

DA 17-0291

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 106N

ROBERT D. RIGGS,

Plaintiff and Appellant,

v.

WARDEN MICHAEL FLETCHER, et al.,

Defendants and Appellees.

APPEAL FROM: District Court of the Third Judicial District,
In and For the County of Powell, Cause No. DV-15-56
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert D. Riggs, Self-Represented, Deer Lodge, Montana

For Appellees:

Jeffrey M. Doud, Assistant Attorney General, Agency Legal Services
Bureau, Helena, Montana

Submitted on Briefs: February 14, 2018

Decided: May 1, 2018

Filed:



Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Robert D. Riggs (Riggs) appeals from the District Court's denial of his motion for a default judgment, his motion to amend, and the granting of the Defendants' motion to dismiss. We affirm.

¶3 Riggs is an inmate at the Montana State Prison (MSP) serving twenty-four years for a 2002 conviction of sexual intercourse without consent, incest, and two counts of felony sexual assault. To become parole eligible, Riggs must complete all three phases of sex offender treatment. This Court upheld his conviction, denied his petition for postconviction relief based on ineffective assistance of counsel, and affirmed his parole restrictions. *State v. Riggs*, 2005 MT 124, 327 Mont. 196, 113 P.3d 281; *Riggs v. State*, 2011 MT 239, 362 Mont. 140, 264 P.3d 693; *Riggs v. Kirkegard*, No. OP 12-0279, (Mont., Aug. 7, 2012).

¶4 In February 2015, while incarcerated at MSP, Riggs received a disciplinary infraction for threatening and extortion. Riggs requested and was afforded a hearing. Following the hearing, the hearing officer found Riggs not guilty of extortion but instead guilty of threatening another inmate and conspiracy to commit blackmail. Riggs

appealed the decision; his appeal was denied. As a result of disciplinary action, Riggs received a higher custody classification, lost his prison job, and was transferred. He was removed from his court-ordered sex offender treatment group, was denied parole for failing to complete the sex offender treatment group, and was placed in administrative segregation.

¶5 On June 30, 2015, Riggs filed a complaint in the District Court against various employees of the MSP. He mailed summons and copies of his complaint to attorneys at the Montana Department of Corrections and requested the sheriff serve the named Defendants. Riggs alleged that the Defendants violated his due process rights causing a deprivation of his liberty and property interests.

¶6 On February 1, 2016, Riggs filed a motion for a default judgment. The District Court denied the motion determining Riggs failed to properly effectuate service on the named Defendants. In December 2016, the Defendants moved to dismiss Riggs's claims because Riggs failed to state a claim upon which relief may be granted pursuant to M. R. Civ. P. 12(b)(6). They contended that none of his claims implicated a protected liberty or property interest. Riggs then filed a motion to amend. Riggs's amended claim reiterated his original claims and added an alleged violation of a criminal statute. The District Court granted the Defendants' motion to dismiss and denied Riggs's motion to amend. The District Court found none of Riggs's claims implicated a protected liberty or property interest and Riggs's attempt to amend his complaint was futile. Riggs appeals the denial of his motion for a default judgment and his motion to amend, and the granting of the Defendants' motion to dismiss.

¶7 A district court's denial of a motion for a default judgment is reviewed for abuse of discretion. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 17, 338 Mont. 423, 166 P.3d 451; *Johnson v. Matelich*, 163 Mont. 329, 334, 517 P.2d 731, 733 (1973). We review a district court's decision regarding a motion to amend a complaint for abuse of discretion. *Hickey v. Baker Sch. Dist. No. 12*, 2002 MT 322, ¶ 12, 313 Mont. 162, 60 P.3d 966. We review de novo a district court's ruling on a motion to dismiss pursuant to M. R. Civ. P. 12(b)(6). *Western Sec. Bank v. Eide Bailly LLP*, 2010 MT 291, ¶ 18, 359 Mont. 34, 249 P.3d 35. A district court's determination that a complaint has failed to state a claim for which relief can be granted is a conclusion of law which we review for correctness. *Sinclair v. Burlington Northern & Santa Fe Ry.*, 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46.

¶8 Riggs argues the District Court erred when it denied his motion for a default judgment. The District Court denied Riggs's motion because it determined he had failed to comply with the Montana Rules of Civil Procedure. Riggs moved for entry of default judgment prior to obtaining entry of default from the Court as required under M. R. Civ. P. 55(a). The District Court determined Riggs failed to properly effectuate service of his complaint as required under M. R. Civ. P. 4(1) and § 2-9-313, MCA. After review of the record we conclude the District Court's denial of the motion was not an abuse of discretion.

¶9 Riggs claims the District Court erred in granting the State's motion to dismiss for failure to state a claim. In the District Court, Riggs asserted that, as a result of the disciplinary action, he: 1) lost his prison job; 2) received a higher custody classification;

3) was transferred to Crossroads Correctional in Shelby; 4) was removed from his court-ordered sex offender treatment group; 5) has been denied parole due to failure to complete sex offender treatment; and 6) was placed in administrative segregation. The due process clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving any person of life, liberty, or property without due process of law. U.S. Const. Amend. XIV; *Campbell v. Mahoney*, 2001 MT 146, ¶ 7, 306 Mont. 45, 29 P.3d 1034. The first step in a due process inquiry regarding a prisoner is whether the inmate had a protected liberty interest as a basis for his claim. Without a liberty interest at stake, the analysis ends. *Campbell*, ¶ 7. The District Court employed the analysis and properly found that none of Riggs's claims implicate a protected property or liberty interest.

¶10 Inmates do not have protected liberty interests in prison employment. *Walker v. Gomez*, 370 F.3d 969, 973 (9th Cir. 2004). Inmates do not have a protected liberty interest in being transferred from or remaining at the Montana State Prison. *Quigg v. Slaughter*, 2007 MT 76, ¶¶ 32-33, 336 Mont. 474, 154 P.3d 1217. Reclassifying inmates and putting them into administrative segregation generally does not implicate protected liberty interests. *Jellison v. Mahoney*, 1999 MT 217, ¶ 9, 295 Mont. 540, 986 P.2d 1089. Riggs's administrative classification is the basis for his claims regarding his parole denial and his removal from and failure to complete sex offender treatment.

¶11 Here, Riggs was given written notice of his alleged infractions of prison rules, granted a hearing, and provided with a written decision by the hearings officer outlining

the basis for the decision. None of Riggs's claims implicate a protected liberty or property interest. The District Court properly granted the Defendants' motion to dismiss.

¶12 Riggs claims the District Court erred when it denied his request to amend his complaint. The district court has discretion to grant or deny a motion to amend if the motion is not made within twenty-one days of service of process. M. R. Civ. P. 15(a)(2); *Stundal v. Stundal*, 2000 MT 21, ¶ 12, 298 Mont. 141, 995 P.2d 420. The District Court determined that Riggs's motion was futile as none of his claims implicated a protected liberty interest, or that they were not appropriate in a civil action. The District Court did not abuse its discretion.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶14 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR