

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DARRYL DURR

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-08724-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On October 26, 2005, plaintiff, Darryl Durr, an inmate incarcerated at defendant's Mansfield Correctional Institution ("ManCI"), was transferred to defendant's Ohio State Penitentiary ("OSP"). Plaintiff's personal property was transferred from ManCI to OSP on that same day.

{¶ 2} Plaintiff asserted his television set and hot pot were damaged beyond repair; the property items were examined by OSP personnel after being transferred from ManCI on October 26, 2005. Furthermore, plaintiff asserted his adapters, cables, transformers, splitter, antenna, ace bandages, and ID badge clips were declared contraband and consequently, "were ordered destroyed or sent out" of the institution.

{¶ 3} Plaintiff filed this complaint on November 13, 2007, listing the estimated replacement value of his alleged damaged or destroyed property at \$183.02. Plaintiff requested defendant be required to pay for the cost of repairing his television set. Additionally, plaintiff requested the court treat his claim for the remaining articles as a

replevin action under R.C. 2737.

{¶ 4} In a completely different matter, plaintiff maintained OSP personnel received a radio and replacement hot pot in the mail on June 16, 2006 intended for him. Plaintiff related he was told by OSP staff that he could not possess the hot pot and radio and was ordered to either mail the items from the institution or authorize the destruction of the property. Apparently, plaintiff opted to mail the hot pot and the radio from OSP. Also, plaintiff related a Bible intended for him was mailed to OSP on June 26, 2006. Plaintiff reported the Bible was never forwarded to him and is currently being held by OSP staff. Plaintiff contended OSP had no authority to withhold either the radio or the Bible from his possession. Therefore, plaintiff seeks an order to recover possession of the replacement hot pot, Bible, and radio. The filing fee was paid. Plaintiff valued the hot pot, radio, and Bible at \$151.46.

{¶ 5} Defendant has contended plaintiff's claim for property damaged or confiscated incident to his October 26, 2005 transfer from ManCI to OSP is barred by R.C. 2743.16¹, the applicable statute of limitations.

{¶ 6} Defendant acknowledged a radio, replacement hot pot, and Bible sent to plaintiff were withheld from him by OSP staff. Defendant classified the hot pot and radio as contraband since the items were "ordered for (p)laintiff by an outside source, which was prohibited by Institutional Policy at the time." The radio and hot pot were mailed from OSP at plaintiff's request. Defendant also classified the Bible sent for plaintiff as contraband, due to the fact this particular Bible was not received in compliance with OSP internal regulations which "requires that all printed materials be received directly from a publisher or distributor." The Bible was sent to plaintiff by a party who is neither a publisher nor a distributor. Therefore, defendant maintained the Bible was properly withheld from plaintiff since Bibles are treated under OSP policy the same as any other printed material. Defendant submitted a copy of the relevant internal policy regulating printed material.

{¶ 7} Plaintiff restated he filed the action in this court seeking "A Writ of Replevin" requesting all property claimed with the exception of his television set be ordered

¹ R.C. 2743.16(A) states in pertinent part:

"[C]ivil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

returned to his possession. Plaintiff requested the television set be returned after repairs have been made at defendant's expense. Plaintiff stated all property items claimed with the exception of the Bible have been sent to this court. The Bible apparently remains in the possession of OSP staff. It should be noted that of all the items claimed only the radio and replacement hot pot have been received by this court. Plaintiff acknowledged he filed an administrative determination action in this court pursuant to R.C. 2743.10², but expressed the intention that this claim is not for monetary damages. Plaintiff's administrative determination claim is controlled by the statutory directives of R.C. 2743.10, despite plaintiff's request that "this court treat his claim as A Writ of Replevin and return his property to him." Furthermore, in regard to his television set plaintiff requested "he be allowed to send out his tv for repair without interference." Also, plaintiff requested he be permitted through this action to "order a replacement adapter for his CD player." Plaintiff filed a response noting, "(p)laintiff only asks that his property be returned to him and that he be allowed to repair/replace those items that must be repaired/replaced."

{¶ 8} Plaintiff asserted that no part of his claim is barred by the statute of limitations as contended by defendant. Plaintiff explained he was required to exhaust all administrative remedies available to him before he could file an action in this court for his property that he claimed was damaged or ordered sent out on October 26, 2005. Plaintiff related he had to wait until all grievances and appeals were resolved regarding the property loss/damage issues incident to his transfer to OSP before he could file an action in this court. Plaintiff's administrative remedies in regard to the issues of property loss/damage incident to his transfer to OSP were exhausted well before October 26, 2007.

{¶ 9} Concerning the radio, replacement hot pot, and Bible withheld from his possession, plaintiff again contended defendant had no right or authority to deny him access to these items.

CONCLUSIONS OF LAW

{¶ 10} Initially a replevin action for the recovery of personal property under

² R.C. 2743.10(A) states in pertinent part:

"(A) Civil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claims."

R.C. 2743 et al. is not cognizable in this court at the administrative determination level. R.C. 2743.10, the statute covering administrative determinations, grants limited jurisdiction over civil actions against the state for money damages of \$2,500.00 or less. This court lacks jurisdiction to provide the special remedy requested by plaintiff. Plaintiff's claim in this court will be determined as an action for damages based on property loss.

{¶ 11} R.C. 2743.16(A) states:

{¶ 12} “(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.1 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.”

{¶ 13} The statute of limitations for plaintiff's claim is two years. Plaintiff's cause of action for any property damage/loss occurring as a result of his transfer from ManCI to OSP accrued on October 26, 2005, the date of the alleged damage, the date of the claimed discovered loss, and the date plaintiff was ordered to mail certain property from the institution. Plaintiff filed his complaint on November 13, 2007 more than two years after the accrual of his cause of action. Consequently, plaintiff's claim for damage to his television and hot pot, the loss of the other items is dismissed since he filed his claim beyond the applicable two year statute of limitations.

{¶ 14} Additionally, any claim based on plaintiff not being permitted to possess a radio, replacement hot pot, and Bible is denied. Defendant denied possession of these items pursuant to internal institution policy. Prison regulations, including those contained in the Ohio Administrative Code, “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, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed 2d 418. Additionally, this court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence. *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182.

{¶ 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 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, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447. An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Therefore, plaintiff in the instant claim is barred from pursuing a claim for the return of restricted property items.



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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Darryl Durr, #A207-889
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa
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