

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARVETTE TOOMER MARSH,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
REBECCA LADD, et al.,	:	No. 03-5977
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

November 1, 2004

Presently before this Court are Defendants’ motion for reconsideration and Plaintiff’s cross-motion for reconsideration of this Court’s Order of October 27, 2004. The central dispute involves the Court’s interpretation of the “personal property” exception to the defense of sovereign immunity in 42 PA. CONS. STAT. ANN. § 8522 (b)(3). For the reasons that follow, the parties’ motions are denied.

The Order of October 27, 2004 granted Defendants’ motion for summary judgment on Plaintiff’s Fourteenth Amendment claim for deprivation of property because the Court held that Plaintiff’s state law claims for conversion and replevin provide her with an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (requiring that plaintiff must show no adequate post-deprivation state remedy exists to maintain § 1983 action for negligent deprivation of property). In so holding, this Court found that Defendants were not entitled to the defense of sovereign immunity on Plaintiff’s state law claims under Pennsylvania’s “personal property” exception, which provides:

[T]he defense of sovereign immunity shall not be raised to claims for damages caused by . . . [t]he care, custody or control of personal property in the possession or control of Commonwealth parties including . . . property of persons held by a Commonwealth agency. . . .

42 PA. CONS. STAT. ANN. § 8522 (b)(3) (2004).

Although the facts of this case appear to fall exactly within the plain language of the statutory exception, Defendants move for reconsideration on the grounds that § 8522(b)(3) is limited to situations in which “the property itself caused the injury.” (Defs.’ Mot. for Recons. at 3.) In support of that proposition, Defendants cite two 1990 Pennsylvania Commonwealth Court decisions and several district court decisions. (Defs.’ Mot. for Recons. at 3 (*citing, e.g., Sugalski v. Commonwealth*, 569 A.2d 1017 (Pa. Commw. Ct. 1990); *Serrano v. Pennsylvania State Police*, 568 A.2d 1006 (Pa. Commw. Ct. 1990); *Iseley v. Horn*, No. Civ. A. 95-5389, 1996 WL 510090, 1996 U.S. Dist. LEXIS 13471 (E.D. Pa. Sept. 3, 1996)).) Plaintiff does not respond directly to Defendants’ argument; instead, Plaintiff asserts that Defendants’ position only serves to resuscitate Plaintiff’s Fourteenth Amendment claim.

Analysis of a more recent Pennsylvania Commonwealth Court decision makes clear that this Court’s prior ruling was correct. In *Bufford v. Pennsylvania Department of Transportation*, the Pennsylvania Department of Transportation (“DOT”) notified Arthur T. Bufford that his license would be suspended for failure to pay a traffic ticket issued in Delaware. 670 A.2d 751, 751 (Pa. Commw. Ct. 1996). In response, Bufford paid the ticket and forwarded appropriate documentation to DOT. *Id.* Several months later, Bufford was stopped by police in Washington, D.C. who searched a national crime database and arrested him for driving with a suspended license. *Id.* Bufford was detained for a short time and fined. *Id.* Bufford filed a complaint in trespass in the Pennsylvania Court of Common Pleas asserting that DOT negligently suspended his license resulting in his arrest, detention and false imprisonment. *Id.* at 752. Bufford further argued that DOT was not entitled to sovereign immunity because his claim fell within the § 8522(b)(3) exception. DOT

asserted sovereign immunity and argued that the § 8522(b)(3) exception only applies when the property itself, in this case the driving record, causes the injury. *Id.* In rejecting DOT's argument, the trial court highlighted the absurdity of such a reading of § 8522(b)(3):

It is . . . absurd to speak of an inaccuracy or deficit in the factual information contained in a file as not being the "occasion of injury" in a case such as the one currently under review. The only alternative interpretation of § 8522(b)(3) would be to say that files and records cannot be the occasion for an injury unless they physically fell off a cabinet and hit someone on the head, or unless a particular document gives a handler a paper cut, which results in blood poisoning

. . .

It was the inaccurate information contained in [Bufford's] file . . . that led directly to the injury. Also, the 'care' and 'custody' of the records in question *were* at fault in the instant case, unless one attempts to assert that the updating and revising of open files, as new facts become known and old ones become obsolete, does not come under the heading of "care, custody, and control." Any who would contend this should be compelled to explain just who *is* responsible for the work of such corrections and updating, if not the agency that has actual custody of the files.

Id.

On appeal to the Pennsylvania Commonwealth Court, DOT reasserted its argument that § 8522(b)(3) only applies when the property itself caused the injury. *Id.* at 753. Although it reversed the trial court's holding on sovereign immunity, the Commonwealth Court elucidated a more nuanced interpretation of § 8522(b)(3). The Court began by addressing the origins of the Pennsylvania state courts' interpretation of the § 8522(b)(3) exception in *Nicholson v. M & S Detective Agency, Inc.*, 503 A.2d 1106 (Pa. Commw. Ct. 1986). In *Nicholson*, a bank employee sued the Commonwealth after being assaulted by a bank security guard who had been hired by M & S Detective Agency, Inc. despite his extensive criminal history. The employee asserted that her injuries were the result of the state's failure to perform its statutory duty to prevent private detective agencies from hiring individuals with criminal histories. The *Nicholson* Court found that § 8522(b)(3) did not apply because it was not the state's "care" or "custody" of the criminal records,

but rather the state's negligent search of those records, that caused the injury. *Nicholson*, 569 A.2d at 1108. The *Nicholson* Court emphasized that "the records themselves were not involved in the chain of causation" and concluded, "[f]or the personal property waiver to apply, the personal property itself must be in some manner responsible for the injury." *Id.* The *Bufford* Court also noted similar conclusions reached in two other cases involving the Commonwealth's issuance of a negligent state examination report of an insurance company and the negligent performance of testing for a sewage disposal system. *See Safeguard Mut. Ins. Co. v. Ins. Comm'r*, 410 A.2d 84 (Pa. Commw. Ct. 1980); *Bendas v. Upper Saucon Township*, 561 A.2d 1290 (Pa. Commw. Ct. 1989). In finding that DOT was entitled to the defense of sovereign immunity, the *Bufford* Court likened DOT's negligence in failing to maintain Bufford's accurate driving record to that in *Nicholson*, *Safeguard* and *Bendas* and concluded: "DOT's negligence . . . does not fit into any exception to sovereign immunity, because the inaccurate driving record, at most, only *facilitated* Bufford's injury by communicating DOT's inaccurate suspension record to third parties." *Bufford*, 670 A.2d at 754 (emphasis added).

These cases are properly understood in the context of record-production and record-keeping. *Bufford*, *Nicholson*, *Safeguard* and *Bendas* reflect the state court's perception that, under certain circumstances, the chain of causation between defendant's negligent act and plaintiff's injury is too attenuated to fall within the § 8522(b)(3) exception.¹ In *Bufford*, for instance, plaintiff's injury was

¹ The fear that application of § 8522(b)(3) under such attenuated theories of causation would expand liability beyond that intended by the legislature was clearly articulated in *Bufford*: To hold otherwise would create a situation where, each time a Commonwealth agency makes a negligent decision and then records that decision in a public document, or overlooks something in an examination of its records, or further, negligently records and stores data which is in any way inaccurate, immunity would be waived under the personal property exception. That exception would

his arrest, detention and false imprisonment, which was directly linked to the inaccurate suspension communicated to the national crime database, rather than to the care and custody of his driving record itself. Such reasoning, however, does not apply in the instant action. In this case, the direct source of Plaintiff's injury was the Defendants' custody of her property. Defendants were responsible for the care, custody and control of Plaintiff's seized property. Plaintiff alleges that, thirty-seven days after the October 25, 2002 suppression hearing, Defendants negligently ordered the destruction of her property. Accordingly, it was the Defendants' allegedly negligent care and custody of her personal property that directly caused Plaintiff's injury, which was the loss of her personal property. It is difficult for this Court to imagine a scenario better fitted to the statutory language of § 8522(b)(3). It would defy logic to hold, as Defendants' urge, that the waiver does not apply because it was Defendants' allegedly negligent mishandling of the property, and not the property itself, that caused Plaintiff's injury. Under Defendant's reasoning, the § 8522(b)(3) exception would only apply in this case if, for instance, Plaintiff's seized mortgage papers "g[ave] [her] a paper cut . . . result[ing] in blood poisoning." *Bufford*, 670 A.2d at 752. Accordingly, Defendants' motion for reconsideration is denied. An appropriate Order follows.

thus become a mechanism for the recovery of damages inflicted by administrative decision making and the negligent recordation of any information first stored and then disgorged by any Commonwealth agency, and we hold that the General Assembly did not intend such a result.
670 A.2d at 755.

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Defendants.	:	

ORDER

AND NOW, this 1st day of **November, 2004**, upon consideration of Defendants' Motion for Reconsideration, Plaintiff's Cross-Motion for Reconsideration and Response, and Defendants' response thereto, it is hereby **ORDERED** that

1. Defendants' Motion for Reconsideration (Document No. 44) is **DENIED**.
2. Plaintiff's Cross-Motion for Reconsideration (Document No. 45) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.