

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0205

FREDDIE R. LEWIS

VERSUS

TIMOTHY WILKINSON, WARDEN, WINN CORRECTIONAL
CENTER, CORRECTIONS CORPORATION OF AMERICA AND
SECRETARY, DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONS

DATE OF JUDGMENT: **SEP 21 2012**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 585,902, SECTION 22, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY KELLEY, JUDGE

* * * * *

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Winnfield, Louisiana

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Timothy Wilkinson, Warden of Winn
Correctional Center, Corrections
Corporation of America & Richard
Stalder

* * * * *

BEFORE: KUHN, PETTIGREW, AND MCDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.,

Appellant, Freddie R. Lewis (Lewis), an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), at a facility with a private prison contractor custodian, filed a petition for judicial review in the Nineteenth Judicial District Court seeking review of his lost property claim. We affirm the judgment dismissing his claim.

In September 2009, appellant filed a lost property claim with prison officials seeking reimbursement for personal property, including various items of food and clothing that he alleged was lost or stolen by prison staff during an inventory of his property. According to an itemized list prepared by appellant, the total value of the property was \$153.14. Following an investigation by prison officials, appellant rejected an offer to settle the claim in exchange for a pair of sweatpants and a sweatshirt. After the denial of his further requests for administrative relief, appellant filed a petition for judicial review in district court.

During the pendency of this matter, on March 17, 2011, appellant signed a Release Form in which he acknowledged receipt of \$153.14 as full settlement of his 2009 lost property claim. However, appellant refused to sign a joint motion to dismiss the matter in district court. Thereafter, DPSC filed a peremptory exception of res judicata in the district court seeking dismissal of appellant's claims on the basis of the March 2011 settlement and release.

The commissioner¹ who reviewed this matter issued a final report recommending that appellant's petition for review of his lost property claim be

¹ The office of commissioner of the Nineteenth Judicial District Court was created by La. R.S. 13:711(A).

dismissed as moot in view of the release he signed. The commissioner further recommended that appellant's claim for additional damages of \$100.00 per day as a sanction for the alleged "theft by fraud" also be dismissed, since the district court lacked authority to grant such damages under La. R.S. 15:1177(C). Lastly, the commissioner recommended that any costs related to this matter that previously were deducted from appellant's inmate banking account should be reimbursed to him. The district court rendered judgment in accordance with these recommendations, adopting the commissioner's report as its reasons for judgment.

The instant appeal followed. On appeal, appellant argues that he never agreed to settle his lost property claim and no settlement occurred since he refused to sign the joint motion to dismiss prepared by DPSC. Additionally, he contends that the March 2011 release was illegally and improperly obtained, and that the district court should not have considered either the release form or documents reflecting deposits made into his inmate bank account because those items were not part of the administrative record.

After a thorough review of the record, we find that the district court's reasons for judgment, as set forth in the commissioner's report (attached hereto as Appendix "A"), adequately explain the court's decision. Based on our review, we find no manifest or legal error or abuse of discretion in the judgment rendered. Accordingly, the judgment of the district court is affirmed. All costs of this appeal are assessed to appellant, Freddie R. Lewis.²

AFFIRMED.

² Although appellant took this appeal *in forma pauperis*, the costs of his unsuccessful appeal may be assessed against him. See La. C.C.P. art. 5188; *Hull v. Stalder*, 00-2730 (La. App. 1st Cir. 2/15/02), 808 So.2d 829, 833 n.3.

APPENDIX "A"

FINAL COMMISSIONER'S REPORT

This report is issued on the appellate record filed herein and on the pleadings and objections filed since an alleged settlement of the claim, for the Court's de novo review and determination of whether the instant appeal is not moot and should be dismissed as such.

The Petitioner, an inmate in the custody of the Department of Public Safety and Corrections, filed this appeal of PROPERTY LOSS claim # WNC-09-918, seeking review in accordance with R.S. 15:1171 et seq. The claim sought reimbursement for personal property lost by prison officers on or about 9/10/09, valued at \$153.14 by the Petitioner.¹ The respondent filed the entire administrative record of the claim, which has been accepted as Exh. A in globo, which includes two Release Forms showing the administration's attempt to settle the claim. The first Release Form was rejected by the Petitioner, as shown by his signature and statement that he refused to accept replacement items for the loss of his property.² The second Release Form signed by the Petitioner on March 17 2011, acknowledges receipt of \$153.14 in full settlement and release of the above described 2009 property claim. While a settlement of the entire claim would make this appeal moot, the Court notes that the Petitioner has since filed an objection to dismissal of this suit as moot alleging that the \$153.14 was not deposited into his inmate banking account and that he did not intend to settle the suit without court costs and possibly additional damages. Since the administrative record did not contain any evidence showing that the settlement amount was actually deposited to the Petitioner's inmate banking account in March 2011, the Court issued an Order to the Respondents to file proof of deposit of \$153.14 into the Petitioner's inmate banking account in full settlement of this property claim.

The Defendants responded by letter to the Court (and copy to the Petitioner), dated May 23, 2011, which is in the record for review. Attached to the letter is a copy of Mr. Lewis's inmate banking report.³ That report shows that on 3/28/2011, two deposits were made to the Petitioner's account, in the amount of \$76.57 each for a total of \$153.14—the exact amount of the claim filed herein and the exact amount upon which the Petitioner signed a Release form in March 2011. The Petitioner filed another objection seeking to "suppress" the proof based on his

¹ See property loss claim form signed by the Petitioner on 9/17/09 in Exh. A.

² See Release form dated November 16 2009 in the record.

³ Mr. Lewis's account is identified by his DOC inmate number, #395306, which is the same number the Petitioner assigns next to his name on his pleadings.

contention that he never settled the claim out of court to allow the defendants to “escape” liability for court costs and fees “and possible nominal damages”.⁴ Further, he asserts that the document ostensibly showing “deposits” to his banking account is not actually a record of money deposited into his account but simply “an inmate banking sheet showing what was received by Inmate Banking and what was deducted from the said receipts.”⁵

However, as to the first contention that he did not intend to settle his claim by the release form, the record does, in fact, contain a Release Form signed by the Petitioner on March 17, 2011, stating that the Petitioner was accepting \$153.14 as full settlement of his 2009 property claim and releasing the respondents from any further liability for the lost property.⁶ The current ARP involves a 2009 property claim for which the Petitioner initially sought \$153 as reimbursement from the prison authority for property they allegedly lost. Even though the Petitioner objects now to the settlement, he is bound by it, and additionally, he would not be entitled to anything more than the reimbursement cost from this Court even if he pursued this appeal. As to the release form, the Petitioner does not even allege that he did not sign the receipt and release in the record. In addition, the signature of “Freddie R. Lewis, #395306” is consistent with and similar to the signatures on all of his numerous pleadings in this suit. Without proof to the contrary that the signature is his, (which can be filed in a traversal), I suggest that the Release Form is valid and binding.

As to the second contention that the banking document filed does not show a deposit to Petitioner’s account, I note that the Petitioner concedes in his objection that he refers to it as his “inmate balance sheet”, and shows what money was received “by inmate banking” on his account #395306. The fact that the \$153 was not deposited until a week or so after the date of the release form does not, in my opinion, invalidate the release agreement. The difference in the dates does not concern the Court unless the Petitioner can show that the money deposited, \$153.14, was not put into his account by the prison administration or on their behalf, but was deposited by some private person in support of the Petitioner, unrelated to the property claim.

Absent evidence to the contrary provided during the traversal period, it is clear to the Court that the \$153.14 deposit into the Petitioner’s inmate account (DOC#395306) in March 2011, is the proof of payment by the Defendants of the amount the Petitioner signed for and accepted in the Release dated March 17, 2011, in the suit record. The deposit is in an amount that coincides precisely with the total value the Petitioner assigned to his own property lost in 2009-- \$153.14. If the Court agrees that proof of settlement is sufficient, with the showing of the

⁴ See “Pro Se Disclaimer”.

⁵ “Pro Se Disclaimer”, p. 2.

⁶ See Exh. A, the March 17, 2011 Release Form.

deposit and release signed by the Petitioner for the full amount assigned by him to the lost property, the issue in this appeal of WNC-09-218 is moot.

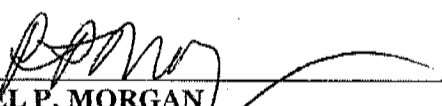
I note, however, that the Petitioner also requested in his appellate petition, monetary "sanctions" or damages in the amount of \$100 a day for "theft by fraud", which this Court is clearly without any authority to grant in this administrative appeal, pursuant to R.S. 15:1177C. That claim should be dismissed pursuant to R.S. 15:1177C.

Therefore, the only issue left to determine in this appeal is who should be responsible for the costs of this appeal. Because the settlement of the claim herein was not offered or made prior to the appeal of this claim (filed in 2009), but apparently as a result of it, I recommend dismissal of this appeal as moot, with all costs herein to be paid by the Defendants. If the Court agrees, a judgment in accordance with this recommendation is attached.

COMMISSIONER'S RECOMMENDATION

In sum, based on the administrative record and related pleadings filed thereafter, for reasons stated, I recommend dismissal of this lost property appeal in WNC-09-218 as moot. Additionally, I recommend dismissal of any other requests for relief sought in the petition for additional damages, pursuant to the prohibition in R.S. 15:1177C. Finally, I recommend dismissal of this appeal with prejudice, with all court costs to be paid by the Defendant/ Department. Any costs previously deducted from Petitioner's inmate banking account for payment of costs herein, must be reimbursed to that account within 90 days of any judgment signed, upon receipt of *proof provided by Petitioner* to the Department that such payment was made in this suit number.

Respectfully submitted this 2nd day of September 2011 in Baton Rouge, La.



RACHEL P. MORGAN
COMMISSIONER, SECTION A
NINETEENTH JUDICIAL DISTRICT COURT