

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY L. BOSWELL

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

June 7, 1996

No. 179593

LC No. 93-076226-CZ

Before: Hoekstra, P.J., and Saad and S. J. Latreille, JJ*.

MEMORANDUM.

Plaintiff, a prisoner at the Ionia Maximum Correctional Facility (IMCF) in Ionia, brought this action under 42 USC § 1983, alleging constitutional violations and seeking money damages, declaratory and injunctive relief. The trial court dismissed his case pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction). We affirm.

Although plaintiff's pleadings and brief are not clearly set forth, he is essentially challenging defendant's refusal to give him unlimited free postage in order to send mail to several courts. However, as the trial court noted, a class action raising this and other issues remains pending against defendant in Ingham County (*Cain v Dep't of Corrections*, Ingham Circuit Court No. 88-61119-CZ). There is no evidence that plaintiff opted out of that action, and thus we conclude that his current challenge to the stamp distribution was appropriately dismissed.

Defendant also raises for the first time on appeal, a challenge to defendant's directive on indigency status. However, because this issue was not raised below, we need not address it here. *In re Forfeiture of \$19,250*, 209 Mich App 20, 32; 530 NW2d 759 (1995).

Affirmed.

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

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Stanley J. Latreille