the defendant two days before the limitations period expired, but did not serve the complaint at that time. The plaintiff later reinstated the complaint seven months after the limitations period expired. Citing Lamp, we upheld the trial court's determination that the plaintiff did not make a good-faith effort to serve the complaint in a timely manner.

Here, Plaintiff relies on cases where the plaintiffs' efforts to serve the defendants began prior to expiration of the statute of limitations and continued thereafter for a reasonable time. For example, in Young, the plaintiff unsuccessfully attempted to serve the defendants prior to the expiration of the limitations period at an address given in a police report. Similarly, in Ramsay, the plaintiff immediately attempted to serve the defendant prior to the expiration of limitations period. See also Shackelford v. Chester Cnty. Hosp., 690 A.2d 732 (Pa. Super. 1997) (writ of summons issued five days before expiration of the limitations period in October 1985; plaintiff made good-faith effort to serve writ where she first attempted service five days after the writ issued and made four more attempts at service in October and November 1985).

In the present case, Plaintiff offered no explanation as to why he failed to attempt service when the writ issued, four days prior to the expiration of the statute of limitations, or within 30 days of the initial issuance of the writ as required by Rule No. 401(a). At argument on the motion for judgment on the pleadings, Plaintiff's counsel stated for the record that his office failed to serve the

writ within 30 days after it issued. See Notes of Testimony (N.T.), 3/22/13, at 12; R.R. at 151a. In addressing the trial court, Plaintiff's counsel stated:

> The only thing I can represent to the Court is that it was an oversight on the part of our office. I can state for the record that absolutely there was no intent to withhold service. There was no intent to delay the litigation. And that again is important because the [McCreesh] case says there [sic] has to be an intent to delay. There was no such intent, your Honor.

N.T. at 13-14; R.R. at 152a-53a. Contrary to Plaintiff's counsel's statement, "[a] plaintiff need not intentionally delay notifying a defendant of a lawsuit in order for a court to find a lack of good faith; rather, simple neglect or mistake can support such a finding." Miller v. Klink, 871 A.2d 331, 336 (Pa. Cmwlth. 2005) (emphasis added). In accord with Miller, Plaintiff's counsel's "oversight" obviously falls short of the good-faith attempts to effect service contemplated by the Lamp and McCreesh lines of cases.

Here, unlike in McCreesh, Plaintiff failed to establish he provided Defendants with actual notice of the commencement of his negligence action prior to the untimely service on Defendants more than 30 days after the expiration of the two-year statute of limitations. Furthermore, we believe the facts in the present case are more akin to those in Farinacci, where the failure to effect timely service resulted solely from the plaintiff's counsel's inadvertence.

In Farinacci, the plaintiff filed a praecipe for writ of summons on the last day of the limitations period. The plaintiff's counsel then misplaced the file, which someone returned to counsel eight or nine days later. Counsel, however,

failed to effect service. Four weeks later, the writ reissued, and plaintiff served all defendants within the next two weeks. The trial court then dismissed the case for failure to comply with the statute of limitations. On appeal, the Superior Court and Supreme Court affirmed. In its decision, the Supreme Court reasoned:

> Lamp requires of plaintiffs a good-faith effort to effectuate notice of the commencement of the action. Although this good-faith requirement is not apparent from a reading of the rule itself, we interpret the rule mindful of the context in which it was announced. The purpose for the rule, as stated in Lamp, 'is to avoid the situation in which a plaintiff can bring an action, but by not making a *good-faith* effort to notify a defendant, retain exclusive control over it for a period in excess of that permitted by the statute of limitations.' [366 A.2d at 889] ….
>
> In each case where noncompliance with Lamp is alleged, the court must determine in its sound discretion whether a good-faith effort to effectuate notice was made. Thus, evidentiary determinations are required. Instantly, plaintiffs submitted an affidavit which the court considered in rendering its decision. Defendants agree that this affidavit sets forth all relevant facts and that no further evidentiary proceedings are required. Based on the affidavit, the Court of Common Pleas found that eight or nine days of the delay was attributable to counsel's simply misplacing the file. Such is not necessarily inconsistent with a finding of good faith. The remaining four weeks' delay is attributable only to counsel's faulty memory. As plaintiffs have failed to provide an explanation for counsel's inadvertence which could substantiate a finding that plaintiffs have made a good-faith effort to effectuate service of the writ, we are constrained to hold that the order of the Court of Common Pleas granting defendants' preliminary objections and dismissing plaintiffs' action was not an abuse of power.

Farinacci, 511 A.2d at 759-60 (emphasis by underline added).

The present case is similar to Farinacci in that plaintiff's counsel's admitted oversight, although unintentional, falls short of the good-faith effort required by Lamp and McCreesh. In other words, Plaintiff's counsel, through an oversight, made no effort to timely serve the initial writ of summons on Defendants. As noted above, a plaintiff need not intentionally delay notifying a defendant of the commencement of a lawsuit, simple neglect or mistake will be sufficient to support a finding of a lack of good faith. Farinacci; Miller.

Moreover, unlike the several cases on which Plaintiff cites for examples of a good-faith effort at service, Plaintiff does not claim any logistical difficulties in effectuating service on Defendants. Therefore, even assuming Plaintiff did not intentionally delay service of process on Defendants until after the expiration of the limitations period, Plaintiff failed to present any evidence of an affirmative good-faith effort to notify Defendants of the commencement of litigation prior to November 2012, nearly two months later. Thus, in accord with McCreesh, Farinacci and Miller, we discern no abuse of discretion in the trial court's dismissal of the case based on its determination that Plaintiff failed to establish he made a good-faith effort to timely serve the writ of summons on Defendants within 30 days of the expiration of the statute of limitations.

B. Lack of Prejudice

1. Argument

Plaintiff further contends, even assuming he failed to comply with the Rules, Defendants were not prejudiced by any delay as required by the flexible approach adopted by the Supreme Court in McCreesh. In addition, Plaintiff asserts

the trial court erred in determining that a prejudice analysis need not be conducted because Plaintiff did not provide Defendants with actual notice, thus rendering McCreesh inapplicable. To that end, Plaintiff points out that the Supreme Court recognized "there may be situations where actual notice may not be absolutely necessary so long as prejudice did not result …." McCreesh, 888 A.2d at 674, n.20.

Here, Plaintiff asserts that in October 2010, less than 30 days after the accident, he provided Defendants with statutory notice of an action against a government unit as required by 42 Pa. C.S. §5522(a). Therefore, Plaintiff argues Defendants had actual notice of the claim at that time.

Plaintiff further contends that after service in November, Defendants, represented by counsel, filed an answer, participated in the case management conference and obtained an order compelling Plaintiff's answers to interrogatories. Thus, Plaintiff urges, Defendants cannot reasonably claim prejudice under these circumstances.

2. Analysis

In McCreesh, the Supreme Court, referring to its prior decision in Farinacci, recognized a difference between having notice of the potential for litigation and having notice of the commencement of litigation within the statute of limitations period. See McCreesh, 888 A.2d at 672, n. 17.

Citing the McCreesh footnote, the Superior Court in Englert v. Fazio Mechanical Services, Inc., 932 A.2d 122 (Pa. Super. 2007), determined that where the plaintiffs did not provide the defendants with actual notice of the commencement of the action within the applicable statute of limitations, a notice of potential litigation is not the same and thus will not suffice as actual notice of the commencement of litigation under McCreesh.

The rationale in Englert is equally applicable here. Although Plaintiff provided Defendants with a statutory notice of a claim in October 2010, this cannot be considered actual notice of the commencement of litigation for McCreesh purposes. Further, in Nagy v. Upper Yoder Township, 652 A.2d 428 (Pa. Cmwlth. 1994), we reasoned (with emphasis added):

> The notice of intention required by 42 Pa. C.S. §5522, simply notifies a municipality that an individual intends to file suit against the municipality. However, that notice does not institute a suit, and plaintiffs may change their mind once this notice is served. Since [a]ppellee was not served with a writ or complaint within the limitations period, it has a reasonable expectation that once the limitations period expired, it would no longer be required to shoulder the burden of possible litigation.

Id. at 431.

We also dismiss Plaintiff's contention that Defendants cannot claim prejudice where their counsel filed an answer to Plaintiff's complaint and obtained an order compelling Plaintiff's answer to interrogatories. In Daniel, we rejected a similar argument that the defendant waived a defective service or statute of limitations argument by answering the complaint. A statute of limitations defense

is properly raised in new matter. Pa. R.C.P. No. 1030(a); Daniel. Here, Defendants raised the statute of limitations defense in their new matter.

Similarly, the scheduling of a case management conference is not a substitute for service requirements, so as to relieve a personal injury plaintiff from the absolute and affirmative duty to make a good-faith effort to serve the writ upon its issuance. Moses v. T.N.T. Red Exp., 725 A.2d 792 (Pa. Super. 1999).

In sum, McCreesh established a flexible standard where a plaintiff's case will not be dismissed where the plaintiff provided the defendants with actual notice of the commencement of litigation. In other words, a plaintiff's case will not be dismissed where the plaintiff's technical noncompliance with the Rules did not prejudice the defendants because they actually received notice of the commencement of the action. Here, however, Plaintiff failed to provide Defendants with actual notice of the commencement of his lawsuit prior to the expiration of the statute of limitations. Therefore, the trial court properly determined McCreesh is inapplicable here.

IV. Conclusion

We commend counsel for his candor to the Court. Nevertheless, for the above reasons, we must reject Plaintiff's contentions that the trial court erred in granting Defendants' motion for judgment on the pleadings where Plaintiff failed to either provide Defendants with actual notice of the commencement of litigation, or to make a good-faith effort to serve Defendants with the writ of summons, prior

to the expiration of the two-year statute of limitations for negligence actions in 42 Pa. C.S. 5524(2). McCreesh. Accordingly, we reluctantly affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rafal Chruszczyk, Appellant	:	
v.	:	No. 513 C.D. 2014
City of Philadelphia and William Nagy	:	

O R D E R

AND NOW, this 6th day of November, 2014, for the reasons stated in the foregoing opinion, the order of the Court of Common Pleas of Philadelphia County is **AFFIRMED**.

ROBERT SIMPSON, Judge