

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

William H. Evans, Jr.,	:	
	:	
Plaintiff-Appellant,	:	No. 19AP-51
	:	(C.P.C. No. 17CV-9206)
v.	:	
	:	(ACCELERATED CALENDAR)
Ohio Department of Rehabilitation	:	
and Correction et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *William H. Evans, Jr.*, pro se.

On brief: *Dave Yost*, Attorney General, and *Andrea K. Boyd*.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, William H. Evans, Jr., appeals pro se from a judgment of the Franklin County Court of Common Pleas dismissing his complaint against defendants-appellees, Gary Mohr, director of the Ohio Department of Rehabilitation and Correction ("ODRC"), Karen Stanforth, ODRC assistant chief inspector, Mark Hooks, warden of the Ross Correctional Institution ("RCI"), and Lisa Bethel, RCI healthcare administrator (collectively "appellees"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In October 2017, Evans, an inmate at RCI, filed a pro se complaint against appellees seeking declaratory and injunctive relief. He generally alleges his constitutional rights have been violated because he has not received a colonoscopy as recommended by an RCI healthcare professional.

{¶ 3} In his complaint, Evans alleges the following facts. He is currently serving a prison sentence of 15 years to life. While incarcerated at RCI, a nurse practitioner advised Evans that he should undergo a colonoscopy due to suspected colon cancer. Evans was instructed that to undergo the procedure he would need to go to RCI's infirmary overnight. He requested that he be permitted to ingest the colon cleansing solution in his prison cell and then be taken to the infirmary for the procedure without having to stay overnight. His request was denied, and he then refused to transfer overnight to the infirmary in order to have the procedure. Evans contends that requiring him to stay overnight in the infirmary in order to have the colonoscopy violates his rights. He asserts that leaving his established prison cell for one night may result in him losing that cell and being placed with a new cellmate in a different housing unit. He further asserts that uprooting him from his established prison cell also may result in the loss or destruction of his personal property. Based on these circumstances, Evans has not undergone the colonoscopy procedure.

{¶ 4} Pursuant to Civ.R. 12(B)(6), appellees moved to dismiss Evans' complaint for failure to state a claim upon which relief can be granted. In December 2018, the trial court granted appellees' motion to dismiss Evans' complaint.

{¶ 5} Evans timely appeals.

II. Assignment of Error

{¶ 6} Evans assigns the following error for our review:

Trial court erred in holding that appellant Evans failed to state a claim against any defendant when the complaint specifically, and repeatedly, stated that Evans is challenging the asserted "policy" of ODRC and all defendants "acquiescence" to violation of Evans's rights to colonoscopy.

III. Discussion

{¶ 7} In his sole assignment of error, Evans contends the trial court erred in granting appellees' motion to dismiss. Under Civ.R. 12(B)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). In ruling on a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must construe the complaint in the light most favorable to the plaintiff, presume all factual allegations in the complaint are true, and make

all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). The dismissal of a complaint for failure to state a claim is proper when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him to relief. *Celeste v. Wiseco Piston*, 151 Ohio App.3d 554, 2003-Ohio-703, ¶ 12 (11th Dist.). When reviewing a decision on a Civ.R. 12(B)(6) motion to dismiss, this court's standard of review is de novo. *Foreman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-15, 2014-Ohio-2793, ¶ 9.

{¶ 8} Evans' complaint invokes his right to adequate medical care. The Eighth Amendment, which applies to the states through the Due Process Clause of the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments" on individuals convicted of crimes. Prison officials may violate the Eighth Amendment when they deprive an inmate of "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); see *Helling v. McKinney*, 509 U.S. 25, 31 (1993) ("[T]he treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment."). "A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." *Brown v. Plata*, 563 U.S. 493, 511 (2011). To prove a violation of the Eighth Amendment, an inmate must show both sufficiently serious deprivation and the prison official's deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

{¶ 9} Evans' complaint also suggests the unlawful deprivation of his liberty. In a conclusory manner, he alleges that appellees are forcing him to relinquish his liberty rights in order for him to receive the recommended medical care. "When an individual violates a criminal law and receives a sentence, he usually cannot be heard to complain about the deprivations of liberty that result." *Ortega v. United States Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir.2013). A prisoner is not entitled to be housed in a particular prison cell or even any particular prison. *Meacham v. Fano*, 427 U.S. 215, 224 (1976); *Quick v. Mann*, 170 Fed.Appx. 588, 590 (10th Cir.2006).

{¶ 10} Even assuming the facts as alleged in the complaint, Evans fails to allege an actionable claim against appellees. Evans alleges a nurse practitioner at RCI recommended he undergo a colonoscopy based on suspected cancer. She advised him that he would need

to stay in the RCI infirmary overnight to prepare for the procedure. Evans asserts he has not undergone the recommended colonoscopy and, therefore, his health has been placed at risk because it would require him to relinquish his established prison cell. But he has no liberty interest in his particular prison cell. And he does not allege any facts suggesting that his stay in the infirmary for one night would result in a sufficiently severe change in the conditions under which he resides. Furthermore, appellees are not denying him medical care. The only reasonable inference that can be reached based on Evans' factual allegations is that he has not received the recommended colonoscopy because he has voluntarily chosen not to take the necessary steps to have that procedure. The fact that Evans does not want to leave his prison cell for one night to stay in the infirmary, based on his concern that he might lose his cell or speculation that his personal property will be damaged or destroyed, does not mean appellees have or will deprive him of his rights. Thus, taking the factual allegations of the complaint as true, Evans fails to state a viable claim against appellees.

{¶ 11} For these reasons, we find the trial court properly granted appellees' motion to dismiss pursuant to Civ.R. 12(B)(6). Accordingly, we overrule Evans' sole assignment of error.

IV. Disposition

{¶ 12} Having overruled Evans' sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and DORRIAN, JJ. concur.
