

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Javelen Wolfe,	:	
	:	
Plaintiff-Appellant,	:	No. 15AP-128
	:	(Ct. of Cl. No. 2014-00838)
v.	:	
	:	
Ohio Department of Rehabilitation	:	(REGULAR CALENDAR)
and Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on September 29, 2015

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*Javelen Wolfe*, pro se.

*Michael DeWine*, Attorney General, and *Frank S. Carson*, for  
appellee.

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APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Javelen Wolfe, appeals a judgment of the Court of Claims dismissing his action against defendant-appellee, the Ohio Department of Rehabilitation and Correction ("ODRC"). For the following reasons, we affirm that judgment.

{¶ 2} Wolfe is an inmate at the Southeastern Correctional Complex. In a conduct report completed December 18, 2013, a prison worker alleged that Wolfe had violated the inmate rules of conduct by attempting to establish a personal relationship with her. On December 20, 2013, a correctional officer began reading Wolfe the conduct report, but broke off when he noticed a problem with the signature of the prison worker who had

completed the report. Another correctional officer read the entire conduct report to Wolfe on December 23, 2013. According to Wolfe, neither correctional officer gave him a copy of the conduct report. Wolfe later obtained a copy of the conduct report, which was not signed by the prison worker who completed the report.

{¶ 3} The prison's rules infraction board ("RIB") held a hearing on Wolfe's alleged rule violation on January 7, 2014. The RIB found that Wolfe had committed the violation, and it imposed 15 days in disciplinary control and recommended that the local control committee determine whether to place Wolfe into local control. Wolfe appealed the RIB's decision to the warden, who affirmed the decision. Wolfe then requested a further review by the director of ODRC, who also affirmed the RIB's decision.

{¶ 4} Wolfe was later placed into local control. According to Wolfe, he was placed into local control before the end of the 15-day period he was to serve in disciplinary control and before a hearing was held regarding whether he met the criteria for a local control placement.

{¶ 5} Wolfe filed a complaint against ODRC in the Court of Claims. In the complaint, Wolfe asserted multiple procedural deficiencies in how ODRC officials handled his rule infraction, including: (1) the conduct report did not contain the signature of the person who made the report, (2) prison officials initially denied Wolfe a copy of the conduct report, (3) the RIB hearing was held 12 days after the issuance of the conduct report, (4) prison officials placed him in local control without first holding a hearing, and (5) the director did not conduct a fair and independent review of the RIB's decision.

{¶ 6} ODRC moved to dismiss Wolfe's complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted. In a judgment dated January 21, 2015, the Court of Claims granted that motion.

{¶ 7} Wolfe now appeals the January 21, 2015 judgment, and he assigns the following errors:

[1.] THE TRIAL COURT MADE ALL REASONABLE  
INFERENCES IN FAVOR OF THE MOVING PARTY[.]

[2.] THE TRIAL COURT DID NOT CONSIDER THE  
EVIDENCE[.]

[3.] THE TRIAL COURT ADDRESSED GUILT OR INNOCENCE WHEN APPELLANT DID NOT MAKE REFERENCES TO IT AS AN ISSUE[.]

[4.] THE TRIAL COURT DENIED THE COMPLAINT BY APPLYING THE DUE PROCESS ISSUE[.]

{¶ 8} Because Wolfe's assignments of error are interrelated, we will address them together. Essentially, by the assignments of error, Wolfe argues that the trial court erred in dismissing his action for failure to state a claim. A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11. In construing a complaint upon a Civ.R. 12(B)(6) motion, a court must presume that all factual allegations in the complaint are true and make all reasonable inferences in the plaintiff's favor. *Id.* at ¶ 12; *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶ 14. " '[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss.' " *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶ 5, quoting *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991). Appellate court review of a trial court's decision to dismiss a claim pursuant to Civ.R. 12(B)(6) is de novo. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶ 12.

{¶ 9} Wolfe argues that he stated claims because he asserted violations of: (1) Ohio Adm.Code 5120-9-07(B)(1), which requires the person making a conduct report to sign it; (2) Ohio Adm.Code 5120-9-07(E), which requires the prison official who reads the conduct report to the inmate to give the inmate a copy of the report; (3) Ohio Adm.Code 5120-9-11(D), which requires the hearing on a rule infraction to occur within three business days of the issuance of the conduct report unless prevented by exceptional circumstances, unavoidable delays, or reasonable postponements; and (4) Ohio Adm.Code 5120-19-13.1(B), which requires a hearing before an inmate is placed into local control.

{¶ 10} For purposes of reviewing the dismissal of Wolfe's complaint, we will presume the veracity of the facts underlying the alleged violations. Despite this presumption, Wolfe cannot state a claim because ODRC's violation of the cited code

provisions does not give rise to a cause of action. Prison regulations like the ones Wolfe relies on "are primarily designed to guide correctional officers in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479 (1997). Prison inmates, therefore, have no right to recover against ODRC when it violates administrative code provisions like the ones at issue here. *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-1048, 2015-Ohio-2668, ¶ 10; *Triplett v. Warren Corr. Inst.*, 10th Dist. No. 12AP-728, 2013-Ohio-2743, ¶ 10.

{¶ 11} Wolfe also argues that he stated a claim when he alleged in his complaint that the director did not conduct a fair or independent review of the RIB's decision. Arguably, this allegation could state a claim for a due process violation. On appeal, however, Wolfe explicitly denies pleading any constitutional claims. Wolfe does not offer any other cause of action that fits the facts alleged, and we know of none that fall within the Court of Claims' jurisdiction.

{¶ 12} In sum, we conclude that none of the allegations in Wolfe's complaint state a claim upon which the Court of Claims could grant Wolfe relief. The Court of Claims, therefore, did not err in dismissing Wolfe's complaint.

{¶ 13} For the foregoing reasons, we overrule Wolfe's assignments of error, and we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

TYACK and HORTON, JJ., concur.

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