

Court of Claims of Ohio

The Ohio Judicial Center
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JAMES H. LAWSON, JR.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-11125-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On November 21, 2008, plaintiff, James H. Lawson, Jr., filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff asserts on or about September 27, 2008, he was wrongfully terminated from his employment with Ohio Prison Industries (“OPI”). While he was reinstated to his job, he is seeking the lost wages he would have earned during the alleged wrongful termination period.

{¶ 2} On February 2, 2009, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “In the exercise of administrative discretion, CCI/OPI made the decision to change Plaintiff’s job and he doesn’t get back pay/lost wages because he didn’t actually work the job for which he seeks those wages. This decision involves the exercise of a high degree of official judgment or discretion. Thus, CCI/OPI is immune from liability and the Complaint should be dismissed.

{¶ 4} “In conclusion, Plaintiff’s allegations failed to state a claim upon which relief

can be granted. Plaintiff's allegations involve a policy decision involving a high degree of discretion, and thus CCI/OPI is immune from liability."

{¶ 5} On February 12, 2009, plaintiff filed a motion to dismiss defendant's motion to dismiss.

{¶ 6} In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, 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, 532 N.E. 2d 753. 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, 71 O.O. 2d 223, 327 N.E. 2d 753, syllabus.

{¶ 7} In *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776, the Supreme Court stated 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 basis policy decision which is characterized by the exercise of a high degree of official judgment or discretion."

{¶ 8} Furthermore, prisoners who perform work duties during incarceration are not employees of the institution. See *Hunt v. Ohio Dept. of Rehab. and Corr.* (1997), 90 Ohio Misc. 2d 42, 44, 696 N.E. 2d 674; *Fondenn v. Ohio Dept. of Rehab. & Corr.* (1977), 51 Ohio App. 2d 180, 183-184, 5 O.O. 3d 325, 367 N.E. 2d 901. Additionally, it is clear that the relationship between an inmate and a prison is custodial not contractual. *Hurst v. Department of Rehabilitation & Corr.* (February 17, 1994), Franklin App. No. 93AP-716.

{¶ 9} When dealing with the day-to-day operations of the prison, prison officials must be given a "wide-ranging deference in the adoption and execution of policies and practices that their judgment are needed to preserve internal order and discipline and to

maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 60 L. Ed 2d 477, 99 S. Ct. 1861. See also *Jones v. North Carolina Prisoners’ Labor Union* (1977), 433 US 119, 128, 53 L. Ed 2d 629, 97 S. Ct. 2532. See also *Procunier v. Martinez* (1974), 416 U.S. 396, 404-405, 40 L. Ed 2d 224, 94 S. Ct. 1800.

{¶ 10} Finally, this court does not act as a court of appeal for internal decisions rendered by the defendant relating to employment opportunities. See *Chatman v. Dept. of Rehabilitation and Correction* (1985), 84-06323-AD; *Ryan v. Chillicothe Institution* (1981), 81-05181-AD; *Rierson v. Department of Rehabilitation* (1981), 80-00860-AD.

{¶ 11} Based upon plaintiff’s complaint, the court finds that plaintiff’s allegations fail to state a claim upon which relief can be granted. Upon review, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
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