[Cite as *State ex rel. Rarden v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-7137.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Lonnie Rarden,	:	
Relator-Appellant,	:	
		No. 16AP-149
v.	:	(C.P.C. No. 15CV-7000)
Ohio Department of Rehabilitation and Correction et al.,	:	(REGULAR CALENDAR)
	:	
Respondents-Appellees.	:	

D E C I S I O N

Rendered on September 30, 2016

On brief: *Lonnie Rarden*, pro se.

On brief: *Michael DeWine*, Attorney General, and *Mindy Worly*, for appellee Ohio Department of Rehabilitation and Correction.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, P.J.

{¶ 1} Relator-appellant, Lonnie Rarden, appeals the February 12, 2016 judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of respondent-appellee, Ohio Department of Rehabilitation and Correction (the "department"), and finding to be moot Rarden's motions for summary judgment. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} On August 13, 2015, Rarden filed a complaint in the Franklin County Court of Common Pleas titled "Writ of Mandamus Complaint." In the opening paragraph, Rarden stated: "[S]ince this involves a breach of contract and that where a duty is based

upon both contract and law, mandamus is the appropriate remedy despite the availability of another action at law." In support, he cited to *State ex rel. Parsons Constr., Inc. v. Moyer*, 72 Ohio St.3d 404 (1995), and *State ex rel. Cope v. Cooper*, 122 Ohio St. 321 (1930). Rarden's complaint then detailed his termination from the Fresh Start Animal Program and the Animal Apprenticeship Program.

{¶ 3} In conclusion, Rarden requested the court grant his request for writ of mandamus to: (1) "compel the [department] to honor the contract that it entered with [Rarden] and the United States Department of Labor," and (2) "order that the [department] Agents at Madison Correctional Institution adhere to ALL Ohio Revised Codes, Administrative Rules, Ohio Department of Rehabilitation and Correctional Policies and Local Institutional Policies that govern prisons in the State of Ohio." (Emphasis sic.) (Complaint at 12.)

{¶ 4} On September 2, 2015, Rarden filed a "Motion to Amend Complaint" in which he indicated that he attempted to obtain a copy of the "Apprenticeship Agreement" from the department but to no avail. Rarden therefore attached a sample of an apprenticeship agreement taken from *Allen v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-06461, 2005-Ohio-7015, "to give this Court an idea of what the contract, or agreement looks like." (Mot. at 1.) Rarden further stated that the exhibits to his original complaint acknowledged that he was enrolled in the Animal Apprenticeship Program and referred to Exhibits O, Q, W, and Z. He argued that Ohio case law, including *Allen* at ¶ 12, and *Reznickcheck v. N. Cent. Corr. Inst.*, Ct. of Cl. No. 2008-09961, 2010-Ohio-547, ¶ 7, hold that if an inmate is enrolled in an apprenticeship program, then a contract exists between the inmate, the department, and the United States Department of Labor. Finally, Rarden alleged that, in addition to violating the Animal Apprenticeship Agreement, the department also breached two oral agreements with him.

{¶ 5} On October 16, 2015, the department filed a motion to dismiss Rarden's complaint for a writ of mandamus for failure to state a claim upon which relief can be granted. The department argued that: (1) no employment contract existed between Rarden and the department; (2) the Ohio Administrative Code and department policies do not confer rights on department inmates; (3) Rarden has no constitutional right to a prison vocational program or prison employment; and (4) Rarden has not complied with

Franklin Cty. C.P.R. 9(E) because when he refiled his complaint he still owed court costs from a prior action. On October 30, 2015, Rarden filed a response in opposition to the motion to dismiss. He again pointed to the above referenced case law as precedent that a contract exists between an inmate enrolled in an apprenticeship program and the department. He further argued that "[t]he Supreme Court of Ohio has long held that the proper remedy for a breach of contract is a writ of mandamus." (Response at 2.) In support, Rarden cited to the *Parsons Constr.* case, and stated: "The crux of [my] complaint is about a breach of contract. It has nothing to do with any Institutional Policies, or constitutional issues as counsel is suggesting in [the] motion to dismiss." (Response at 4.) Rarden concluded by asking the court to "issue an Injunction and return [Rarden] to status quo ante pursuant to Civ.R. 65 and [*State ex rel. Kilgore v. Cincinnati*, 1st Dist. No. C-110007, 2012-Ohio-4406, ¶ 21]." (Response at 4.)

{¶ 6} On December 30, 2015, Rarden filed a motion for summary judgment, and on February 8, 2016, he filed a motion requesting judgment on his motion for summary judgment.

{¶ 7} On February 12, 2016, the trial court entered judgment granting the department's motion to dismiss and finding Rarden's motions requesting summary judgment and judgment on the same to be moot. The court found that "no employment relationship existed between [Rarden] and [the department], which would permit mandamus relief." (Entry at 1.) The court further found that the Ohio Administrative Code and department policies do not confer rights to Rarden for purposes of mandamus relief and that Rarden has no constitutional right to a prison vocational program or prison employment.

{¶ 8} On February 26, 2016, Rarden filed a motion for reconsideration of the trial court's February 12, 2016 judgment. On March 1, 2016, Rarden filed this appeal.

II. Assignments of Error

{¶ 9} Rarden assigns the following two assignments of error for our review:

> [I.] The trial court erred when it relied on evidence outside of the complaint. The trial court should have converted respondent's 12(B)(6) motion into a motion for summary judgment.

> [II.] A writ of mandamus is not subject to dismissal under 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for relator.

III. Discussion

{¶ 10} In his first assignment of error, Rarden suggests the department dismissed his complaint for not paying previous filing fees in another case and that it was error for the court to rely on evidence outside the record of this case. A review of the trial court's entry reveals the rationale for dismissal was due to lack of employment relationship and lack of rights pursuant to the Ohio Administrative Code rules and department policies. The trial court did not base its decision on Rarden's failure to pay fees in another case and there is no indication that the trial court relied on facts outside the record of this case in dismissing the complaint. Accordingly, we overrule the first assignment of error.

{¶ 11} In his second assignment of error, Rarden alleges the complaint is not subject to dismissal pursuant to Civ.R. 12(B)(6). A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94 (1995), citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In reviewing the complaint, the court must take all of the material allegations as admitted and construe all reasonable inferences in favor of the non-moving party. *Id.* In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus; *State ex rel. Wallace v. Mausser*, 10th Dist. No. 14AP-274, 2015-Ohio-1227, ¶ 20-21.

{¶ 12} Rarden alleges two claims as the basis for mandamus. First, he alleges he is entitled to mandamus because the department breached a contract(s) with him. Second, he alleges he is entitled to mandamus because the department violated certain administrative rules and policies governing prisons in Ohio. Specifically, he alleges violations of the following: (1) department Policy 57-EDU-07, IV (alleging a violation because unit manager is not knowledgeable in the craft and not approved by the Local Apprenticeship Advisory Committee (Complaint at ¶ 6.)); (2) department Standards of Employee Conduct (alleging that the staff have shown favoritism or preferential treatment

toward certain inmates (Complaint at ¶ 10.)); (3) Fresh Start Animal Program Policy 5A-16, section VI, G (alleging that a certain inmate's participation in the program was a violation against the prohibition against inmates convicted of sex crimes participating in the same (Complaint at ¶ 14.)); (4) Ohio Adm.Code 5120-3-06(A) (alleging a violation because he was assigned, transferred, removed from a work program assignment for punitive purposes even though his infraction was not job related (Complaint at ¶ 18.)); (5) Ohio Adm.Code 5120-9-31 (alleging violation because the Education Department failed to respond to his informal complaint within seven days (Complaint at ¶ 33.)); (6) Ohio Adm.Code 5120-9-29 (alleging the institutional inspector failed to fully address his grievance (Complaint at ¶ 52-53.)); and (7) department Policy 50-PAM-02, section E (alleging a violation because the warden and unit manager administrator failed to respond to his kite within seven days (Complaint at ¶ 36, 37, 45, 47.)).

{¶ 13} Initially, we address Rarden's argument that mandamus is the appropriate remedy for his breach of contract claim and his citation to *Parsons Constr.* in support of the same. In *Parsons Constr.*, it was uncontroverted that the payee-relator entered into a construction contract with the city of Zanesville. The city's public service director was the city's agent for purposes of determining if and when the construction project was satisfactorily completed. The director approved the payee-relator's request for payment of approximately $150,000. The court found this to be "essentially uncontested evidence." *Id.* at 405. The city auditor, without invoking her authority pursuant to R.C. 733.13 to summon and examine a payee concerning a voucher or claim, refused to pay. The payee-relator filed a writ of mandamus asking the court to compel the payment of $150,000 by the respondent-city. The court granted the writ.

{¶ 14} The *Parsons Constr.* court held:

> Ohio has recognized that the mere fact that a proceeding is in some respects the enforcement of a contractual obligation does not in and of itself require that the action be in contract rather than mandamus. *State ex rel. Huntington Natl. Bank v. Putnam* (1929), 121 Ohio St. 109, 112, 167 N.E. 360, 361. Where a duty is based upon both contract and law, mandamus is appropriate despite the availability of another action at law. *State ex rel. Cope v. Cooper* (1930), 122 Ohio St. 321, 326-327, 171 N.E. 399, 401.

> Respondents' duty to pay relator the amount due did not arise solely from the contract. Instead their ministerial duty to pay arose from law, where the appropriate city officials determined that relator completely and satisfactorily performed the contract, Moyer did not invoke her limited statutory investigative authority to obtain evidence indicating that payment to relator was improper, and the evidence establishes that relator's performance was not deficient. A breach of contract action would not be a plain and adequate remedy in the ordinary course of law because relator is not being damaged solely due to a breach of contract, but also due to a failure of public officers to perform official acts which they are under a clear legal duty to perform. See *State ex rel. Montrie Nursing Home, Inc. v. Aggrey* (1978), 54 Ohio St.2d 394, 397, 8 O.O.3d 401, 403, 377 N.E.2d 497, 499; *State ex rel. Bossa v. Giles* (1980), 64 Ohio St.2d 273, 276, 18 O.O.3d 461, 462-463, 415 N.E.2d 256, 258.

Id. at 406-07.

{¶ 15} The case before us differs significantly from *Parsons Constr.* Most notably, the question of whether a contract with the department even existed, and if so, whether the department breached a contract with Rarden, is disputed. Furthermore, in *Parsons Constr*., the respondent's duty to perform was grounded in statute, whereas here, the department's (respondent's) duty to perform, alleged pursuant to the breach of contract claim, is grounded in an "Apprenticeship Agreement" and oral contracts. The exception outlined in *Parsons Constr*. does not apply to the facts of this case. Accordingly, we find that Rarden has not met the third requirement for mandamus: that he has no plain and adequate remedy at law.

{¶ 16} Nevertheless, as to his request for mandamus based in the administrative rules and policies, Rarden specifically argues that because he alleged two of the three requirements for issuance of a mandamus: (1) the existence of a legal duty by the respondent; and (2) the lack of an adequate remedy at law for relator, it was error to dismiss pursuant to Civ.R. 12(B)(6). "To be entitled to a writ of mandamus, relator must show: (1) a clear legal right to the relief requested; (2) respondent is under a clear legal duty to perform the act sought; and (3) relator has no plain and adequate remedy at law." *State ex rel. Collier v. Ohio Adult Parole Auth*., 10th Dist. No. 07AP-530, 2008-Ohio-1798, ¶ 5, citing *State ex rel. Fain v. Summit Cty. Adult Probation Dept*., 71 Ohio St.3d

658 (1995). Furthermore, the Supreme Court of Ohio has held that the appropriate standard of proof in mandamus cases is proof by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, ¶ 55.

{¶ 17} We find the trial court did not err in dismissing Rarden's claim that he is entitled to a writ of mandamus. Applying the Civ.R. 12(B)(6) standard, we conclude that: (1) Rarden did not show he has no plain and adequate remedy at law as to his breach of contract claim; and (2) that he did not address the criteria of a clear legal right to the relief requested as to his administrative rules and policies claims. Accordingly, we overrule the second assignment of error.

IV. Conclusion

{¶ 18} Therefore, Rarden's two assignments of error are overruled, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and LUPER SCHUSTER, JJ., concur.