[Cite as *Whiteside v. Madison Correctional Inst.*, 2004-Ohio-879.]

IN THE COURT OF CLAIMS OF OHIO

NORMAN V. WHITESIDE	:	
Plaintiff	:	CASE NO. 2002-08742 Magistrate Steven A. Larson
v.	:	MAGISTRATE DECISION
MADISON CORRECTIONAL INSTITUTION, et al.	:	
Defendants	:	

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{¶1} Plaintiff brought this action against defendants, Madison Correctional Institution (MCI) and the Ohio Attorney General's Office, alleging claims of negligence and defamation.[1] On October 1, 2003, this case was tried to a magistrate of the court on the issues of liability and damages.[2]

{¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. In early June 2002, plaintiff received, through certified mail, ten sheets of color labels and 50 sheets of color stationery. Defendant's employee, Khrista K. Hackworth, testified that she examined the contents of the mail, then gave the mail to plaintiff. Hackworth subsequently spoke with CO Michael Harris and through the course of their conversation, Hackworth referred to the contents of plaintiff's mail. As a consequence, on August 9, 2002,

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[1]The term "defendant," unless otherwise designated, shall refer to MCI.

[2]Plaintiff withdrew his request for an immunity determination regarding Corrections Officer (CO) Christopher Nance.

CO Harris conducted a shakedown of plaintiff's quarters and confiscated the aforementioned labels and stationery which were deemed to be contraband. CO Harris then requested that CO Nance retrieve the contraband and deliver it to the vault where such items are stored.

{¶3} Plaintiff alleges that defendant had no rules prohibiting possession of adhesive labels received through the public mail. However, Ohio Adm.Code 5120-9-17 (G)(1) provides, in relevant part: "Mail that presents a THREAT to the security and safety of the institution, its staff or inmates, may be withheld from the inmate-addressee. No material or correspondence will be considered to present SUCH A THREAT solely on the basis of its appeal to a particular ethnic, political, racial or religious group. To constitute SUCH A THREAT, the correspondence must meet at least one of the following criteria: (1) The correspondence incites, aids, or abets criminal activity or violations of departmental rules, such as, but not limited to, rioting, extortion, illegal drug use or conveyance of contraband. ***" (Original emphasis.)

{¶4} In the case at bar, Lieutenant William Jones testified that adhesive labels sent to inmates through the mail are considered contraband because of the possibility that drugs could be hidden within the adhesive. Defendant can be justifiably concerned that adhesive labels might be utilized as a conduit to smuggle drugs to inmates; its policy is clearly in place to prevent such activity. "Prison officials are accorded great deference in the execution of its policies and practices that are needed to preserve discipline, order and institutional security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶5} Ohio Adm.Code 5120-9-06(E)(20) also addresses the issue of whether defendant had the authority to confiscate both plaintiff's labels and stationery. The rule prohibits, "[b]usiness operations whether or not for profit, including usury, without specific permission in writing from the managing officer." In paragraphs 5, 23, and 26 of his complaint, plaintiff alleges that his labels were used for "actual use advertisement." Plaintiff provided no evidence that he had received permission to engage in such activity. Therefore, the materials confiscated were justly deemed contraband under Ohio Adm.Code 5120-9-06(E)(20). Again, the court affords prison administrators deference when executing and enforcing its policies. *Bell*, supra.

{¶6} Ohio Adm.Code 5120-9-19(B)(2) further states: "An inmate may receive a reasonable number of printed materials subject to the following limitations: *** (2) Printed materials may be received in reasonable quantities; but only, directly from a publisher or distributor. Inmates may receive printed materials from other sources (e.g., family, friends, etc.) only with the prior approval of the warden or designee." Although plaintiff received these materials from Holland of Columbus (HOC), a company owned by plaintiff's sister, Regina Holland, these materials may be reasonably assumed to have been received from a family member. Accordingly, plaintiff was required to obtain permission before receiving the materials. Plaintiff failed to produce evidence to that effect.

{¶7} Plaintiff also alleges that defendant negligently handled plaintiff's confiscated property. While defendant does not have the liability of an insurer with respect to inmate property, it does have the duty to make reasonable attempts to protect or

recover such property. *McCrary v. Ohio Dept. of Rehab. & Corr.* (1988), 45 Ohio Misc.2d 3. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Defendant has the duty to use ordinary care in the packing or storing of an inmate's property, even when such packing or storing is due to an inmate's disciplinary confinement. *Gray v. Department of Rehabilitation and Correction* (1985), Court of Claims Case No. 84-01577-AD. On August 21, 2002, plaintiff signed a "personal A/C withdrawal" slip authorizing defendant to return the contraband to HOC, care of Regina Holland. (Defendant's Exhibit A.) Postage for the parcel amounted to $2.96, which is evidenced by a receipt. Id. Although plaintiff testified that the package failed to reach its intended destination, he did not offer any evidence corroborating that claim. Plaintiff has failed to prove by a preponderance of the evidence that defendant breached its duty of care as it relates to the return of plaintiff's property.

{¶8} Plaintiff also alleges that Assistant Attorney General Matthew Lampke made defamatory statements regarding the intended usage of the labels. Attorney Lampke advanced a theory regarding plaintiff's intended use of the labels, and that theory was central to the issues presented in this case. Therefore, Mr. Lampke's statements are afforded an absolute privilege since they were reasonably related to this proceeding. "A statement made in a judicial proceeding enjoys an absolute privilege against a defamation action as long as the allegedly defamatory statement is reasonably related to the proceeding in which it appears." *Hecht*

v. Levin, 66 Ohio St.3d 458, 1993-Ohio-110, citing *Surace v. Wuliger* (1986), 25 Ohio St.3d 229.

{¶9} For the foregoing reasons, the court finds that plaintiff failed to prove by a preponderance of the evidence that he is entitled to relief on any of the claims presented. Judgment is recommended in favor of defendant.

{¶10} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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STEVEN A. LARSON
Magistrate

Entry cc:

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ML/cmd
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