

Circuit Court for Allegany County
Case No. 01-C-16-043599

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 801

September Term, 2017

RAYMOND CARTER,

v.

SECRETARY, DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONAL SERVICES

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: July 12, 2019

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises from a judicial review in the Circuit Court for Allegany County affirming the decision of an Administrative Law Judge (“ALJ”). Appellant, Raymond Carter alleged in a grievance filed with the Inmate Grievance Office (“IGO”) that appellee, the Secretary of the Department of Public Safety and Correctional Services (the “Secretary”), was responsible for his property that was lost or damaged during a transfer from a Florida correctional facility back to a Maryland correctional facility. The ALJ found otherwise, dismissing appellant’s grievance, and appellant filed a petition for judicial review. The circuit court affirmed the ALJ’s decision. Thereafter, appellant filed an application for leave to appeal, which was granted, and presents the following question for our review:

1. Did the Administrative Law Judge err in concluding that the Division of Correction “is not responsible for Carter’s property losses?”

For reasons to follow, we affirm.

BACKGROUND

Appellant is a prisoner confined to the North Branch Correctional Institution (“NBCI”) in Maryland, an institution of the Division of Correction (“DOC”).¹ In August 2013, appellant was transferred from the Western Correctional Institution,² a facility in Maryland, to a correctional institution in Florida pursuant to the Interstate Corrections Compact (the “ICC”).

¹ The Division of Correction is within the Department of Public Safety and Correctional Services. *See* Md. Code of Corr. Serv. § 3-201.

² Western Correctional Institution is a DOC facility.

Appellant maintains his personal property was “inventoried, packed, and shipped with [him] to Florida.” In March 2015, appellant was transferred back to Maryland and housed at NBCI, where he currently remains. Appellant claims his property was packed prior to his departure from Florida, however certain items were not sent to him in Maryland or arrived damaged. Specifically, appellant alleges he is missing “clothing, legal papers, and [a] TV.” Appellant claims to have received a box of items at NBCI on May 21, 2015 containing “a comb, nail clipper, a cup, a bowl, a soap dish, a combination lock, one book, and dominoes,” and a second box on August 6, 2015 containing appellant’s “ripped up” legal transcript, “a broken radio and headphones.”

On May 5, 2015, appellant submitted a request for administrative remedy with the warden of NBCI through the Administrative Remedy Procedure process, which was denied. Thereafter, appellant appealed to the Commissioner of Correction, and his appeal was dismissed and denied. Appellant then filed a grievance with the IGO on June 22, 2015, asserting it was “the responsibility of the Department of Public Safety and Correctional Services, both ICC offices, and [the Florida correctional institution] to make sure [his] property was handle[d] with care since they packed [him] up on the 24th of March 2015.”

On October 12, 2015, a hearing was held before an ALJ, during which appellant presented evidence and arguments. In its written decision issued January 12, 2016, the ALJ found, “Grievant does not claim that any DOC employee or official was involved in any way in the loss of certain items of property and money (or damage to other items) that he possessed while incarcerated in Florida.” In response to appellant’s argument that

pursuant to the terms of the ICC he remained “subject to the jurisdiction” of Maryland while he was physically in Florida, and thus, Maryland is responsible for his lost and damaged property, the ALJ stated, “it is simply nonsensical to conclude that such ‘jurisdiction’ includes responsibility for property loss or damage committed by Florida staff or officials.” The ALJ concluded “[the] DOC is not responsible for [appellant’s] losses; his dispute is properly with Florida correctional authorities, not with Maryland DOC.” The grievance was dismissed.

Appellant then filed a petition for judicial review in the Circuit Court for Allegany County. After a hearing on the matter, the circuit court affirmed the decision of the ALJ. Appellant’s application for leave to appeal was granted by this court on May 3, 2018.

STANDARD OF REVIEW

When reviewing the decision of an administrative agency, we review the agency’s decision, not the circuit court’s decision. *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008) (citation omitted). Primarily, our goal is to “determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Md. Dep’t of the Env’t v. Ives*, 136 Md. App. 581, 585 (2001) (citation omitted). “We apply a limited standard of review and will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists.” *Long Green Valley Ass’n v. Prigel Family Creamery*, 206 Md. App. 264, 274 (2012) (internal quotations omitted).

DISCUSSION

I. The Administrative Law Judge did not err in denying and dismissing appellant’s grievance.

Appellant argues the Maryland DOC is responsible for his personal property that was either lost or damaged during a transfer from a Florida correctional facility to a Maryland correctional facility. Specifically, appellant claims that pursuant to the ICC he “was subject to the jurisdiction [of the Maryland DOC] at all time[s], and thus, the Maryland DOC was and is responsible for [a]ppellant, [which] includes his property.” Conversely, the Secretary asserts that the ALJ properly determined that the Maryland DOC is not responsible for appellant’s property losses.

In Maryland, when a grievance involves lost or damaged inmate property, the grievant bears the burden of proof by a preponderance of the evidence to establish:

1. That the property was lost, damaged, stolen, destroyed, or improperly confiscated through the negligence or other wrongful act or omission of an employee or official of the Division or the Patuxent Institution;
2. That an employee or official of the Division or the Patuxent Institution failed to comply with institutional rules governing disposition of confiscated property;
3. That the grievant complied with all institutional rules governing inmate disposition of confiscated property;
4. That the grievant was the owner of the property at the time of the alleged loss, damage, theft, destruction, or confiscation; and
5. The fair value of the property at the time of the alleged loss, damage, theft, destruction, or confiscation.

COMAR 12.07.01.09(C)

Here, the ALJ found that “the grievant does not claim that any DOC employee or official was involved in any way in the loss of certain items of property and money (or damage to other items) that he possessed while incarcerated in Florida.” It was further

undisputed that Florida correctional personnel were in exclusive control of inventorying, packing, and shipping appellant's property. As a result, the ALJ concluded that appellant's property was not lost, damaged, or stolen by a Maryland DOC employee or official, or that such an employee or official failed to comply with institutional rules, and thus, he was not entitled to relief.

Appellant argued below, as he does here, that pursuant to Md. Code Corr. Serv. § 8-605(c), "inmates confined in an institution pursuant to the terms of [the ICC] shall at all times be subject to the jurisdiction of the sending state," and therefore, he remained "subject to the jurisdiction [of Maryland] at all times." He contends that "under the ICC contract Florida staff acted as agents of the [Maryland] DOC." Based on these arguments, appellant claimed the Maryland DOC was continually responsible for him and his property.

Addressing this argument, the ALJ stated:

While Maryland (the sending state) retains jurisdiction for all legal purposes such as appeals, sentence revisions, parole or probation considerations, calculations of release dates, etc., it is simply nonsensical to conclude that such "jurisdiction" includes responsibility for property loss or damage committed by Florida staff or officials. The language of COMAR 12.07.01.09C(1) is perfectly clear—a grievant may prevail in a property grievance *only* if the Grievant proves that "the property was lost, damaged, stolen, destroyed, or improperly confiscated through the negligence or other wrongful act or omission of an employee or official of the [DOC]." Although I found the Grievant credible on the issues of whether all his property and funds had been returned from Florida (and whether some of the property returned was damaged), DOC is not responsible for his losses; his dispute is properly with Florida correctional authorities, not with Maryland DOC. Therefore, the grievance must be dismissed.

We agree. In our view there was substantial evidence in the record to support the ALJ's factual findings regarding the Maryland DOC's role in the loss of appellant's

property. Further, the ALJ did not err as a matter of law when he determined that the jurisdiction of the Maryland DOC is for legal purposes and does not extend to appellant's claim.

The ICC also provides no remedy for appellant, as it does not create an agency relationship between the sending and receiving state regarding inmate property issues. The sections of the ICC that address when an agency relationship is established between the sending and receiving state are §§ 8-605(a) and (f). Section 8-605(a) provides that:

Whenever the duly constituted authorities in a state party to this Compact, and which has entered into a contract . . . , shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary . . . the officials may direct that the confinement be within an institution within the territory of the other party state, *the receiving state to act in that regard solely as agent for the sending state.*

Md. Code Corr. Serv. § 8-605(a) (emphasis added). Section 8-605(f) provides:

Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities . . . of the receiving state The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state In any and all proceedings had pursuant to the provisions of this section, *the officials of the receiving state shall act solely as agents of the sending state.*

Id. at (f) (emphasis added). Neither section establishes an agency relationship between Florida and Maryland that would render Maryland responsible for appellant's property loss or damage in Florida.

The terms of the ICC contract between Florida and Maryland do not address inmate property. The contract does state, "it shall be the responsibility of the receiving State

[(Florida)] to defend against any cause of action which may accrue to the inmate, in and through the fault of the receiving State,” therefore it is the responsibility of Florida to defend against appellant’s grievance. As such, the ALJ correctly determined that appellant’s dispute is appropriately with Florida correctional authorities, not with the Maryland DOC.

Appellant finally claims that as a result of his transfer and current confinement in Maryland, he is being denied access to the Florida courts, and thus, he cannot pursue his grievance there. Specifically, appellant claims “it would further be nonsensical to find [his] claim lies with the receiving state’s (Florida) jurisdiction, when [he] is now housed back in Maryland. [Unless] Maryland is going to transport [him] to court in Florida, then [he] is being denied access to the courts, which of course would raise constitutional issues.” In response, the Secretary asserts that appellant has not alleged any constitutional basis for relief. We agree.

It is well established that “prisoners have a constitutional right of access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 821 (1977). “[T]he pertinent inquiry is whether adequate, effective and meaningful access to the courts has been provided.” *Secretary, Dept. of Public Safety and Correctional Services v. Allen*, 286 Md. 133, 139 (1979). However, meaningful access is to be “distinguished from unrestricted or unlimited access.” *Id.*

In *Lewis v. Casey*, the Supreme Court held that to prevail on an access to courts claim, an inmate must prove “actual injury.” 518 U.S. 343, 353 (1996). Thus, an inmate

must “demonstrate that a nonfrivolous legal claim had been frustrated” or “impeded.” *Id.* at 353 (footnotes omitted). An inmate is required to establish he or she has been deprived some specific opportunity to litigate a claim challenging the inmate’s conviction or the conditions of his confinement in a court of law. *Id.* at 351. The inmate must articulate how some specific injury resulted from the alleged lost opportunity to litigate, otherwise the alleged injuries are merely speculative. *Id.*

We hold appellant’s denial of access to the courts claim is without merit, as he has failed to allege any specific action taken by the Maryland DOC that has hindered his opportunity to pursue his grievance in Florida. It appears appellant is arguing that simply because he was transferred back to Maryland and is currently confined there, he is being denied access. However, without an allegation of actual injury, we cannot presume that being confined in a correctional facility—the very nature of being an inmate—equates to being denied access to the courts. Appellant fails to point to any specific facts that show the Maryland DOC has blocked his access to the Florida judicial system or has impeded his grievance against Florida. To the contrary, the record reflects that appellant admittedly “filed a grievance [in] Florida” and “sent a number of letters to Florida,” and that the Maryland DOC made several attempts to assist him in recovering his property from Florida.

**JUDGMENT OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**