

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

JAMES A. SHARP

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-02410-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, James A. Sharp, is an inmate under the custody of defendant, Department of Rehabilitation and Correction (“DRC”), incarcerated at the Marion Correctional Institution (“MCI”). Plaintiff related that when he first arrived at MCI in March 2007 he was informed “that various personal purchases could only be made by vendors [sic] that were designated by” DRC. DRC policy required inmates to authorize mail order purchases from approved vendors. On May 22, 2007, plaintiff authorized MCI to withdraw \$47.42 from his inmate account to purchase a set of headphones and cassette tapes from M & P Sales, a DRC approved vendor. Plaintiff submitted documentation recording \$47.42 was withdrawn from his account on May 22, 2007 and forwarded to M & P Sales. Plaintiff explained he never received the merchandise ordered from M & P Sales and therefore made requests for the MCI administrative staff to assist him in either obtaining the ordered merchandise or a refund from M & P Sales. Plaintiff filed this complaint seeking to recover the \$47.42 amount

from DRC, despite the fact he was informed all inmates bear the risk for orders made from a DRC approved vendor. Payment of the filing fee was waived.

{¶ 2} 2) Defendant denied any liability in this matter asserting DRC has no duty to recover goods or a refund from an approved vendor. Defendant implied that DRC is not the proper party defendant in this action.

{¶ 3} 3) Plaintiff filed a response insisting defendant should bear liability for the failure of a DRC approved vendor to provide him with the goods he ordered. Plaintiff pointed out he relied on defendant to provide him with a reputable business. Plaintiff stated he was never warned he ordered merchandise at his own risk. Plaintiff did not produce any authority to establish defendant should bear responsibility for the failure of a third party to deliver ordered goods.

CONCLUSIONS OF LAW

{¶ 4} 1) 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, 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.

{¶ 5} 2) 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, 479, 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. Accordingly, to the extent that plaintiff alleges that DRC somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 3) Defendant is not a proper party to this action. Plaintiff has not offered any authority to support his entitlement to a refund from defendant. Plaintiff's claim rests with the vendor. Any cause of action plaintiff may have based on the facts of this claim lies against the vendor M & P Sales. This court, under R.C. 2743 et al. does not have jurisdiction to decide claims against non-state entities. See *Perkins v. Lebanon Correctional Inst.*, Ct. of Cl. No. 2005-11051-AD, 2006-Ohio-7183.

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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:

James A. Sharp, #522-087
P.O. Box 57
Marion, Ohio 43301

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

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