

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dwayne Hill,	:	
	:	
Appellant	:	
	:	No. 1642 C.D. 2007
v.	:	Submitted: December 21, 2007
	:	
	:	
Sharon Burks	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: February 11, 2008

Dwayne Hill (Hill), representing himself, appeals an order of the Court of Common Pleas of Fayette County (trial court) that sustained the preliminary objections of Sharon Burks (Burks), Chief Grievance Officer for the Pennsylvania Department of Corrections, and dismissed Hill’s Complaint. Upon review, we affirm.

Hill is an inmate currently incarcerated at the State Correctional Institute (SCI) in Huntingdon County. At the time of the events underlying Hill’s Complaint, however, he was incarcerated in the restricted housing unit at SCI–Fayette.

In April 2007, Hill filed a Complaint against Burks in the trial court. He styled his complaint as a civil rights action under 42 U.S.C. §1983, and claimed Burks violated his rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Pennsylvania Constitution. Hill

alleged a footlocker containing his personal property was vandalized and its contents stolen. The contents of the footlocker allegedly consisted of a radio, cigarettes, potato chips, a headphone adapter, tea bags, honey buns and soup.

Hill averred he complained of the loss of this property by filing an institutional grievance that eventually made its way to Burks. In particular, Hill alleged, “Burks, answered that final level of administrative remedy appeal. In that reply dated December 27, 2006 [Burks] claimed that the issues raised in [Hill’s] appeal was [sic] some how [sic] remote from his original grievance.” Certified Record, Item #1, Compl. at ¶15. Hill further averred Burks “is being sued due to her deliberate indifference to [Hill’s] rights and her duty to provide him with a full and fair due process ... proceeding before depriving [him] of his personal property.” Compl. at ¶17. As to the relief requested, Hill sought actual damages of \$129.25, the claimed value of the personal property, litigation expenses, and punitive damages.

In response, Burks filed a motion to dismiss Hill’s Complaint and a supporting brief, in which she asserted, among other things: the complaint was legally insufficient to state a claim against her; she was immune from suit; and, Hill had a meaningful post-deprivation remedy in the form of the grievance process.¹

¹ Because Hill’s complaint utilized the term “deliberate indifference,” Burks also asserted Hill failed to state a claim under the Eighth Amendment to the U.S. Constitution. In response, Hill asserted he did not state an Eighth Amendment claim. Certified Record, Item #7 at 3. Hill reiterates this point in his Brief to this Court. Appellant’s Br. at 8. Accordingly, this issue is waived.

The trial court subsequently issued an order in which it granted Burks' motion to dismiss Hill's Complaint. Hill filed a notice of appeal.² In response, the trial court issued a statement in lieu of opinion in which it adopted the reasoning set forth in Burks' Brief in support of her motion to dismiss.

On appeal,³ Hill argues the trial court should have denied Burks' motion to dismiss for failure to conform to the Pennsylvania Rules of Civil Procedure. As to the merits, Hill argues the trial court erred in determining: Burks did not violate the Pennsylvania and U.S. Constitutions by depriving him of his personal property; the grievance process provided him with an adequate post-deprivation remedy; and Burks was entitled to immunity.

Hill first argues the trial court should have denied Burks' motion to dismiss for failure to conform to the Rules of Civil Procedure. Specifically, he asserts Burks erroneously filed a "motion to dismiss" his complaint rather than properly filed preliminary objections pursuant to Pa. R.C.P. No. 1028.

Hill is correct that Burks incorrectly filed a motion to dismiss rather than preliminary objections in compliance with Pa. R.C.P. No. 1028. Therefore,

² Hill originally filed his appeal with the Superior Court, which transferred the appeal to this Court.

³ In reviewing an appeal from an order sustaining preliminary objections in the nature of a demurrer, we must determine whether on the facts alleged in the complaint, the law states with certainty no recovery is possible. Unified Sportsmen of Pa. v. Pa. Game Comm'n, 903 A.2d 117 (Pa. Cmwlth. 2006). We must accept as true all well-pled allegations of material fact averred in the complaint, as well as all inferences reasonably deducible from those allegations. Id.

Hill is technically correct that Burks followed an improper procedure. But, to amount to reversible error, the procedural defect must also cause harm. See Pa. R.C.P. No. 126 (“[t]he court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.”). Here, Hill offers no explanation as to how this procedural error resulted in prejudice to him. Absent a showing of prejudice, we discern no reversible error. Id.; see R.H.S. v. Allegheny County Dep’t of Human Servs., Office of Mental Health, 936 A.2d 1218 (Pa. Cmwlth. 2007); Baravordeh v. Borough Council of Prospect Park, 706 A.2d 362 (Pa. Cmwlth. 1998). Thus, Hill’s argument fails.

As to the merits, we note that to state a claim under 42 U.S.C. §1983, a plaintiff must allege a violation of rights secured by the U.S. Constitution or the laws of the United States, and show the alleged deprivation was committed by a person acting under the color of state law. Gonzaga Univ. v. Doe, 536 U.S. 273 (2002). Courts cannot impose supervisory liability in Section 1983 cases solely on a theory of respondeat superior. Monell v. Dep’t of Social Servs. of City of New York, 436 U.S. 658 (1978); Weaver v. Franklin County, 918 A.2d 194 (Pa. Cmwlth. 2007). To prevail in a Section 1983 suit against a supervisory official, a plaintiff must demonstrate the supervising defendant had personal involvement in the alleged wrongs. Andrews v. City of Phila., 895 F.2d 1469 (3d Cir. 1990). Personal involvement can be pled through allegations of personal direction or of actual knowledge and acquiescence. Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988).

Here, although Hill styles his complaint as a §1983 action, he fails to identify a federal right, guaranteed by either federal law or the U.S. Constitution, to a fair hearing in the state inmate grievance setting. Indeed, this Court holds the inmate grievance procedures, which are established by Department of Corrections' regulations, do not implicate rights under the United States and Pennsylvania Constitutions. Lockett v. Blaine, 850 A.2d 811 (Pa. Cmwlth. 2004) (citing Sandin v. Conner, 515 U.S. 472 (1995)). In the absence of a federal statutory or constitutional basis for his claim, Hill's Complaint is legally insufficient to state a cause of action under 42 U.S.C. §1983.

Hill's Complaint suffers from a second fatal defect. To that end, Hill does not allege personal involvement on the part of Burks in the loss of his personal property. Rather, he avers:

14. [Hill's] total lose [sic] was 129.25. Plaintiff appealed his prison grievance stating that some of his personal property was still missing and that some of his property had been found damaged. ...

15. [Burks] answered that final level of administrative remedy appeal. In that reply dated December 27, 2006 [Burks] claimed that the issues raised in [Hill's] appeal was [sic] some how [sic] remote from his original grievance.

16. [Hill] has a direct interest in this action because [Burk's] refusal to provide due process deprives him of the ability to use his property in a lawful and authorized manner.

17. [Burks] is being sued due to her deliberate indifference to [Hill's] rights and her duty to provide him with a full and fair due process ... proceeding before depriving [Hill] of his personal property.

Compl. at ¶¶14-17. In his prayer for relief, however, Hill seeks monetary damages.

The difficulty with Hill's Complaint stems from the lack of relationship between the allegations and the relief requested. See Unified Sportsmen of Pa. v. Pa. Game Comm'n, 903 A.2d 117 (Pa. Cmwlth. 2006). More specifically, Hill alleges Burks violated his due process rights by failing to provide him a full and fair proceeding. Significantly, Hill does not allege Burks had any involvement in the loss of his personal property. However, Hill does not seek a full and fair proceeding to vindicate his claimed procedural due process rights; rather, he seeks monetary damages representing the loss of his personal property. In short, his demand for relief is not for improved procedures but rather for the underlying substantive relief sought in the grievance.

A third defect in Hill's action is his inability to obtain relief either monetary or procedural. To the extent Hill seeks monetary damages, Hill's claim against Burks for violation of the Pennsylvania Constitution fails. In Jones v. City of Philadelphia, 890 A.2d 1188 (Pa. Cmwlth.), appeal denied, 589 Pa. 741, 909 A.2d 1291 (2006), this Court declined to create a private cause of action for money damages based on state constitutional violations.

Moreover, to the extent Hill's Complaint is actually an appeal from an adverse grievance decision seeking a different outcome, his claim cannot proceed. In Bronson v. Central Office Review Committee, 554 Pa. 317, 721 A.2d 357 (1998), our Supreme Court held this Court lacks appellate jurisdiction over inmate

appeals of decisions by intra-prison disciplinary tribunals, such as grievance and misconduct appeals.⁴

Based on the foregoing, we discern no error in the trial court's dismissal of Hill's Complaint. Accordingly, we affirm.⁵

ROBERT SIMPSON, Judge

⁴ The Supreme Court further held this Court usually lacks original jurisdiction over an inmate's petition for review after a grievance proceeding. The Court held original jurisdiction was not available "in a case not involving constitutional rights not limited by the [DOC]." *Id.* at 323, 721 A.2d at 359. The Court explained, "[u]nless 'an inmate can identify a personal or property interest . . . not limited by Department [of Corrections] regulations and which has been affected by a final decision of the department' the decision is not an adjudication subject to the court's review." *Id.* (citation omitted). Similarly, "the limitations placed upon the judiciary to rule on issues of internal prison operations as set forth in Bronson apply to our common pleas courts as well." Brown v. Dep't of Corr., 913 A.2d 301, 305 (Pa. Cmwlth. 2006), appeal denied, 591 Pa. 705, 918 A.2d 748 (2007).

Here, there is no constitutional dimension to Hill's claim. See Hudson v. Palmer, 468 U.S. 517 (1984) (under Due Process Clause of U.S. Constitution, even an intentional deprivation of an inmate's personal property by state officials does not violate his due process rights, if an adequate post-deprivation remedy exists); Austin v. Lehman, 893 F. Supp. 448 (E.D. Pa. 1995) (inmate grievance system can constitute adequate post-deprivation remedy).

⁵ We may affirm on different grounds where grounds for an affirmance exist. City of Pittsburgh v. Logan, 780 A.2d 870 (Pa. Cmwlth. 2001), aff'd, 570 Pa. 500, 810 A.2d 1185 (2002).

