

Court of Claims of Ohio

The Ohio Judicial Center
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RICKY KURT WASSENAAR

Case No. 2006-02293

Plaintiff

Judge J. Craig Wright
Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} Plaintiff brings this action alleging that defendant wrongfully withdrew funds from his inmate account. On September 11, 2006, plaintiff filed a motion for a preliminary injunction. On September 20, 2006, defendant filed a response. On October 13, 2006, the court ordered that plaintiff's motion be considered in conjunction with the trial on the merits pursuant to Civ.R. 65(B)(2). On May 22, 2007, the case was tried to a magistrate of the court on the issues of liability, damages, and civil immunity.

{¶2} On June 6, 2005, plaintiff was transferred into defendant's custody from the Arizona Department of Corrections. Plaintiff's claims arise out of the withdrawal of money from his inmate account by defendant to satisfy a restitution judgment that was rendered by an Arizona court.

{¶3} On June 3, 2005, plaintiff was convicted of various felonies by the Superior Court of Arizona, Maricopa County, and ordered to pay restitution in the amount of \$626,383.36 as part of his sentence. (Defendant's Exhibit A.) The restitution order required that "[p]ayment shall be 30% of [plaintiff's] earnings while incarcerated at the Arizona Department of Corrections." Plaintiff testified that soon after he was placed in defendant's custody at the Corrections Reception Center (CRC), he was informed that the restitution order would be enforced and that he could file an objection to the enforcement of the order.

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{¶4} On August 14, 2005, plaintiff filed an objection wherein he argued that the restitution order applied only while he was incarcerated in Arizona. (Defendant’s Exhibit B.) On August 29, 2005, Janet Cathel, the CRC account clerk supervisor, issued a final decision overruling plaintiff’s objections and authorizing the withdrawal of money from plaintiff’s inmate account. (Defendant’s Exhibit E.)

{¶5} While there is conflicting testimony whether plaintiff was ever notified of Cathel’s final decision, it is undisputed that defendant subsequently began withdrawing money from plaintiff’s inmate account and that defendant remitted those funds to the Arizona Clerk of Courts to satisfy the restitution order. Following several such withdrawals, plaintiff filed this case alleging that he is entitled to the return of the money already withdrawn from his account and seeking an injunction prohibiting defendant from withdrawing any additional money.

{¶6} The transfer of inmates into Ohio from other states is governed by R.C. 5120.50, which provides, in relevant part:

{¶7} “(D) PROCEDURES AND RIGHTS

{¶8} “***

{¶9} “(6) All inmates who may be confined in an institution pursuant to the provisions of [the Interstate Corrections Compact] shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. *The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.*” (Emphasis added.)

{¶10} Pursuant to the foregoing, the court finds that the provision of the restitution order requiring that “[p]ayment shall be 30% of [plaintiff’s] earnings while incarcerated at the Arizona Department of Corrections,” created a “legal right which plaintiff would have had if confined in an appropriate institution of the sending state.” Specifically, the court

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finds that plaintiff has a legal right under the terms of the restitution order to retain 70 percent of his inmate earnings. In other words, restitution is limited to 30 percent of his “earnings” in the Ohio prison system.

{¶11} Regarding plaintiff’s motion for injunctive relief, “[a] permanent injunction is an equitable remedy that will be 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, ¶25, 2003-Ohio-1331, citing *Lemley v. Stevenson* (1995), 104 Ohio App.3d 126, 136; *Strah v. Lake Cty. Humane Soc.* (1993), 90 Ohio App.3d 822, 831. Furthermore, “[t]he purpose of an injunction is to prevent a future injury, not to redress past wrongs.” *Id.* quoting *Lemley*, *supra*, at 136.

{¶12} The court finds that plaintiff has proven that he will suffer permanent and irreparable injury if a permanent injunction is not granted and that he is without an adequate remedy at law. Accordingly, it is recommended that judgment be rendered in favor of plaintiff and that plaintiff’s motion for injunctive relief be granted. It is further recommended that defendant be enjoined from withdrawing money from plaintiff’s inmate account in excess of 30 percent of the money plaintiff earns while in the custody and control of defendant.

Turning to the issue of plaintiff’s damages, plaintiff testified that the money that defendant withdrew from his account was sent to him by family members and was thus not “earnings.” Plaintiff’s original restitution order stated that he was to pay restitution in the amount of \$626,383.36. Defendant’s Exhibit I shows that, as of the day of trial, the current balance of plaintiff’s debt was \$625,914.67. Accordingly, it is recommended that judgment be rendered in favor of plaintiff in the amount of \$468.69, the difference between those two amounts.

{¶13} Finally, to the extent that plaintiff seeks a determination as to the civil immunity of defendant’s employees, the court finds that Reginald Wilkinson, Gregory

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Trout, Austin Stout, Marc Houck, Jeffrey Remmick, Linda Gabauer, Lori Beggs, Tracy England, T. Jackson, Gary Croft, Hugh Daley, Paul Shoemaker, and L.C. Coval were, at all times relevant hereto, acting within the scope of their employment or official responsibilities with defendant, and that they did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, it is recommended that the court issue a determination that Reginald Wilkinson, Gregory Trout, Austin Stout, Marc Houck, Jeffrey Remmick, Linda Gabauer, Lori Beggs, Tracy England, T. Jackson, Gary Croft, Hugh Daley, Paul Shoemaker, and L.C. Coval are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction over any civil action that might be taken against them based upon the allegations of plaintiff's complaint.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

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MR/cmd

Filed June 22, 2007\To S.C. reporter July 30, 2007