

[Cite as Dorsey v. Grafton Correctional Inst., 2004-Ohio-2096.]

IN THE COURT OF CLAIMS OF OHIO

DARYL D. DORSEY :

Plaintiff :

V. :

CASE NO. 2003-04384-AD

GRAFTON CORRECTIONAL INSTITUTION :

ENTRY OF DISMISSAL

Defendant

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On April 2, 2003, plaintiff, Daryl Dorsey, filed a complaint against defendant, Grafton Correctional Institution. Plaintiff alleges on February 1, 2003, during a shakedown operation, his boots, dress shoes, and radio were confiscated. A Rules Infraction Board ("R.I.B.") hearing was held, and as a result, his state issued boots were returned to the quartermaster, his radio was shipped home at his expense, and his dress shoes were destroyed. Plaintiff contends the dress shoes should not have been destroyed but should have been sent out of the institution with his radio. Plaintiff asserts the shoes were destroyed prior to the R.I.B. decision being final. Plaintiff seeks damages in the amount of \$110.00 for the destruction of his dress shoes;

{¶3} 2) On January 2, 2004, plaintiff submitted the filing fee;

{¶4} 3) On January 30, 2004, defendant filed a motion to dismiss;

{¶5} 4) In support of the motion to dismiss, defendant stated

in pertinent part:

{¶6} "Plaintiff failed to provide proof of ownership for the shoes and Defendant's records do not indicate that Plaintiff owned the shoes (Exhibit B). Furthermore, Plaintiff has no right to assert a claim for contraband property he has no right to possess. *Radford v. Department of Rehabilitation and Correction* (July 9, 1985), Court of Claims No. 84-09071-AD, unreported (copy attached) . . .

{¶7} "In addition, Plaintiff's action should be dismissed for lack of subject matter jurisdiction because an inmate's appeal of a hearing officer's decision does not relate to civil law. In the present case, the hearing officer, with affirmance of the Rules Infraction Board chairman, decided to confiscate and destroy the shoes in question as contraband (Exhibits C and D).";

{¶8} 5) Documents presented by defendant establish that the R.I.B. hearing was held on February 4, 2003 and affirmed by the chairman of the R.I.B. on February 7, 2003;

{¶9} 6) On February 4, 2004, plaintiff filed a motion for default judgment. Plaintiff asserts defendant's motion to dismiss was not timely filed nor did defendant file an investigation report in accordance with Civ. R. (6);

{¶10} 7) On February 13 and 17, 2004, plaintiff filed motions objecting to defendant's motion to dismiss;

{¶11} 8) In support of the motions, plaintiff stated in pertinent part:

{¶12} "Although it is obvious that the Plaintiff had possession of extra items over the limit. The defendant does not provide a title for shoes possessed as they did/do for the plaintiff's walkman, that they allowed the plaintiff to possess as contraband

for over a year. Yet, the defendant fails to tell the Court in their January 28th, 2004 report about DR&C's policy Section #205-01 GRANDFATHERED Item(s) which consist of: Personal property an inmate was authorized to possess prior to the implementation of this policy and which they have been permitted to retain after the effective date of this policy (Effective date November 1, 2001 See enclosed policy).

{¶13} "It should be further noted that this property was destroyed before the plaintiff was through the disciplinary (Rules Infraction Board) process, which is why this court has proper jurisdiction over this case.

{¶14} "The defendant fails to recognize that Ohio Revised Code §2933.41 determines how property is disposed of. (NOT G.C.I. Staff) The Major of the institution must send an institutional list of property which he/she request to be destroyed to the Lorain County Probate Court, then the judge authorizes the property to be destroyed not G.C.I. staff members. It is obvious that staff has tried to cover up this property that was legitimately possessed prior to the effective date of the Grandfathered clause, in which the individual/plaintiff is allowed to possess said property until it becomes unusable, as this policy is governed by R.C. §111.15 See *Strutton v. ODRC*. 61 Ohio Misc. 2d 248." [sic];

{¶15} 9) In this pleading, plaintiff asserts his shoes were destroyed on February 13, 2003. A review of the claim file reveals plaintiff has presented no evidence that he had title to the dress shoes in question.

{¶16} THE COURT CONCLUDES THAT:

{¶17} 1) Defendant has no obligation to file responsive pleadings until the filing fee is paid;

{¶18} 2) A general rule of the jurisdiction of this court is that we do not have jurisdiction over decisions of the Rules Infraction Board of the Department of Corrections. *Sears v. Dept. of Rehab. & Corr.* (1975), 75-0170-AD. *Maynard v. Jaco* (1977), 76-0581-AD;

{¶19} 3) The court is without jurisdiction to consider an appeal from a Rules Infraction Board decision. *Freeman v. Denton* (1976), 76-0463;

{¶20} 4) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Dept. of Rehab. & Corr.* (1988), 88-04899-AD;

{¶21} 5) Furthermore, plaintiff has no right to assert a claim for contraband property he has no right to possess. *Beaverson v. Dept. of Rehab. & Corr.* (1988). 87-02540-AD;

{¶22} 6) Defendant's motion to dismiss is GRANTED pursuant to Civ. R. 12 since this court lacks subject matter jurisdiction and plaintiff has failed to state a claim upon which relief can be granted.

{¶23} IT IS ORDERED THAT:

{¶24} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED, plaintiff's motion for default judgment is DENIED, and plaintiff's motion in opposition to defendant's motion to dismiss is DENIED. Plaintiff's case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
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