

Court of Claims of Ohio

The Ohio Judicial Center
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TIMOTHY J. CONLEY

Case No. 2006-05756

Plaintiff

Judge Joseph T. Clark
Magistrate Matthew C. Rambo

v.

MAGISTRATE DECISION

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

{¶1} On February 21, 2007, defendant filed a motion for judgment on the pleadings. Plaintiff did not file a response. On April 12, 2007, an oral hearing was held at the Southern Ohio Correctional Facility (SOCF) on defendant's motion.

{¶2} Civ.R. 12(C) states:

{¶3} "After the pleadings are closed but within such times as not to delay the trial, any party may move for judgment on the pleadings."

{¶4} A motion for judgment on the pleadings presents only questions of law and it may be granted only where no material factual issues exist and when the moving party is entitled to judgment as a matter of law. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165-166. "Pursuant to Civ.R. 12(C), the pleadings must be construed liberally and in a light most favorable to the party against whom the motion is made along with the reasonable inferences drawn therefrom." *Burnside v. Leimbach* (1991), 71 Ohio App.3d 399, 402.

{¶5} At all times relevant to this action plaintiff was an inmate in the custody and control of the Ohio Department of Rehabilitation and Correction at SOCF pursuant to R.C. 5120.16. Plaintiff alleges that defendant's medical staff spoke with him through the door of his cell within earshot of other inmates. Plaintiff claims that defendant violated his right of medical privacy by failing to ensure that such communications remained

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confidential. Plaintiff further claims that defendant improperly denied a request he made to be placed in “protective control.”

{¶6} Claims alleging the infringement of an inmate’s constitutional rights create a cause of action under Section 1983, Title 42, U.S.Code. *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. Such claims may not be brought against the state in the Court of Claims 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.

{¶7} The court construes plaintiff’s claim for the violation of his right to privacy as a constitutional claim. See *Watley v. Dept. of Rehab. & Corr.* (April 30, 2003), Ct. of Cl. No. 2003-02012. Thus, even if the court were to agree with plaintiff that such a right exists with regard to inmates in a state penal institution, this court would lack jurisdiction over such a claim.

{¶8} To the extent that plaintiff claims defendant improperly denied his request to be placed in protective control, the Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined *** in accordance with the same rules of law applicable to suits between private parties ***’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70; *Van Hoene v. State* (1985), 20 Ohio App.3d 363, 364.

{¶9} 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. See *Bell v. Wolfish* (1979), 441 U.S. 520, 547; *Reynolds v. State*, supra, at 70; *Deavors v. Ohio Dept. of Rehab. & Corr.*, supra. Accordingly,

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defendant is immune from liability arising from the decision to deny plaintiff's request to be placed in protective control.

{¶10} Based upon the foregoing, it is recommended that defendant's motion for judgment on the pleadings be granted and that judgment be rendered in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

cc:

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RCV/cmd	

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