

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

KEVIN GREEN	:	CIVIL ACTION
	:	
v.	:	
	:	
MARTIN HORN, <u>et al.</u>	:	NO. 96-2282

MEMORANDUM ORDER

AND NOW, TO WIT, this 17th day of November, 1997, upon consideration of Defendants' Motion for Summary Judgment, Plaintiff's Memorandum in Support of State Law Claim, Defendants' reply thereto, oral argument before the court on September 9, 1997, Defendants' Pretrial Conference Agenda and Plaintiff's response thereto, the court will dismiss Plaintiff's claims to the extent that they arise under state law for the reasons set forth below.

In the court's Memorandum and Order of July 29, 1997, the court granted in part and denied in part Defendants' Motion for Summary Judgment. The court left open the issue of Plaintiff's state law claims for further review and is now in a position to rule on that issue. In its Memorandum and Order of July 29, 1997, the court noted that Plaintiff's Amended Complaint made general references to state law claims. The court gave Plaintiff an opportunity to describe those claims and to respond to Defendants' argument that they were immune from any state law claims. To this end, the court permitted Plaintiff, if he wished to proceed with any state law claims, to file a memorandum

describing the legal basis for the state law claims and explaining why such claims would not be barred by sovereign immunity.

On August 12, 1997, Plaintiff filed a memorandum devoted entirely to the issue of immunity. Two days later, the court received a letter from Defendants in response to Plaintiff's memorandum. On August 26, 1997, the court received a letter from Plaintiff addressing the issues of sovereign immunity and the state law claims. However, the letter again failed to state a basis for the state law claims. Finally, the court, pursuant to its order issued August 28, 1997, heard oral argument from the parties on the state law claims on September 9, 1997. Defendants filed a Pretrial Conference Agenda that reiterated their argument that they were immune from any possible state law claims. Once again, Plaintiff was unable to articulate any legal basis for the state law claims against the Defendants.

The court finds that even if Plaintiff had articulated state law claims, Defendants would be immune from such claims under the statutory protection of sovereign immunity. As employees of the Commonwealth acting within the scope of their duties, the Defendants are immune from state law claims. 1 Pa. Cons. Stat. Ann. § 2310. Sovereign immunity has been waived only for certain negligence claims, none of which fit the Plaintiff's factual assertions. 42 Pa. Cons. Stat. Ann. § 8521-22. Therefore, even if Plaintiff had state law claims, such claims would be barred by sovereign immunity.

For the reasons set forth above, IT IS ORDERED that Plaintiff's state law claims against all Defendants are DISMISSED.

Because Plaintiff's federal claims against Defendants Martin L. Horn, William R. Winder, Donald T. Vaughn and Derek Hairston have already been dismissed by the court's order dated July 29, 1997, there are no remaining claims against these Defendants and IT IS ORDERED that judgement is entered in favor of defendants Horn, Winder, Vaughn and Hairston and against plaintiff Green. Plaintiff's federal claims will go forward against the remaining defendants.

IT IS FURTHER ORDERED that this matter is called for trial at 10:00 a.m. on December 8, 1997, in Courtroom 17-B, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

LOUIS C. BECHTLE, J.