

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

MAURICE MOORE

Plaintiff

v.

BELMONT CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-03670-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On August 13, 2007, plaintiff, Maurice Moore, an inmate incarcerated at defendant, Belmont Correctional Institution (“BeCI”), authorized the withdrawal of \$179.90 from his inmate account to pay for compact discs ordered from M & P Sales, a BeCI approved vendor. Plaintiff submitted documentation recording \$179.90 was withdrawn from his account on August 13, 2007 and forwarded to M & P Sales. Plaintiff explained he never received the merchandise ordered from M & P Sales and therefore made requests for the BeCI administrative staff to assist him in either obtaining the ordered merchandise or a refund from M & P Sales. Plaintiff filed this complaint seeking to recover the \$179.90 amount from BeCI, despite the fact he was informed all inmates bear the risk for orders made from a BeCI approved vendor. Plaintiff also requested \$700.00 damages for mental anguish and work performed in prosecuting this claim. These claimed damages are not compensable in a claim of this type, are consequently denied and will not be further addressed. Plaintiff requested prejudgment interest of \$95.00. Prejudgment interest is not compensable and is denied. Plaintiff submitted the

\$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 2} 2) Defendant denied any liability in this matter asserting BeCI has no duty to recover goods or a refund from an approved vendor. Defendant implied that BeCI is not the proper party defendant in this action.

{¶ 3} 3) Plaintiff filed a response insisting defendant should bear liability for the failure of a BeCI approved vendor to provide him with the goods he ordered. Plaintiff pointed out he relied on defendant to provide him with a reputable business. Plaintiff stated he was never warned he ordered merchandise at his own risk. Plaintiff did not produce any authority to establish defendant should bear responsibility for the failure of a third party to deliver ordered goods. Plaintiff contended defendant should bear liability for his loss because he was forced to order merchandise through an approved vendor of defendant's choice. Plaintiff suggested defendant was charged with a duty to assure that all approved vendors remained viable business entities.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 2) Prison regulations, including those contained in the Ohio Administrative Code, "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, 479, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this 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. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent that plaintiff alleges that DRC somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 3) Defendant is not a proper party to this action. Plaintiff has not offered any authority to support his entitlement to a refund from defendant. Plaintiff’s claim rests with the vendor. Any cause of action plaintiff may have based on the facts of this claim lies against the vendor M & P Sales. This court, under R.C. 2743 et al. does not have jurisdiction to decide claims against non state entities. See *Perkins v. Lebanon Correctional Inst.*, Ct. of Cl. No. 2005-11051-AD, 2006-Ohio-7183; *Sharp v. Dept. of Rehab. and Corr.* (2008), 2008-02410-AD.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
9/30
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