

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-193
TDW-CUM-9/19/2012

TANNER AMERGIAN,

Plaintiff

v.

MAINE CORRECTIONAL CENTER,

Defendant

ORDER STATE OF MAINE
Cumberland County Office

SEP 19 2012

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Before the court is defendant's motion to dismiss.

In his complaint, plaintiff Tanner Amergian alleges that the Maine Correctional Center in Windham "controlled, harbored and possessed" a dangerous dog and that the dog severely bit Amergian while he was in custody at the MCC. Complaint ¶¶ 3-4, 6. The Correctional Center's motion to dismiss argues that Amergian's claims do not fall within the limited exceptions to sovereign immunity contained in the Maine Tort Claims Act, 14 M.R.S. §§ 8101 et seq., and is therefore barred by sovereign immunity. See 14 M.R.S. § 8103(1).

In response to the Correctional Center's motion to dismiss, Amergian filed both an opposition to the motion and a motion to amend his complaint, arguing that the existing complaint was sufficient to put the Correctional Center on notice that Amergian was arguing that the harboring of the dangerous dog was "tantamount to negligently maintaining the premises" but that the amendment was offered in an abundance of caution. Motion to Amend dated May 10, 2012 at 1.¹ The amended

¹ Amergian did not have to file a motion to amend his complaint because he was entitled to amend his complaint once as of right before a responsive pleading has been served. M.R.Civ.P. 15(a). All parties have been proceeding on the assumption that the amended complaint is the operative pleading.

complaint adds a Count V which repeats and realleges the allegations that Amergian was severely bitten by a dog possessed by the Correctional Center and frames that as a claim that the Correctional Center negligently maintained or operated its facility.

From the motion to amend, the amended complaint, and Amergian's opposition to the Correctional Center's motion, it is evident that this case turns on whether Amergian's claims, as alleged, fall within the exception to immunity contained in 14 M.R.S. § 8104-A(2) for "negligent acts or omissions in the construction, operation or maintenance of any public building or the appurtenances to any public building."

Although Amergian's amended complaint phrases his claim in terms of negligent operation of a "facility," the statutory exception applies to the operation of a "public building" or appurtenance thereto. The governing Law Court precedent demonstrates that the focus of the exception is limited to physical structures – public buildings and fixtures or other objects attached to public buildings. E.g., Searle v. Town of Bucksport, 2010 ME 89 ¶¶ 10-12, 3 A.3d 390; Sanford v. Town of Shapleigh, 2004 ME 73 ¶ 11, 850 A.2d 325.

In Lightfoot v. S.A.D. No. 35, 2003 ME 24 ¶ 11, 816 A.2d 63, the Law Court emphasized that the "public building" exception to immunity does not apply to allegedly negligent activities conducted within a public building. Instead the public building exception "must implicate the physical structure of the public building." Finally, in ABT & A Co. v. State, 644 A.2d 460 (Me 1994), the Law Court ruled that the public building exception "applies only to the State's acts in the care or operation of its buildings and property, not to the State's care or supervision of people in its charge."

In light of the above authorities, it is evident that Amergian's claim does not involve alleged negligence in the operation or maintenance of a public building and is therefore barred by sovereign immunity.

The entry shall be:

Defendant's motion to dismiss is granted. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: August 31, 2012



Thomas D. Warren
Justice, Superior Court

TANNER AMERGIAN VS MAINE CORRECTIONAL CENTER
UTN:AOCSSr -2012-0036547

CASE #:PORSC-CV-2012-00193

01 0000003530 SLEEK, DIANE
6 STATE HOUSE STATION AUGUSTA ME 04333-0006
F MAINE CORRECTIONAL CENTER DEF RTND 05/07/2012

02 0000002837 TEPLER, SHELDON J
186 LISBON ST PO BOX 3065 LEWISTON ME 04243-3065
F TANNER AMERGIAN PL RTND 04/18/2012