

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

TRAMAINE E. MARTIN

Case No. 2007-07418-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

BELMONT CORRECTIONAL INST.

Defendant

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Tramaine E. Martin, an inmate incarcerated at defendant, Belmont Correctional Institution (BeCI), stated that he was moved from the merit dorm at BeCI to a disciplinary dorm where “a high volume of thefts” occurred. Plaintiff further stated that the decision to move his housing assignment was done “for no substantial reason at all.” According to plaintiff, the housing assignment transfer occurred on May 11, 2007.

{¶ 2} 2) On May 12, 2007, an unidentified individual or individuals broke into plaintiff’s locked locker box and stole several items of personal property. Plaintiff alleged that his headphones, CD player, adapter, batteries, various food items, photographs, and hygiene articles were stolen. Also, plaintiff pointed out that his combination lock was broken. Plaintiff filed this complaint seeking to recover \$190.91, the estimated value of the personal property he claimed was stolen or damaged. In addition to his claim for property loss, plaintiff seeks damages based on defendant’s decision to move him from the BeCI merit dorm to a different housing assignment. Plaintiff construed this decision by defendant was a violation of his constitutional rights under the Eighth Amendment. Based on the alleged violations of his constitutional rights, plaintiff requested damages in the amount of \$1,550.00. The \$25.00 filing fee was paid and plaintiff has requested reimbursement of that amount along with his

damage claim. Plaintiff also requested damages in the amount of \$500.00 grounded on the alleged negligence of a BeCI inspector in handling his grievances regarding property loss and housing assignments.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant acknowledged that plaintiff was transferred at BeCI, but denied he was transferred from a merit dormitory to a disciplinary dormitory. Defendant maintained that plaintiff was transferred to a general population dormitory at sometime during April 2007. Defendant asserted any claim plaintiff is pursuing that is based on constitutional violations should be dismissed since these particular claims are not cognizable in this court. See *Burkey v. Southern Ohio Corr. Facility* (1998), 38 Ohio App. 3d 170, 528 N.E. 2d 607. Furthermore, defendant contended that plaintiff has failed to prove any BeCI staff acted negligently when addressing plaintiff's grievances. Also, defendant denied that any BeCI staff did anything to facilitate the theft of plaintiff's property. Defendant asserted that plaintiff failed to offer any evidence to prove that the theft of his property was proximately caused by any negligent act or omission on the part of BeCI personnel. Defendant explained that when plaintiff reported the theft of his property, BeCI "staff prepared a theft loss report, investigated the theft, and made attempts to retrieve the property by reviewing camera footage of the dormitory" where the theft occurred. Evidence has shown a prompt, but fruitless search for plaintiff's property was conducted after the theft was reported. Defendant denied that any BeCI personnel failed to exercise reasonable care in addressing plaintiff's property theft report or his internal complaints involving his housing assignment.

{¶ 4} 4) Plaintiff filed a response insisting that this court does have jurisdiction to determine his claim based on an asserted Eighth Amendment violation. Plaintiff again related that he was transferred "from merit housing to 4 house" for no apparent reason, although plaintiff acknowledged "4 house" is not a disciplinary dormitory. Plaintiff reasserted that the transfer in and of itself constitutes actionable negligence. Additionally, plaintiff reasserted that the handling of his internal grievances by

defendant's inspector constituted actionable negligence. In regard to the theft of his property, plaintiff contended that the search conducted by BeCI personnel was perfunctory, limited, and therefore, inadequate.

CONCLUSIONS OF LAW

{¶ 5} 1) 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 of discretion.” *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447. The court determines the handling of plaintiff's internal grievances is a matter applicable to the holding in *Reynolds*, and consequently defendant is immune from suit on that claim. Also, the court finds that defendant issued dormitory assignments to plaintiff in the exercise of a high degree of official judgment and discretion. Thus, defendant is entitled to discretionary immunity on that claim.

{¶ 6} 2) The court construes plaintiff's claim that his housing transfer was an unjust disciplinary move is essentially a claim based upon the conditions of his confinement. Inmate complaints regarding the conditions of confinement are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St. 3d 89, 91, 1994-Ohio-37, 637 N.E. 2d 306. 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, 109 S. Ct. 2702, 105 L. Ed. 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38

Ohio App. 3d 170, 528 N.E. 2d 607; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230. Accordingly, this court is without jurisdiction to determine plaintiff's claims referring to any alleged constitutional violations in relation to a housing transfer.

{¶ 7} 3) The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07094-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 8} 4) Defendant is not responsible for actions of other inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 9} 5) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 10} 6) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 11} 7) Plaintiff has failed to prove, by a preponderance of the evidence, that he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. London Correctional Inst.* (2001), 2001-03135-AD; *Mitchell v. London Correctional Inst.*, Ct. of Cl. No. 2004-01770-AD, 2004-Ohio-3270.

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ENTRY

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

6/4
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