

Court of Claims of Ohio

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RUSSELL E. APPENZELLER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-08957

Judge J. Craig Wright
Magistrate Steven A. Larson

JUDGMENT ENTRY

{¶ 1} On June 15, 2009, defendant filed a motion for summary judgment or, in the alternative, to transfer plaintiff's case to the administrative docket. On July 10, 2009, plaintiff filed an affidavit in response to the motion. The motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

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

{¶ 3} "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 *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Belmont Correctional Institution (BeCI) pursuant to R.C. 5120.16. Plaintiff asserts that defendant improperly withdrew money from his inmate account to pay court costs for an appeal that he filed in the Tenth District Court of Appeals. In a separate claim, plaintiff asserts that employees of defendant illegally conspired to prevent him from corresponding with a member of the public with whom plaintiff had previously corresponded by issuing a "Direct Order to Cease Correspondence/Contact."

{¶ 5} "A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity." *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28. Inasmuch as plaintiff's sole claim for relief is equitable in nature, the Court of Claims Act has no applicability. *Santos*, R.C. 2743.02(A)(1), 2743.03(A). Plaintiff's remedy in seeking the return of the withdrawn funds is an application for a writ of mandamus compelling the warden of his institution to comply with the relevant statutes and administrative code sections. See *State v. Brown*, 156 Ohio App.3d 120, 2004-Ohio-558. This court is without jurisdiction to grant such relief. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 1999-Ohio-53.

{¶ 6} In support of its motion with respect to plaintiff's claim that employees of defendant conspired against him, defendant provided the affidavits of BeCI Victim Coordinators, Kathy Brown and Veronica Jackson. Both Brown and Jackson state that they received notification from a member of the public with whom plaintiff had corresponded stating that he did not want any further correspondence from plaintiff. Additionally, they state that, pursuant to defendant's policy, on November 7, 2006, they met with plaintiff and instructed him that he was not to contact the individual further and

that a “Direct Order to Cease Correspondence/Contact” had been issued. Finally, both state that they followed defendant’s policies and procedures in issuing the order.

{¶ 7} In opposition to defendant’s motion, plaintiff provided his own affidavit wherein he states that he “never harassed or threatened” the individual who contacted BeCI. Plaintiff further states that defendant’s employees did not follow proper regulations and procedures when they issued the order.

{¶ 8} 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.

{¶ 9} 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. “[D]ecisions relating to a prisoner’s transfer to different institutions, classification and security status concern prison security and administration and are executive functions that involve a high degree of official discretion.” *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105.

{¶ 10} The court finds that defendant’s decision to issue a “Direct Order to Cease Correspondence/Contact” is characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising therefrom.

{¶ 11} Moreover, 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, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482. 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.

{¶ 12} Finally, civil conspiracy is “a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages.” *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 419, 1995-Ohio-61, quoting *LeFort v. Century 21-Maitland Realty Co.* (1987), 32 Ohio St.3d 121, 126. However, “[a]n underlying unlawful act is required before a civil conspiracy claim can succeed.” *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 475, 1998-Ohio-294. Inasmuch as there is no underlying “unlawful act” before the court, plaintiff’s civil conspiracy claim is without merit.

{¶ 13} Based upon the foregoing, plaintiff’s claim regarding the withdrawal of money from his inmate account to pay court costs is DISMISSED for lack of subject matter jurisdiction. The court finds that defendant is entitled to judgment as a matter of law on the remainder of plaintiff’s claims. Accordingly, 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.

J. CRAIG WRIGHT
Judge

cc:

Case No. 2008-08957

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JUDGMENT ENTRY

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