

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Submitted on Briefs, May 25, 2006

**WILLIAM B. THURLBY v. SEVIER COUNTY, TENNESSEE, COUNTY
EXECUTIVE MANAGER, SHERIFF MONTGOMERY, CHIEF SEALS,
CAPT. PARTON, LT. HENRY, SGT. MONTGOMERY, OFFICER “ZEUS”,
OFFICER TRENTAM, OFFICER “JOHN DOE”, AND OFFICER KEITH**

**Direct Appeal from the Circuit Court for Sevier County
Nos. 2004-0066 II, and 2004-0067 III Hon. Jon K. Blackwood, Circuit Judge**

No. E2005-01328-COA-R3-CV - FILED AUGUST 23, 2006

In this action, plaintiff, acting *pro se*, alleged certain rights were denied to him by the County and several County officials. The Trial Court granted defendants summary judgment. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

William Thurlby, Wartburg, Tennessee, *pro se*.

Zachariah N. Stansell and W. Mitchell Cramer, Knoxville, Tennessee, for appellees.

OPINION

Plaintiff, acting *pro se*, filed this action against Sevier County, the County Executive, Sheriff, and several county officers. In his Complaint, he alleged that he was transported to the Sevier County Jail in August 2002, from Brushy Mountain State Prison. While in the jail, he was subjected to maltreatment, including refusal to timely furnish medication, denied a bible and other personal items, as well as being placed in a cell which contained human waste, trash and ants. He also alleged that he requested to see a nurse, which was refused.

Plaintiff asserted that his Constitutional rights were violated, including the right to religious freedom, the right to assist in his own defense, due process, access to the courts, etc.

Subsequently, defendants filed a Motion to Dismiss and/or in the Alternative for Summary Judgment, asserting that the relief sought by plaintiff was improper against the defendants, who were a governmental entity and agents, and that plaintiff failed to state a claim, as there was no allegation of a plan or custom on the part of the County to deny plaintiff his civil rights.

The parties filed affidavits and documents, and defendants filed a Rule 56 Statement of Material Facts, based on an Affidavit filed by Chief Seals, who stated that he was a supervisor at the Sevier County Jail, and that he had reviewed the records pertinent to the case and also had personal recollection of the plaintiff and his stay in the jail. He stated there were no religious services held at the jail while plaintiff was there, due to ongoing renovations, and that plaintiff never asked for a minister or other religious figure to meet with him. Seals stated that plaintiff was given an “initial pack” upon his arrival at the jail which contained hygiene items, paper and a writing utensil, that plaintiff was given a Bible on the same day he requested one, and concluded that defendants did nothing to violate plaintiff’s right to practice his religion. Seals also testified that a cleaning cart went through the maximum security wing once per day, and that plaintiff could have requested that his cell be cleaned, and also cleaning supplies were readily available for plaintiff’s own use.

The Trial Court entered an Order of Dismissal as to all defendants, after reviewing all the pleadings/briefs and hearing oral argument. The Trial Court found there was no genuine issue of material fact, and that defendants were entitled to judgment as a matter of law, for the following reasons:

- 1) Plaintiff’s request for injunctive relief was improper pursuant to Tenn. Code Ann. §8-47-102, because defendants are state actors.
- 2) Defendants could not be subject to a default judgment, since they are a governmental entity and agents of the state.
- 3) Punitive damages are not available, since defendants are covered by the GTLA.
- 4) Declaratory relief cannot be granted against the defendants pursuant to the Declaratory Judgment Act.
- 5) Plaintiff failed to state a claim upon which relief could be granted.
- 6) It was reasonable to deny plaintiff his personal Bible for security reasons, and temporary suspension of in-house religious services was reasonably related to the legitimate interests of safety, construction and repair of the jail, so

plaintiff's right to religious expression was not violated.

- 7) Plaintiff failed to state a claim with regard to denial of his legal papers, because he was not denied access to the court, and he failed to allege any actual injury from not having possession of some of his legal papers.
- 8) Plaintiff's right to freedom of the press was not violated, and any papers withheld from plaintiff were withheld due to safety concerns.
- 9) Defendants are immune under the GTLA, and the Sheriff is specifically immune pursuant to Tenn. Code Ann. §8-8-301.

The Court then entered a second Order of Dismissal, dismissing the remaining claims, finding that plaintiff failed to show deliberate indifference to his medical needs, or that he had a serious medical condition. The Court found that neither the nurse nor the officers perceived a substantial risk of harm to plaintiff, and that he failed to otherwise state a claim against defendants.

The plaintiff, on appeal, states these issues for review:

1. Whether the trial court erred in failing to grant a default judgment against defendants?
2. Whether the trial court improperly granted summary judgment on plaintiff's claim of denial of his right of religious expression?
3. Whether the trial court improperly granted summary judgment on plaintiff's claim of denial of his right of access to the courts?
4. Whether the trial court improperly granted summary judgment on plaintiff's claim of denial of his right to receive his medications?
5. Whether the trial court improperly granted summary judgment on plaintiff's claims of Eighth Amendment violations due to the conditions of his confinement?
6. Whether the trial court properly held that defendants were immune pursuant to the GTLA?
7. Whether the defendants should have been sanctioned for intentionally misrepresenting the facts in discovery, and/or whether this claim can be entertained by this Court?

The Trial Court ruled defendants could not be subject to a default judgment, since

they are a governmental entity and agents of the state.¹ Tenn. R. Civ. P. 55.04 states that “No judgment by default shall be entered against the state of Tennessee or any officer or agency thereof unless the claimant establishes his or her claim or right to relief by evidence satisfactory to the court.” Moreover, the trial court has broad discretion in determining whether a grant of default judgment is proper, and thus the failure to grant or setting aside of a default judgment will not be reversed unless an abuse of that discretion is shown. *See McGowan v. Crants*, 2002 WL 1751375 (Tenn. Ct. App. Feb. 6, 2002); *Henson v. Diehl Machines., Inc.*, 674 S.W.2d 307 (Tenn. Ct. App. 1984). No abuse of discretion is shown, and this issue is found to be without merit.

Plaintiff argues that it was error for the Trial Court to deny his claim of right to religious expression. He alleged that he was not given a Bible for several days, but his Affidavit does not address this issue. Another prisoner’s Affidavit corroborates plaintiff’s requests for his Bible. The Seals’s Affidavit states that plaintiff was not given his personal Bible due to safety and contraband concerns, but that plaintiff was given a Bible on the day he requested it. There is a dispute of fact on this issue.

In determining whether summary judgment is appropriate, our Supreme Court has directed:

In determining whether or not a genuine issue of material fact exists for purposes of summary judgment, courts in this state have indicated that the question should be considered in the same manner as a motion for directed verdict made at the close of the plaintiff’s proof, i.e., the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. Then, if there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied. The court is not to “weigh” the evidence when evaluating a motion for summary judgment.

The court is simply to overrule the motion where a genuine dispute exists as to any material fact. The phrase “genuine issue” contained in Rule 56.03 refers to genuine factual issues and does not include issues involving legal conclusions to be drawn from the facts. The critical focus is limited to facts deemed “material”, which is to say those facts that must be decided in order to resolve the substantive claim or defense at which the motion is directed.

Moreover, the cases make clear that the party seeking summary judgment must carry the burden of persuading the court that no genuine and material factual issues exist and that it is, therefore, entitled to judgment as a matter of law.

Once it is shown by the moving party that there is no genuine issue of material fact,

¹ The record before us does not contain a motion for default judgment.

the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial.

* * *

the issues that lie at the heart of evaluating a summary judgment motion are: (1) whether a factual dispute exists; (2) whether the disputed fact is material to the outcome of the case; and (3) whether the disputed fact creates a genuine issue for trial. . . .Second, to preclude summary judgment, a disputed fact must be “material”. A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed. Therefore, when confronted with a disputed fact, the court must examine the elements of the claim or defense at issue in the motion to determine whether the resolution of that fact will effect the disposition of any of those claims or defenses. By this process, courts and litigants can ascertain which issues are dispositive of the case, thus rendering other disputed facts immaterial.

Byrd v. Hall, 847 S.W.2d 208, 211-215 (Tenn. 1993)(citations omitted).

In this case, taking plaintiff’s allegations as true, he was denied his Bible for several days upon entering the Sevier County Jail. Plaintiff does not address whether or not a substitute Bible was given to him. Given this dispute of fact, the issue becomes whether this disputed fact is “material”, as required in *Byrd*. The issue then becomes whether not having access to his personal Bible for several days, violates plaintiff’s right to religious expression?

This issue was raised in the case of *Tarpley v. Allen County, Indiana*, 312 F.3d 895 (7th Cir. 2002), when an inmate alleged that his Bible was confiscated, and that he was given a substitute Bible without the commentary contained in his Bible. In that case the Trial Court granted summary judgment and the Circuit Court of Appeals affirmed, explaining that while an inmate’s right to freely exercise his religion did not “evaporate entirely” when he entered a jail, it was also not unfettered, and could permissibly be infringed upon by legitimate penological objectives. *Id.*

The Court held that plaintiff was provided a reasonable substitute and his rights were not violated.

In this case, the affidavit of Chief Seals states that plaintiff’s Bible was withheld due to concerns about safety and contraband in the jail. Thus, defendants have shown a legitimate penological objective for withholding plaintiff’s personal Bible. Since plaintiff did not dispute that a reasonable substitute was provided, he has failed to show that his rights were infringed upon, or that he was ultimately unable to freely practice his religion. We conclude that the factual dispute raised is not a disputed material fact and summary judgment was appropriate on this issue.

Inmates have the right to access to the courts, and the courts have protected that right

by prohibiting prison officials from interfering with the inmates' attempts to prepare legal documents. *Lewis v. Casey*, 518 U.S. 343 (1996). To demonstrate that this right has been deprived, the inmate must show that the alleged denial resulted in actual injury to his legal case. *Id.* Plaintiff alleged in his Complaint that he was denied part of his legal work the entire time he was at the Sevier County Jail, but he did not address this in his Affidavits. The Affidavit of Bramblett, however, stated that plaintiff repeatedly asked the guards for his legal papers, which was refused.

In a similar case, the Seventh Circuit Court of Appeals said:

With respect to appellant's assertion that the loss or destruction by defendants of appellant's legal papers and law books also deprived him of access to the courts, we conclude, once again, that appellant's allegations fail to rise to the level of a cognizable constitutional violation. Appellant, in opposition to defendants' motion for summary judgment, could and should have stated with specificity exactly what materials he was deprived of and how such deprivation resulted in his being denied the meaningful access to the courts to which he is entitled. Each of the cases cited by appellant in support of the contention that destruction or loss of a prisoner's legal papers by prison officials states a valid cause of action under § 1983 deals with a situation involving papers or documents crucial or essential to a pending or contemplated appeal. The mere assertion by appellant, in both his response to defendants' motion for summary judgment and in his brief, that legal papers, transcripts and law books were intentionally kept from him fails, without more, to demonstrate a constitutionally significant deprivation of meaningful access to the courts.

Hossman v. Spradlin, 812 F.2d 1019 (7th Cir. 1987). Similarly, here, the plaintiff has failed to provide any information regarding what legal materials he was deprived of, and how this ultimately caused any injury, or detrimentally affected his case. The allegations fail to rise to the level of a cognizable constitutional violation, and summary judgment was appropriate on this issue.

A prisoner is entitled to receive medical care under the Eighth Amendment, but to state a claim for denial of this right, the prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to his serious medical needs. *Estelle v. Gamble*, 429 U.S. 97 (1976). The prisoner must show that the medical need is "sufficiently serious" (objective component), and also must allege facts which would show that the official being sued "subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk." *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001). The plaintiff must show more than mere negligence. *Id.*

Plaintiff's Affidavit states that he was not given his blood pressure medication for 30 hours upon arrival at the Sevier County Jail, and stated that his medication was given thereafter in a haphazard fashion, which resulted in plaintiff suffering from weakness, headaches, sweating, sickness, etc. In his second Affidavit, plaintiff stated that he had a hard time getting his blood

pressure medicine, and that most of his initials on the medication log had been forged, as shown by the fact that it appeared they were still giving him medication even after he left and went back to Brushy Mountain.

The Trial Court ruled against plaintiff, holding that plaintiff had not set forth sufficient allegations to satisfy either the objective or subjective component. Plaintiff did allege that the “haphazard” fashion in which his medication was administered caused him injury, which would tend to suggest a serious medical condition. He did not, however, allege sufficient facts which would tend to show that the official being sued “subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk.” *See Comstock*. Plaintiff admits that he did, in fact, receive his medication, albeit not at exactly at the time he should have. The record does not show that defendants disregarded any substantial risk to the plaintiff, and plaintiff has failed to set forth facts that demonstrate a deliberate indifference to his medical needs.

Next, plaintiff claims that the conditions of his confinement (i.e. the extremely unsanitary condition of his cell) violated his Eighth Amendment right to be free from cruel and unusual punishment. The Eighth Amendment provides that prisoners must receive the basic necessities of life including food, clothing, sanitation, medical care, etc. *Grubbs v. Bradley*, 552 F. Supp. 1052 (M.D. Tenn. 1982). While plaintiff stated that his cell was not cleaned for approximately 18 days, he does admit that the cell was eventually cleaned. Harsh and unpleasant conditions such as lack of toilet paper, soap, toothbrush and toothpaste for several days, and being confined in a filthy, roach-infested cell on a temporary basis, have been deemed insufficient to violate a prisoner’s Eighth Amendment rights. *Harris v. Fleming*, 839 F.2d 1232 (7th Cir. 1988). In that case, the Court stressed that the conditions were temporary, and were not prison-wide, but only affected the inmate. Courts have also stressed that the sanitation required is measured by a reasonableness standard, and is not usually found to implicate Constitutional rights unless the inmate’s health is endangered (such as if the inmate becomes ill or dies). *See Grubbs, Harris, supra*. Here, the plaintiff did not make these allegations regarding any health problems, and the conditions were not alleged to be prison-wide, and were admittedly only temporary. We affirm the Trial Court’s grant of summary judgment on plaintiff’s claim of an Eighth Amendment violation, due to the conditions of his confinement.

In order to state a claim against the municipality pursuant to 42 U.S.C. §1983, the plaintiff must show there was an official policy, practice or custom which resulted in a deprivation of his rights. *Napier v. Madison County, Ky.*, 238 F.3d 739 (6th Cir. 2001). In order to state a claim pursuant to 42 U.S.C. §1983 against the individuals asserting qualified immunity, plaintiff must show that the individuals’ conduct deprived him of a constitutional right, and that the individuals reasonably should have known that the conduct violated clearly established law. *Doe v. Sullivan County, Tn.*, 956 F.2d 545 (6th Cir. 1992). Plaintiff has failed to state a claim pursuant to 42 U.S.C. §1983.

Finally, plaintiff is asking this Court for an award of sanctions against defendants for what he characterizes as “intentional misrepresentations made with specific intent to obstruct the

Courts” in the discovery responses filed by defendants. He cites cases where a party’s claims were dismissed for failure to comply with discovery, or where default judgment was entered against a defendant as a discovery sanction for conduct that demonstrated a “clear record of delay or contumacious conduct”. *Potts v. Mayforth*, 59 S.W.3d 167 (Tenn. Ct. App. 2001); *Holt v. Webster*, 638 S.W.2d 391 (Tenn. Ct. App. 1982). These cases hold that the decision regarding whether to award such sanctions is within the discretion of the trial court. *Id.*

The record does not demonstrate that plaintiff actually sought this relief in the Trial Court, as these allegations were raised in a pleading seeking to “add criminal charges” against defendants. Taking a lenient view of plaintiff’s filings as a *pro se* litigant, however, even if these claims were properly raised in the Trial Court, the Court never imposed any such sanctions, and plaintiff has not shown any abuse of discretion in that regard. For the foregoing reasons, we affirm the grant of summary judgment by the Trial Court and remand, with the cost of the appeal assessed to William B. Thurlby.

HERSCHEL PICKENS FRANKS, P.J.