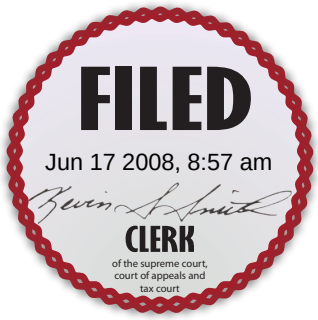

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IN THE
COURT OF APPEALS OF INDIANA

LONNIE GARNER, JR.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 77A04-0802-CV-51
	)	
TRACY TOMKIEWICZ a/k/a ARAMARK CORRECTIONAL SERVICES, LLC,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Thomas E. Johnson, Judge
The Honorable Ann Smith Mischler, Magistrate
Cause No. 77D01-0708-SC-694

June 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Lonnie Garner Jr. appeals the entry of summary judgment in favor of Tracy Tomkiewicz a/k/a Aramark Correctional Services, LLC ("Defendant"). We affirm.

Issue

Garner raises two issues, which we consolidate and restate as whether the trial court erred in granting Defendant's Motion for Summary Judgment.[1]

Facts and Procedural History

Garner is incarcerated at Wabash Valley Correctional Facility, where Aramark provides food services. Garner and other inmates work in the kitchen facilities operated by Aramark, but none is employed by Aramark. Instead, the Indiana Department of Correction ("DOC") selects, assigns, and compensates the inmates for their services.

Garner sued Aramark and its regional vice president, Tomkiewicz, for $4176 in wages and damages. The trial court granted the Defendant's Motion for Summary Judgment. Garner now appeals.

Discussion and Decision

Garner argues that the trial court erred in granting Defendant's Motion for Summary Judgment. In reviewing the entry of summary judgment, we apply the same standard as the trial court. Filip v. Block, 879 N.E.2d 1076, 1080 (Ind. 2008), reh'g denied. The moving party is entitled to judgment as a matter of law if there is no genuine issue of material fact. Id. We construe all facts and reasonable inferences in favor of the nonmoving party. Id.

[1] On appeal, Garner also argues that the Thirteenth Amendment's prohibition of slavery supports his claim for unpaid wages. However, he waived this argument as he did not raise it before the trial court. See Dedelow v.

Garner indicated in his "Statement of Claim and Amount" that he was suing the Defendant "for negligence." Appendix at 7. The same day, he filed a Notice of Tort Claim ("Notice") in which he appears to complain that "he was employed by Aramark Food Service Corporation" or at least that he should have been an employee. Id. at 15. He acknowledged that he never received an Aramark employment application, but claims that he never refused to fill one out. In essence, his claim seems to be that he should have been paid $7.25/hour as an employee rather than whatever he received.

The fact that he filed the Notice undermines the basis of his claim against two private persons. This Notice is required in seeking relief from the State, not from private persons such as Tomkiewicz and Aramark. Furthermore, in his Notice, Garner claimed $52.18 in "back state pay," suggesting that his dispute, if any, was with the State, not Defendant. Id. at 14 (emphasis added).

Garner filed a "Motion for Counter Summary Judgment," in which he asserted without support that he was in a business arrangement with Aramark and that Aramark was exploiting his cheap labor. Id. at 54. He attached a DOC "Manual of Policies and Procedures" regarding "Offender Work Assignments and Pay Schedules" ("DOC Manual"). Id. at 62-68. The objectives of the program included preparing the offender for reintegration into the community and "provid[ing] a linkage to jobs managed by PEN Products." Id. at 62. However, the DOC Manual states plainly that it does not apply to work release programs or to the operations of PEN Products. It neither references Aramark nor suggests that an offender working in food services becomes an employee of Aramark. Indeed, the DOC

Pucalik, 801 N.E.2d 178, 183 (Ind. Ct. App. 2003).

Manual defines "Assignment" as placement of an offender into a "facility operation position or employment with PEN Products." Id. at 63. Contrary to Garner's argument, this language distinguishes between work with PEN Products and other work in a facility. The former establishes an employment relationship, while the latter does not. Accordingly, this definition supports the inference that Garner was not employed by Aramark. Unlike the $7.25/hour that Garner demands, the DOC Manual's maximum per hour wage was twenty-five cents.

The Defendants moved for summary judgment, designating an affidavit of Tomkiewicz. In it, Tomkiewicz stated that "Aramark does not employ prison inmates at Wabash" and that inmates working in Aramark-operated kitchen facilities are compensated by DOC, not Aramark. Id. at 53.

Garner designated no evidence to suggest that Aramark or Tomkiewicz owed him anything. The trial court did not err in granting the Defendant's Motion for Summary Judgment.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.