

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Tullytown Borough, | : |
| | : No. 239 C.D. 2015 |
| Appellant | : Argued: October 6, 2015 |
| | : |
| v. | : |
| | : |
| Edward Armstrong, Robert | : |
| Campanaro, Edward Czyzyk, and | : |
| George Fox | : |

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: December 11, 2015

Tullytown Borough (Borough) appeals from the January 15, 2015, order of the Court of Common Pleas of Bucks County (trial court) denying the Borough’s motion for a protective order.¹ We affirm based on the trial court’s opinion.

Edward Armstrong, Robert Campanaro, Edward Czyzyk, and George Fox (Appellees) filed a writ of summons commencing a civil rights action pursuant to 42 U.S.C. §1983 against the Borough. Thereafter, by letter dated September 30,

¹ The Borough filed a motion to certify this interlocutory order for appeal by permission, but the trial court denied it pursuant to section 702(b) of the Judicial Code, 42 Pa. C.S. §702(b). By order dated March 30, 2015, this court granted the Borough’s petition for review of the interlocutory order pursuant to Pa. R.A.P. 1311, Note.

2014, Appellees sought to depose nine Borough employees.² The letter identified the individuals but failed to indicate the reasons for the depositions.

On October 30, 2014, the Borough filed a motion for a protective order, arguing that Appellees' request for pre-complaint discovery, i.e., the letter asking to depose the nine witnesses, is expansive and without justification. The Borough stated that Appellees failed to explain how the depositions are material and necessary to the filing of a complaint and pointed out Appellees' history of abusive litigation. According to the Borough, Appellees' lawsuit is frivolous and a "fishing expedition" to gain information for use in the upcoming election. (Borough's Mot., 10/30/14, at 1-3.)

Appellees responded that they requested pre-complaint discovery, pursuant to Pa. R.C.P. No. 4003.8, to obtain material and necessary facts to plead a violation of Appellees' civil and constitutional rights. (Appellees' Reply, 11/14/14, at 1-3.) In their memorandum of law in support of their pre-complaint discovery request, Appellees contended that they "have reason to believe that [Borough] Police Officers were spying on campaign meetings of [Appellees], who were candidates for [B]orough Council positions, at various locations within [the Borough]." (Appellees' Mem., 11/14/14, at 4.) Appellees further argued that they "were advised by certain individuals that [Borough] Police Officers were ordered to follow the activities of the [Appellees] as candidates for office in 2013." (*Id.* at 6.)

² Appellees requested the deposition testimony of four police officers, John Finby, Philip Kulan, Andrew Bunda, and Ryan Bunda; two former police officers, Shawn McLister and James Reichel; the current Chief of Police, Daniel Doyle; the former Chief of Police, Patrick Priore; and Chairman of the Police Committee, Councilman Matthew Pirolli.

In its brief in support of its motion for a protective order, the Borough stated that there are no facts of record:

The only thing close to a factual allegation comes from [Appellees'] brief that '[Appellees] were advised by certain individuals that [Borough] Police Officers were ordered to follow the activities of the [Appellees] as candidates for office in 2013.' Notably, [Appellees] do not seek to depose there (sic) 'certain individuals.' Instead, they want to depose the entire police department.

(Borough's Br. at 2 (citation omitted).)

On November 20, 2014, the trial court issued a rule to show cause why the Borough's motion for a protective order should not be granted. On December 8, 2014, the Borough filed a praecipe under Bucks County Rule of Civil Procedure (Bucks County Rule) No. 208.3(b), requesting disposition of the motion.³

³ Bucks County Rule No. 208.3(a)(2) provides that when the trial court issues a rule to show cause and a response is filed, the motion shall be submitted to, and decided by, the trial court pursuant to Bucks County Rule No. 208.3(b). Bucks County Rule No. 208.3(b)(2) provides that "[s]ubject to the requirements of Pa. R.C.P. No. 206.7, when the matter is at issue and ready for decision, the moving party on the application shall, by praecipe, order the same to be submitted for disposition pursuant to this rule." Pa. R.C.P. No. 206.7(c) sets forth the following procedure after the issuance of a rule to show cause:

(c) If an answer is filed raising disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows, within the time set forth in the order of the court. If the petitioner does not do so, *the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted* for the purpose of this subdivision.

(Emphasis added).

On January 15, 2015, the trial court denied the Borough's motion for a protective order. The Borough requested reconsideration and certification of the order for interlocutory appeal. The trial court denied both requests on February 11, 2015. The Borough petitioned this court for review.

By order dated March 30, 2015, this court granted the Borough's petition for review of the interlocutory order and agreed to consider the following issue on appeal:

Did the trial court err by allowing pre-complaint discovery where the [trial] court did not require the party seeking discovery to demonstrate that the information sought is material and necessary to the filing of the complaint and that discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party.

(Cmwlth. Ct. Order, 3/30/15, at 1.)

Before this court, the Borough argues that the trial court erred in determining that Appellees demonstrated that the nine requested depositions were material and necessary to draft a complaint. We disagree.

Initially, we observe that

[d]iscovery matters, including pre-complaint discovery requests, are within the discretion of the trial court, and we will not reverse absent an abuse of discretion. An abuse of discretion occurs where "in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will."

Pelzer v. Wrestle, 49 A.3d 926, 929 (Pa. Cmwlth. 2012) (citations omitted).

Pa. R.C.P. No. 4003.8 restricts pre-complaint discovery as follows:

(a) A plaintiff may obtain pre-complaint discovery where the information sought is material and necessary to the filing of the complaint and the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party.

(b) Upon a motion for protective order or other objection to a plaintiff's pre-complaint discovery, the court may require the plaintiff to state with particularity how the discovery will materially advance the preparation of the complaint. In deciding the motion or other objection, the court shall weigh the importance of the discovery request against the burdens imposed on any person or party from whom the discovery is sought.

Thus, a trial court may, but is not required to, direct a party to state how discovery will advance preparation of the complaint.

Pursuant to Pa. R.C.P. No. 206.7, the trial court, in reviewing the rule to show cause and the Borough's motion, assumed the facts in Appellees' reply and memorandum of law to be true. The trial court determined that the Borough admitted that: (1) Appellees needed the depositions to establish the material and necessary facts to plead a cause of action; (2) there was police surveillance of political candidates in the Borough in 2013; and (3) the depositions would not be annoying, oppressive, burdensome, or expensive. (Trial Ct. Op. at 3.)

Here, after review of the record, we conclude that the trial court did not abuse its discretion in denying the Borough's motion for protective order. The trial court thoroughly addressed the Borough's issue in its opinion.

Accordingly, we affirm based on the well-reasoned opinion of the Honorable James M. McMaster.


ROCHELLE S. FRIEDMAN, Senior Judge

President Judge Pellegrini concurs in the result only.