

[Cite as *Sansom v. Correctional Reception Ctr.*, 2003-Ohio-4917.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT SANSOM :

Plaintiff :

v. :

CASE NO. 2003-03825-AD

CORRECTIONAL RECEPTION CENTER :

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY

JUDGMENT

Defendant :

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On March 20, 2003, plaintiff, Robert Sansom, filed a complaint against defendant, Correctional Reception Center. Plaintiff alleges on or about February 3, 2003, defendant refused to accept legal mail sent by his family to him, and, subsequently, returned the mail to his family. Plaintiff contends this conduct on the part of defendant constitutes a denial of due process, denial of access to the courts and is in violation of the 14th Amendment to the United States Constitution. Plaintiff seeks damages in the amount of \$1,220.00 which represents \$20.00 for postage expenses and the remainder for the denial of his rights;

{¶3} 2) On June 12, 2003, plaintiff submitted a letter with documentation that revealed his case in the Eight District Court of Appeals had been dismissed. Plaintiff asserts this case was dismissed due to the fact defendant had not allowed him to receive legal mail from his family. However, the reason for dismissal is unknown since plaintiff has not provided this court with the entry of dismissal issued by the Eight District Court of Appeals;

{¶4} 3) On June 24, 2003, plaintiff filed a “response brief to move for a decision in favor of plaintiff.” Plaintiff merely states he was not afforded due process by defendant. Plaintiff cites federal cases to support his position;

{¶5} 4) On July 2, 2003, defendant filed a motion for summary judgment;

{¶6} 5) In support of the motion for summary judgment, defendant states in pertinent part:

{¶7} “Plaintiff claims that DRC denied him his constitutional rights. It is well settled that the Court of Claims lacks jurisdiction over Plaintiff’s claims of denial of his constitutional rights. As Plaintiff’s complaint is pled as a 42 USC § 1983 action, this claim must be dismissed.

{¶8} “The state cannot be sued under 42 USC 1983 in which the statute is only to be used against ‘persons’, and the state is not a ‘person’ within the meaning of the statute. *Will v. Michigan Department of State Police* (1989), 491 U.S. 58. Accordingly, under 42 USC 1983 may not be maintained against the state in the Court of Claims. *Graham v. Bd. of Bar Examiners*, (1994), 98 Ohio App. 3d 620, 623 (citing *Burkey v. Southern Ohio Correctional Facility*(1983) 38 Ohio App. 3d 170). . .

{¶9} “Administrative decisions that relate to prison security are protected by the doctrine of sovereign immunity because those decisions involve a high degree of official discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70; *Bell v. Wolfish* (1979), 441 U.S. 520, 547. Consequently, any of the alleged decisions by defendant to handle or process plaintiff’s mail is not actionable.”

{¶10} 6) Plaintiff has not responded to defendant’s motion for summary judgment.

{¶11} THE COURT CONCLUDES THAT:

{¶12} 1) Civ. R. 56 (C) states, in part, as follows:

{¶13} “\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of

evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*\* See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St. 2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St. 2d 317.;

{¶14} 2) In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Civ. R. 12(B)(6), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St. 2d 242, 71 O.O. 2d 223, 327 N.E. 2d 753, syllabus. In ruling on a motion to dismiss under Civ. R. 12(B)(6), the material allegations of the complaint are assumed to be true and are taken as admitted. *Phung v. Waste Mgmt., Inc.* (1986), 23 Ohio St. 3d 100, 102; 23 OBR 260, 261; 491 N.E. 2d 1114, 1116;

{¶15} 3) In *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 171, the Tenth District Court of Appeals stated:

{¶16} "In *State v. Green* (1981), 633 P.2d 1381, 1382, the Alaska Supreme Court held that states are not 'persons' within the meaning of Section 1983 based upon its interpretation of Section 1983 from the holding of the United States Supreme Court in *Quern v. Jordan* (1979) 440 U.S. 332. See, also, *Edgar v. State* (1979), 92 Wash. 2d 217, 595 P.2d 534, certiorari denied (1980), 444 U.S. 1077. Generally, it has been held that the remedy afforded the one whose civil rights have been violated is to proceed against the officials who refuse to protect the individual's civil rights and that the state was granted

immunity under the Eleventh Amendment in federal court against such suit and, also, in state court in that the state is not considered to be a person within the apparent intent of Section 1983.

{¶17} “In federal court, the state is not a ‘person’ within the meaning of Section 1983 and cannot be sued thereunder. *Quern v. Jordan*, supra. Likewise, state agencies are not ‘persons’ and cannot be sued under Section 1983. *Edelberg v. Illinois Racing Bd.* (C.A. 7, 1976), 540 F. 2d 279; *Thompson v. Burke* (C.A. 3, 1977), 556 F. 2d 231.”;

{¶18} 4) The language in R.C. 2743.02 that “the state” shall “have its liability determined \*\*\* in accordance with the same rules of law applicable to suits between privates parties \*\*\*\*” means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.;

{¶19} 5) Defendant’s mail policy falls within its policy making function. Defendant has adopted standards for processing mail which originates with private attorneys, courts, and judicial entities and mail that originates with non-legal entities. This court will not interfere defendant’s policy making function;

{¶20} 6) “The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party’s claims for relief. *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ. R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St. 2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June

28, 2001), Franklin App. No. 00AP-1110.” *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶21} IT IS ORDERED THAT:

{¶22} Plaintiff’s letter of June 12, 2003, is considered a motion to submit additional evidence and is GRANTED. Plaintiff’s response brief is considered a motion for default judgment and is DENIED. For the reasons set forth above, defendant’s motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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DRB/laa  
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