

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN A. WARD,	§	
	§	
Plaintiff Below-	§	No. 352, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
MELVIN HENNESSEY, MIKE	§	C.A. No. 03C-10-264
DELOY and ROBERT SMITH,	§	
	§	
Defendants Below-	§	
Appellees.	§	

Submitted: April 1, 2005  
Decided: May 24, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 24<sup>th</sup> day of May 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The plaintiff-appellant, John A. Ward, filed an appeal from the Superior Court's July 19, 2004 order granting the motion for summary judgment of defendants-appellees, Melvin Hennessey, Mike Deloy and Robert Smith, all officers with the Department of Correction ("DOC") (collectively, the "DOC defendants"). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In September 2001, Lieutenant Smith and another correctional officer conducted a "shakedown" of the Pre-Release Community Room at the Sussex

Correctional Institute, Georgetown, Delaware (“SCI”), where Ward and another inmate were working. The officers confiscated several computer disks, which they suspected were being used in an illegal gambling operation. Ward and the other inmate were charged with disciplinary violations and were transferred to the Segregated Detention Area of SCI pending an investigation. At a disciplinary hearing in October 2001, Staff Lieutenant Hennessy found that Ward had committed the charged violations and imposed a sanction of 10 days in disciplinary segregation. Deputy Warden Deloy affirmed Hennessy’s decision on appeal.

(3) On October 30, 2003, Ward filed a civil complaint in the Superior Court alleging that the DOC defendants had violated his Eighth and Fourteenth Amendment rights by not providing him with a fair disciplinary hearing and by imposing a sanction that amounted to cruel and unusual punishment. Along with the complaint, Ward also filed a petition for a writ of mandamus requesting the Superior Court to compel the DOC to remove the disciplinary reports from Ward’s inmate file, a memorandum in support of the petition for a writ of mandamus, and an appendix.<sup>1</sup> At the time of filing, the Prothonotary separated the civil complaint

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<sup>1</sup> The front of the appendix contained language stating, “This is the petitioner’s appendix of exhibits filed in support of his petition for a writ of mandamus and memorandum submitted August, 2003.” The appendix contained Ward’s affidavit and the affidavit of the other inmate involved in the incident.

from the petition for a writ of mandamus, the memorandum and the appendix and assigned the two matters to two different Superior Court judges for decision.<sup>2</sup>

(4) In response to the civil complaint, the DOC defendants filed a motion to dismiss, which included the affidavit of Lieutenant Smith. Ward does not dispute that he was properly served with the motion to dismiss. On June 1, 2004, the Superior Court judge directed Ward to respond to the DOC defendants' motion and advised the parties that the motion would be heard on July 19, 2004, in a courtroom. Ward submitted a response to the motion, which was filed on June 14, 2004. There were no affidavits attached to the response.

(5) On July 19, 2004, a hearing was held in the Superior Court on the DOC defendants' motion to dismiss. At that time, the judge advised the parties that the motion would be treated as a motion for summary judgment because of the affidavit attached to the motion.<sup>3</sup> After citing the legal standards governing motions for summary judgment, the judge ruled that he must accept the factual representations contained in the affidavit of Lieutenant Smith as true, given that there was no countering affidavit, and granted the motion.

(6) In this appeal, Ward claims that the Superior Court judge: a) failed to provide him with proper notification that the DOC defendants' motion would be

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<sup>2</sup> The petition for a writ of mandamus was dismissed by the Superior Court. This Court affirmed the judgment of the Superior Court by Order dated August 3, 2004.

<sup>3</sup> Super. Ct. Civ. R. 12(c).

treated as a motion for summary judgment; b) failed to consider the affidavits filed along with his civil complaint, which had been improperly separated from the civil complaint by the Prothonotary; and c) failed to give him an opportunity at the hearing to explain what was in the affidavits.

(7) The Superior Court was not obligated to give Ward any special notification that the motion to dismiss would be treated as a motion for summary judgment. There is no evidence that Ward was not properly served with the DOC defendants' motion, which contained Lieutenant Smith's affidavit. As a pro se litigant, it was Ward's obligation to respond to the motion as required under the Superior Court Civil Rules.<sup>4</sup> If Ward wished to submit affidavits countering the affidavit submitted by the DOC defendants, he was required under the rules to do so at the time he filed his response to the motion.

(8) In addition, Ward may not blame the Prothonotary for his failure to file a proper response. At the time Ward's papers were filed in the Superior Court, the Prothonotary properly assigned the civil complaint to one judge and the petition for a writ of mandamus, with its accompanying memorandum and appendix, to another. There also was no error or abuse of discretion on the part of

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<sup>4</sup> Super. Ct. Civ. R. 12(c) and 56(c) and (e).

the judge assigned to the civil complaint in reviewing only those materials that had been filed in connection with that case.

(9) Finally, the transcript of the hearing on the DOC defendants' motion reflects no abuse of discretion on the part of the Superior Court. It was proper for the judge to limit the arguments of the parties to the papers before him and to rule on the motion solely on that basis.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>5</sup> Super. Ct. Civ. R. 56(e).