

JOE MYERS,

Plaintiff

v.

TIMOTHY F. MCCUNE, JOSEPH
CHIVERS, JACK W. MURTAUGH, JR.,
GRAYDON BREWER, CARL V. NANNI,
JACK LEWIS, JIM GALLAGHER, HANK
LEYLAND, GREG LOVERCHECK,
EDWARD TASSEY, AK STEEL, UAW
(formerly Butler Armco Independent
Union),

Defendants

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

William J. Petrus
PROTHONOTARY

2019 NOV 21 A 10:45

PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED

NO. A.D. No. 19-10516

OPINION

The presenting matters are the Preliminary Objections to the Plaintiff's Complaint filed by various Defendants. For the reasons explained hereafter, the Preliminary Objections are GRANTED *en toto* such that this case is DISMISSED with prejudice against the objecting Defendants.

PROCEDURAL HISTORY

The Plaintiff's pro se Complaint, filed on May 29, 2019, is largely indecipherable in terms of presenting a factual or legal basis for a claim against any of the Defendants. To the extent a factual picture can be ascertained from Plaintiff's rambling references to his constitutional rights, it appears the Plaintiff was terminated from his employment with AK Steel on April 10, 2001. *Plaintiff's Complaint, p.4.* With the assistance of his union representatives, the Plaintiff challenged the basis for his termination before an arbitrator. On November 29, 2011, the arbitrator upheld the Plaintiff's termination.

As the public records reflect, the Plaintiff subsequently filed a lawsuit on April 22, 2004 in the Butler County Court of Common Pleas against AK Steel Corporation and Butler Armco Independent Union, U.A.W. (hereafter Union). The case was then removed by the Defendants to the federal district court and docketed at Civil Action No. 04-674 in the United States District Court for the Western District of Pennsylvania. The case was reviewed by the federal court pursuant to the preempting law, the Labor Management Relations Act (“LMRA”), 29 U.S.C. Section 185(a).

Plaintiff’s lawsuit claimed that the Union representatives failed to adequately represent him regarding his discharge, specifically for refusing to appeal the arbitrator’s ruling. In Plaintiff’s view, there was a breach of contract by his Union representatives. Plaintiff also alleged a breach of contract against AK Steel Corporation in addition to a state law fraud claim. The gravamen of the Plaintiff’s case was the contention that the defendants committed fraud by failing to inform him that the arbitrator’s ruling was unappealable and that he had a six-month window time to file an unfair labor practice claim.

By Opinion and Order dated October 4, 2004, the Honorable Judge Donetta W. Ambrose, then the Chief U.S. District Judge for the Western District of Pennsylvania, dismissed all of the Plaintiff’s claims as time-barred. The Plaintiff’s appeal to the Third Circuit Court of Appeals resulted in the affirmance of the trial court’s ruling by Opinion/Order filed December 8, 2005. *See Myers v AK Steel Corporation*, 156 F. App. 528 (3d Cir. 2005).

On May 29, 2019, Plaintiff filed the case *sub judice* in the Butler County Court of Common Pleas. The original named Defendants were Timothy F. McCune, Joseph M. Chivers, Jack W. Murtaugh, Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tasse, AK Steel, UAW (formerly Butler Armco Independent Union).

Defendant Timothy F. McCune was sued in his capacity as Butler County District Attorney. However, at the time this lawsuit was filed, Timothy F. McCune was serving as a member of the Butler County Court of Common Pleas. By Order dated June 25, 2019, by the Honorable Judge William Shaffer, President Judge, the Butler County bench was recused from this case. Thereafter, the undersigned was appointed by the Pennsylvania Supreme Court by Order dated July 24, 2019 to preside in this matter.

The Defendants who have filed Preliminary Objections are Plaintiff's former employer, AK Steel, Plaintiff's Union and Union representatives. Oral argument was held on October 22, 2019, with all necessary parties participating, including the Plaintiff. It was an opportunity for all parties to make their positions clear. A court reporter recorded the proceeding.

The Plaintiff had ample time to amend his Complaint to address any issues raised in the Preliminary Objections and failed to do so. Most of the reasons for granting the Preliminary Objections overlap for all Defendants, while there are specific reasons related to certain Defendants.

TIMOTHY F. MCCUNE

Plaintiff is suing Timothy F. McCune for his alleged failure to prosecute people who were involved in the termination of his employment with AK Steel. His claim is baseless for a host of legal and factual reasons.

As a matter of law, the Plaintiff does not have standing to sue McCune for failing to prosecute a fellow citizen. It has long been the law that a private citizen cannot sue the prosecutor for exercising the core function of making prosecutorial decisions. According to the United States Supreme Court, "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

The rationale is based on the need for prosecutors to exercise independent professional judgment grounded on the facts and law without regard to whether private citizens can file suit. It also prevents private citizens from seeking revenge on a perceived enemy by attempting to coerce a prosecutor to file a criminal charge for fear of civil liability.

For the above reasons, among others, prosecutors are given immunity from civil liability for claims against them in state and federal court. In Pennsylvania, the doctrine of high public official immunity precludes the Plaintiff's claim against McCune. *Durham v McElynn*, 772 A.2d 68, 68 (Pa. 2001). Under federal law, a prosecutor has absolute immunity from civil liability. *Kulwicki v. Dawson*, 969 F.2d 1454 (3d Cir. 1992). "The decision to initiate a prosecution is at the core of a prosecutor's judicial role. A prosecutor is absolutely immune when making this decision, even when he acts without a good faith belief that any wrongdoing occurred." *Id.*, p. 1463. Accordingly, McCune is immune from any state or federal civil claim the Plaintiff can assert.

Assuming *arguendo* that Plaintiff could sue McCune, his Complaint fails to establish a legal or factual basis for any claim. The lone factual allegation in Plaintiff's Complaint is that McCune stated "I have no opinion regarding your claims with AK Steel." *Complaint*, p. 7. From this alleged statement, the Plaintiff, without any basis, leaps to the conclusion that McCune "turned a blind eye" to prosecuting anyone. *Id.* The Plaintiff fails to identify who should have been prosecuted. Further, Plaintiff never identified what specific crimes were committed that should have been prosecuted by McCune.

Separately, Plaintiff fails to provide any reason why he waited over eighteen years to sue McCune. The Plaintiff cannot, as a matter of law, identify any civil claim against McCune that was still within any state or federal statute of limitations when this lawsuit was filed on May 29, 2019.

Lastly, Plaintiff's Complaint does not identify what relief he seeks against McCune. The only demand that Plaintiff asserts is that McCune lose his law license. This lawsuit is not the proper forum for such a demand.

Based on the foregoing, the law does not afford Plaintiff any relief against McCune.

DEFENDANTS UAW LOCAL 3303, JAMES C. GALLAGHER, HANK LEYLAND, JOHN MURTAUGH Jr, GREG LOVERICK, CARL V. NANNI AND JACK LEWIS

These Defendants are comprised of the Plaintiff's Union, Union officials and/or Plaintiff's co-workers. Giving the Plaintiff the benefit of all favorable inferences in his Complaint, it is still unclear what causes of action Plaintiff asserts against these Defendants.

It is undisputed the Plaintiff was a member of the Union he now is suing. In addition, there was a Collective Bargaining Agreement (CBA) entered into by AK Steel Corporation and the Union, pursuant to which Plaintiff was bound as a member of the Union. As the Plaintiff's litigation in federal court established, the rights and remedies he possessed pursuant to the CBA were governed by the LMRA. Given these uncontestable circumstances, there are at least the following legal reasons why the Plaintiff cannot establish a claim against any of these Defendants.

A) COLLATERAL ESTOPPEL

AK Steel Corporation and the Butler Armco Independent Union, U.A.W. were named parties in the Plaintiff's unsuccessful litigation in federal court. In the present lawsuit, Plaintiff identifies as a Defendant, "U.A.W. (formerly Butler Armco Independent Union)". Hence, the present Union is the successor to the union defendant in Plaintiff's prior litigation.

As a result, the Plaintiff is collaterally estopped from litigating any issues in this case that were previously litigated between these parties. At a minimum, these issues include the fact that all of the Plaintiff's claims against these Defendants under the LMRA are time-barred according to the Third Circuit Court of Appeals Order in 2005. Nothing Plaintiff alleges in this lawsuit, nor could he allege if permitted to amend his Complaint, can change those facts.

B). FEDERAL OR STATE STATUTE OF LIMITATIONS

Giving the Plaintiff the benefit of an inference that his claims are not pursuant to the LMRA, he has yet to articulate any claim that is within any federal or state statute of limitations. To the extent there are any factual averments within the Plaintiff's Complaint, all of the activity which he mentions occurred in 2001. Plaintiff was fired by AK Steel on April 10, 2001. The arbitrator upheld his dismissal by a decision dated November 29, 2001.

As the federal courts found, since 2001, the Plaintiff has known what he needed to know to timely file a lawsuit against AK Steel and/or the U.A.W. Further, the federal courts found that none of the Defendants engaged in any fraudulent behavior that impeded the Plaintiff's ability to timely file a lawsuit.

Then, as now, the Plaintiff fails to allege any basis for an equitable tolling of the statute of limitations for any federal or state claims against the present Defendants. The Plaintiff waited for over eighteen years to file the current lawsuit against these Defendants. To let this lawsuit proceed, and force the Defendants to incur additional expenses as well as the unnecessary use of judicial resources, is unjust when this case can be resolved as a matter of law.

C.) THESE DEFENDANTS ARE NOT STATE ACTORS

Giving the Plaintiff the benefit of a far-fetched inference that his Complaint alleges a factual basis that somehow these Defendants violated his right to a jury trial in his federal litigation, he still cannot establish a legal claim as a matter of law.

It has long been a bedrock constitutional principle that private actors, such as the Defendants herein, cannot be liable for a constitutional violation. Rather, only those who are acting pursuant to state authority can be liable for violating a citizen's constitutional rights. The Fourteenth Amendment to the United States Constitution provides in relevant part:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment applies to conduct characterized as “state action.” *Lugar v Edmondson Oil Company Inc. and Barbour*, 457 U.S. 2744, 2746 (1982).

The statutory embodiment of this principle is found in Title 42 U.S.C. Section 1983, which grants a remedy to a private citizen for a violation of a constitutional right which takes place “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory...” *Id.*

The Supreme Court of the United States eloquently described the distinction between the liability of a state actor and a private citizen as follows:

“In 1883, this Court in the *Civil Rights Cases*, 109 U.S. 3 (3 S.Ct. 18, 27 L.Ed. 835), affirmed the dichotomy set forth in the Fourteenth Amendment between the deprivation by the state, subject to scrutiny under its provisions, and private conduct, ‘however discriminatory or wrongful,’ against which the Fourteenth Amendment offers no shield.”

Jackson v. Metropolitan Edison Co. 419 U.S. 345, 349 (1974).

Nothing Plaintiff has alleged in his Complaint, or could allege in any amended complaint, can establish the Defendants were state actors liable for the violation of any of the Plaintiff's constitutional rights.

D.) THE RIGHT TO A JURY TRIAL IN A CIVIL CASE IS NOT ABSOLUTE

One consistent theme of the Plaintiff's Complaint is his insistence that he has a right to a jury trial without any interference by the Defendants or the Court. By the authorities he cites, it is unclear in what setting he creates any claim against these Defendants for a violation of his right to a jury trial.

The Plaintiff was never the subject of a criminal prosecution. Hence, his reliance on *Miranda v. Arizona*, 384 U.S. 432 (1966) is irrelevant. Instead, the Plaintiff has been involved in three separate civil proceedings, including this case, all of which he initiated as the moving party.

First was the arbitration case, which Plaintiff lost in 2001. Next was the civil lawsuit he filed in 2004 against these parties, which was dismissed by federal judges prior to trial. In these two proceedings, none of the Defendants had any authority to deny the Plaintiff his right to a jury trial. The arbitrator's ruling was entered pursuant to the procedure set forth in the CBA under which it was brought. The federal judges had the legal authority to dismiss the Plaintiff's case short of a jury trial because his claims were time-barred.

At oral argument in this case, this Court, at least twice, tried to explain to the Plaintiff that his right to a jury trial in a civil proceeding was not absolute. Plaintiff was informed his claims were reviewable by a court to determine whether there was a factual and legal basis to allow any viable causes of action to go to trial.

The Plaintiff fails to acknowledge or accept the fact that when he chose to invoke the jurisdiction of this Court by filing the instant case, he was subject to all of the procedural and substantive laws binding upon all moving parties. Inherent within the civil process is the gatekeeping function of a judge to dismiss a case that fails to establish a legal or factual basis for a jury trial.

As the record in this case establishes, it is clear as a matter of law that the Plaintiff has not set forth, nor can he establish by any amended Complaint, a viable cause of action against any of these Defendants. Thus, it is incumbent upon this Court, as the gatekeeper, to grant the Preliminary Objections of the Defendants and dismiss this case with prejudice.

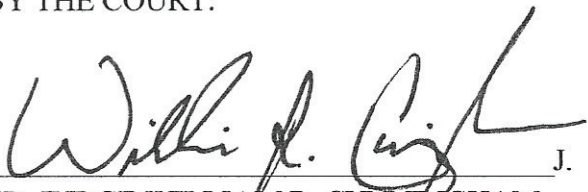
CONCLUSION

Plaintiff's Complaint (as well as his other filings) are based on a misguided belief that he can sue anyone at any time for any reason and demand that nothing can be done to prevent him from having a jury try the case.

The record is clear that the Plaintiff has not and cannot by amendment establish a legal claim against any of the Defendants discussed herein.

BY THE COURT:

DATE: 11-21-19


SR. JUDGE WILLIAM R. CUNNINGHAM J.

