

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID CONKLIN, IV,	:	
	:	
Appellant	:	
	:	No. 25-CV-1394
v.	:	
	:	
CARBON COUNTY CORRECTIONAL	:	
FACILITY, CARBON COUNTY,	:	
CARBON COUNTY COMMISSIONERS,	:	
WARDEN JAMES YOUNGKIN	:	
	:	
Appellees	:	

David Conklin, IV	Pro Se
Frank L. Tamulonis, Jr., Esquire	Counsel for Appellees

MEMORANDUM OPINION

Serfass, J. - August 26, 2026

Appellant, David Conklin, IV (hereinafter "Appellant"), has appealed from the Order of this Court issued on May 22, 2026, pursuant to which we sustained Appellees' preliminary objections and dismissed Appellant's complaint. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

On June 30, 2025, Appellant filed a "Complaint in Mandamus and for Violations of Pennsylvania Constitutional Rights" against Carbon County Correctional Facility, Carbon County, Carbon County

Commissioners, and Warden James Youngkin (hereinafter, "Appellees"). In his complaint, Appellant alleged violations of 42 Pa.C.S. §5901 and Article 1, §13 of the Pennsylvania Constitution.

On August 4, 2025, Appellees, through counsel, filed "Preliminary Objections of Defendants by Reason of Improper Service". Therein, Appellees averred that Appellant served Nanovic Law Offices with the complaint via regular U.S. mail. Appellees stated that neither Nanovic Law Offices nor any attorney associated with that firm is the solicitor for Carbon County, the Carbon County Correctional Facility or the Carbon County Commissioners, and requested that this Court dismiss Appellant's complaint for improper service under Pa.R.C.P. 400(a).

On September 19, 2025, Appellant filed "Plaintiff's Response to Defendants' Preliminary Objections". Therein, Appellant requested that this Court overrule Appellees' preliminary objections as he had made a good faith effort to serve the complaint and that any technical defects could be cured without prejudice to Appellees as they received actual notice of the complaint. In the alternative, Appellant requested leave to effectuate proper service.

Oral argument on Appellees' preliminary objections was held on November 12, 2025. This Court took the matter under advisement and the parties were given the opportunity to file supplemental briefs in support of their respective positions. On December 19,

2025, Appellees filed a supplemental brief. Appellant did not file any supplemental brief in opposition. After careful consideration, on May 22, 2026, we issued our "Order of Court" sustaining Appellees' preliminary objections and dismissing Appellant's complaint.

On June 26, 2026, Appellant filed his "Notice of Appeal". On June 29, 2026, we issued an order directing Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b)(1) within twenty-one (21) days. On July 22, 2026, twenty-three (23) days after we issued our 1925(b) Order, Appellant filed a concise statement.

ISSUES

In his concise statement, Appellant raises the following seven (7) issues for appellate review:

1. Whether this Court erred in concluding that Appellant failed to make a good-faith effort to effectuate service after considering the totality of the circumstances presented;
2. Whether this Court misapplied Pennsylvania authority governing actual notice, defective service, and the good-faith standard applicable to commencement of an action;
3. Whether this Court abused its discretion by dismissing the Complaint despite acknowledging that Appellees received actual notice of the action;

4. Whether this Court erred by failing to grant or expressly address Appellant's alternative request for leave to cure any defect in service through proper service by the Sheriff;
5. Whether this Court erred in concluding that Appellees would suffer legal prejudice if Appellant were permitted to cure service;
6. Whether this Court erred in concluding that Appellant's claims were barred by the applicable statutes of limitation and in relying on that conclusion as part of its dismissal analysis; and
7. Whether this Court abused its discretion by dismissing the action rather than permitting it to proceed on the merits under the circumstances reflected in the record.

DISCUSSION

At the outset, we submit that no issues have been preserved for appellate review in this matter. Appellant has failed to comply with our June 29, 2026 Order directing him to file a concise statement of matters complained of an appeal within twenty-one (21) days. Specifically, our Pa.R.A.P. 1925(b) Order was entered on the docket on June 29, 2026. Therefore, Plaintiff was required to file his concise statement on or before July 20, 2026. Plaintiff failed to comply with this directive, instead filing his Rule 1925(b) Statement on July 22, 2026 and offering no reason as to why the statement was untimely.

By its plain text, Rule 1925(b) requires every “[a]ppellant [to] file of record [a Rule 1925(b)] Statement and concurrently [] serve the judge” when directed to do so. Pa.R.A.P. 1925(b)(1). The Rule also states “that any issue not properly included in the Statement timely filed and served pursuant to subsection (b) shall be deemed waived.” Id. at 1925(b)(3)(iv).

In Commonwealth v. Lord, 719 A.2d 306 (Pa. 1998), the Pennsylvania Supreme Court made clear that if an appellant fails to file a timely Rule 1925(b) Statement as ordered by the trial court, all issues will be waived for purposes of appellate review. The Pennsylvania Commonwealth Court has observed: “The Supreme Court’s establishment of a bright-line rule in Lord makes waiver under Rule 1925(b) automatic with no room for interpretation. Commonwealth v. Reid, (Pa.Cmwlth., No. 1745 C.D. 2024, filed May 28, 2026), slip op. at 3 [, 2026 WL 1492578].

“[T]he Pennsylvania Supreme Court has strictly applied [the] requirement that appellants timely comply with a trial court’s order to file a [Rule 1925(b) Statement] pursuant to Pa.R.A.P. 1925(b).” Paluch v. Beard, 182 A.3d 502, 506 (Pa.Cmwlth. 2018). This is true even for *pro se* litigants. Cummings v. Matiyasic, 334 A.3d 85, 89 (Pa.Cmwlth. 2025). Our Supreme Court has disapproved of intermediate appellate courts creating exceptions to the strict bright-line waiver requirement for untimely Rule 1925(b) Statements established in Lord. See Commonwealth v. Hill, 16 A.3d

484, 494 (Pa. 2011) (disapproving "lower court decisions that had created exceptions to [Pa.R.A.P. 1925(b)'s] bright-line nature," explaining "the Rule's provisions are not subject to *ad hoc* exceptions or selective enforcement"); *see also* Commonwealth v. Wholaver, 903 A.2d 1178, 1184 (Pa. 2006) (reaffirming that "the strict waiver rule should not be 'selectively enforced ... based on the arguments of the parties'" (citation omitted)).

As noted hereinabove, our Rule 1925(b) Order required Plaintiff to file his concise statement no later than July 20, 2026. Plaintiff filed his statement on July 22, 2026. As Plaintiff filed his Rule 1925(b) Statement two days late, we deem all of Plaintiff's issues on appeal waived. *See* Commonwealth v. Franson, 42 A.3d 1100, 1104 (Pa.Super. 2012) wherein the defendant filed his concise statement three (3) days late and the Superior Court concluded that he had waived all claims by failing to timely file a Rule 1925(b) Statement.

To the extent Appellant contends that his concise statement was timely filed based upon the "Affidavit of Service" which was attached thereto and dated July 18, 2026, we note that Pa.R.A.P. 1925(b) provides that filing the statement of record by mail "...shall be complete on mailing if the appellant obtains a United States Postal Service Form 3817 Certificate of Mailing, Form 3800 Receipt for Certified Mail, Form 3806 Receipt for Registered Mail, or other similar United States Postal Service form from which the

date of deposit can be verified in compliance with the requirements set forth in Pa.R.A.P. 1112(c)" Pa.R.A.P. 1925(b)(1). Appellant's "Certificate of Service" does not demonstrate compliance with Pa.R.A.P. 1925(b), rendering his concise statement untimely.

In the event that the Honorable Commonwealth Court permits this appeal to proceed, we will address the issues set forth in Appellant's concise statement seriatim:

Issues One and Two:

We will address Issues One and Two in tandem as they both challenge our decision regarding service of Appellant's complaint. In so doing, we note that "[v]alidity of service is essential and failure to perfect service is fatal to a lawsuit." Ferraro v. Patterson-Erie Corp., 363 A.3d 987, 999 (Pa. 2024).

Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed. Sharp v. Valley Forge Medical Ctr. and Heart Hosp., Inc., 422 Pa. 124, 221 A.2d 185 (1966). Without valid service, a court lacks personal jurisdiction of a defendant and is powerless to enter judgment against him or her. U.K. LaSalle, Inc. v. Lawless, 421 Pa.Super. 496, 618 A.2d 447 (1992). Thus, improper service is not merely a procedural defect that can be ignored when a defendant subsequently learns of the action against him or her. Frycklund v. Way, 410 Pa.Super. 347, 599 A.2d 1332 (1991).

Cintas Corp v. Lee's Cleaning Services, Inc., 700 A.2d 915, 917-18 (Pa. 1997).

Pennsylvania Rule of Civil Procedure 401(a) provides that "[o]riginal process must be served within thirty (30) days after

issuance of the writ or the filing of complaint." Pa.R.Civ.P. 401(a). If the plaintiff is unable to serve the complaint within the period prescribed by Rule 401(a), the plaintiff must file a praecipe for reissuance of the writ or reinstatement of the complaint in order to continue its validity. Pa.R.Civ.P. 401(b).

The Rules of Civil Procedure further provide that original process shall be served within the Commonwealth only by the county sheriff, subject to certain exceptions not applicable to Appellant's complaint. Pa.R.C.P. 400(a). The rules also provide that service of original process upon "a political subdivision shall be made by handing a copy to (1) an agent duly authorized by the political subdivision to receive service of process, or (2) the person in charge of the office of the defendant, or (3)... the chairman or clerk of the board of county commissioners." Pa.R.C.P. 422(b). In the instant case, Appellant alleges that a true and correct copy of the complaint was served via regular U.S. Mail on Nanovic Law Offices. In the "Certificate of Service" attached to his complaint, Appellant indicated that Nanovic Law Offices serves as solicitor for the Carbon County Correctional Facility. An affidavit from Attorney Thomas S. Nanovic, a partner at Nanovic Law Offices, provides that neither the law firm nor any member of the firm serves as the solicitor for the Carbon County Correctional Facility or for Carbon County, and that no member of the law firm

is authorized to accept service on behalf of any of the named defendants.

“When a plaintiff relies on actual notice to a defendant that an action has been commenced, that actual notice has to be the result of a good faith, but improper, effort at service of process under the Rules.” Ferraro v. Patterson-Erie Corp., 313 A.3d 987, 1007 (Pa. 2024). Therefore, we must first determine whether Appellant effectuated proper service of the complaint. Here, Appellant attempted service upon Defendants via regular United States Mail. Regardless of whether the mailing was addressed to the proper defendants or their agents, this method of service is improper. As noted previously, service of original process in the Commonwealth is only to be effectuated by the county sheriff, subject to certain exceptions not applicable in the instant case. Pa.R.C.P. 400(a). Further, Rule 422 provides that when a political subdivision is the named defendant, service must be made by handing a copy to either a duly authorized agent of the political subdivision, the person in charge at the defendant’s office or the chairman or clerk of the board of county commissioners. Pa.R.C.P. 422(a). In this case, Appellant attempted service of original process by regular mail directed to Nanovic Law Offices. Such attempt was ineffective and contrary to the Pennsylvania Rules of Civil Procedure.

Having established that service was defective, our analysis turns to whether Appellees received actual notice of the complaint. Appellees responded to the complaint with preliminary objections, so it appears they received actual notice. Therefore, we must now determine whether the actual notice they received was "the result of a good faith, but improper, effort at service of process under the Rules." Ferraro v. Patterson-Erie Corp., 313 A.3d 987, 1007 (Pa. 2024). We note that it is Appellant's burden to prove that he made a good faith effort to effectuate service of his complaint in a timely manner. See Gussom v. Teagle, 247 A.3d 1046, 1056 (Pa. 2021). Providing actual notice without a good faith attempt at diligent and proper service is insufficient to meet Appellant's burden. Here, Appellant attempted service once, via regular U.S. mail. As noted previously, this attempt does not comport with the Pennsylvania Rules of Civil Procedure. See Pa.R.C.P. 400(a). Having made one attempt at service that so clearly violated the Rules of Civil Procedure, we cannot conclude that Appellant made a good faith effort at serving Appellees. Moreover, despite the fact that Appellees' preliminary objection notified Appellant of the proper means of service, he failed to reinstate the complaint or to offer any evidence that he diligently made any effort to effectuate proper service on the Appellees prior to the dismissal of the complaint. His failure to do so belies a good faith effort to ensure diligent and proper service. Aside from mailing the

complaint to Nanovic Law Offices, Appellant made no effort to inquire into or perfect service. Therefore, we find that Appellant failed to carry his initial burden of demonstrating that he made a good faith effort to diligently and timely serve original process on Appellees. Because Appellant failed to meet his evidentiary burden, informal receipt of actual notice is irrelevant. See Ferrano v. Patterson-Erie Corp, 313 A.3d at 1011.

We can only assume that when Appellant says "considering the totality of the circumstances", he is again arguing that his *pro se* status confers special consideration. (Appellant's 1925(b) Statement, para. 1). Our Appellate Courts have acknowledged that *pro se* status confers no special benefit upon a party. Commonwealth v. Adams, 882 A.2d 496, 498 (Pa.Super. 2005) (citation omitted). To the contrary, "any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing." Id. Moreover, "... an [uncounseled] litigant is not to be given any particular advantage because of his lack of knowledge of the law." Young v. Estate of Young, 138 A.3d 78, 87 (Pa.Cmwlth. 2016) (citation omitted).

Issues Three through Seven:

The remaining issues raised in Appellant's concise statement will be addressed together as they all relate to our decision to dismiss Appellant's complaint. Appellant contends, *inter alia*,

that this Court erred in concluding that Appellees would suffer legal prejudice if Appellant was permitted to cure service. Independent of the question of whether Appellant intended to stall the judicial machinery or whether Appellees were prejudiced, Appellant "carries an evidentiary burden to demonstrate that [he] met [his] good faith mandate." Gussom v. Teagle, 247 A.3d 1046, 1057 (Pa. 2021). We have already determined that Appellant failed to meet his evidentiary burden. That determination notwithstanding, Appellees argued that they would be prejudiced since the statute of limitations had run on Appellant's claims. Count I of the complaint sought a writ of mandamus compelling Appellees to comply with 42 Pa.C.S.A. §5901 (relating to jail officer's duty to provide inmates with physical exercise). The six-month statute of limitations under 42 Pa.C.S.A. §5522(b)(1) is applicable to an action in mandamus. Fleming v. Rockwell, 500 A.2d 517, 519 (Pa.Cmwlth. 1985). Appellant alleged that violations of 42 Pa.C.S.A. §5901 began in late August of 2023. See Plaintiff's Affidavit In Support of Complaint, para. 2. Appellant filed his complaint on June 30, 2025, well after the six-month period had run.

Count II of Appellant's complaint sought compensatory damages for a violation of Article I, Section 13 of the Pennsylvania Constitution. "[N]either Pennsylvania statutory authority, nor appellate case law has authorized the award of monetary damages

for a violation of the Pennsylvania Constitution.” Jones v. City of Philadelphia, 890 A.2d 1188, 1208 (Pa.Cmwlth. 2006). Appellant’s request for compensatory damages can be characterized more as an action to recover damages for injuries to his person, caused by the alleged wrongful acts of Appellees. Such a claim is subject to the two-year statute of limitations found in 42 Pa.C.S.A. §5524. That section provides that such an action must be commenced within two years. 42 Pa.C.S.A. §5524(2). As Appellant alleged the wrongful conduct on the part of Defendants that caused him injury occurred sometime in August of 2023, that two-year period as since run. Allowing Appellant to reinstate his complaint now would require Appellees to litigate stale claims. Further, to allow Appellant to file an amended complaint requesting non-monetary relief would serve no purpose as he is no longer incarcerated.

Finally, we reiterate that it was Appellant’s burden to prove that he made a good faith effort to effectuate service of his complaint in a timely manner. Appellant failed to make even a single proper attempt at service. He took no action to reinstate the complaint nor to attempt service through the sheriff’s department in accordance with the Rules of Civil Procedure.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be dismissed as no issues have been properly

preserved for review by the Honorable Commonwealth Court or, in the alternative, denied for the reasons set forth hereinabove.

BY THE COURT:

\s\ Judge Steven R. Serfass
Steven R. Serfass, J.