STATE OF MICHIGAN

COURT OF APPEALS

JEFFERY ALAN JOHNSON

Plaintiff-Appellant,

v

PAROLE BOARD,

Defendant-Appellee.

UNPUBLISHED
December 20, 1996

No. 189026
LC No. 95-080319-AW

Before: Holbrook, Jr., P.J., and White and A.T. Davis, Jr.,* JJ.

PER CURIAM.

Plaintiff, a prison inmate, appeals by right the trial court's grant of defendant's summary disposition motion under MCR 2.116(C)(8), dismissing plaintiff's writ of mandamus seeking to compel defendant to provide thirty days notice of and a parole consideration interview. The trial court found that defendant had no legal duty to act in the manner plaintiff sought, nor did plaintiff have a clear legal right to such performance, making mandamus improper. We affirm.

MCL 791.235; MSA 28.2305 provides in relevant part:

> (1) The release of a prisoner on parole shall be granted solely upon the initiative of the parole board. . . . Except as provided in subsection (2), a prisoner shall not be denied parole without an interview before 1 member of the parole board. The interview shall be conducted at least 1 month before the expiration of the prisoner's minimum sentence . . . .
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> * * *
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> (7) At least 90 days before the expiration of the prisoner's minimum sentence . . . or the expiration of a 12 month continuance for any prisoner, a parole eligibility report shall be prepared by appropriate institutional staff. . . .

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

Thus, the statutory requirement for a parole board *interview* is only at the point that a prisoner's minimum sentence is concluding. Plaintiff acknowledges that he received this interview, resulting in a twelve-month continuance. At the expiration of a continuance, the statute provides for the preparation of a parole eligibility *report*, not an interview. Thus, the trial court correctly concluded that defendant had no statutory duty to provide an interview.

Plaintiff also relies on 1979 AC, R 791.7710(c), which states that, if a parole release is denied, the parole board shall furnish the prisoner written notice "setting a new hearing date, to be no more than 12 months from the minimum eligibility date or previous pass-over date." Plaintiff asserts that this rule entitles him to a parole release interview annually. However, the 1979 version of the rule was superseded by 1988 AACS, R 791.7710, which provides in relevant part that, "[i]f a prisoner is denied parole at his or her minimum parole eligibility date, written notice shall be provided to the prisoner of his or her next parole consideration date, as determined by the parole board." The trial court relied on this version of the rule in concluding that the scheduling of subsequent parole release interviews was at the parole board's discretion. Plaintiff argues that the trial court's reliance was misplaced, asserting MCL 24.207(k); MSA 3.560(107)(k) makes 1988 AACS, R 791.7710 inapplicable and requires application of 1979 AC, R 791.7710. MCL 24.207(k); MSA 3.560(107)(k) provides that the following is excluded from the definition of an administrative rule:

> Unless another statute requires a rule to be promulgated under this act, a rule or policy that only concerns the inmates of a state correctional facility and does not directly affect other members of the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. . . .

Plaintiff reasons that because 1979 AC, R 791.7710 was promulgated before December 4, 1986, it could not be amended, making the 1988 change nugatory. We reject this argument. First, nothing indicates that the 1988 AC, R 791.7710 amended, rather than superseded, 1979 AC, R 791.7710. MCL 791.206; MSA 28.2276 provides the Department of Corrections with the authority to promulgate rules controlling the manner in which paroles are considered. Under this authority, 1988 AC, R 791.7710 was promulgated, giving it the force and effect of law. Replacing the earlier rule with the new version implicitly rescinded the earlier one. Thus, the trial court properly applied the more current rule, making the scheduling of subsequent parole hearings discretionary and, thus, not the proper object of mandamus. *Musselman v Governor*, 448 Mich 503, 521; 533 NW2d 237 (1995), aff'd on rehearing 450 Mich 574; 545 NW2d 346 (1996).

Plaintiff also argues that his motion for summary disposition should have been granted because defendant's pleading was defective. Plaintiff asserts that the court improperly corrected an erroneous case number on the caption of defendant's motion and that this violated MCL 600.2325; MSA 27A.2325, which provides that "[n]o process, pleading or record, shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or of some other court of competent jurisdiction." Without cite to any authority to support this claim, plaintiff merely asserts that the court, rather than defendant itself, corrected the pleading. Although in general, original

files ought not be altered, imperfections in pleadings that do not alter the issue between the parties and do not prejudice the parties are not a proper basis for vacating a judgment. MCL 600.2315; MSA 27A.2315; MCL 600.2321; MSA 27A.2321. Nothing in the record before this Court indicates that plaintiff was prejudiced or misled by defendant's flawed caption, which likely was corrected upon filing.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Alton T. Davis, Jr.