

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DARYL COOK,
Plaintiff,

vs.

ROBERT SMITH,
Defendant.

: NO. 17-1224

:
:

: CIVIL ACTION

:
:

: *Motion for*

: *Summary Judgment*

MEMORANDUM OPINION

This matter concerns the inmate procedures for sending money between inmates. On August 14, 2017, Plaintiff Daryl Cook (“Cook”), inmate at State Correctional Institution at Fayette (“SCI-Fayette”), filed a Complaint against Defendant Robert Smith (“Smith”), Superintendent/Facility Manager of the State Correctional Institution at Muncy (“SCI-Muncy”). Cook alleges that Defendant acted in “bad faith” when he failed to allow Cook’s daughter, an inmate at SCI-Muncy, to receive a \$300.00 check which Cook had received approval to send pursuant to DC-ADM 803.¹ Cook alleges that he sent the check on July 28, 2015 through his inmate account and the mailroom of SCI-Fayette.² Cook’s daughter later informed him that the money was not placed in her prison account.³ Cook further alleges that Smith indicated to his daughter that the check was denied and returned to Cook because Cook’s daughter was not authorized to receive the money.⁴ Cook avers that after his daughter attempted to have Smith approve the check, Cook wrote a letter on September 29, 2016 to Smith indicating that Smith’s refusal to accept the check was a mistake and should be

¹ Plaintiff’s Complaint at 4.

² *Id.* at 2.

³ *Id.* at 3.

⁴ *Id.*

remedied.⁵ Even though Cook advised Smith that Cook would be filing a civil action against Smith if Smith did not allow the check to be deposited into his daughter's account, Cook asserts that Smith never responded.⁶

Cook argues that Smith's dilatory actions caused Cook and his daughter to have a "falling out" which caused him to suffer intentional infliction of emotional distress, loss of consortium, bad reputation, and defamation of character.⁷ Cook also claims that he suffered interference with family rights, a personal relationship, and interference with property rights.⁸ Cook also claims Smith's actions caused Cook to suffer "loss of family bond, loss of money, loss of sleep, loss of appetite, loss of privacy, loss of freedom of choice, loss of property rights, tortious interference of property rights and [] cruel and unusual punishment."⁹ Cook seeks a declaratory judgment that he had a right to send money to his daughter without giving a reason why he wanted to send said money, compensatory damages of \$1,500,000.000, and punitive damages of \$3,000,000.00.¹⁰ Cook desires a trial by jury.¹¹

On December 29, 2017, Smith filed an *Answer* to Cook's Complaint denying the substantive allegations and raising twelve affirmative defenses.¹² On January 10 2018, Cook filed a *Praecipe for Default Judgment Against Defendant* for failure to file a timely answer, which the Prothonotary entered the same day. Also on January 10, 2018, Smith filed a *Petition for Relief from Judgment of Default* claiming that Cook failed to

⁵ *Id.*

⁶ *Id.* at 3-4.

⁷ *Id.* at 4-5.

⁸ *Id.* at

⁹ *Id.* at 5.

¹⁰ *Id.* at 5-6. Cook sued Smith in Smith's individual capacity.

¹¹ *Id.* at 6.

¹² Smith admitted that he did not respond to Plaintiff's letter. Defendant's Answer to Complaint and Affirmative Defenses at 3 (Dec. 29, 2017).

properly serve the complaint.¹³ On February 9, 2018, this Court issued an Opinion & Order granting Smith's petition and striking the default judgment.¹⁴

Presently before the Court is Smith's *Motion for Summary Judgment*, which was filed on December 7, 2018. Smith argues that Cook's Complaint should be dismissed for: (1) failure to Exhaust Administrative Remedies pursuant to 42 U.S.C. § 1997e,¹⁵ (2) failure to state a claim since Cook's check was returned to his account,¹⁶ and (3) sovereign immunity from Cook's state law claims sounding in intentional tort as no relevant exception applies.¹⁷ On January 2, 2019, Cook filed a *Response* to Smith's motion.¹⁸ Cook retorts that he was not unable to file a formal grievance because Smith failed to respond to Cook's initial letter requesting a reason why his check was not deposited in his daughter's account.¹⁹ Cook also argues that the inmate mail policy is unconstitutional.²⁰

STANDARD OF REVIEW

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law[:]

¹³ Defendant's Petition for Relief from Judgment of Default at 6 (Jan. 10, 2018).

¹⁴ *Cook v. Smith*, No. 17-1224, Opinion & Order: Strike Judgment at 1 (Feb. 9, 2018).

¹⁵ Defendant's Motion for Summary Judgment at 4-5 (quoting *Mazur v. Cuthbert*, 186 A.3d 490, 498-99 (Pa. Commw. Ct. 2018)) (hereinafter "Defendant's Motion"). Smith asserts that Cook failed to follow regular procedure and first file his complaint through the inmate grievance review system as set forth in the Department of Correction's Administrative Directive 804. *Id.* at 4.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 8 (quoting *Mazur v. Cuthbert*, 186 A.3d 490, 498-99 (Pa. Commw. Ct. 2018)).

¹⁸ Plaintiff's Motion in Opposition to Motion for Summary Judgment (Jan. 2, 2019).

¹⁹ *Id.* at 9-10.

²⁰ *Id.* at 6, 9.

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.²¹

DISCUSSION²²

Pursuant to the Federal Prison Litigation Reform Act and Pennsylvania Prison Litigation Reform Act, a prisoner must exhaust administrative remedies before he or she can pursue legal action in court.²³ The Court finds that Cook failed to exhaust administrative remedies and, therefore, his federal and state claims are dismissed.²⁴

²¹ Pa.R.C.P. No. 1035.2.

²² During argument, Smith argued that Cook's complaint was barred by the statute of limitations for being filed two days late. As the "mailbox rule" applies to prisoners, and Smith failed to establish when Cook mailed or handed his complaint to prison officials, the Court will proceed with its analysis on the substance. See *Kittrell v. Watson*, 88 A.3d 1091, 1096 (Pa. Commw. Ct. 2014) ("Under the prisoner mailbox rule, a prisoner's *pro se* appeal is deemed filed at the time it is given to prison officials or put in the prison mailbox.").

²³ 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."); 42 Pa.C.S.A. § 6603(a) ("Prison conditions litigation filed in or remanded to a court of this Commonwealth alleging in whole or in part a violation of Federal law shall be subject to any limitations on remedies established by Federal law or Federal courts with respect to the Federal claims.").

²⁴ See *Cornish v. City of Philadelphia*, 2015 WL 4931758, at *5 (E.D. Pa. Aug. 18, 2015) (holding that 42 Pa.C.S.A. § 6602(e)(2) implicitly required exhaustion of remedies for claims under Pennsylvania law as well); see also 42 Pa.C.S.A. § 6602(e)(2), deemed unconstitutional on other grounds, *Payne v. Commonwealth Dep't of Corr.*, 871 A.2d 795, 811 (Pa. 2005) ("In summary, we hold that the Commonwealth Court properly granted partial summary judgment in favor of the Department, thereby

The Pennsylvania Department of Corrections' Inmate Grievance System ("grievance system") encourages the inmate to resolve the issue informally by filing an informal request via *DC-135A Inmate Request to Staff Member* form.²⁵ However, the grievance system requires that the inmate file a formal grievance with the Facility Grievance Coordinator, or his or her designee, regardless of whether the inmate's informal request resolved the issue.²⁶ Hence, presuming that Cook's Sept 29, 2016 letter is an appropriate informal request under the grievance system, Smith's failure to respond did not absolve Cook of his duty to file a formal grievance with the Facilities Grievance Coordinator.

Additionally, even if Cook had exhausted administrative remedies, his complaint fails to state a claim on which relief can be granted as he alleged in his complaint that his check was returned to him.²⁷ Moreover, the grievance system requires that both the inmate sending mail and the inmate receiving mail acquire approval before the mail can be properly processed.²⁸ Cook's daughter did not obtain approval to receive his check.

upholding Sections 6602(e) and (f) of the PLRA, the amendments to the Obscenity Law, and DC-ADM 803.").

²⁵ Defendant's Motion, Ex. 3 (Affidavit of Grievance Officer Keri Moore), attach. A, at 1-1. This grievance policy was effective May 1, 2015.

²⁶ *Id.*

²⁷ *Keeley v. Com., State Real Estate Comm'n*, 501 A.2d 1155, 1157 (Pa. Commw. Ct. 1985) ("A due process analysis is a two-staged process; first there must be a determination of whether a constitutionally protected property or liberty interest is implicated, and, if so, then assessing the appropriate procedural protection due.").

²⁸ Defendant's Motion, Ex. 1, at 1-1 ("An inmate may not [. . .] correspond with another inmate, former inmate, parolee, probationer or co-defendant unless approval is given pursuant to this policy."). This grievance policy was effective February 4, 2015. The Court finds Cook's argument that the grievance system is overbroad, vague, or otherwise unconstitutional because it does not specifically denote "family member" as not properly before this Court. Cook's daughter was also an inmate at this time; therefore, she would be included under "another inmate."

For the reasons discussed above, Plaintiff Daryl Cook's Complaint is dismissed with prejudice.²⁹

IT IS SO ORDERED this 12th day of February 2019.

BY THE COURT,

Eric R. Linhardt, Judge

cc: Daryl Cook (Pro se Plaintiff)
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²⁹ The Court finds that it does not need to address Smith's defense of sovereign immunity based on its adjudication above.