

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

MARK HOPKINS

Plaintiff

v.

MADISON CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-01479

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} On March 29, 2007, defendant filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(1). Plaintiff did not file a response. On May 10, 2007, an oral hearing was held at the Madison Correctional Institution (MaCI) on defendant's motion.

{¶2} "The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80.

{¶3} At all times relevant to this action plaintiff was an inmate in the custody and control of the Ohio Department of Rehabilitation and Correction at MaCI pursuant to R.C. 5120.16. Plaintiff alleges that on September 22, 2006, he sustained injuries to his right arm and shoulder in a fall and that he was subsequently transported from MaCI for treatment. According to the complaint, plaintiff's right arm was set in a cast and a treating physician prescribed a course of physical therapy to commence upon removal of the cast.

{¶4} Plaintiff claims that after the cast was removed, defendant neither provided the prescribed physical therapy nor arranged for a physician to perform a follow-up examination. Plaintiff alleges that he continues to experience pain, stiffness, and limited mobility in his right arm.

{¶5} Defendant contends that plaintiff's claims are based upon the alleged violation of constitutional and civil rights and that, therefore, the complaint must be

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dismissed in its entirety. Indeed, plaintiff's complaint states that "[t]his is a civil rights action brought under 42 U.S.C. § 1983 ***."

{¶6} It is well-settled that constitutional and civil rights claims, including those brought under Section 1983, Title 42, U.S.Code, are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170. Thus, this court is without jurisdiction to hear plaintiff's claims alleging violations of his constitutional and civil rights.

{¶7} However, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." *Rogers v. Targot Telemarketing Services* (1990), 70 Ohio App.3d 689, 692. While the complaint is couched in terms of Section 1983, Title 42, U.S.Code, the allegations contained therein give rise, at a minimum, to a negligence claim concerning an alleged failure to provide prescribed medical care.

{¶8} Based upon the foregoing analysis, it is recommended that defendant's motion be granted, in part, as it pertains to any constitutional and civil rights claims alleged in plaintiff's complaint. It is further recommended that the case proceed on a theory of negligence.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). 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 factual finding or legal

[Cite as *Hopkins v. Madison Correctional Inst.*, 2007-Ohio-3871.]

conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

Naomi H. Maletz Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130	Mark Hopkins, #502-438 Madison Correctional Institution 1851 State Route 56 P.O. Box 740 London, Ohio 43140
Magistrate Steven A. Larson 209 South High Street, Lobby Columbus, Ohio 43215	

RCV/cmd

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To S.C. reporter July 30, 2007