

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Charles M. Steele,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-9 (C.P.C. No. 07CVH11-16219)
Terry Collins, Director of the Ohio Department of Rehabilitation and Correction et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on September 10, 2009

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*Charles M. Steele*, pro se.

*Richard Cordray*, Attorney General, and *Melissa A. Montgomery*, for appellees.

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APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiff-appellant, Charles M. Steele ("appellant"), appeals from a decision of the Franklin County Court of Common Pleas granting the motion for judgment on the pleadings filed by defendants-appellees Terry Collins, Director of the Ohio Department of Rehabilitation and Correction ("ODRC"), Timothy Brunsman, Warden of Chillicothe Correctional Institution, Lieutenant McCray, and corrections officer Masters (collectively "appellees").

{¶2} Appellant is currently incarcerated at the Chillicothe Correctional Institution ("CCI"). Appellant filed the instant complaint on November 28, 2007, seeking a declaratory judgment and injunctive relief. Underlying appellant's complaint is his allegation that CCI has a policy of using administrative segregation "as a weapon" and that such policy is violative of his statutory and constitutional rights. (Complaint at 2.) Specifically, appellant alleges there is no manner in which to seek review by the Director of ODRC of certain violations and infractions. This lack of review, appellant contends, allows CCI to operate a "white supremacy" type of system with "no checks and balances." (Complaint at 4.)

{¶3} Appellant avers he was placed in administrative segregation for 15 days as a result of being found in violation of the Inmate Rules of Conduct. Specifically, the Rules Infraction Board ("RIB") found appellant guilty of violating Rules 21 (disobedience of a direct order) and 26 (disrespect to an officer, staff member, visitor or other inmate). Appellant appealed the RIB's decision to the warden, who upheld the findings of the RIB. Pursuant to Ohio Adm.Code 5120-9-08, while some decisions of the RIB as affirmed by the warden may be appealed to the Director of ODRC, those decisions regarding a violation of Rules 21 and 26 are not subject to review by the Director. Because he was placed in administrative segregation without review by the Director, appellant alleges his due process rights were violated.

{¶4} Appellees sought judgment on the pleadings pursuant to Civ.R. 12(C). Appellees made three arguments: (1) appellant was not entitled to declaratory judgment because no justiciable issue or controversy exists; (2) appellant was not entitled to

injunctive relief; and (3) actions for money damages against the state and its officers and employees can only be brought in the Ohio Court of Claims.

{¶5} The trial court, agreeing with appellees, granted their motion for judgment on the pleadings on December 9, 2008. Particularly, the trial court found appellant's complaint presented no real controversy or justiciable issue requiring declaratory relief, nor did appellant show he would suffer immediate and irreparable harm if relief was not granted such that he would be entitled to injunctive relief. Finally, the trial court found R.C. 2743.03 requires that requests for monetary relief, even if there is also a request for declaratory judgment, are required to be brought in the Court of Claims.

{¶6} Appellant appealed to this court and brings the following two assignments of error for our review:

[1.] The trial court abused its discretion when it liberally construed the defendant's motion for summary judgment as a motion for judgment on the pleadings, denying appellant his due process rights guaranteed under the Fourteenth Amendment to the United States Constitution.

[2.] The trial court erred to the prejudice of appellant when ruling that appellant's declaratory judgment action could only be brought against defendants in a civil action in the Court of Claims.

{¶7} Civ.R. 12(C) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A Civ.R. 12(C) motion for judgment on the pleadings has been characterized as a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted. *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 581, 2001-Ohio-1287. The purpose of a Civ.R. 12(C) motion for judgment on the pleadings is to resolve questions of law. *Greene v. Ohio Adult Parole Auth.*, 10th Dist. No. 08AP-555, 2008-Ohio-5972,

discretionary appeal not allowed by 121 Ohio St.3d 1428, 2009-Ohio-1296, ¶9, citing *State ex rel. Montgomery v. Purchase Plus Buyer's Group, Inc.*, 10th Dist. No. 01AP-1073, 2002-Ohio-2014, citing *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 1996-Ohio-459. In ruling on the motion, the court may consider both the complaint and answer, but must construe all of the material allegations as true and draw all reasonable inferences in favor of the nonmoving party. *Id.*; *Whaley*, *supra*. In order to grant the motion, the court must find beyond doubt that the nonmoving party can prove no set of facts that would entitle him or her to relief. *Id.*, citing *McLeland v. First Energy*, 9th Dist. No. 22582, 2005-Ohio-4940, ¶6. Our review of a decision on a Civ.R. 12(C) motion is *de novo*. *Id.*, citing *Fontbank, Inc. v. CompuServe, Inc.* (2000), 138 Ohio App.3d 801, 807.

{¶8} Because they are interrelated, appellant's two assignments of error will be addressed together. Reduced to their essence, appellant contends it was error for the trial court to grant appellees' motion for judgment on the pleadings and thereby deny him his right to have a jury hear his case.<sup>1</sup>

{¶9} Appellant sought a declaration that Ohio Adm.Code 5120-9-08 is unconstitutional because it violates his constitutional right to due process. To be entitled to declaratory relief, a plaintiff must demonstrate: (1) a real controversy exists between the parties; (2) the controversy is justiciable in character; and (3) the situation requires speedy relief to preserve the rights of the parties. *Harris v. Ohio Adult Parole Auth.*, 10th

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<sup>1</sup> Though the heading of his first assignment of error suggests the trial court erred in construing a motion for summary judgment as a motion for judgment on the pleadings, appellant makes no additional argument with respect to this statement. We address this only to clarify that, although the appellees' pleading filed on October 3, 2008 is titled as a motion for summary judgment, the body of the pleading makes clear the relief sought is judgment on the pleadings pursuant to Civ.R. 12(C). In fact, the only reference to summary judgment in the entire pleading is in the title.

Dist. No. 06AP-374, 2007-Ohio-142, ¶11. A court may dismiss a complaint for declaratory judgment without addressing the merits if there is no justiciable issue between the parties or a grant of declaratory judgment will not terminate the controversy. *Id.*; citing *Wilburn v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-198, 2001-Ohio-4047.

{¶10} Though challenging Ohio Adm.Code 5120-9-08, appellant's complaint is based entirely on the fact he was placed in administrative segregation without the right to appeal to the Director of ODRC. As appellant concedes, however, there is no constitutionally protected liberty interest in remaining free from administrative segregation. *Sandin v. Conner* (1995), 515 U.S. 472, 115 S.Ct. 2293 (a prisoner's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest). See also *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 1997-Ohio-139 (holding that absent evidence that the challenged institutional action would affect the inmate's duration of confinement, an inmate has no liberty interest in being free of disciplinary or administrative segregation because such segregation does not impose an atypical and significant hardship on the inmate); *Watley v. Wilkinson*, 10th Dist. No. 03AP-1039, 2004-Ohio-5062.

{¶11} In a similar circumstance before the Sixth Circuit Court of Appeals, three Ohio inmates brought a prisoner civil rights action challenging their placement in administrative segregation. *Collmar v. Wilkinson* (C.A.6, 1999), 187 F.3d 635. The inmates alleged the RIB found them guilty based solely on the testimony of confidential informants with no finding the informants were reliable, and as a result of the RIB proceedings, the inmates were placed in administrative segregation. Relying on *Sandin* and its progeny, the court noted there is no due process right to be housed in a particular

facility, no due process right not to be transferred to a more restrictive facility, and no due process right to remain in general population. *Id.* Because the inmates' allegations did not constitute an atypical and significant hardship in relation to the ordinary incidents of prison life, the court found the Federal District Court's dismissal was proper.

{¶12} Similarly, Tennessee inmate McGowan filed a civil rights complaint seeking monetary damages, a declaratory judgment and injunctive relief based on his being placed in administrative segregation. *McGowan v. Settles* (C.A.6, 2000), 215 F.3d 1327. McGowan alleged that he was denied his due process rights at the prison disciplinary proceeding that resulted in him being found guilty and being placed in administrative segregation. The court, relying on *Sandin*, stated an inmate has no liberty interest in remaining free of disciplinary or administrative segregation. Therefore, because McGowan did not allege that the state's action would affect the duration of his sentence or significantly disrupt his environment, the complaint was properly dismissed by the Federal District Court.

{¶13} Though conceding the rule of law in *Sandin*, appellant states what he has raised is an allegation not that he was deprived of a constitutionally protected liberty interest, but that he was deprived of a constitutionally protected property interest. This argument, however, fares no better for appellant. Though not specifying what his property interest is, it appears appellant is arguing he has a protected property interest in remaining in the general prison population, yet this claimed property right is not clearly established. "Property interests protected by the due process clause must be more than abstract desires or attractions to a benefit. The due process clause only protects those interests to which one has a legitimate claim of entitlement." *Waeschle v. Dragovic*

(C.A.6, Aug. 14, 2009), No. 08-2228 (slip opinion), quoting *Brotherton v. City of Cleveland* (C.A.6, 1991), 923 F.2d 477, 480 (citations and internal quotation marks omitted).

{¶14} Given that appellant has failed to allege a constitutionally protected liberty or property interest, his due process claim cannot stand. Accordingly, there is no justiciable issue or controversy existing between the parties, and the trial court properly dismissed appellant's claim for declaratory judgment.

{¶15} Appellant's claim for injunctive relief also fails. Injunctive relief is an equitable remedy and is granted only where the act sought to be enjoined will cause immediate and irreparable injury to the complaining party, and there is no adequate remedy at law. *Franklin Cty. Dist. Bd. of Health v. Paxson*, 152 Ohio App.3d 193, 202, 2003-Ohio-1331, ¶25, citing *Lemley v. Stevenson* (1995), 104 Ohio App.3d 126, 136; *Strah v. Lake Cty. Humane Soc.* (1993), 90 Ohio App.3d 822, 831. As indicated in appellant's complaint, he was released from administrative segregation on October 10, 2007, prior to the filing of his complaint, and there is no allegation of immediate and irreparable injury that would otherwise entitle appellant to injunctive relief.

{¶16} Lastly, we note that although appellant states in his brief he seeks only declaratory and injunctive relief, his complaint does make a "compensatory and punitive [sic] damages request." (Complaint at 14,) To the extent this could be construed as a request for money damages unrelated to his due process claim, the court of common pleas would lack jurisdiction over such a claim and dismissal is proper. See, e.g., *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St.3d 97, 103; *Cullen v. Ohio Dept. of Rehab. & Corr.* (1998), 125 Ohio App.3d 758, 764-65, appeal not allowed by 83 Ohio St.3d 1416; *Ballengee v. Ohio Dept. of Rehab. & Corr.* (1996), 79 Ohio Misc.2d 69.

{¶17} Based on the foregoing, we find the trial court did not err in granting appellees' motion for judgment on the pleadings. Accordingly, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and TYACK, JJ., concur.

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