

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RICKY KURT WASSENAAR

Case No. 2006-02293

Plaintiff

Judge J. Craig Wright
Magistrate Steven A. Larson

v.

DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} On June 22, 2007, the magistrate issued a decision recommending that plaintiff's motion for injunctive relief be granted, that judgment be rendered in favor of plaintiff in the amount of \$468.69, and that defendant's employees be granted civil immunity.

{¶2} Civ.R. 53(D)(3)(b)(i) states in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." Defendant filed objections on July 6, 2007. On July 10, 2007, plaintiff filed his objections.

{¶3} On July 23, 2007, plaintiff filed a motion for leave to file a response to defendant's objections. Upon review, plaintiff's motion for leave is GRANTED, instanter.

{¶4} In the June 22, 2007 decision, the magistrate found the following: "On June 6, 2005, plaintiff was transferred into defendant's custody from the Arizona Department of Corrections. * * * On June 3, 2005 plaintiff was convicted of various felonies by the Superior Court of Arizona, Maricopa County, and ordered to pay restitution in the amount of \$626,383.36 as part of his sentence. The restitution order required that '[p]ayment shall be 30% of [plaintiff's] earnings while incarcerated at the Arizona Department of Corrections.'" Although plaintiff objected to the enforcement of the judgment against him,

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defendant withdrew money from his account and remitted the funds to the Arizona Clerk of Courts to satisfy the restitution order.

{¶5} The magistrate found that pursuant to R.C. 5120.50 and the restitution order plaintiff had a “legal right” to retain 70 percent of his inmate earnings, and therefore, his restitution payments are limited to 30 percent of his “earnings” while incarcerated in the Ohio prison system. The magistrate recommended that defendant be enjoined from withdrawing funds in excess of plaintiff’s earnings and that plaintiff be awarded \$468.69, the amount improperly withdrawn from his account.

{¶6} Defendant filed the following objections:

{¶7} “[1.] The magistrate erred in finding that R.C. 5120.50 prohibited [defendant] from taking funds from plaintiff’s inmate account to send to Arizona to satisfy court ordered restitution;

{¶8} “[2.] The magistrate erred in finding that R.C. 5120.50 limited the funds [defendant] could seize from plaintiff’s account and not determining that R.C. 5120.133 authorized the seizure of funds in plaintiff’s account;

{¶9} “[3.] The magistrate erred in finding that [defendant] should refund \$468.69 as that amount included earnings which [defendant] was entitled to seize from plaintiff.”

{¶10} R.C. 5120.50, provides, in part:

{¶11} “(D) PROCEDURES AND RIGHTS

{¶12} “* * *

{¶13} “(6) All inmates who may be confined in an institution pursuant to the provisions of [the Interstate Corrections Compact] shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. *The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.*” (Emphasis added.)

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{¶14} R.C. 5120.133 authorizes defendant to withdraw money from inmates' accounts and provides, in part:

{¶15} "(A) The department of rehabilitation and correction, upon receipt of a certified copy of the judgment of a court of record in an action in which a prisoner was a party that orders a prisoner to pay a stated obligation, may apply toward payment of the obligation money that belongs to a prisoner and that is in the account kept for the prisoner by the department."

{¶16} Based upon the plain language of the statutes, the court finds that defendant's duties under R.C. 5120.50 do not conflict with its obligations under R.C. 5120.133. Defendant may withdraw money from plaintiff's account pursuant to R.C. 5120.133 "upon receipt of a certified copy of the judgment of a court of record." However, the court finds that pursuant to R.C. 5120.50, the restitution order limits both the manner by which defendant may withdraw funds from plaintiff's account and the amount that defendant can withdraw. Accordingly, defendant's first and second objections are OVERRULED.

{¶17} In its third objection, defendant asserts that it withdrew earnings of \$171.75 from plaintiff's inmate account 30 percent of which was rightfully seized pursuant to the restitution order. In support of its argument, defendant cites the restitution order from the Superior Court of Arizona, Maricopa County. However, the order contains no statements of plaintiff's earnings or account balance. Upon review of the record, the court is unable to determine the amount of the money in plaintiff's account that represents "earnings" for the purposes of the restitution order. Moreover, the court notes that defendant did not provide the court with a transcript of all submitted evidence to the magistrate in support of its objection. Civ.R. 53(D)(3)(b)(iii) provides, in part, that: "An objection to a factual finding * * * shall be supported by a transcript of all the evidence submitted to the magistrate relevant

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to that finding * * *.” Based upon the foregoing, defendant’s third objection is OVERRULED.

{¶18} Plaintiff filed three objections to the magistrate’s decision. First, plaintiff objects to the magistrate’s recommendation that defendant’s employees be granted civil immunity. Plaintiff did not provide the court with a transcript to support his objection. Accordingly, plaintiff’s first objection is OVERRULED.

{¶19} Secondly, plaintiff objects to the magistrate’s finding that 30 percent of his earnings are subject to the restitution order. Plaintiff argues that the restitution order no longer applies to him because he is no longer incarcerated in Arizona. However, based upon the analysis of R.C. 5120.50 above, plaintiff’s second objection is OVERRULED.

{¶20} Finally, plaintiff argues that the magistrate erred in not assessing costs in this case. Specifically, plaintiff argues that he is owed \$50 for postage and copying, and \$500 for time spent preparing his case. Although Civ.R. 54(D) does not permit the court to award costs to the prevailing party, neither the time plaintiff spent preparing his case nor postage used are allowable litigation expenses under the rule. See *Cincinnati ex rel. Simons v. Cincinnati* (1993), 86 Ohio App.3d 258, 267. Accordingly, plaintiff’s third objection is OVERRULED.

{¶21} Upon review of the record, the magistrate’s decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections shall be overruled and the court shall adopt the magistrate’s decision and recommendation as its own, including findings of fact and conclusions of law contained therein.

{¶22} Plaintiff’s motion for injunctive relief shall be granted, and defendant shall be enjoined from withdrawing money from plaintiff’s inmate account in excess of 30 percent of the money plaintiff earns while in the custody and control of defendant. Judgment shall be rendered for plaintiff in the amount of \$468.69.

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{¶23} In addition, the court determines that Reginald Wilkinson, Gregory Trout, Austin Stout, Marc Houck, Jeffrey Remmick, Linda Gabauer, Lori Beggs, Tracy England, T. Jackson, Gary Croft, Hugh Daley, Paul Shoemaker, and L.C. Coval are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

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JUDGMENT ENTRY

This case was considered by the court upon the parties' objections to the magistrate's decision. For the reasons set forth in the decision filed concurrently herewith, the objections are **OVERRULED** and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Plaintiff's motion for injunctive relief is hereby **GRANTED**, and defendant is enjoined from withdrawing money from plaintiff's inmate account in excess of 30 percent of the money plaintiff earns while in the custody and control of defendant. Judgment is

rendered for plaintiff in the amount of \$468.69. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

In addition, the court determines that Reginald Wilkinson, Gregory Trout, Austin Stout, Marc Houck, Jeffrey Remmick, Linda Gabauer, Lori Beggs, Tracy England, T. Jackson, Gary Croft, Hugh Daley, Paul Shoemaker, and L.C. Coval are entitled to civil

[Cite as *Wassenaar v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-5147.]

immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

J. CRAIG WRIGHT

Judge

cc:

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