

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STANLEY L. BOSWELL,

Plaintiff-Appellant,

v

PATRICK HAYES, GERALD GREER, and  
KENNETH MCGINNIS, Individually, and  
MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

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UNPUBLISHED

August 2, 1996

No. 173767

LC No. 93-73811-CZ

Before: White, P.J, and Fitzgerald, and E.M. Thomas,\* JJ.

PER CURIAM.

Plaintiff, appeals the circuit court's dismissal of his civil rights action alleging constitutional violations. We affirm.

Plaintiff received a package containing a book from Kroch & Brentano's, Inc., a bookstore<sup>1</sup> in Chicago, Illinois, while an inmate at Ionia Correctional Facility. Prison officers rejected the package because the book was not ordered through an authorized vendor. On January 25, 1993, plaintiff filed a complaint entitled "Civil Rights Complaint 42 USC 1983," alleging that defendants' actions in refusing to deliver the book to him violated Michigan Department of Corrections (MDOC) rules and postal laws. The complaint further alleged that defendants' actions were taken under an invalid policy directive.

Plaintiff's complaint alleged three causes of action: due process violations under the Fourteenth Amendment; denial of First and Fourteenth Amendment rights; and violation of state law. The three individual defendants were MDOC employees: Gerald Greer, resident unit manager; Patrick Hayes, corrections officer; and Kenneth McGinnis, director of MDOC. The complaint alleged that defendants acted under color of law to violate plaintiff's rights.

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

Defendants moved for summary disposition under MCR 2.116(C)(8), arguing that plaintiff's failure to exhaust administrative remedies rendered the circuit court without jurisdiction. It was further argued that McGinnis could not be liable under 42 USC 1983 because plaintiff failed to show any direct involvement by McGinnis in the actions that formed the basis of the complaint.

Plaintiff moved for summary disposition as to defendants' liability. The trial court dismissed plaintiff's complaint in its entirety on the basis that the prison policy excluding books other than those sent by authorized vendors had a legitimate and neutral objective and withstood constitutional challenge.

Plaintiff argues that MDOC's policy directive allowing individual corrections officers to determine which material is excludable and excluding books solely because they are not sent by an authorized vendor violates plaintiff's free speech and due process rights.

MDOC policy directive 05.03.118 became effective March 19, 1985, and superseded PD-BCF-63.03. The directive sets forth MDOC's guidelines for all correctional institutions regarding the mail rights of prisoners. The directive includes a list of prohibited materials prisoners "shall not be allowed to receive . . . as they are considered to be a threat to the order and security of an institution or to the rehabilitation of prisoners." 05.03.118(N). Prohibited materials include "Material received from sources other than directly from authorized vendors or publishers." 05.03.118(N)(6). The Administrative Hearing Report in the lower court record, dated July 15, 1992, states that this is the reason the book was not delivered to plaintiff: "PD-BCF-63.03, books may be received directly from the publisher or from an authorized vendor. Kroch and Brentano's is not a publisher or an authorized vendor."

The current policy directive further provides that if staff believes that mail to a prisoner violates the guidelines, a hearing shall be promptly held to determine whether the mail meets the criteria for an excluded item or publication. 05.03.118(O). If the hearing upholds exclusion of a publication, a copy of the hearing report and the publication are submitted to the Deputy Director of the Bureau of Correctional Facilities (BCF) for a final determination. 05.03.118(P).

Plaintiff attached the administrative hearing report to his motion for summary disposition, which shows that a hearing was held in conformity with 05.03.118(O). It is unclear from the record whether the BCF director reviewed the matter. However, plaintiff did not assert that the policy directive was not complied with. Rather, plaintiff argues the directive itself is unconstitutional and illegal, or was misapplied in this case.

In determining whether a policy restricting publications prisoners may receive is facially constitutional, a court must consider whether it is reasonably related to legitimate penological interests. *Thornburgh v Abbott*, 490 US 401, 404; 109 S Ct 1874; 104 L Ed 2d 459 (1989). The Supreme Court has upheld policies limiting incoming books to those received from authorized sources on the basis that the purpose of such policies is to reduce "the administrative difficulties posed by the necessity of carefully inspecting each book mailed from unidentified sources." *Bell v Wolfish*, 441 US 520, 551;

99 S Ct 1861; 60 L Ed 2d 447 (1979). In *Spruytte v Walters*, 753 F2d 498, 505 (CA 6 1985), the Sixth Circuit reviewed the predecessor rules and directives of those applicable in the instant case in considering a challenge to the prison officials' refusal to allow a prisoner to receive a paperback dictionary mailed to him by his mother. Administrative Rule 791.6603(3) at that time stated in pertinent part:

There is no limit on the amount of incoming mail a resident may receive . . . and all incoming mail shall be opened and inspected for money and contraband prior to delivery to the addressee. . . . A resident may receive any book . . . which does not present a threat to the order or security of the institution or to resident rehabilitation. [*Id.* at 505.]

Prison officials did not find that the book was a security threat, but excluded it under MDOC policy directive PD-BCF-63.03 because it did not come from an authorized vendor or publisher. *Id.* at 501. The Sixth Circuit held that the policy directive was invalid as it purported to restrict prisoners' access to an entire category of publications and was thus not a legitimate interpretation of Administrative Rule 791.6603, which by its terms required officials to determine that an individual book posed a threat to security. *Id.* at 505. The *Spruytte* court noted:

. . . the Supreme Court has held that the purpose of a publisher-only rule is to reduce 'the administrative difficulties posed by the necessity of carefully inspecting each book mailed from unidentified sources. [citing *Bell*, 441 US at 551.] The publisher-only rule of Policy Directive PD-BCF-63.03 is an administrative technique that is designed to obviate the need for 'carefully inspecting each book,' but such careful inspection is precisely what is mandated by Administrative Rule 791.6603(3). [*Id.* at 505.]

The Court noted that the drafters of the rule could have included an authorized vendor or publisher only rule had they wanted one, but instead drafted a rule requiring careful inspection.

The conflict between the Administrative Rule and the policy directive was remedied in 1989, when the rule was changed to provide that prisoners may receive any book "which is sent directly by the publisher or other authorized retail outlet. . ." 1989 AACS R 791.6603(3)(effective January 2, 1990). Thus, we conclude the ruling and policy directive is constitutional and plaintiff's rights were not violated. Further, plaintiff has provided no support for his assertion that the book was sent directly from the publisher.<sup>2</sup>

We conclude that plaintiff's case was properly dismissed.

Affirmed.

/s/ Helene N. White

/s/ E. Thomas Fitzgerald

/s/ Edward M. Thomas

<sup>1</sup> A stub from Kroch's & Brentano's is in the lower court record. Beneath the company's logo is the following statement "THE FULL SERVICE BOOKSTORES." Although plaintiff appears to assert that the book was sent by the publisher, there is no indication in the record that Kroch's is a publisher.

<sup>2</sup> We note that the rule was further changed in 1993 to state:

(3) Subject to the limitations of this rule, a prisoner may receive any printed, typed, or handwritten items that are transmitted through the United States postal service . . . All incoming mail shall be opened and inspected for money and contraband before delivery to the addressee. . . Subject to the limitations of this rule, a prisoner may receive any book . . . if it is sent directly from a publisher or retail outlet that is authorized by the institution head . . . [1993 AACS R 791.6603(3).]