

STATE OF MICHIGAN  
COURT OF APPEALS

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STANLEY L. BOSWELL,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

June 7, 1996

No. 178929

LC No. 93-75034-CZ

Before: Gribbs, P.J., and Hoekstra and C. H. Stark,\* JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals the circuit court order granting summary disposition to defendant. Plaintiff is a prisoner at a correctional facility. He brought this action for damages after he was restricted from buying food items in the prison store. Plaintiff claimed that defendants had a duty to stock diabetic food items in the prison store and alleged infliction of mental distress, degradation or humiliation, and violation of state law and the federal constitution. We affirm.

Plaintiff's claim was properly dismissed. The circuit court lacked jurisdiction to decide plaintiff's claims for damages for violation of state and federal due process and equal protection. *Hamilton v Reynolds*, 129 Mich App 375, 378; 341 NW2d 152 (1983). MCL 600.6419; MSA 27A.6419. Moreover, state officials who are sued in their official capacity are not persons within the meaning of 42 USC 1983. *Will v Michigan Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). Under the circumstances of this case, declaratory relief was not available to plaintiff. MCL 24.264; MSA 3.560(164).

There is no merit to defendant's claim that he was denied a hearing. It is apparent from the record that plaintiff was given notice of a hearing and was allowed to submit a lengthy statement. Allowing plaintiff to buy food items was jeopardizing his safety because of plaintiff's noncompliance with his diabetic diet, and plaintiff's store privileges were properly restricted at his physician's request. 1989 AACS R 791.4405(8)(b); MDOC policy directive 04.05.120 (formerly PD-BCF-60.01).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Finally, neither the restriction nor the failure to stock diabetic items in the prison store constituted a violation of equal protection under the federal constitution. The record shows that the prison store committee made a business decision to discontinue diabetic candy because of low sales, and that the committee received no requests to stock diabetic items.

Affirmed.

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra

/s/ Charles H. Stark