

STATE OF MICHIGAN
COURT OF APPEALS

MORRIS MARTIN,

Plaintiff–Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant–Appellee.

UNPUBLISHED

September 17, 1996

No. 186566

LC No. 95-032545-CZ

Before: MacKenzie, P.J., and Markey and J.M. Batzer*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s orders granting defendant’s motion for summary disposition and sanctioning plaintiff for filing a frivolous claim. We affirm.

Plaintiff, a prisoner at the Muskegon Correctional Facility, was cited for a minor misconduct. Marcia Lang, a counselor at defendant’s facility, conducted a hearing concerning this violation, and she determined that plaintiff was guilty as charged. Plaintiff appealed this determination, and Robert Forberg, assistant deputy warden for the facility, affirmed it. Plaintiff subsequently filed an action under 42 USC 1983 against Lang and Forberg seeking damages for a violation of his civil rights. Plaintiff alleged that Lang and Forberg’s actions violated his due process rights and a created liberty interest. The trial court granted summary disposition in favor of defendant under MCR 2.116(C)(8), and granted its motion for sanctions.

On appeal, plaintiff argues that the trial court erred when it granted summary disposition in defendant’s favor under MCR 2.116(C)(8). This Court reviews de novo as a question of law a trial court’s determination concerning a motion for summary disposition. *Parcher v Detroit Edison Co*, 209 Mich App 495, 497; 531 NW2d 724 (1995). Generally, a motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by looking to the pleadings alone, and such a motion cannot be supported with documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations within the complaint, as well as reasonable inferences and conclusions that may be

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

drawn from those allegations, are accepted as true. *Marcelletti v Bathani*, 198 Mich App 655, 658; 500 NW2d 124 (1993). A motion under MCR 2.116(C)(8) should only be granted when the plaintiff's claim is so unenforceable as a matter of law that the plaintiff cannot develop facts that could possibly justify a right to recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

Here, plaintiff pleaded an action under 42 USC 1983 for damages resulting from the deprivation of his civil rights. In order for plaintiff's complaint to be found legally sufficient, the following factors must be found:

- (1) whether a liberty or property interest exists which the state has interfered with, and
- (2) whether the procedures attendant upon the deprivation were constitutionally sufficient. [*Jordan v Jarvis*, 200 Mich App 445, 448; 505 NW2d 279 (1993).]

As to the first element, plaintiff alleged that the actions of defendant's employees violated his right to procedural due process because the hearing in question infringed his "created liberty interest" in prison rules and policy directives. This Court has recently rejected plaintiff's proffered "created liberty interest" and opined:

We believe it necessary to point out that although the applicable prison rules and policy directive provide for an administrative hearing prior to discipline, thus eliminating unbridled discretion by prison employees or officials, this by itself does not create a liberty interest or due process right. [*Martin v Stine*, 214 Mich App 403, 417; 542 NW2d 884 (1995).]

Furthermore, our review of the record shows that defendant afforded plaintiff all the constitutionally sufficient procedures to which he was entitled. Because no liberty interest can be found and plaintiff was afforded due process, we conclude that the trial court did not err in granting summary disposition in defendant's favor. *Wade, supra* at 163.

Plaintiff also argues that the trial court erred in ordering him to pay costs and attorney fees without making a determination whether he has the ability to pay the sanctions, as required by *Sales v Marshall*, 873 F2d 115, 120 (CA 6, 1989). This Court is not bound by the precedent of federal courts. *Lee v Nat'l Union Fire Ins Co*, 207 Mich App 323, 328; 523 NW2d 900 (1994). In addition, under Michigan jurisprudence, such a finding is only required when the prisoner in question is challenging the propriety of his conviction. *People v Herrera (On Remand)*, 204 Mich App 333, 339; 514 NW2d 543 (1994). Because plaintiff does not fall within this class of prisoners, he is still liable for the sanctions in question as long as they are appropriate. *Wells v Dep't of Corrections*, 447 Mich 415, 420; 523 NW2d 217 (1994).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer