

[Cite as *Banks v. Corr. Corp. of Am.*, 2015-Ohio-2002.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

FREDERICK BANKS,)	
)	
PLAINTIFF-APPELLANT,)	
)	
V.)	CASE NOS. 14 MA 48
)	14 MA 98
)	
CORRECTIONAL CORPORATION OF)	OPINION
AMERICA, et al.,)	
)	
DEFENDANTS-APPELLEES.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Mahoning County, Ohio
Case No. 2014CV47, 104, 35, 36, 79

JUDGMENT: Dismissed

APPEARANCES:
For Plaintiff-Appellant

Frederick Banks
#05711068
NEOCC
2240 Hubbard Road
Youngstown, Ohio 44505

For Defendants-Appellees

Attorney Timothy J. Bojanowski
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: May 20, 2015

[Cite as *Banks v. Corr. Corp. of Am.*, 2015-Ohio-2002.]
DONOFRIO, P.J.

{¶1} Defendant-appellant Frederick Banks appeals decisions entered in the Mahoning County Common Pleas Court dismissing four complaints that he filed pro se against defendants-appellees Corrections Corporation of America (CCA), et al.

{¶2} CCA owns and operates the Northeast Ohio Correctional Center (NEOCC), a correctional facility located in Youngstown, Ohio. Banks is a federal inmate at the facility pursuant to a correctional services agreement between the U.S. Marshals and CCA. In a one-week period in January 2014, Banks filed four pro se complaints against CCA and various members of the staff at NEOCC.

2014CV00035 – Negligence, Intentional Infliction of Emotional Distress, & Mandamus

{¶3} On January 7, 2014, Banks sued NEOCC Case Manager Mastell, NEOCC Warden Michael Pugh, CCA, and CCA President Damon Hininger. Preliminarily, he stated that he is an American Indian and a Wiccan who practices witchcraft, but did not identify any specific rights attendant to those designations. (2014CV00035 Complaint, ¶ 1.) Instead, Banks alleged that CCA owed him a duty of care pursuant to the CCA Inmate Admissions and Orientation Handbook. (2014CV00035 Complaint, ¶ 2.) According to Banks, that handbook provided that inmates “be treated respectfully, impartially, and fairly by all personnel,” and have “unrestricted and confidential access to the courts by correspondence (on such matters as civil and criminal cases and conditions of your imprisonment).” (2014CV00035 Complaint, ¶ 2.) He also averred that the handbook required “a wide range of reading materials for educational purposes and for your own enjoyment” and that inmates “be informed of the rules procedures and schedules.” (2014CV00035 Complaint, ¶ 2.)

{¶4} Banks alleged that Case Manager Mastell was negligent in failing to provide him with photocopies for a legal proceeding in an unspecified criminal case and, as a result, “lost the criminal case and was given a sentence of imprisonment.” (2014CV00035 Complaint, ¶ 3.) Banks also alleged that NEOCC staff denied him access through the law library to print copies of pleadings pertaining to an unspecified Allegheny County civil case. (2014CV00035 Complaint, ¶ 3.) Banks also

alleged that Mastell's actions amounted to intentional infliction of emotional distress. In addition to damages and punitive damages, Banks also sought an order requiring the defendants to comply with their duties set out in the handbook and provide him with the necessary copies.

2014CV00036 – Negligence

{¶5} The same day Banks filed his complaint in 2014CV00035, he filed another complaint in which he sued CCA, Lieutenant Kelty, an unknown Captain, ten or more unknown riot team members, CCA President Damon Hininger, Nurse Becky Lnu, an unknown nurse, and NEOCC Warden Michael Pugh. According to Banks, on January 2, 2013, CCA and its staff used tear gas to extract an inmate named Burnett from his cell located three cells over from his own. Banks alleged that the tear gas used to extract Burnett seeped into his cell and that the defendants negligently failed to decontaminate him and provide him medical care. He also alleged that he and this other inmate were experiencing electronic harassment by the CIA "Office of Science and Technology Behavioral Modification Unit" through the use of voice to skull or V2K technology in which it transmits messages directly into their brains threatening to kill them. Again referring to the inmate handbook, Banks averred that the defendants breach their duty of care to him by exposing him to the tear gas and then failing to decontaminate him and provide him proper medical care. He claimed that the CIA used the V2K technology against him because he filed the most ever cases against the federal government in history and was a plaintiff in a case resulting in the largest settlement in history for \$3.4 billion.

2014CV00047 – Negligent Supervision

{¶6} The day after filing the first two complaints, Banks filed this complaint which made the same claims and set forth the same allegations as he did in case no. 2014CV00035, only this time he captioned the complaint as one for negligent supervision. Banks reiterated that the CIA is using V2K technology to harass and threaten him, and contends that he has received psychological evaluations resulting in him receiving "a clean bill of mental health." (2014CV00047 Complaint, ¶ 1.)

2014CV00104 – Negligence & Intentional Infliction of Emotional Distress

{¶7} Banks filed his fourth lawsuit approximately a week later on January 14, 2014, which bore captions for negligence and intentional infliction of emotional distress. In addition to CCA and its president, Damon Hininger, and NEOCC's warden, Michael Pugh, Banks named as defendant a "Mrs. Flannigan," who he identified as a mailroom worker. He also listed as defendants "E.S.," "Counselor Green," "Parada," "Signet," and "Penguin Group Inc."

{¶8} Banks alleged that Flannigan intentionally and negligently "obstructed" 25 pieces of his legal mail resulting in him losing a criminal case and receiving 20 months of imprisonment. He sought lost wages of \$250,000 and punitive damages of \$750,000. He later alleged that both Flanningan and E.S. failed to deliver to him his personal and legal mail, and sought \$1 million in damages and \$3 million in punitive damages. For his intentional infliction of emotional distress claim, he alleged that Parada and Green refused to supply him with writing paper for his legal pleadings unless he removed Wiccan and witchcraft symbols and items from his cell.

{¶9} CCA responded to each of Banks's four complaints with a motion to dismiss pursuant to Civ.R. 8(a) and 12(b)(6) for failure to state a claim. While CCA set forth specific arguments in response to each of Banks's claims individually, its overarching argument was that inmate regulations as set forth in the inmate handbook do not create a legally enforceable right and cited well-established caselaw in support. The trial courts granted each of CCA's motions, Banks appealed those decisions resulting in two appellate case numbers, 14 MA 48 and 14 MA 98, which this court later consolidated.

{¶10} Banks's sole assignment of error states:

The Common Pleas Court erred in Dismissing the claims of Appellant because he based his claims on 28 Code of Federal Regulations Section 542.11 & 541.12 a Law of Congress and not the CCA Handbook?

{¶11} Although he did not advance this argument below, on appeal Banks argues that NEOCC's inmate handbook cites to 28 C.F.R. 542.11 and 28 C.F.R. 541.12 which he characterizes as a "Law of Congress" and now asserts his claims were premised on those provisions. He also argues that his status as a "Lakota Sioux American Indian" and "a member of the Sioux tribe and tribal official" requires the courts to liberally construe his claims in his favor.

{¶12} As an initial matter, it must be noted that Banks has been declared a vexatious litigator pursuant to R.C. 2323.52. *T. Rowe Price Services, Inc., v. Banks*, Mahoning C.P. No. 2014CV001812 (Nov. 26, 2014). Therefore, before this court is permitted to consider Banks's substantive arguments in this appeal, a determination must be made as to whether Banks has complied with the requirements set forth in R.C. 2323.52.

{¶13} According to R.C. 2323.52(D)(3), a person who has been designated a vexatious litigator may not institute or continue any legal proceedings in a court of appeals, or make any application other than an application for leave to proceed pursuant to subsection (F)(2) of the statute. Subsection (F)(2) reads, in pertinent part:

A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.

{¶14} R.C. 2323.52(l) reads, in its entirety:

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

{¶15} As indicated, the foregoing provisions use the word “shall.” Thus, before a vexatious litigator can go forward with any type of legal proceeding in a court of appeals, they must file an application for leave to proceed. *Marin v. Trumbull Cty. Probate Court*, 11th Dist. No. 2012-T-0016, 2012-Ohio-2011, ¶¶ 19–20. Dismissal is mandatory if the required application for leave is not filed. *Huntington Natl. Bank v. Lomaz*, 11th Dist. No. 2005-P-0075, 2006-Ohio-3880, ¶ 14.

{¶16} Here, Banks did not file an application for leave to proceed before this court either before he filed his notice of appeal or during the pendency of this appeal. Dismissal of this appeal is warranted on this basis alone.

{¶17} Even if this court were able to reach the merits of Banks’s substantive arguments, the trial court’s decisions would still remain undisturbed. Concerning how his claims should be construed, regardless of his status or designation, Ohio’s Rules of Civil Procedure and attendant caselaw set forth liberal notice pleading rules. *Bank of Am. N.A. v. Miller*, 7th Dist. No. 13 CA 894, 2014-Ohio-2932, ¶ 23.

{¶18} Turning to the underlying nature of Banks’s claims, neither NEOCC’s inmate handbook nor the federal regulations provide a basis for such claims. An inmate handbook is not a source of substantive law that confers a legal right. *Stupelli v. Rose*, 9th Dist. No. 95CA006078, 1995 WL 608387, *1 (Oct. 18, 1995). Furthermore, prison regulations of the nature cited by Banks 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); *State ex rel. Shepherd v. Croft*, 10th Dist. No. 09AP-621, 2010-Ohio-258, ¶ 5.

{¶19} Accordingly, due to Banks’s status as a vexatious litigator and his failure to file the statutorily required application for leave to proceed before this court, this appeal is dismissed.

Waite, J., concurs.

DeGenaro, J. concurs.