

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

EDWIN BEST,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
POLICE OFFICER JAMES KEENAN	:	NO. 03-5651
	:	
Defendant.	:	

MEMORANDUM AND ORDER

By way of the current motion, plaintiff Edwin Best seeks to compel the City of Philadelphia to pay the judgment and attorney's fees awarded against defendant Police Officer James Keenan. For the reasons which follow, the Court recommends that the motion be denied.

I. FACTUAL AND PROCEDURAL HISTORY

On October 10, 2003, plaintiff filed a complaint in this Court alleging a violation of his Fourth Amendment rights pursuant to 42 U.S.C. § 1983, together with state law causes of action for assault and battery. More specifically, plaintiff charged the City of Philadelphia and several individual police officers with unlawful use of excessive force during a confrontation. Although the City was dismissed from the action by voluntary stipulation, the Philadelphia City Solicitor's Office continued to represent the remaining defendant officers.

Trial began on June 16, 2004 and, the next day, the Court declared a mistrial due to improper introduction of evidence by defense counsel. A new trial began on June 21, 2004, and two of the individual officers were dismissed from the action, leaving Officer James Keenan as the sole defendant. Following Officer Keenan's failure to appear on the second day of the new trial, the jury returned a judgment against him in the amount of \$100 in compensatory damages and \$500 in punitive damages.

Thereafter, the Philadelphia City Solicitor's Office sought and was denied leave to withdraw as counsel for Officer Keenan due to his failure to cooperate with the defense. On petition by plaintiff, the Court then awarded attorney's fees against defendant in the amount of \$15,225. In light of the City's refusal to pay any judgment on behalf of Officer Keenan, plaintiff filed a Motion to Compel the City of Philadelphia to Pay the Judgment and Attorney's Fees. By way of opinion issued October 4, 2004, this Court found that, as the judgment was against Officer Keenan in his individual capacity, plaintiff had no standing to pursue an indemnification action against the City of Philadelphia.

On January 12, 2005, Officer Keenan assigned to plaintiff all monies due to him from the City of Philadelphia under the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8541 *et seq.* In turn, plaintiff filed this Renewed Motion to Compel Payment of the Judgment and Attorney's Fees.

## II. DISCUSSION

While the City sets forth multiple defenses to plaintiff's current motion, one argument in particular precludes any further consideration by this Court – that of subject matter jurisdiction. Specifically, the City contends that this Court cannot proceed over the state law claim of indemnification under 42 Pa.C.S.A. § 8548.

In determining the reach of the federal courts' ancillary jurisdiction, the United States Supreme Court has “cautioned against the exercise of jurisdiction over proceedings that are 'entirely new and original,' . . . or where ‘the relief [sought is] of a different kind or on a different principle” than that of the prior decree.” Peacock v. Thomas, 516 U.S. 349, 358, 116 S. Ct. 862, 869 (1996) (quotations omitted). Our case law has approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties – such as attachment, mandamus and garnishment – to assist in the protection and enforcement of federal judgments. Id. at 357 (citing cases). The Supreme Court, however, has expressly declined to authorize “the exercise of ancillary jurisdiction in a subsequent

lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment.” Id. at 357. As explained by the Court,

Ancillary enforcement jurisdiction is, at its core, a creature of necessity. . . . When a party has obtained a valid federal judgment, only extraordinary circumstances, if any, can justify ancillary jurisdiction over a subsequent suit [against a third party]. To protect and aid the collection of a federal judgment, the Federal Rules of Civil Procedure provide fast and effective mechanisms for execution. . . . The Rules cannot guarantee payment of every federal judgment. But as long as they protect a judgment creditor's ability to execute on a judgment, the district court's authority is adequately preserved, and ancillary jurisdiction is not justified over a new lawsuit to impose liability for a judgment on a third party.

Id. at 359; See also IFC Consult, AG v. Safeguard Intern. Partners, LLC, \_\_\_ F. Supp.2d \_\_\_, 2005 WL 327537, \*4 (E.D. Pa. Feb. 10, 2005) (federal district court could not exercise ancillary jurisdiction over garnishment proceeding brought by judgment creditor against entity that had not been party to underlying lawsuit to confirm arbitration award, although entity was contractually obligated to indemnify judgment debtor; indemnification clause raised new theory of liability from underlying lawsuit and genuine issue of material fact remained as to whether indemnification clause applied to loss or liability coverage.).

Armed with assignment of rights from Officer Keenan, plaintiff, in the case at bar, now seeks to compel the City of Philadelphia to indemnify Officer Keenan, under the Pennsylvania Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8548, for the amount of the judgment, plus attorneys’ fees and costs, rendered against him in the above-captioned action. “[I]t is clear that an action under the Tort Claims Act, which mandates specific procedures for indemnification by municipalities for judgments rendered against public employees, is the proper recourse for a public employee faced with such judgment when the public body is not named in the suit.” Retenauer v. Flaherty, 642 A.2d 587, 594 (Pa. Commw. 1994), appeal denied, 668 A.2d 1135 (Pa. 1995). The statute specifically states as follows:

When an action is brought against an employee of a local agency for damages on account of an injury to a person or property, and he has given timely prior written notice to the local agency, and it is judicially determined that an act of the employee caused the injury and such act was, or that the employee in good faith reasonably believed that such act was,

within the scope of his office or duties, the local agency shall indemnify the employee for the payment of any judgment of the suit.

42 Pa.C.S.A. § 8548 (1998).<sup>1</sup>

Such an action, however, lacks the required legal and factual interdependence necessary for this Court to invoke its ancillary jurisdiction. The underlying action proceeded under a 42 U.S.C. § 1983 claim of excessive force, with the Court exercising its supplemental jurisdiction over the state law claims of assault and battery. See 28 U.S.C. § 1367. Although the City of Philadelphia was originally a party to the action and defended Officer Keenan throughout the course of this matter, it had been voluntarily dismissed as a party prior to the start of trial. The Court thereafter entered judgment against only Officer Keenan. The motion now pursued by plaintiff is not simply an effort to collect on that judgment, but rather an attempt to establish liability, under state law, on the part of the City of Philadelphia. This determination turns on an interpretation of the indemnification provision of the state Tort Claims Act – a theory of liability not present in the initial action.

Accordingly, plaintiff now has several options available to him. He may move in this Court, under the Federal Rules of Civil Procedure, to enforce the judgment against Officer Keenan, without concern for the City's liability. Alternatively, he may use the assignment of rights given to him by Officer Keenan and bring a state court action, under 42 Pa.C.S.A. § 8548, against the City of Philadelphia. Under well-established federal jurisprudence, however, he may not, however, pursue indemnification from the City in federal court.

An appropriate order follows:

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<sup>1</sup> Notably, under § 8550, indemnification is not available if it is judicially determined that the employee's act constituted a crime, actual fraud, actual malice or willful misconduct. 42 Pa.C.S.A. § 8550.

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ORDER

AND NOW, this 12<sup>th</sup> day of *March*, 2005, upon consideration of Plaintiff's Renewed Motion to Compel Payment of the Judgment and Attorney's Fees and the City of Philadelphia's Response thereto, it is hereby ORDERED that the Motion is DENIED.

It is so ordered.

BY THE COURT:

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CHARLES B. SMITH  
UNITED STATES MAGISTRATE JUDGE