

IN THE COURT OF COMMON PLEAS OF HUNTINGDON COUNTY,
PENNSYLVANIA

CIVIL DIVISION

BRUCE X. COOPER,	:
Plaintiff	:
	:
vs.	: NO. 12-1202
	:
C. M. COOK,	:
Defendant	:

MEMORANDUM

This case is before the Court on preliminary objection in the nature of a demurrer¹ filed on behalf of Defendant C. M. Cook.

Standard

“A preliminary objection in the nature of a demurrer will be granted where the contested pleading is legally insufficient.” Cardenas v. Schober, 783 a.2d 317, 321 (Pa.Super. 2001). In reviewing a pleading all material facts set

¹ Pa.R.C.P. 1028(a)(4).

forth in the pleading as well as all reasonable inferences reasonably deductible therefrom are admitted as true. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. CoreStates Bank, Nat'l Assn. v. Cutillo, 723 A.2d. 1053, 1057 (Pa.Super. 1999).

Facts

The factual foundation for Mr. Cooper's Constitutional claims are straightforward.

Plaintiff is an inmate at the State Correctional Institution at Huntingdon, Pennsylvania (SCIH). Since July, 2009, when he was transferred to SCIH Plaintiff relates that he has been housed on B-Block. According to the Plaintiff B-Block is one of seven (7) general population blocks at SCIH.

Defendant C. M. Cook is the Unit Manager of B-Block.

Plaintiff is correct that a determination of whether or not a due process violation has occurred initially requires a finding that a protected liberty interest exists. Wilder v. Department of Corrections, 673 A.2d 30 (Pa. Cmwlth. 1996), petition for allowance of appeal denied, 545 Pa. 673, 681 a.2d 1344 (1996). However, he is incorrect that inmates have a liberty interest in cell assignments in correctional institutions.

The United States Court of Appeals for the Ninth Circuit addressed the issue in Grayson v. Rison, 945 F.2d 1064, 1067 (9th Cir. 1991), as follows:

“When prison officials have legitimate administrative authority, such as the discretion to move inmates from prison to prison or from cell to cell, the Due Process Clause imposes few restrictions on the use of the authority, regardless of any additional motives which are claimed to exist. It doesn’t matter what label is placed on the action or what other reasons may be behind it; nor is it relevant that the conditions of confinement may become less pleasant as a result. We must allow prison officials the freedom to exercise their administrative authority without judicial oversight. Some administrative actions will inevitably make prisoners feel cheated; nevertheless, this does not give them a federal cause of action. See Fano, 427 U.S. at 225, 96 s.Ct. at 2538.” (Emphasis added.)

A similar conclusion was reached in this federal circuit in Flanagan v. Shively, 783 F.Supp. 922 (N.D.Pa. 1992).

Defendant's demurrer to the due process claim will therefore be sustained.

B. Equal Protection

Mr. Cooper's equal protection argument is equally unavailing since cell relocations do not affect a fundamental right of Mr. Cooper since neither he nor any other inmate at SCIH has a right in where he is incarcerated or celled. The fact that inmates housed on B-Block are subjected to an annual reassignment of cells while inmates on other cell blocks aren't is not relevant.

Conclusion

An order will be entered sustaining the preliminary objections and dismissing this action.

BY THE COURT,



J.

DATED: February 7, 2013

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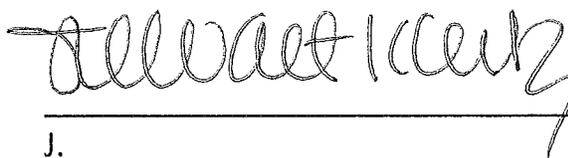
CIVIL DIVISION

BRUCE X. COOPER, :
 :
 Plaintiff :
 :
 vs. : NO. 12-1202
 :
 C. M. COOK, :
 :
 Defendant :

ORDER

AND NOW, this 7th day of February, A.D., 2013, for the reasons set forth in a Memorandum filed this date, the Preliminary Objections of Defendant are sustained and this action is dismissed.

BY THE COURT,



J.

NOTICE OF ENTRY OF ORDER OR DECREE
FILED IN CASE NO. 12-1202
NOR IS THIS COURT'S JUDGMENT HAS
BEEN RECORDED IN THE PUBLIC
RECORDS OF HUNTINGDON COUNTY, PA.
DATE:

FEB 07 2013