

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN L. TAYLOR, SR.

Plaintiff

v.

MARTIN F. HORN, ET AL.,

Defendants

CIVIL NO. 3:CV-01-0036

(Judge Kosik)

MEMORANDUM AND ORDER

John L. Taylor, Sr. filed this civil rights complaint pursuant to 42 U.S.C. § 1983 on January 10, 2001. He is currently confined at the State Correctional Institution at Greene, Pennsylvania. Along with his complaint, Taylor filed an application seeking leave to proceed in forma pauperis in this matter.¹ Named as defendants are Martin F. Horn, former Secretary of the Department of Corrections, and the following employees at the State Correctional Institution at Smithfield (SCI-Smithfield), Taylor's former place of confinement: James M. Morgan, Superintendent; Robert S. Bitner, Chief Hearing Examiner; and Sharon M. Burks, Grievance Coordinator. Taylor alleges that defendants Morgan, Bitner and Burks failed to process his grievances. He also contends that defendant Horn failed to correct this problem and properly train the employees at SCI-Smithfield with respect to the processing of grievances. The matter is presently before the court on a motion for judgment on the pleadings filed by defendants. (Doc. 36.)

¹ Taylor completed this court's form application for leave to proceed in forma pauperis and authorization form. An Administrative Order was thereafter issued on January 16, 2001 (Doc. 5), directing the warden at Taylor's place of confinement to commence deducting the full filing fee from his prison trust fund account.

Background

Defendants filed an answer to the complaint on April 5, 2001. Thereafter, plaintiff sought leave of court to file an amendment to his complaint. (Doc. 18.) In the proposed amendment to the complaint Taylor details his claims against each of the four named defendants. On February 7, 2002, the court granted plaintiff's motion to file an amendment to the complaint, and directed that Documents 1 and 18 be construed as the complaint in this matter. (Doc. 28.) On February 21, 2002, defendants filed their answer to the amendment.²

In his complaint, Taylor alleges that he filed an appeal from a grievance with Defendant Bitner on May 5, 2000, pursuant to DC-ADM 804. He claims that fifty-three (53) days expired and he finally received a response from Bitner. He claims that on May 27, 2000, he filed another appeal with respect to a second grievance he was pursuing, and it took Bitner twenty-six (26) days to respond. He also alleges that on June 10, 2000, he filed an appeal to Bitner with respect to a grievance he was pursuing regarding a third matter, and that Bitner replied thirty-nine (39) days later. He further asserts that on three later occasions, August 18, 2000, October 2, 2000 and November 15, 2000, Bitner responded to the grievances ". . . well outside of the DC-ADM 804 policy dictates governing time for response." (Doc. 1 at unnumbered p.3.) It is Taylor's contention that according to DC-ADM

² Taylor has submitted both a reply to defendants' answer to the complaint and defendants' answer to the amendment to the complaint. (Docs. 15 and 34). The Clerk of Court will be directed to strike these documents from the record as they are improper pleadings pursuant to Fed. R. Civ. P. 7(a), which does not provide for the filing of a reply to a complaint without leave of court.

804 policy, he should be receiving responses from the Chief Hearing Examiner to his appeals within twenty-one (21) days.

In his amendment to the complaint, Taylor further alleges the following. He states that Defendant Horn, as the policy maker and supervisor of the employees of the Department of Corrections, either directly or indirectly violated his constitutional rights due to the improper training of his employees. Taylor further alleges that Defendant Morgan, as warden of SCI-Smithfield, condoned and/or acquiesced in the behavior of his subordinates in the same way as Horn. With respect to Defendant Burks, grievance coordinator at SCI-Smithfield, Taylor claims she somehow failed to follow Department of Corrections procedure in processing his grievances. Finally, Taylor reasserts his claim against Defendant Bitner that he failed to follow Department of Corrections procedure in processing his appeal. He claims that because defendants did not process his grievances properly, he is entitled to injunctive and monetary relief. Presently pending is defendants' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (Doc. 36.) The motion is fully briefed and for the following reasons will be granted.³

³ According to the parties, also pending is a motion to compel the production of documents apparently filed by plaintiff sometime on February 19, 2002. Although defendants received a copy of this motion, there is no record of this motion ever having been filed with the Court. The docket does not reveal that any such motion was ever submitted by plaintiff in or around the time of February 2002. Defendant has filed a response to the motion, and plaintiff a reply to defendant's response. Because of the Court's disposition of defendants' motion for judgment on the pleadings, the motion to compel will be denied as moot. However, even if the Court were to have ruled on the motion, it would have been denied in that plaintiff moved the Court to compel documents without first ever having requested from defendants the documents sought. Further, plaintiff was supposedly seeking medical documents which clearly are not relevant to the claims raised in the instant action.

Discussion

Federal Rule of Civil Procedure 12(c) provides as follows:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R. Civ. P. 12(c). Defendants' motion for judgment on the pleadings under Rule 12(c) will not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that they are entitled to judgment as a matter of law. Society Hill Civic Association v. Harris, 632 F.2d 1045, 1054 (3d Cir. 1980). As stated in Rule 12(c), a motion for judgment on the pleadings may be converted to a motion for summary judgment if matters outside the pleadings are presented to and not excluded by the court. See Brennan v. Nat'l Tel. Directory Corp., 850 F. Supp. 331, 335 (E.D. Pa. 1994). Defendants would then carry the burden of demonstrating that there is an absence of evidence to support plaintiff's position. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).⁴

In reviewing a motion for judgment on the pleadings, the court must view the facts presented in the pleadings and inferences to be drawn therefrom in the light most favorable to the nonmoving party. Society Hill Civic Association, 632 F.2d at 1054; Jablonski v. Pan

⁴ In the instant case, however, there is no matter outside of the pleadings to consider requiring the Court to convert defendants' motion for judgment on the pleadings into a motion for summary judgment. The Court need only consider whether there could be any set of facts that could be proved consistent with Taylor's allegations.

American World Airways, Inc., 863 F.2d 289, 290-91 (3d Cir. 1988). There is marked similarity between the standard applied in reviewing a motion for judgment on the pleadings and a motion to dismiss under Fed. R. Civ. P. 12(b)(6). As such, the courts therefore review motions for judgment on the pleadings in the same manner as motions to dismiss. See, e.g., Rose v. Bartle, 871 F.2d 331, 342 (3d Cir. 1989); GATX Leasing Corp. V. National Union Fire Ins. Co., 64 F.3d 1112, 1114 (7th Cir. 1995) ("We review a motion pursuant to Rule 12(c) under the same standard as a motion to dismiss under Fed. R. Civ. P. 12(b) ..."). This interpretation by the courts is also supported by the wording found in Fed. R. Civ. P. 12(h)(2), which specifically allows courts to rule on a 12(b)(6) motion as a motion for judgment on the pleadings.⁵ 2 Moore's Federal Practice § 12.38 (3d ed. 2001) ("In fact, any distinction between [a judgment on the pleadings under Rule 12(c) and a motion to dismiss under Rule 12(b)] is merely semantic because the same standard applies to motions made under either subsection."); see also Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995), aff'd, 91 F.3d 125 (3d Cir.) (Table), cert. denied, 519 U.S. 982 (1996) (applying the same standard to motions for judgment on the pleadings as to motions to dismiss under Rule 12(b); Sprague v. American Bar Association, No.CIV.A. 01-382, 2001 WL 1450606 (E.D. Pa. Nov. 14, 2001).

In the instant case, the Court must accept Taylor's allegations as true and view the facts in the light most favorable to him. This case presents little, if any, disagreement about

⁵ Pursuant to Fed. R. Civ. P. 12(h)(2), "[a] defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits." Fed. R. Civ. P. 12(h)(2).

the facts. Taylor basically alleges that he submitted grievance appeals to Defendant Bitner for resolution, and Bitner did not resolve those appeals in a timely fashion under the policies of the Department of Corrections. He also generally alleges that Horn, Morgan and Burks are responsible due to the supervisory or official positions they hold - - he contends they were somehow responsible by failing to adequately train employees as to how to process grievance appeals.

In their motion for judgment on the pleadings, defendants contend that there is no dispute as to the facts in this case, and that they are entitled to judgment as a matter of law. Plaintiff presents no substantive issue with regard to any of the issues he addressed in the many grievances he filed. Rather, his only claim is that defendants impeded his use of the inmate grievance system. Even assuming these facts are true, such actions would not give rise to a viable constitutional claim. It is well-established that there is no constitutional right to a grievance procedure. See Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 1137-38 (1977) (Burger, C.J., concurring) ("I do not suggest that the [grievance] procedures are constitutionally mandated."); Wilson v. Horn, 971 F. Supp. 943, 946 (E.D. Pa. 1997) aff'd, 142 F.3d 430 (3d Cir. 1998); McGuire v. Forr, Civ. A. No. 94-6884, 1996 WL 1331130, at *1 (E.D. Pa. Mar. 21, 1996), aff'd, 101 F.3d 691 (3d Cir. 1996). While prisoners do have a constitutional right to seek redress of their grievances from the government, that right is the right of access to the courts and such a right is not compromised by the failure of the prison to address an inmate's grievance. See Flick v. Alba, 932 F.2d 728, 729 (8th Cir. 1991) (federal grievance regulations providing for administrative remedy procedure do not create liberty interest in access to that procedure). Taylor does not claim that defendants have obstructed his access to the courts. To the

contrary, the filing of this lawsuit confirms that they have not. Thus, Taylor fails to state a viable claim that defendants have violated his constitutionally protected rights, and defendants are entitled to a judgment as a matter of law.⁶ Accordingly, defendants' motion for judgment on the pleadings (Doc. 36) will be granted. An appropriate Order follows.

AND NOW, THIS 23rd DAY OF MAY, 2002, IT IS HEREBY ORDERED THAT:

1. The Clerk of Court is directed to strike Documents 15 and 34 from the record as improper pleadings pursuant to Fed. R. Civ. P. 7(a).
2. Plaintiff's motion to compel filed in February of 2002 is denied as moot.
3. Defendants' motion for judgment on the pleadings (Doc. 36) is granted. The Clerk of Court is directed to enter judgment in favor of defendants in this action.

⁶ Further, the claims against Defendants Horn, Morgan and Burks would also fail in that they are premised on a theory of respondeat superior. See Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Rather, each named defendant must be shown, via the complaint's allegations, to have been personally involved in the events or occurrences which underlie a claim. See Rizzo v. Goode, 423 U.S. 362 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). As explained in Rode:

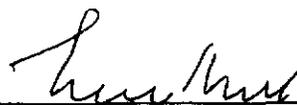
A defendant in a civil rights action must have personal involvement in the alleged wrongs Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

Rode, 845 F.2d at 1207.

Taylor has clearly failed to set forth with appropriate particularity any personal knowledge or acquiescence on the part of Defendants Horn, Morgan and Burks. He merely seeks to impose liability upon them based on their supervisory positions at the prison.

4. The Clerk of Court is directed to close this case.

5. Any appeal taken from this Order will be deemed frivolous, without probable cause, and not taken in good faith.



EDWIN M. KOSIK
United States District Judge

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