

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

JOHN CALVIN OATES : CIVIL ACTION  
 :  
 v. :  
 :  
 :  
 NICHOLAS DIPIERO & :  
 JOSEPH FISHER : NO. 97-4489

MEMORANDUM and ORDER

Norma L. Shapiro, J.

March 3, 1998

Plaintiff John Calvin Oates ("Oates") has filed a request for an extension of time to file a notice of appeal of this court's December 22, 1997 Memorandum and Order. For the reasons stated below, Oates' motion will be denied.

Oates filed an action against Nicholas DiPiero ("DiPiero") and Joseph Fisher ("Fisher") (collectively the "defendants"), two Philadelphia Civil Service Commissioners. Oates claimed defendants deprived him of rights and privileges and obstructed justice under 42 U.S.C. § 1985 by disclosing confidential medical information regarding his history of drug abuse.

On November 3, 1997, only three weeks after filing his Second Amended Complaint, Oates filed a motion for summary judgment. On November 20, 1997, defendants responded to Oates' motion for summary judgment and filed a cross-motion for summary judgment.

By Memorandum and Order entered December 23, 1997, the court, finding defendants' had absolute immunity for actions taken in furtherance of their role as Civil Service

Commissioners, denied Oates' motion for summary judgment and granted defendants' cross-motion for summary judgment.

A party must file a notice of appeal "within 30 days after the date of entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). The thirty day period within which Oates' was required to file a notice of appeal to the Court of Appeals expired on January 23, 1998; Oates did not file a notice of appeal within that period.

On February 10, 1998, Oates filed this request for an extension of time to file a notice of appeal. A party may file a motion for an extension of time to file a notice of appeal "not later than 30 days after the expiration of the time prescribed by this Rule 4(a)." Fed. R. App. P. 4(a)(5). Oates' timely filed this motion within that period.

"The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal ...." Id. Oates has not alleged any excusable neglect that prevented him from filing a notice of appeal within the thirty day period following entry of this court's December, 1997 Memorandum and Order. Instead, Oates argues that "if discovery is completed, with affidavits from the Defendants and other parties he can prove the Defendants acted outside of their jurisdiction." Pltff.'s Req. for Extension at 2.

When this court entered summary judgment in favor of

defendants, all discovery concluded and this action was closed. Oates now claims that additional discovery may show that defendants acted outside of their jurisdiction when they engaged in performing their duties as Civil Service Commissioners and denied his claim.

Oates himself filed his motion for summary judgment only three weeks after filing his Second Amended Complaint. He claims now that further discovery was necessary in order to resolve this action, but he earlier sought summary judgment in his favor on the same evidence the court relied upon in granting defendants' cross-motion for summary judgment. That evidence showed defendants conducted a hearing on Oates' civil service appeal and issued a written finding. As the court earlier determined, they had absolute immunity for actions taken during that process.

Judicial officers and quasi-judicial officers are entitled to absolute immunity unless the challenged action was completely unrelated to the performance of their judicial or quasi-judicial duties. See, e.g., Forrester v. White, 484 U.S. 219, 230 (1988) (no absolute immunity for judge engaged in administrative matters such as firing an employee). The evidence submitted clearly reveals that defendants were Civil Service Commissioners reviewing Oates' civil service appeal under 351 Pa. Code. § 7.7-201 and Civil Service Regulation 22 when they allegedly violated Oates' rights. No additional discovery can establish that

defendants acted outside their jurisdiction under governing law.

Oates' action was without merit as would be an appeal; he has not shown "good cause" to warrant an extension of time to file a notice of appeal. Oates' motion will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 3d day of March, 1998, upon consideration of plaintiff John Calvin Oates' ("Oates") request for an extension of time to file a notice of appeal and in accordance with the attached Memorandum, it is hereby **ORDERED** that Oates' request for an extension of time is **DENIED**.

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Norma L. Shapiro, J.