

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

RAYSHAWN OGLESBY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-11052-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 2, 2007, plaintiff, Rayshawn Oglesby, an inmate incarcerated at defendant's London Correctional Institution ("LoCI"), authorized the withdrawal of \$96.69 from his inmate account to pay for compact discs ordered from M & P Sales, a LoCI approved vendor. Plaintiff stated the LoCI cashier's office deducted \$96.69 from his inmate account on April 4, 2007 and forwarded that amount to the approved vendor, M & P Sales. Plaintiff explained he never received the merchandise ordered from M & P Sales. Subsequently, on July 16, 2007, LoCI Institutional Inspector, D.M. Blackwell posted a written notice informing inmates to cease all orders with M & P Sales due to the fact the company was not honoring orders or making any refunds for nondelivered items. Plaintiff contended defendant should bear responsibility for the failure of M & P Sales to deliver the compact discs he had purchased. Plaintiff asserted defendant violated the Ohio Administrative Code (5120-9-33¹) authorizing M & P Sales

¹ Ohio Adm. Code 5120-9-33(E)(2) provides rules for inmates receiving (non-food) packages. Specifically this code section mandates:

as an approved vendor and soliciting sales of musical merchandise from a fraudulent company. Plaintiff related he attempted to receive assistance from LoCI personnel to procure a refund from M & P Sales. LoCI staff informed plaintiff he would “need to pursue personal legal action with this vendor,” M & P Sales since LoCI had “no avenue to reinstate your funds.” Plaintiff filed this complaint arguing defendant should bear responsibilities for the failure of M & P Sales to honor his order. Plaintiff stated defendant acted negligently by “joining at the hip with (and) soliciting services (for) a vendor that perpetuated fraud and (deceit) causing plaintiff to be wrongfully deprived of his property for an extended period of time, causing plaintiff (inter alia) loss-of-use of his property that he could have used for other matters and/or other enjoyments.” Plaintiff seeks recovery of damages in the amount of \$2,500.00 for loss of use of property, stress and time expended trying to unsuccessfully pursue a refund of money paid for nondelivered goods. Payment of the \$25.00 was waived.

{¶ 2} 2) Defendant denied any liability in this matter and initially advised that M & P Sales was not an approved vendor pursuant to Ohio Adm. Code 5120-9-33(E)(2). Additionally, defendant advised the purchase of compact discs is addressed under Ohio Adm. Code 5120-9-19(B)(2).² Defendant maintained M & P Sales acted as a distributor of printed materials as stated in Ohio Adm. Code 5120-9-19(B)(2). Defendant implied it had no legal responsibility for the improper acts of M & P Sales and therefore owed no duty to plaintiff to recover goods or a refund. Essentially, defendant asserted it is not the proper party defendant in this action. Furthermore, assuming M & P Sales could be classified as an approved vendor rather than a distributor and the purchase of compact discs is deemed a package order, defendant asserted internal policy³ specifically excludes LoCI being a party to the transaction.

“(E) Inmates may possess only personal property items received through an institutional commissary, and/or vendors identified by the director or designee.

“(2) Inmates may order and receive sundry packages (non-food personal property) only from vendors approved by the director or designee.”

² Ohio Adm. Code 5120-9-19(B)(2) which covers inmate possession rules for “printed materials” that includes compact discs provides:

“(B) An inmate may receive a reasonable number of printed materials subject to the following limitations:

“(2) Printed materials may be received in reasonable quantities; but only, directly from a publisher or distributor. Inmates may receive printed materials from other sources (e.g., family, friends, etc.) only with the prior approval of the warden or designee.”

³ Defendant’s internal policy Number 61-PRP-01 which addresses “Offender Personal Property”

{¶ 3} 3) Plaintiff filed a response insisting defendant should bear liability for all damages claimed. Plaintiff stated defendant “was negligent in permitting circulation of this fraudulent M & P Sales vendor’s catalogues within the correctional institution for reliance of the prisoner population.” Also plaintiff stated defendant “approved business transactions with this fraudulent M & P Sales vendor throughout the State of Ohio.” Plaintiff contended defendant “approved as well as permitted solicitation of purchases of the M & P Sales vendor’s music merchandise.” Seemingly, plaintiff has argued such dealings between defendant and M & P Sales makes defendant legally responsible for the improper acts of M & P Sales. Plaintiff did not produce any authority to establish that 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.

states in Paragraph VIC(5):

“(C) Ordering Packages from approved vendors.

“5. All such purchases by an offender, offender family member, friend or other from an approved vendor are a business transaction strictly between the ordering individual and the approved vendor.”

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 the damages claimed 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; *Moore v. Belmont Correctional Inst.*, Ct. of Cl. No. 2008-03670-AD, 2008-Ohio-7065; *Sharp v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2008-02410-AD, 2008-Ohio-7064.

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

RAYSHAWN OGLESBY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-11052-AD

Deputy Clerk Daniel R. Borchert

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:

Rayshawn Oglesby, #526-502
State Route 56
P.O. Box 69
London, Ohio 43140

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
6/10
Filed 6/19/09
Sent to S.C. reporter 10/22/09