

IN THE COURT OF CLAIMS OF OHIO

STEVEN SMITH

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2025-00035AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Steven Smith (“plaintiff”) is an inmate in the custody of defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). On July 10, 2024, a book was mailed to plaintiff at the prison where he was housed. Pursuant to Adm. Code 5120-9-19, ODRC withheld the book from plaintiff because it was not shipped from an authorized source but instead was sent from a smoothie shop. ODRC notified plaintiff of the withholding, the grounds for the withholding, and his right to appeal the withholding. Plaintiff appealed, but his appeal was unsuccessful. ODRC destroyed the book several days after the warden issued his decision.

{¶2} Plaintiff sues to recover the value of the book and other damages. He asserts two claims: negligence and civil conspiracy. Plaintiff submitted the \$25.00 filing fee. Plaintiff has moved for default judgment. That motion, and plaintiff’s claims, fail.

{¶3} Plaintiff is not entitled to a default judgment because ODRC has not defaulted. R.C. 2743.10(B) gave ODRC 60 days from the date it received a copy of the complaint to respond with an investigation report. The court’s docket shows that ODRC received the complaint on January 23, 2025, and that ODRC filed its investigation report 36 days later, on February 28, 2025. Plaintiff has produced no evidence to the contrary. Although he claims to have served the complaint himself on January 9, 2025, that would not prove a default even if that were true because ODRC filed its investigation report within 60 days of receipt of the complaint. Plaintiff’s March 5, 2025 motion for default judgment is therefore DENIED.

{¶4} Plaintiff's negligence claim fails on two levels. It relies on alleged violations of Adm. Code 5120-9-19 and Admin. Code 5120-9-55 to establish a duty, but such regulations cannot establish that element of a negligence claim. *Gordon v. Ohio Dept. of Rehab. & Correction*, 2018-Ohio-2272, ¶ 16 (10th Dist.). Further, no claim lies for the loss of contraband. ODRC determined that the book was contraband because it came from an unapproved vendor, and this court lacks jurisdiction to overturn that finding. *Skiles v. Dept. of Rehab. & Correction*, 2019-Ohio-1911, ¶¶ 19, 20 (Ct. of Cl.).

{¶5} Plaintiff's civil conspiracy claim fails for want of an underlying tort. "A civil conspiracy claim is derivative and cannot be maintained absent an underlying tort that is actionable without the conspiracy." *O'Brien v. Ashley*, 2021-Ohio-4064, ¶ 17 (10th Dist.). Plaintiff relies on his negligence claim to support his conspiracy claim, but the negligence claim fails for the reasons just discussed. Plaintiff's conspiracy claim therefore fails as well.

{¶6} Judgment is therefore entered for defendant.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶7} 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. Plaintiff's March 5, 2025 motion is DENIED. Court costs are assessed against plaintiff.

HOLLY TRUE SHAVER
Deputy Clerk

Filed 4/22/25
Sent to S.C. Reporter 9/9/25