

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY L. BOSWELL,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

June 18, 1996

Nos. 177162, 180113

LC No. 93-75709-CZ

94-77613-CZ

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

MEMORANDUM.

Plaintiff was incarcerated in the Ionia Maximum Correctional Facility in 1993, and the Alger Maximum Correctional Facility in 1994. His consolidated appeals arise out of challenges he made at each facility to the Michigan Department of Corrections' (MDOC) practice of opening mail addressed to plaintiff from the Michigan Attorney General, outside of plaintiff's presence. Although the Ionia case was initially filed in state court, it was later removed to federal court, and still later remanded for consideration of the state-law claims only. The Ionia trial court granted summary disposition on these state law claims in favor of the MDOC (without specifying the basis). In the Alger case, which appears to contain both state and federal claims, the trial court granted summary disposition against plaintiff due to the res judicata effect of the decision in the Ionia case. Plaintiff appeals of right from both decisions, which were consolidated. We affirm.

After careful consideration of the record and issues presented, we find no error. Although we are mindful of the federal court's decisions interpreting 42 USC § 1983 in this area, see e.g., *Muhammad v Pitcher*, 35 F3d 1081 (CA6, 1994), there is no prohibition in state law against opening mail from the Attorney General of Michigan and inspecting it for contraband outside the presence of the inmate. Thus, the Ionia court did not err in dismissing that matter. Similarly, since the state-law issues had recently been determined, and the federal courts were still litigating the federal constitutional issues, the Alger court's decision was correct in every respect.

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

Affirmed.

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