

[Cite as *Petty v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-4800.]

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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ANTHONY PETTY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

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Case No. 2007-07001

Judge Joseph T. Clark
Magistrate Steven A. Larson

JUDGMENT ENTRY

{¶ 1} On April 21, 2008, defendant filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C). Plaintiff did not file a response.

{¶ 2} Civ.R. 12(C) provides:

{¶ 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 defendant at the Chillicothe Correctional Institution (CCI) pursuant to R.C. 5120.16. Plaintiff alleges in his complaint that an employee of defendant informed plaintiff’s mother that plaintiff suffers from Hepatitis C in violation both of defendant’s internal rules or regulations and plaintiff’s right to medical privacy. Defendant argues that an alleged violation of internal rules or regulations does not give rise to a claim for relief and that the Court of Claims lacks jurisdiction over plaintiff’s medical privacy claim.

{¶ 6} The court has consistently construed claims for the violation of a right to medical privacy as constitutional claims arising under 42 U.S.C. 1983. See *Watley v.*

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Dept. of Rehab. & Corr. (Apr. 30, 2003), Ct. of Cl. No. 2003-02012; *Abdulrahaman v. Dept. of Rehab. & Corr.* (Nov. 26, 2007), Ct. of Cl. No. 2007-01576. It is well-settled that claims alleging the infringement of an inmate's constitutional rights are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170. Accordingly, plaintiff's claim that defendant violated his right to medical privacy is not within the subject matter jurisdiction of this court.

{¶ 7} With regard to plaintiff's claim that an employee of defendant violated internal rules and regulations by disclosing his medical information, prison regulations "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 1997-Ohio-139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482. Indeed, the court has held that "even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. & Corr.* (1993), 67 Ohio Misc.2d 1, 3.

{¶ 8} Based upon the foregoing, and construing the facts alleged in a light most favorable to plaintiff, the court finds that defendant is entitled to judgment as a matter of law as to plaintiff's claims premised upon alleged rule violations. Accordingly, defendant's motion for judgment on the pleadings is hereby GRANTED and judgment is rendered in favor of defendant as to that claim. Plaintiff's constitutional claim is DISMISSED for lack of subject matter jurisdiction. 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.

JOSEPH T. CLARK

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Judge

cc:

Amy S. Brown Assistant Attorney General 150 East Gay Street, 18th Floor Columbus, Ohio 43215-3130	Anthony Petty, #538-136 Noble Correctional Institution 15708 McConnelsville Road Caldwell, Ohio 43724
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MR/cmd

Filed September 2, 2008

To S.C. reporter September 18, 2008