

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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ERVIN TRIPLETT, JR.

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

Case No. 2005-08701

Judge J. Craig Wright

Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} On June 22, 2006, defendant filed a motion for summary judgment. Plaintiff did not respond. On July 21, 2006, plaintiff filed a cross-motion for summary judgment. On July 25, 2006, defendant filed a response. On August 4, 2006, an oral hearing was held on the motions before a magistrate of the court.

{¶ 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 to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff claims that defendant unlawfully

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destroyed four boxes of his property. Defendant argues that the property was destroyed pursuant to the Ohio Administrative Code and a valid order of the Scioto County Court of Common Pleas.

{¶ 5} This court has consistently held that a correctional institution cannot be held liable for loss of contraband property that plaintiff had no right to possess, and that an inmate plaintiff is barred from recovering the value of confiscated property which was subsequently destroyed pursuant to a court order. See *Beaverson v. Dept. of Rehab. and Corr.* (1988), 61 Ohio Misc.2d 249; *Dodds v. Dept. of Rehab. and Corr.* (2000), Ct. of Cl. No. 2000-03603; and *Sandoval v. Ohio State Penitentiary*, Ct. of Cl. No. 2004-05082, 2004-Ohio-5414.

{¶ 6} According to an exhibit that is attached to defendant's motion, defendant petitioned the Scioto County Court of Common Pleas to have plaintiff's property forfeited and destroyed. On April 1, 2004, the Scioto County Court of Common Pleas declared that plaintiff's property be forfeited and ordered that it be destroyed. Inasmuch as defendant acted pursuant to a valid court order plaintiff is barred from recovering damages from defendant. In any event, this court does not have jurisdiction to review the determination by a common pleas court.

{¶ 7} Plaintiff argues that the forfeiture proceedings were faulty because he was not given notice of the hearing. However, nothing in Ohio Adm.Code 5120-9-55 requires the common pleas court either to notify the property owner of the petition or to hold a hearing thereon. *In re Application for Forfeiture of Unauthorized Items Confiscated from Inmates Pursuant to AR 5120-9-55*, 12th Dist. No. CA2003-05-021, 2004-Ohio-2905. Accordingly, plaintiff's assertion that defendant violated Ohio Adm.Code 5120-9-55 fails as a matter of law.

{¶ 8} To the extent that plaintiff argues that his civil rights were violated, it is well-settled that Section 1983, Title 42, U.S.Code claims are not actionable in this court. *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170, 171; *Thompson*

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v. Southern State Community College (June 15, 1989), Franklin App. No. 89AP-114; *Bleicher v. University of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302. Plaintiffs in the Court of Claims are limited to causes of action which they could pursue if defendant were a private party. *Thompson*, citing *McCord v. Div. of Parks & Recreation* (1978), 54 Ohio St.2d 72.

{¶ 9} Based upon the foregoing, defendant is entitled to judgment as a matter of law. Accordingly, it is recommended that defendant's motion for summary judgment be granted and plaintiff's motion for summary judgment be denied.

{¶ 10} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

cc:

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MR/cmd

Filed October 6, 2006

To S.C. reporter October 27, 2006