

STATE OF MICHIGAN
COURT OF APPEALS

KELVIN SIMMONS,

Plaintiff-Appellant,

v

COUNTY OF WAYNE and WAYNE COUNTY
SHERIFF,

Defendants-Appellees.

UNPUBLISHED

July 12, 2002

No. 230936

Wayne Circuit Court

LC No. 99-939395-NZ

Before: Hood, P.J., and Saad and E. M. Thomas*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We affirm.

Plaintiff, a prisoner, filed this action seeking damages on the ground that he was twice subjected to strip searches that were conducted in violation of the law. Defendants moved to dismiss, asserting that plaintiff had failed to exhaust his administrative remedies prior to filing suit and that they were immune from liability for any tort claims. The trial court granted the motion without explanation. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

The Prisoner Litigation Reform Act (PLRA), which took effect November 1, 1999, prohibits a prisoner from filing a civil action concerning prison conditions until he has exhausted all available administrative remedies. MCL 600.5503(1). Plaintiff contends that the PLRA was not applicable because he submitted his complaint to the court on or about October 29, 1999. A civil action is commenced upon the filing of a complaint, MCR 2.101(B), and plaintiff's complaint was not actually filed until December 16, 1999. Although it had been sent in for filing earlier, the court had to review his request for suspension of fees and costs. Pursuant to MCL 600.2963(1) and (3), the court ordered plaintiff to pay a partial filing fee and was required to "suspend the filing of the civil action" until plaintiff paid the fee. MCL 600.2963(1).

Plaintiff next contends that if the PLRA did apply, he was excused from exhausting his administrative remedies due to fear of retaliation. Because plaintiff has not cited any case law or

* Circuit judge, sitting on the Court of Appeals by assignment.

other authority in support of his argument, the issue has not been preserved for appeal. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

Plaintiff next contends that to the extent the court found that defendants were entitled to immunity, it erred in so ruling because the rule of governmental immunity was abrogated as to counties in *Myers v Genesee Co Auditor*, 375 Mich 1; 133 NW2d 190 (1965). That case predates the adoption of the Government Tort Liability Act, MCL 691.1401 *et seq.*, pursuant to which counties are in fact entitled to claim immunity from tort liability. MCL 691.1401(b), (d); MCL 691.1407(1).

We have reviewed plaintiff's remaining claims of error and find that they are irrelevant to either basis for the trial court's ruling.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas