[Cite as *Williams v. Collins*, 2011-Ohio-3029.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Randolph Williams, Jr. et al.,	:	
Plaintiffs-Appellants,	:	
		No. 10AP-1012
v.	:	(C.P.C. No. 09CVH-10-15054)
Terry J. Collins et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 21, 2011

Randolph Williams, *Jr.*, pro se.

Michael DeWine, Attorney General, and *Peter L. Jamison*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiff-appellant, Randolph Williams, Jr. ("Williams"), appeals the judgment of the Franklin County Court of Common Pleas, which granted summary judgment in favor of defendants-appellees, Terry J. Collins, Director of the Ohio Department of Rehabilitation and Correction ("ODRC"), Deb Timmerman-Cooper, Warden of the London Correctional Institution ("LCI"), and Russ Parrish, Unit

Management Administrator of LCI (collectively, "appellees"). Because the trial court did not err, we affirm.

{¶2} Williams and two other inmates of LCI, Martin Holloman and Ako Thomas, filed a complaint against appellees on October 7, 2009. In it, the plaintiffs alleged that they were subjected to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. Specifically, they alleged that appellees had deprived them of state-issued soap within the inmate housing units.

{¶3} According to the complaint, appellees began depriving inmates of state-issued soap on or about June 5, 2009, when a memo issued by Parrish stated that ODRC would no longer provide soap to the inmate population. After receiving the memo, three inmates filed grievances with ODRC's chief inspector, Gary Croft, who granted them, in part, and directed that soap be placed in inmate common areas. Croft's decision was dated July 9, 2009. When soap had not been returned to the common areas by July 13, 2009, Holloman sent a communication to Timmerman-Cooper. Parrish responded that the common areas would be receiving soap dispensers, which were on order. Thereafter, inmates were informed that soap would only be provided in common areas of the institution, not in inmate housing units. For relief, the complaint sought a declaration that the Eighth Amendment and ODRC policies require appellees to provide all inmates with soap in the "inmate housing units common areas" at LCI. They also sought an injunction to the same effect.

{¶4} On November 12, 2009, appellees moved to dismiss the complaint. Appellees contended that the complaint had not stated a claim on which relief could be granted because the plaintiffs had not alleged any resulting pain or harm and had not

met standards for alleging a claim under the Eighth Amendment. Appellees also contended that the plaintiffs had failed to comply with mandatory filing requirements.

{¶5} On March 5, 2010, the trial court granted appellees' motion to dismiss only as to Holloman and Thomas because they had not met filing requirements. The trial court denied appellees' motion as to Williams because appellees had failed to state their grounds with particularity. Thereafter, appellees answered.

{¶6} On July 14, 2010, appellees moved for summary judgment on Williams' claim under the Eighth Amendment. They contended that (1) the issue was moot because soap dispensers had been installed in all inmate housing bathrooms, and (2) Williams' claims were not enough to show cruel and unusual punishment under the Eighth Amendment. They attached the affidavit of Timmerman-Cooper, who stated that LCI had adopted a new policy, which provided inmates with access to free soap in all common areas and bathrooms. She also stated that inmates could purchase soap from the LCI commissary. Inmates who could not afford soap were entitled to obtain it for free or on credit.

{¶7} In response, Williams argued that the issue was not moot because LCI does not always keep soap in the new dispensers. Four affidavits supported this contention. Williams also argued that the claims were sufficient under the Eighth Amendment.

{¶8} On July 14, 2010, the trial court granted summary judgment in favor of appellees. The court concluded that reasonable minds could only conclude that appellees had not shown deliberate indifference to inmates' hygiene needs, and therefore, Williams was not entitled to relief under the Eighth Amendment. The court

noted that, while Williams had presented evidence that disputed Timmerman-Cooper's statement that soap was available in inmate showers and bathrooms, there was no dispute that soap was otherwise available to inmates through the commissary.

{¶9} Williams filed a timely appeal, and he raises the following assignment of error:

> THE TRIAL COURT ERRED BY GRANTING [APPELLEES'] MOTION FOR SUMMARY JUDGMENT WHEN MATERIAL ISSUES OF FACT WERE STILL IN DISPUTE REGARDING WHETHER [APPELLEES] HAD VIOLATED THE APPELLANT'S RIGHTS AGAINST CRUEL AND [UNUSUAL] PUNISHMENT UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶10} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶11} Pursuant to Civ.R. 56(C), 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." Accordingly, summary judgment is appropriate

only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶12} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. Id. at 293. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶13} 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. U.S. Const. amend. VIII. Prison officials may violate the Eighth Amendment when they deprive an inmate of "the minimal civilized measure of life's necessities." *Rhodes v. Chapman* (1981), 452 U.S. 337, 347, 101 S.Ct. 2392, 2399. To prove a violation of the Eighth Amendment, an inmate must show both an objective element—that the deprivation was sufficiently

serious—and an objective element—that a prison official acted with deliberate indifference. *Farmer v. Brennan* (1994), 511 U.S. 825, 834, 114 S.Ct. 1970.

{¶14} "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* (May 23, 2011), ___ U.S. ___, 131 S.Ct. 1910. Nevertheless, "the Constitution does not mandate comfortable prisons, and prisons * * *, which house persons convicted of serious crimes, cannot be free of discomfort." *Rhodes*, 452 U.S. at 349, 101 S.Ct. at 2400. Restrictive or even harsh conditions are "part of the penalty that criminal offenders pay for their offenses against society." Id., 452 U.S. at 347, 101 S.Ct. at 2399.

{¶15} At issue here is the alleged deprivation of a single hygiene item, soap. Where the deprivation of hygiene items was temporary, courts have concluded that the plaintiff did not satisfy the sufficiently-serious component. See, e.g., *Harris v. Fleming*, (C.A.7, 1988), 839 F.2d 1232, 1235-36 (no constitutional violation where prison officials failed to provide prisoner with toilet paper for five days, and with soap, toothbrush, and toothpaste for ten days); *McNatt v. Unit Mgr. Parker*, No. 3:96CV1397, 2000 U.S. Dist. LEXIS 20468, 2000 WL 307000 (D.Conn. Jan.18, 2000), affirmed, 11 Fed. Appx. 30 (C.A.2, 2001) (no constitutional violation where inmates endured, among other deprivations, no toiletries or clothing for six days). Compare *Flanory v. Bonn* (C.A.6, 2010), 604 F.3d 249 (holding that inmate had stated an Eighth-Amendment claim where prison officials deprived him access to toothpaste for 337 days).

{¶16} At best, Williams has alleged a temporary deprivation of an essential hygiene item. In his complaint, Williams alleged that prison officials stopped providing

state-issued soap, but he did not allege that he was without soap for any period of time or that any harm resulted. In his affidavit, he stated that prison officials failed to fill the liquid soap dispensers in the housing unit bathroom from June to July 2010, generally failed to fill the dispensers on a regular basis, and have never supplied soap in the shower areas. (The other inmate affidavits were identical.) Again, however, Williams does not state in his affidavit that he has been without soap for any period of time or that harm has occurred. In her affidavit, Timmerman-Cooper stated that, under the new policy, soap is available for purchase at the commissary at a cost of $.55 to $2.54 and that LCI will provide soap to inmates unable to afford it. Williams provided no evidence to counter appellees' evidence showing that he has access to soap from the commissary, whether for purchase or otherwise.

{¶17} Even viewing all of the evidence most strongly in favor of Williams, reasonable minds could only conclude that he has access to soap and may have suffered, at worst, a temporary deprivation of free soap with no ill effects. Williams has failed to show that the alleged injury is sufficiently serious to support a claim for cruel and unusual punishment under the Eighth Amendment. Having concluded that Williams cannot meet the objective, or sufficiently serious, prong of the applicable, two-part test, we need not consider the subjective, or deliberate indifference, prong.

{¶18} For these reasons, we overrule Williams' assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and TYACK, JJ., concur.