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AUG -8 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| CHARLES McMANUS,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>M. PARRA, TARA HOYT, R. GAMEZ, SANDRA WALKER, CHRIS MENDOZA, and CHRIS LANG,<br><br>Defendants/Appellees. | 2 CA-CV 2013-0003<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20117533

Honorable James E. Marner, Judge

AFFIRMED

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Charles McManus
Florence
In Propria Persona

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K E L L Y, Presiding Judge.

**¶1** Charles McManus, an inmate in the Arizona Department of Corrections (ADOC), appeals from the trial court's order dismissing his civil rights complaint against six ADOC employees. He argues the trial court erred in dismissing his complaint

because the ADOC employees deprived him of property without due process of law, in violation of the Fourteenth Amendment. We affirm.

## Background

**¶2** "In reviewing a trial court's decision to dismiss a complaint for failure to state a claim, we assume as true the facts alleged in the complaint . . . ." *Fid. Sec. Life Ins. Co. v. State*, 191 Ariz. 222, ¶ 4, 954 P.2d 580, 582 (1998). In October 2011, McManus filed a civil rights complaint, pursuant to 42 U.S.C. § 1983, in which he sought damages based on his allegation that the ADOC employees had deprived him of property—a television—without due process. The ADOC employees filed a notice in which they waived their right to answer the complaint unless the court determined McManus had a reasonable opportunity to prevail on the merits.[1] *See* 42 U.S.C. § 1997e(g). The trial court determined McManus did not have a reasonable opportunity to prevail and dismissed the complaint.

## Discussion

**¶3** McManus argues the trial court "arbitrarily dismissed" his complaint and erred "in not recognizing the constitution[al] violation." We review de novo the dismissal of a § 1983 complaint. *See Burk v. State*, 215 Ariz. 6, ¶ 6, 156 P.3d 423, 426

[1]The Prison Litigation Reform Act provides that defendants may waive the right to "reply" to an inmate's complaint without being deemed to have admitted the allegations in the complaint. 42 U.S.C. § 1997e(g)(1). The court may require a reply "if it finds that the plaintiff has a reasonable opportunity to prevail on the merits." § 1997e(g)(2); *see also Baker v. Rolnick*, 210 Ariz. 321, ¶ 22, 110 P.3d 1284, 1289 (App. 2005) (in addressing complaint filed pursuant to § 1983, we apply "federal substantive law along with the attendant federal rules and policies").

(App. 2007). We will affirm the dismissal only if, assuming the truth of the facts alleged in the complaint, McManus "would not be entitled to relief under any interpretation of the facts susceptible of proof." *Fid. Sec. Life Ins. Co.*, 191 Ariz. 222, ¶ 4, 954 P.2d at 582.

**¶4** Section 1983 allows a plaintiff to assert a cause of action against any person who, under color of state law or authority, deprives another person of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. In reviewing § 1983 claims, we apply federal substantive law, rules and policies. *Baker v. Rolnick*, 210 Ariz. 321, ¶ 22, 110 P.3d 1284, 1289 (App. 2005). The Prison Litigation Reform Act requires a trial court to dismiss an action brought by an inmate with respect to prison conditions if it determines that the action is "frivolous, malicious, [or] fails to state a claim upon which relief can be granted." § 1997e(c)(1).

**¶5** In his complaint, McManus claimed he was denied due process because the ADOC employees did not follow established prison policy in confiscating his television. Specifically, he alleged "[n]o disciplinary report was ever written" explaining why his television was taken, and the ADOC employees did not properly address his attempts, through the ADOC's administrative grievance process, to have the television returned to him. But, even assuming McManus's allegations are true, "a state's failure to follow its grievance procedures does not give rise to a § 1983 claim." *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986); *see also Smith v. Corr. Corp. of Am.*, 19 Fed. Appx. 318, 321 (6th Cir. 2001) (inmate has "no constitutional right to . . . disciplinary or grievance systems that me[et] his standards").

**¶6** Further, to the extent McManus alleges the ADOC employees acted without authority in depriving him of his property, this does not in itself establish a violation of due process. Under the doctrine of *Parratt v. Taylor*, a prisoner deprived of property by a "random and unauthorized act" of a state employee has no federal due process claim unless the state fails to afford an adequate post-deprivation remedy. 451 U.S. 527, 541 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986). If an adequate post-deprivation remedy exists, the deprivation, although real, is not "without due process of law." *Id*. at 541-42. This doctrine applies to both negligent and intentional deprivation of property. *See Hudson v. Palmer*, 468 U.S. 517, 530-33 (1984).

**¶7** Here, as McManus asserts, he had access to and availed himself of post-deprivation remedies through the ADOC's administrative grievance process. McManus has not demonstrated the process was inadequate, and indeed acknowledges he received a replacement television as a result of it.[2] Further, as the trial court observed, McManus also had an adequate post-deprivation remedy through a state tort claim. *See Hudson*, 468 U.S. at 531 n.11 (in context of prisoner complaint based upon property deprivation, state tort law remedy was "entirely adequate to satisfy due process"). Thus, even taking as true McManus's allegation that he was deprived of property, the deprivation was not

[2]In his complaint, McManus asserted the television he received was "in a worse condition than the one confiscated." But the adequacy of a post-deprivation remedy does not turn upon whether the relief requested is obtained, but instead "on the availability of some meaningful opportunity subsequent to the initial taking for a determination of rights and liabilities." *Parratt*, 451 U.S. at 541, 543.

"without due process of law." *Parratt*, 451 U.S. at 541-42. Accordingly, the trial court did not err in dismissing the complaint.[3]

**Disposition**

**¶8** The trial court's order is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

[3]McManus also argues the trial court should have "provided an opportunity to amend the complaint." But, McManus did not request an opportunity to amend, and he has therefore waived this argument on appeal. *See Dube v. Likins*, 216 Ariz. 406, ¶ 53, 167 P.3d 93, 107-08 (App. 2007). Further, McManus does not explain how the complaint could have been amended to survive dismissal. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (leave to amend not required if clear that deficiency not curable by amendment).