

STATE OF MICHIGAN
COURT OF APPEALS

CLIFTON MOFFAT,

Plaintiff-Appellee,

v

PRISON HEALTH SERVICES, INC.,

Defendant-Appellant.

UNPUBLISHED
September 13, 2012

Nos. 305651 & 305715
Ingham Circuit Court
LC No. 11-000252-CK

Before: SERVITTO, P.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

In docket number 305715, defendant appeals as of right the portion of a June 20, 2011, order denying defendant's motion for summary disposition and granting summary disposition pursuant to MCR 2.116(I)(2) in favor of plaintiff with regard to plaintiff's breach of contract claim. In docket number 305651, defendant appeals by leave granted the portion of the same order requiring defendant "to perform reconstructive surgery on plaintiff's torn ACL within 45 days of this order and continue with necessary post-surgery rehabilitation."¹ We reverse and remand.

Plaintiff is an inmate in the custody of the Department of Corrections (DOC). Defendant is a private health-services provider that has contracted with the DOC to provide medical care for prison inmates within the DOC system. In September 2007, plaintiff reinjured the anterior cruciate ligament (ACL) in his left knee while in the custody of the DOC. Plaintiff first tore the ACL in 1991 and had it surgically repaired. Following the most recent injury, defendant's physician and medical director determined that under the current standard of care plaintiff should receive conservative treatment instead of reconstructive surgery because plaintiff's left knee remains in good condition and functions well. Defendant viewed plaintiff as a poor candidate for a successful outcome given his history of medical problems with the knee, including the prior surgery and the existence of arthritis.

In February 2011, plaintiff filed the present action in which he asserted that he is a third-party beneficiary of the medical services contract between defendant and the DOC. Plaintiff

¹ This Court granted defendant's motion for stay pending appeal.

maintained that defendant breached the contract through its refusal to perform ACL surgery on his knee. After considering defendant's motion for summary disposition that was brought pursuant to MCR 2.116(C)(8) and (10), the trial court granted summary disposition in favor of plaintiff, finding that plaintiff had stated a claim for breach of contract as a third-party beneficiary and that plaintiff had established the need for reconstructive surgery.

Defendant first argues that the trial court erroneously refused to dismiss plaintiff's claim pursuant to MCL 600.5507(3). We agree. We review de novo the trial court's ruling on the competing motions for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The Michigan Prisoner Litigation Reform Act (PLRA), MCL 600.5501 *et seq.*, applies to a "civil action concerning prison conditions." MCL 600.5501. "'Civil action concerning prison conditions' means any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison...." MCL 600.5531(a).

MCL 600.5507 of the PLRA provides in relevant part:

(2) A prisoner who brings a civil action or appeals a judgment concerning prison conditions shall, upon commencement of the action or initiation of the appeal, disclose the number of civil actions and appeals that the prisoner has previously initiated.

(3) The court shall dismiss a civil action or appeal at any time, regardless of any filing fee that may have been paid, if the court finds any of the following:

(a) The prisoner's claim of injury or of imminent danger under subsection (1) is false.

(b) The prisoner fails to comply with the disclosure requirements of subsection (2).

Under MCL 600.5507, "[i]f a prisoner fails to disclose the number of previous suits, the statute explicitly instructs the court to dismiss the action." *Komejan v Dep't of Corrections*, 270 Mich App 398, 399; 715 NW2d 375 (2006). "[T]he statutory language mandates dismissal of the appeal, without regard to how or when the issue was raised." *Tomzek v Dep't of Corrections*, 258 Mich App 222, 223; 672 NW2d 511 (2003). The prisoner's action is subject to dismissal even when the number is zero. *Id.* at 224-225.

Initially, we note that the PLRA applies to plaintiff's action because it is a "civil action concerning prison conditions." MCL 600.5501. Plaintiff seeks court-ordered surgery that defendant has failed to provide. Thus, plaintiff's action seeks equitable relief relating to the effects of an omission by the government's agent. MCL 600.5531(a).

Here, plaintiff failed to comply with MCL 600.5507(2). Plaintiff did not indicate the previous number of civil actions and appeals in his complaint or in any other related document.

Under the plain language of the statute, therefore, plaintiff's complaint must be dismissed. *Komejan*, 270 Mich App at 399.

Plaintiff asserts that the following paragraph in his complaint satisfied MCL 600.5507(2) because it identified his related action in federal court:

¶ 22. Defendant PHS was afforded an opportunity to rectify their breach when they chose to rebut a controversy that they were not deliberately indifferent under a constitutional tort remedy.

This paragraph did not satisfy MCL 600.5507(2) because it did not disclose the "number" of previous civil actions. The plain language of MCL 600.5507(2) requires a prisoner to state a specific "number." At most, ¶ 22 vaguely indicates there was a previous dispute between plaintiff and defendant.²

Plaintiff's complaint must be dismissed for failure to comply with MCL 600.5507(2). Given our resolution of this issue, it is unnecessary to address defendant's remaining claims of error. *Mitan v Campbell*, 474 Mich 21, 26 n 6; 706 NW2d 420 (2005).

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

² We note that dismissal under MCL 600.5507(3) would be mandated in any event because plaintiff failed to identify other previously filed civil actions and appeals.