

United States District Court  
Southern District of Texas

**ENTERED**

November 09, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

ERIC D. STEWART,

Plaintiff,

VS.

ERNEST GUTIERREZ, *et al.*,

Defendants.

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CIVIL ACTION NO. 3:15-CV-175

**ORDER OF DISMISSAL**

Eric D. Stewart (TDCJ #01209188) has filed a complaint under 42 U.S.C. § 1983, alleging that his right to procedural due process was violated when some of his property was lost during a transfer from one prison unit to another. The Court has examined Stewart’s complaint pursuant to 28 U.S.C. § 1915A and will now dismiss his claims without prejudice to his right to sue in state court.

**I. BACKGROUND**

Stewart alleges that he was transferred from the Garza Unit in Bee County to the Darrington Unit in Brazoria County on April 22, 2014 (Dkt. 1 at p. 7). Not all of his property made it to Darrington, however; some food, workout clothes, and toiletry items came up missing (Dkt. 1 at pp. 7, 13). Stewart pursued administrative remedies through the prison grievance system and was offered a property settlement of \$40.00 (Dkt. 1 at pp. 7–8). *See* TEX. GOV’T CODE §§ 501.007, 501.008 (providing that an inmate may recover up to \$500.00 on a claim that the prison system lost or damaged the inmate’s

personal property). Believing the missing property to be worth \$120.75, Stewart declined the \$40.00 offer and filed this lawsuit (Dkt. 1 at pp. 7–8).

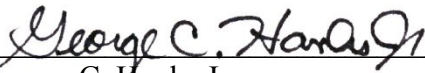
## II. LOST PROPERTY AND PROCEDURAL DUE PROCESS

A random and unauthorized deprivation of property by state officials, whether negligent or intentional, does not rise to the level of a constitutional violation or a cognizable claim under Section 1983 if state law provides an adequate post-deprivation remedy. *Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996). The burden is on the plaintiff to show that the State’s post-deprivation remedies are inadequate. *Id.* Even leaving aside the property-loss remedies provided by the Government Code, the tort of conversion generally constitutes an adequate remedy in Texas. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994).

The ability to sue for damages in state court forecloses Stewart’s Section 1983 claim. *Thompson v. Steele*, 709 F.2d 381, 383 (5th Cir. 1983). The Court will **DISMISS** Stewart’s claims **without prejudice** to his right to sue in state court. *See Loftin v. Thomas*, 681 F.2d 364, 364–65 (5th Cir. 1982). All pending motions are **DENIED**.

The Clerk of this Court shall send a copy of this Order to the parties.

SIGNED at Galveston, Texas, this 9<sup>th</sup> day of November, 2016.

  
George C. Hanks Jr.  
United States District Judge