

[Cite as *Semenchuk v. Mansfield Correctional Inst.*, 2003-Ohio-4158.]

IN THE COURT OF CLAIMS OF OHIO

ALLEN J. SEMENCHUK :
Plaintiff : CASE NO. 2001-11090
v. : MAGISTRATE DECISION
MANSFIELD CORRECTIONAL INST. : Steven A. Larson, Magistrate
Defendant :
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{¶1} Plaintiff brought this action against defendant alleging claims of breach of contract and negligence. The case was tried to a magistrate of the court on the issues of liability, damages, and the civil immunity of defendant’s employees, Angela Hunsinger and Lieutenant Cope.

{¶2} On October 9, 2002, plaintiff filed a motion pursuant to Civ.R. 52 and 53(E)(3) for the magistrate to include findings of fact and conclusions of law in his decision. Plaintiff’s October 9, 2002, motion is hereby GRANTED. The magistrate’s findings of fact and conclusions of law follow.

{¶3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff’s claims involve his participation in a paralegal apprentice program at the Mansfield Correctional Institution (ManCI). In July 2000, plaintiff began working in the apprenticeship program under the supervision of John Babajide, a librarian employed by defendant. Plaintiff was subsequently removed from the program after being found guilty of a security-

related offense by defendant's Rules Infraction Board (RIB) and thereupon placed in local control.

{¶4} The RIB determined that plaintiff had attempted to establish a relationship with Angela Hunsinger, a case manager at ManCI. Hunsinger had become concerned about plaintiff's behavior which she considered inappropriate and obsessive. Hunsinger's February 27, 2001, incident report alleged that plaintiff went "out of his way" to make contact with her and that he frequently visited her office without having any reason. Hunsinger also reported that plaintiff had sent her a typewritten kite that included a poem. Although a fictitious name was used on the February 27, 2001, kite, defendant conducted an investigation and concluded that plaintiff had written the kite. On March 7, 2001, while he was in the local control unit, plaintiff sent Hunsinger a letter that purported to explain his feelings about her. Hunsinger also found the March 7, 2001, letter to be inappropriate and, on that same day, she filed another incident report charging plaintiff with attempting to establish a relationship.

{¶5} After his release from local control, plaintiff was transferred to the Ross Correctional Institution (RCI). Plaintiff claims that defendant breached a contract with him by removing him from the apprenticeship program and that defendant's negligence resulted in the loss of his typewriter when he was transferred to RCI.

{¶6} With regard to his contract claim, plaintiff acknowledged that he did not enter into a written contract with defendant; rather, he asserts that defendant breached an oral contract. The only evidence that plaintiff offered to support his contract claim was his own testimony that defendant's employees, Fran Porter and

John Babajide, made certain promises to him regarding the apprenticeship program. Fran Porter, the job coordinator at ManCI, was responsible for apprenticeship programs including the paralegal program. Babajide was plaintiff's supervisor while he worked in the library. According to plaintiff, Babajide referred him to Porter when he had questions regarding program administration. At trial, plaintiff conceded that he did not speak with Porter about the program until approximately two months after he began training.

{¶7} Porter testified regarding defendant's policy for inmate program assignments. Porter testified that inmates are not guaranteed the opportunity to complete educational programs and that plaintiff was withdrawn from the apprenticeship program because he had been placed in local control. Porter explained that an inmate can be withdrawn from an education program when the inmate is not a positive participant in the program, or is deemed a security threat, or is placed in segregation. Defendant's Administrative Rule 5120-3-06 provides, in part: "(J) An inmate may be removed from an institutional work program for disciplinary reasons if the inmate is convicted of a job-related or security-related rules infraction. *** Removal may be recommended to the WPAC [Work Program Assignment Committee] by the [RIB] *** Conviction of a serious security violation resulting in a close custody status, *such as local control, shall result in immediate removal from a work program.*" (Emphasis added.) The magistrate finds that defendant complied with its administrative rule and that plaintiff has failed to establish that defendant's employees breached an oral contract with him. Moreover, the Tenth District Court of Appeals has recognized that "the relationship between an inmate and the Department of Rehabilitation and Correction is

custodial, not contractual." *Hurst v. Dept. of Rehab. & Corr.* (Feb. 17, 1994), Franklin App. No. 93AP-716.

{¶8} Furthermore, plaintiff's claims concern defendant's decisions regarding plaintiff's transfer, program assignment, and security classification. Ohio courts have consistently held that the state cannot be sued for its legislative or judicial functions, or the exercise of an executive function involving a high degree of official discretion or judgment. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105; *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70. Decisions that relate to a prisoner's transfer, classification, and security status concern prison security and administration and are executive functions that involve a high degree of official discretion. *Deavors, supra*; *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶9} Plaintiff further alleges that the actions of Angela Hunsinger and Lieutenant Cope were malicious and intentional and that they should not be entitled to civil immunity. Plaintiff's allegations regarding Lieutenant Cope concern determinations made by the RIB. As a general rule, this court has no jurisdiction to review decisions of the RIB. See *Holbert v. Ohio Dept. of Rehab. & Corr.* (1995), 75 Ohio Misc.2d 44. In light of the above findings, the court concludes that the actions of Lieutenant Cope and Angela Hunsinger were not outside the scope of their employment and that plaintiff failed to prove that they acted with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, the magistrate recommends that the court make a determination that Lieutenant Cope and Angela Hunsinger are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common

pleas do not have jurisdiction over civil actions against these individuals based upon the allegations in this case.

{¶10} Plaintiff next asserts that the typewriter that was confiscated as contraband by defendant's employees was his own personal property. Plaintiff claims that defendant improperly confiscated his typewriter and that defendant's negligent failure to protect and store the typewriter caused its loss.

{¶11} Although defendant does not have the liability of an insurer with respect to inmate property, it does have the duty to make reasonable attempts to protect or recover such property. *McCrary v. Ohio Dept. Of Rehabilitation & Cor.* (1988), 45 Ohio Misc.2d 3. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Defendant has the duty to use ordinary care in the packing or storing of an inmate's property, even when such packing or storing is due to an inmate's disciplinary confinement. *Gray v. Department of Rehabilitation and Correction* (1985), 84-01577-AD.

{¶12} Plaintiff testified that defendant's employees confiscated his typewriter and other personal property when he was placed in local control. An inmate property record dated May 22, 2001, documents plaintiff's personal property and lists items that defendant classified as contraband. (Defendant's Exhibit Z.) The contraband items included several articles of clothing, locks, and a clock; however, the property record did not list a typewriter. According to the property record, plaintiff was present during the "pack-up" and he signed the record to certify that the list was "a

complete and accurate inventory" of his personal property. Plaintiff also signed below a notation that defendant directed to "send home" the contraband items. Plaintiff testified that he authorized defendant to send the contraband items to his aunt and that she received all of the items except for his typewriter.

{¶13} The property record was also signed by Corrections Officer Scott Hardesty who worked in the RCI property room. At trial, Hardesty explained that when items are classified as contraband, the inmates who own such property have the option to either send the property home or have the property destroyed. Hardesty testified that plaintiff elected to send the contraband items home. According to Hardesty, all typewriters must be "titled" and any typewriter that is received at RCI as a result of an inmate transfer must be accounted for on the inmate's property record and sent to the institution package room. Hardesty testified that there was no record to show that plaintiff owned a typewriter or that one was transferred from ManCI.

{¶14} Scott Basquin, an administrative assistant at ManCI who reviews appeals from RIB decisions, testified that he reviewed the determination that found plaintiff guilty of attempting to establish a relationship and possessing contraband for procedural errors. Basquin modified the RIB decision because he found that plaintiff was not guilty of the contraband charge. In his March 9, 2001, decision, Basquin determined that the typewriter was not contraband and should be returned to its owner; however, Basquin testified that he did not examine the typewriter or determine who owned it.

{¶15} Although the evidence suggests that plaintiff possessed a typewriter while he was incarcerated at ManCI, there is

insufficient evidence to show that he owned the typewriter. Furthermore, plaintiff testified that he had previously believed that the typewriter had been sent to his aunt. The court concludes that plaintiff has failed to prove by a preponderance of the evidence that defendant breached any duty it owed to plaintiff. Accordingly, the magistrate recommends that judgment be rendered in favor of defendant.

{¶16} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

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