

Court of Claims of Ohio

The Ohio Judicial Center
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MARQUISE PERRY

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY, et al.

Defendants

Case No. 2006-06787

Judge J. Craig Wright
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On November 27, 2006, defendants filed a motion for partial dismissal of plaintiff's complaint pursuant to Civ.R. 12(B)(6). Plaintiff did not file a response. On January 18, 2007, an oral hearing was held at the Southern Ohio Correctional Facility (SOCF) on defendants' motion.

{¶2} In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242.

{¶3} At all times relevant to this action plaintiff was an inmate in the custody and control of defendants at SOCF pursuant to R.C. 5120.16. Plaintiff asserts that defendants' employees violated Department of Rehabilitation and Correction (DRC) Special Management Procedure 55-SPC-02. Specifically, plaintiff claims that he did not receive regularly scheduled visits from defendants' employees Major Warren, SOCF Warden Edwin Voorhies, James Goodman, Cynthia Davis, Matthew Stuntebeck, an unidentified qualified health care professional, an unidentified deputy warden, an unidentified senior correctional supervisor, and the "P.A.M." Plaintiff also claims that his meals were not

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served in accordance with DRC policy. Finally, plaintiff alleges that defendants' employees used excessive force while restraining him.

{¶14} Defendants argue that implementation of the policies cited in plaintiff's complaint involves a high degree of official discretion and that, therefore, defendants and their employees are immune from liability.

{¶15} The Supreme Court of Ohio has held that "[t]he 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 private 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, 70; *Van Hoene v. State* (1985), 20 Ohio App.3d 363, 364. Additionally, "[p]rison regulations *** are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 1997-Ohio-139. Accordingly, plaintiff's claims based upon alleged violations of internal DRC policies must fail.

{¶16} Furthermore, to the extent that plaintiff claims violations of his civil and constitutional rights, it is well-settled that such claims are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶17} Based upon the foregoing analysis, it is recommended that defendants' motion be granted and that judgment be rendered in favor of defendants on the above-referenced claims. Plaintiff's claim alleging excessive use of force is the only claim remaining for trial.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other

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party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

cc:

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RCV/cmd	

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