

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0426

RANDELL ORANGE

VERSUS

GEO GROUP, INC., WARDEN TERRELL, LT. CASTALLO,
SGT. WINDOW, SGT. COOK, CAPTAIN LANEY,
MR. BURNETT, CAPTAIN WISE AND LT. LAYJAY

Judgment Rendered: NOV 07 2014

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 626,254

The Honorable William A. Morvant, Judge Presiding

* * * * *

Randell Orange
Kinder, Louisiana

Plaintiff/Appellant,
In Proper Person

William Kline
Baton Rouge, Louisiana

Attorney for Defendant/Appellee,
Louisiana Department of Public
Safety and Corrections

* * * * *

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

DRAKE, J.

Appellant, Randell Orange, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), housed at Allen Correctional Center in Kinder, Louisiana, appeals a judgment of the district court that dismissed his petition for judicial review without prejudice. Based on our review of the record, we affirm the district court's judgment.

FACTS AND PROCEDURAL HISTORY

Mr. Orange filed a petition for judicial review in the Nineteenth Judicial District Court (19th JDC) purportedly seeking review of Louisiana Corrections Administrative Remedy Procedure ("CARP") No. ALC-2013-653 in accordance with La. R.S. 15:1171 *et seq.* However, it is clear from a review of the record, Mr. Orange is seeking monetary damages for a lost property claim. The record only contains an acceptance of his grievance filed as ARP No. ALC-2013-653. The final agency decision is not contained in the record. The initial grievance and the nature of the relief Mr. Orange requested is not in the record before us. In the petition for judicial review, Mr. Orange seeks to be reimbursed \$1000.00 for property he alleges was taken from him by prison personnel and damages in the amount of \$10,000.00 from the officer he alleges confiscated his property. Mr. Orange is not seeking a review or reversal of an agency decision, but is seeking damages and compensation for property taken.

The 19th JDC Commissioner¹ (Commissioner) issued a recommendation pursuant to La. R.S. 15:1177(A)(5) and (9) dismissing the petition of Mr. Orange as being improperly filed as an administrative appeal and in the incorrect venue.

¹ The office of commissioner of the 19th JDC was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5); *see Martinez v. Tanner*, 11-0692 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1082, 1084 n.3, *writ denied*, 11-2732 (La. 7/27/12), 93 So. 3d 597.

The district court adopted the recommendation of the Commissioner after a *de novo* review of the record. It is from this judgment that Mr. Orange appeals.

DISCUSSION

Mr. Orange filed a petition for judicial review of an administrative decision in accordance with CARP with the 19th JDC. Louisiana Revised Statutes 15:1177(A)(9) sets forth the appropriate standard of review by the district court, which functions as an appellate court when reviewing the DPSC's administrative decisions. Judicial review is mandated to be conducted by the trial court without a jury and must be confined to the record. La. R.S. 15:1177(A)(5). Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) arbitrary, capricious or characterized by an abuse of discretion, or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. La. R.S. 15:1177(A)(9); *Lightfoot v. Stalder*, 00-1120 (La. App. 1 Cir. 6/22/01), 808 So. 2d 710, 715-716, *writ denied*, 01-2295 (La. 8/30/02), 823 So. 2d 957.

The district court determined that it was unable to review the delictual action of Mr. Orange pursuant to La. R.S. 15:1177(C) and La. R.S. 15:1184. The district court also cited *Pope v. State*, 99-2559 (La. 6/29/01), 792 So. 2d 713, as holding that suits based on delictual actions or seeking monetary damages could not be heard through the administrative appellate process by the 19th JDC acting as an appellate reviewer of the administrative record.

CARP and PLRA

The Louisiana Legislature enacted the CARP, La. R.S. 15:1171, *et seq.*, in 1985 in response to the Civil Rights of Institutionalized Persons Act,² which provided standards for the voluntary development and implementation by states of a system for resolution of disputes and grievances raised by prisoners. *Pope*, 792 So. 2d at 715. Louisiana Revised Statutes 15:1171 authorizes the DPSC or the sheriff to adopt, for the particular correctional institution, an administrative remedy procedure for receiving, hearing, and disposing of complaints and grievances by an “offender,”³ which arise while the offender is in custody. *Pope*, 792 So. 2d at 715-16. The administrative remedy procedure is the formal grievance mechanism that all offenders committed to the custody of the DPSC must use before they may proceed with a suit in federal or state court. LAC 22:I.325(D)(1). As originally enacted, La. R.S. 15:1171 encompassed “complaints and grievances,” without any reference to tort actions. *Pope*, 792 So. 2d at 716.

In response to the *Pope* decision, the Louisiana Legislature, in 2002, amended La. R.S. 15:1177(A) to exclude tort claims from judicial review. *See* 2002 La. Acts, 1st Ex. Sess., No. 89, §2, effective April 18, 2002. In amending the statute, however, the Legislature created a specific administrative remedy procedure for prisoner tort claims and reserved the right of a prisoner to file a tort suit in district courts for *de novo* review after he first exhausted the administrative remedy procedure for tort claims set forth in CARP.⁴ La. R.S. 15:1172. Thus, Mr. Orange may have properly sought administrative review of his tort claim, pursuant

² *See* 42 U.S.C. § 1997-1997j (1980).

³ An “offender” means an adult or juvenile offender who is in the physical or legal custody of the DPSC, a contractor operating a private prison facility, or a sheriff when the basis for the complaint or grievance arises.

⁴ Pursuant to the 2002 amendments to La. R.S. 15:1172 and 1177 (2002 La. Acts, 1st Ex. Sess., No. 89, §2, effective April 18, 2002), the district courts do not function as courts of review (limited to a review of the CARP record), but as courts of original jurisdiction. However, this does not relieve the prisoner from first filing an administrative claim (via CARP) pursuant to La. R.S. 15:1172. *See Jackson v. State*, 11-1716 (La. App. 1 Cir. 3/23/12), 92 So. 3d 391, 396, *writ granted*, 12-0912 (La. 6/22/12), 90 So. 3d 1069; *Dickens v. Louisiana Correctional Institute for Women*, 11-0176 (La. App. 1 Cir. 9/14/11), 77 So. 3d 70, 73 n.1.

to the administrative procedure set forth in CARP, prior to filing his action in district court. However, once administrative relief of his tort claim was denied, the district court had no authority to act as an appellate court to review his prisoner tort claim. La. R.S. 15:1177(C).

Once an offender exhausts the administrative procedure pursuant to CARP, he may file a civil suit in district court pursuant to the Louisiana Prison Litigation Reform Act (“PLRA”), La. R.S. 15:1181, *et seq.* Louisiana Revised Statutes 15:1181(2) defines a “civil action with respect to prison conditions” or a “prisoner suit” as:

[A]ny civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison.

Furthermore, La. R.S. 15:1184(F) states that:

The exclusive venue for **delictual actions** for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. Upon consent of all parties, the court may transfer the suit to a parish in which venue would otherwise be proper. [Emphasis added].

It is only after an administrative decision regarding a delictual action is rendered that the prisoner has the right to file his claim as *an original civil action* in the appropriate district court. *Jackson v. State*, 11-1716 (La. App. 1 Cir. 3/23/12), 92 So. 3d 391, 396, *writ granted*, 12-0912 (LA. 6/22/12), 90 So. 3d 1069. By requiring the prisoner to file his tort claim as an original civil action, i.e., a petition for damages, rather than as a petition for judicial review, the district court is able to make its own, independent findings of fact in the first instance and apply the law to the facts so found, with no regard to the findings of the DPSC. *See Pope*, 792 So. 2d at 719.

In his brief to this court, Mr. Orange argues that he first has to exhaust his administrative remedies and attaches an exhibit from a previous matter dated June

2, 2008. Apparently, Mr. Orange attempted to file a prisoner suit in the Parish of East Feliciana, the parish where he was confined at the time in Dixon Correctional Institute. The 20th JDC transferred the matter to the 19th JDC for judicial review pursuant to La. R.S. 15:1177(A). There is no indication that the matter contained in the exhibit was a tort matter. Therefore, the exhibit is not indicative that judicial review must be sought in the 19th JDC to exhaust administrative remedies in this tort matter, as argued by Mr. Orange.

CONCLUSION

Based on the foregoing, the January 17, 2014 judgment of the district court, which dismissed the suit without prejudice pursuant to La. R.S. 15:1177(C), for improper format, and La. R.S. 15:1184, for improper venue, is affirmed. Costs of the appeal are assessed against plaintiff, Randell Orange.

AFFIRMED.