

Plaintiff professed he “suffered in severe pain for a period of (8) days being denied all of his prescribed lower back, groin, and hernia medications and as well was deprived of needed gastro palpitation medication and therefore could not eat any food for that (8) day period; plaintiff was deprived of his medically ordered hernia support and groin support braces and supports; denied dental floss, and while suffering in extreme pain for that (8) day period, was denied personal presence at his scheduled 5-5-03 parole screening hearing to which the prejudicie [sic] did systemically attach, was issued a retaliatory and manufactured conduct report resulting in plaintiff’s being sanctioned an additional (2) months imprisonment for ‘bad time’ by the APA, and among other unspecified injury, plaintiff’s National N.A.A.C.P. membership (‘identification’) card was destroyed by segregation staff in retaliation and to further and needlessly punish plaintiff to the furtherance of Ms. Taylor’s misconduct.”

{¶ 4} 4) Based on all these stated incidents plaintiff filed this claim seeking to recover \$2,500.00, the statutory maximum recoverable amount under R.C. 2743.10. Plaintiff also requested the court make an immunity determination under R.C. 2743.02(F) for NCCI employee, Robyn Taylor. This court, at the Administrative Determination level, does not have the jurisdiction to carry out immunity determination proceedings pursuant to R.C. 2743.02(F). Plaintiff submitted the requisite material filing fee.

{¶ 5} 5) Defendant insisted plaintiff was not denied attendance at a May 5, 2003, parole board hearing. Although plaintiff was housed in a segregation unit at the time of the hearing, this housing status did not prevent plaintiff from attending the hearing. In fact, defendant explained, plaintiff simply refused to attend the May 5, 2003, proceeding and the matter was consequently continued.

{¶ 6} 6) Furthermore, defendant asserted plaintiff was not deprived of necessary medication and medical appliances during the period he spent in segregation. Defendant related plaintiff voluntarily initiated a hunger strike on May 3, 2003. While plaintiff was choosing to not eat he was assessed every day by NCCI medical staff. Defendant contended plaintiff did not complain of pain or show signs of medical distress from May 3 to May 8, 2003. Defendant argued plaintiff did not produce sufficient evidence to establish his medical condition was exacerbated by any act or omission on the part of NCCI personnel.

{¶ 7} 7) Defendant denied any liability in this matter. Defendant contended plaintiff has either failed to offer requisite proof to sustain his allegations or he has attempted to address causes of action outside the jurisdiction of this court.

{¶ 8} 8) Plaintiff stated he has previously withdrawn any claims for recovery referenced under the term, “direct retaliation.”¹ Therefore any matter in this action which may be considered under the guise of retaliatory conduct shall not be addressed.

{¶ 9} 9) On April 4, 2004, plaintiff filed an extensive reply to defendant’s investigation report. Plaintiff asserted he was denied medication and medical appliances from May 1 to May 8, 2003. Plaintiff claimed he did not receive prescribed analgesic pills, antacids, and analgesic balm. Additionally, plaintiff claimed he was denied use of his hernia belt and athletic supporter. Plaintiff denied he voluntarily chose to declare a hunger strike and not eat during the time he was confined in segregation. Plaintiff explained his refusal to eat was based directly upon his claim he was allegedly deprived of prescribed antacid medication. Plaintiff has not produced required evidence to prove he suffered injury as a result of any alleged deprivation. The issues regarding medication deprivation and motive for not eating remain in conflict.

{¶ 10} 10) Plaintiff argued his confinement in the NCCI segregation unit was based on the fabrications of NCCI employee Robyn Taylor. Plaintiff also related he suffers from a lower back disorder and a hernia condition. Plaintiff contended his confinement in segregation constituted a common law battery when considering the alleged reasons for his confinement coupled with his medical disorders. Plaintiff did not offer proof that his placement in segregation was improper and this confinement exacerbated any physical condition.

{¶ 11} 11) Furthermore, plaintiff professed he did not refuse to attend his parole screening hearing on May 5, 2003. Plaintiff suggested he was denied access to the hearing by defendant. Plaintiff asserted the reason he was placed in a segregation unit on May 1, 2003, was to prevent his attendance at the described parole eligibility screening. Defendant submitted a document

¹ On March 16, 2004, plaintiff filed a notice to amend his complaint requesting references to “direct retaliation” be deleted. It should be noted that although plaintiff included a certificate of service with this pleading, service was not made by plaintiff upon the proper representative of defendant.

identified as an entry from the Offender Tracking System. The document contains information about parole hearings specifically concerning plaintiff. The information recorded on the May 5, 2003 hearing, indicates plaintiff refused to attend the hearing and the hearing was rescheduled for September, 2003. No entry appears detailing the outcome of the September, 2003 hearing.

{¶ 12} 12) Additionally, plaintiff contended by May, 2003, he had served the maximum sentence for a July, 1993 kidnapping conviction. Therefore, plaintiff reasoned because he had already served the sentence for the kidnapping offense, defendant had no right or authorization to continue to confine him. Essentially, plaintiff has put forth a claim grounded on false imprisonment. Although plaintiff was sentenced to a term of fifteen to twenty-five years on the 1993 kidnapping conviction, plaintiff insisted he had served the complete sentence by May, 2003. Plaintiff related he was only required to serve 126 months to fully discharge the maximum sentence imposed on his particular conviction.

{¶ 13} 13) Plaintiff also reasserted his N.A.A.C.P. membership card was defaced by NCCI staff. The card was stapled in multiple areas. Furthermore, plaintiff claimed he was taunted because of his N.A.A.C.P. membership and his refusal to hand over 20% of the funds collected for the N.A.A.C.P. to the NCCI “Combined Charitable Campaign.” It appears plaintiff is trying to maintain he was the victim of an extortion attempt which, according to plaintiff, resulted in an additional sixty day confinement in defendant’s institution. Plaintiff has not produced sufficient evidence to establish any of these allegations.

CONCLUSIONS OF LAW

{¶ 14} 1) To the extent that plaintiff’s complaint alleges racial discrimination and retaliatory conduct, his claims are founded upon alleged violations of Section 1983, Title 42, U.S. Code. However, it has been consistently held that actions against the state cannot be brought under Section 1983, Title 42, U.S. Code, because the state is not a “person” within the meaning of section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230. Furthermore, any claim based on violations of constitutional rights under the Eighth Amendment is not cognizable in this court. Accordingly, plaintiff’s claim, based on alleged violations of his constitutional rights is dismissed. This court

lacks jurisdiction to hear a claim to the extent it asserts constitutional violations. *Gersper v. Ohio Dept. of Hwy. Safety* (1994), 95 Ohio App. 3d 1. Constitutional claims and claims based on Section 1983, Title 42, U.S. Code are not actionable in this court. *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App. 3d 302. Plaintiff's claims flowing from perceived constitutional violations, discrimination, and retaliation are dismissed.

{¶ 15} 2) An inmate is not entitled to pursue damages under a false imprisonment theory for spending time in disciplinary confinement for rules infractions, which he was ultimately found not to have committed. *Saxton v. Ohio Dept. of Rehab. & Corr.* (1992), 80 Ohio App. 3d 389. Under this rationale, the court concludes an inmate may not pursue a false imprisonment type action for time spent in segregation.

{¶ 16} To the extent that plaintiff alleges a claim for false imprisonment under the common law, the tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St. 3d 107. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear[s] that such judgment or order of the court, is void." *Bennett*, id, at 111; *Tymcio v. State* (1977), 52 Ohio App. 2d 298, 303.

{¶ 17} Plaintiff has failed to prove any set of facts to prove defendant is not justified in continuing to confine him.

{¶ 18} 3) Despite plaintiff's contention that his claim based on alleged deprivation of medicine and medical attention is not a medical claim, the court disagrees. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1985), 2 Ohio St. 2d 310. The state is not an insurer of inmate safety. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc. 2d 699.

{¶ 19} Ordinarily, where plaintiff is alleging substandard medical treatment, expert medical opinion must be provided to establish a prima facie case. Plaintiff may not simply rest upon

allegations of medical negligence as stated in his complaint. *Saunders v. Cardiology Consultants, Inc.* (1990), 66 Ohio App. 3d 418, 420; *Hoffman v. Davidson* (1987), 31 Ohio St. 3d 60, 61; *Guth v. Huron Road Hosp.* (1987), 43 Ohio App. 3d 83, 84.

{¶ 20} In order to sustain a medical claim, plaintiff is required to produce evidence by expert testimony to demonstrate all the following:

{¶ 21} 1) the acceptable medical standard of care;

{¶ 22} 2) defendant's breach of that standard; and,

{¶ 23} 3) that plaintiff's injuries were proximately caused by defendant's breach.

{¶ 24} *Bruni v. Tatsumi* (1976), 46 Ohio St. 2d 127 at 130; *Hubbard v. Laurelwood Hosp.* (1993), 85 Ohio App. 3d 607; *Paul v. MetroHealth St. Luke's Med. Ctr., et al.* (1998), Ohio App. LEXIS 4964 (Oct. 22, 1998), Cuyahoga App. No. 71195, unreported. Since plaintiff has failed to produce expert medical opinion regarding the cause of any injury or disability, his claim based on deprivation of care is denied.

{¶ 25} 4) Although not strictly responsible for a prisoner's property, defendant had at least a duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶ 26} 5) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶ 27} 6) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶ 28} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his membership card was damaged as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

IN THE COURT OF CLAIMS OF OHIO

ROBERT LEE NORRIS

:

Plaintiff	:	
v.	:	CASE NO. 2003-11381-AD
NORTH CENTRAL CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
	:	
	:	

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert Lee Norris, #281-431
P.O. Box 8107
Mansfield, Ohio 44901

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

DRB/RDK/laa
8/4
Filed 8/24/04
Sent to S.C. reporter 9/22/04