

[Cite as *Dorsey v. Grafton Correctional Inst.*, 2003-Ohio-1281.]

IN THE COURT OF CLAIMS OF OHIO

DARYL DORSEY :

Plaintiff : CASE NO. 2002-02329

v. : MAGISTRATE DECISION

GRAFTON CORRECTIONAL : Steven A. Larson, Magistrate
INSTITUTION :

Defendant :

: : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court on the issues of liability and damages. At the close of plaintiff’s case-in-chief, defendant moved the court for dismissal pursuant to Civ.R. 41(B)(2). Defendant also moved the court to render a judgment pursuant to Civ.R. 41(B)(2) on the issue of civil immunity. The magistrate declined to render judgment on the merits until the close of all the evidence.¹ However, on the issue of immunity for defendant’s employees, Linda Fada, Michael Wright, and Karen Maschmeier, the magistrate found the following:

{¶2} “Linda Fada, Michael Wright, and Karen Maschmeier were, at all times relevant hereto, acting within the course and scope of their employment with defendant, and;

{¶3} “The above-mentioned employees did not act with malicious

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Defendant’s Civ.R. 41(B)(2) motion to dismiss, which was previously held in abeyance is hereby DENIED.

purpose, in bad faith, or in a wanton or reckless manner with regard to plaintiff."

{¶4} Therefore, the magistrate recommends that the court make a determination that Linda Fada, Michael Wright, and Karen Maschmeier are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86, and that the courts of common pleas do not have jurisdiction over any civil actions against them based upon the allegations in this case.

{¶5} With respect to the merits of plaintiff's case, the magistrate notes that, on July 16, 2002, the court issued an entry denying defendant's motion for judgment on the pleadings pursuant to Civ.R. 12(C). In that entry, the court interpreted plaintiff's claim as one for negligence. Nevertheless, in addition to his negligence claim, plaintiff has continued to assert a claim based upon an alleged contract with defendant as well as claims alleging that defendant violated its own administrative policies. Plaintiff's claims are based upon his assertion that defendant moved him from a "non-smoking" cell to a "smoking" dormitory and that he experienced health problems as a result of the move.

{¶6} With regard to plaintiff's contract claim, the Tenth District Court of Appeals has recognized that "the relationship between an inmate and the Department of Rehabilitation and Correction is custodial, not contractual." *Hurst v. Department of Rehabilitation & Corr.* (Feb. 17, 1994), Franklin App. No. 93AP-716.

Moreover, the magistrate finds that the alleged contracts do not create an obligation for defendant but rather express defendant's expectations for inmates who are assigned to non-smoking cells.

(Plaintiff's Exhibits 1 and 2.)

{¶7} Additionally, each of plaintiff's claims concerns defendant's determination regarding cell assignment. Ohio courts have consistently held that the state cannot be sued for its legislative or judicial functions, or the exercise of an executive function involving a high degree of official discretion or judgment. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105; *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70. Decisions that relate to a prisoner's transfer, classification, and security status concern prison security and administration and are executive functions that involve a high degree of official discretion. *Deavors, supra*; *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶8} Furthermore, plaintiff failed to present any medical evidence to substantiate his claim that he experienced health problems as a result of being placed in a general population dormitory.

{¶9} Upon consideration of the evidence and the arguments of counsel, the magistrate finds that plaintiff has presented insufficient evidence to establish any of the claims for relief raised in his complaint. Therefore, the magistrate recommends that judgment be rendered in favor of defendant.

STEVEN A. LARSON
Magistrate

Entry cc:

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MAGISTRATE DECISION

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Filed 3-17-2003
To S.C. reporter 3-18-2003