

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Trevor Mattis, :
Appellant :
v. : No. 1164 C.D. 2007
: Submitted: October 19, 2007
DOC, George Patrick, Co. Taylor, Lt. :
Smith, Capt. Irwin, Co. Brahim, Lt. :
Harris, J. Everhart, Sgt. Jones, R. Reed, :
Co. Cadwallader :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: January 24, 2008

Trevor Mattis (Appellant) appeals from a decision of the Clearfield County Court of Common Pleas (trial court) which denied Appellant's *in forma pauperis* petition and thereafter, dismissed his complaint. We affirm.

On July 21, 2006, Appellant filed a complaint and an *in forma pauperis* petition with the trial court. On July 27, 2006, the trial court denied the *in forma pauperis* petition, believing that it did not have the appropriate jurisdiction. On August 11, 2006, Appellant filed a petition for review with our court. On August 14, 2006, our court transferred the petition for review to the trial court. On August 22, 2006, the trial court sent Appellant a letter marking the case stricken effective August 22, 2006. On August 28, 2006, Appellant filed a motion for good cause and permission to proceed.

On February 9, 2007, Glenn Irwin (Irwin), John Harris (Harris), Jerry Everhart (Everhart), Todd Cadwallader (Cadwallader), George Patrick (Patrick), Robert Taylor (Taylor), James B. Smith (Smith), Peter Brahim (Brahim), Jeremy Jones (Jones), Robert Reed (Reed) (collectively, individual Appellees) and the

Department of Corrections (Department) (collectively, Appellees) filed their first set of preliminary objections to Appellant's original complaint, challenging Appellant's lack of service. On April 13, 2007, Appellant made proper service on the individual Appellees, making said preliminary objections moot as to the individual Appellees. However, Appellant did not serve the office of the attorney general as required by Pa. R.C.P. No. 422.

On May 9, 2007, after individual Appellees were served by Appellant, Appellees filed a second set of preliminary objections. On June 8, 2007, the trial court granted Appellees' preliminary objections and dismissed Appellant's complaint with prejudice. Appellant filed a timely appeal to our court.¹

Appellant contends that the trial court erred in granting Appellees' preliminary objections as he properly served the Department in accordance with Pa. R.C.P. No. 422; that he stated a case upon which relief may be granted against individual Appellees; and that he exhausted his administrative remedies prior to commencing this action.

Pennsylvania Rule of Civil Procedure 422 provides that:

Service of original process upon the Commonwealth or an officer of the Commonwealth, or a department, board, commission or instrumentality of the Commonwealth, or a member thereof, shall be made at the office of the defendant and the office of the attorney general by handing a copy to the person in charge thereof.

¹ Our review of a trial court's order sustaining preliminary objections and dismissing the complaint is whether the trial court committed an error of law or an abuse of discretion. Sassu v. Borough of West Conshohocken, 929 A.2d 258 (Pa. Cmwlth. 2007). We will accept all well-pled facts in the complaint as true, as well as any reasonable inferences from those facts. Id.

As the trial court found, there is no indication in the record that Appellant served the office of the attorney general. In Gallman v. Martin, 889 A.2d 649 (Pa. Cmwlth. 2005), our court determined that the trial court lacked personal jurisdiction over the Department of Corrections due to the plaintiff's failure to effect service in accordance with Pa. R.C.P. No. 422.

Thus, in the present controversy, the trial court was correct in determining that Appellant's failure to serve the office of the attorney general results in dismissal of Appellant's complaint against the Department for failure to make proper service. However, proper service was made on the individual Appellees, so we must address the issues against them as individuals.

Appellant contends that the trial court erred in granting individual Appellees' preliminary objections as he did state a case upon which relief may be granted against the individual Appellees. Appellant alleges in his complaint that "various staff" have targeted Appellant for "harassment, intimidation, discrimination, and retaliation" due to the fact that he had initiated a civil complaint against the staff at the State Correctional Institution at Graterford (SCI-Graterford). Appellant's Complaint, at 1-2.

Appellant contends that the individual Appellees acted in retaliation. In proving a claim of retaliation, Appellant must plead that the conduct which led to the alleged retaliation was constitutionally protected; that he suffered some adverse action that was sufficient to deter a person of ordinary firmness from exercising his constitutional rights; and lastly, that the constitutionally protected conduct was a substantial or motivating factor in the decision to take adverse action. Yount v. Department of Corrections, 886 A.2d 1163 (Pa. Cmwlth. 2005).

The conduct Appellant contends caused the alleged retaliation was Appellant's initiation of a civil complaint against staff at SCI-Graterford. The filing of a civil complaint is a constitutionally protected right. However, Appellant fails to show that he suffered an adverse action that was sufficient to deter him, or a person of ordinary firmness, from exercising his constitutional rights or that such conduct by Appellant was a substantial or motivating factor for the individual Appellees to take such adverse actions.

First, Appellant alleges that Taylor and Smith forced him to ship three of his boxes containing legal matter or they would be destroyed.² Our court has previously ruled on this issue in Hackett v. Department of Corrections, 751 A.2d 272 (Pa. Cmwlth. 2000). Therein, we determined that "limiting the amount of material that an inmate may keep in his cell is rationally related to legitimate penological goals of safety and security." Id. at 275. Thus, this allegation of retaliation is not supported by Appellant's complaint, as Appellant fails to show that such actions by individual Appellees were motivated by Appellant filing the civil complaint.

Next, Appellant alleges that Irwin "ignored" Appellant when Appellant asked him why he was never given a confiscation slip for all the property that security confiscated from him. In this instance, Appellant fails to show that he suffered an adverse action that was sufficient to deter him or a person of ordinary firmness from exercising his constitutional rights. The trial court was correct in determining that Appellant failed to state a case upon which relief may be granted against Irwin.

² Taylor told Appellant that he would not "be filing any more complaints" and Smith told him that he would not "be writing any more books around here." Appellant's Complaint, at 2.

Next, Appellant alleges that Brahim denied Appellant's request to sit on the commode while giving a urine sample.³ The trial court found that denial of a request to alter the procedure followed in giving a urine sample was not a violation of Appellant's constitutional rights. An inmate does not have a right to change how a test is administered by the Department. Appellant again failed to allege how this action by Brahim was motivated by his filing of the civil complaint. The trial court did not err in finding that Appellant failed to state a case upon which relief may be granted against Brahim.

Next, Appellant alleges that Harris called another Department employee and ordered him to issue a misconduct citation against Appellant for being in an unauthorized area when he arrived at an activity early.⁴ Appellant admits to being in an unauthorized area. The Department's policy is to issue a misconduct citation when an inmate is in an unauthorized area. As Appellant was in an unauthorized area, Harris did not violate Appellant's rights when he ordered that a misconduct citation be issued against Appellant. Again, Appellant fails to show that such conduct by Harris stemmed from his filing of the civil complaint or that he suffered an adverse action due to such complaint.

Next, Appellant contends that after the shift commander had referred the misconduct for an informal hearing before Everhart, Everhart refused to meet with Appellant within seven days, as allegedly required by Department policy and

³ Appellant stated that Brahim denied Appellant's request to sit on the commode while giving a urine sample, "forcing" Appellant to then defecate on himself while giving such sample. Brahim then laughed at Appellant, who "was then forced to walk back to his block through the general inmate population in an unclean state and smelling foul." Appellant's Complaint, at 4. "As a direct result[,] [Appellant] was embarrassed, degraded, humiliated, and dehumanized." *Id.*

⁴ Appellant claims that other inmates who arrived after him were returned to their block but did not receive a misconduct citation. Appellant's Complaint at 4-5.

that on the eighth day, Everhart referred the misconduct to a formal hearing in order to expose Appellant to a more stringent punishment. Further, Everhart refused to recuse himself from hearing Appellant's grievance after Appellant requested he do so. Once again, Appellant fails to allege that Everhart's conduct was motivated by Appellant's filing of his civil complaint.

Next, Appellant contends that Reed, the hearing examiner that Appellant's misconduct charge was referred to, ignored the alleged Department policy requiring a meeting within seven days and found Appellant guilty. Appellant's Complaint, at 5-6. Reed, in finding Appellant guilty of a misconduct which Appellant admitted to, did not violate any of Appellant's rights. Appellant fails to show that this guilty verdict was the result of Reed seeking to punish him due to his filing of the civil complaint.

Next, Appellant alleges that when Cadwallader received Appellant's television and radio, he inspected them to verify that they worked. However, such items were returned to Appellant damaged. Appellant's Complaint, at 6-7. Appellant does not allege that Cadwallader damaged his property, only that he inspected it upon receipt. Thus, Appellant fails to allege that he suffered a harm which was caused by Cadwallader who was motivated by Appellant's filing of his civil complaint.

Next, Appellant alleges that Jones falsely claimed that he inspected Appellant's television and radio upon their return to Appellant, as such items were returned to Appellant damaged. Appellant's Complaint, at 7. Appellant still fails to allege that such action by Jones was motivated by Appellant's filing of the civil complaint or that such action against him was sufficient to deter Appellant from exercising his constitutional rights.

After reviewing Appellant's complaint, we are unable to find any specific allegations against Patrick.

As Appellant failed to show that he suffered an adverse action that was sufficient to deter him, or a person of ordinary firmness, from exercising his constitutional rights or that such conduct by Appellant was a substantial or motivating factor for the individual Appellees to take such adverse actions, we must agree with the trial court that Appellant failed to state a claim upon which relief can be granted against the individual Appellees.

Finally, Appellant contends that the trial court erred in granting Appellees' preliminary objections as Appellant did exhaust his administrative remedies prior to commencing this action. An inmate must exhaust all available administrative remedies before seeking redress from the courts. St. Clair v. Board of Probation and Parole, 493 A.2d 146 (Pa. Cmwlth. 1985). The trial court is without power to act until all of Appellant's administrative remedies have been exhausted.

In the present controversy, Appellant has failed to take appeals from the denial of his grievances. Thus, Appellant has failed to exhaust his administrative remedies. The trial court was correct in dismissing Appellant's action with prejudice.

Accordingly, we must affirm the decision of the trial court.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Trevor Mattis, :
 :
 Appellant :
 :
 v. : No. 1164 C.D. 2007
 :
 :
 DOC, George Patrick, Co. Taylor, Lt. :
 Smith, Capt. Irwin, Co. Brahim, Lt. :
 Harris, J. Everhart, Sgt. Jones, R. Reed, :
 Co. Cadwallader :

PER CURIAM

ORDER

AND NOW, this 24th day of January, 2008, the order of the Court of
Common Pleas of Clearfield County in the above-captioned matter is affirmed.