

Circuit Court for Allegany County
Case No.: 01-C-17-045006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1881

September Term, 2017

STEVEN E. TARPLEY

v.

FRANK B. BISHOP, JR., *et al.*

Wright,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 30, 2019

*This is an unreported opinion, and it 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.

Steven Tarpley, a former inmate at North Branch Correctional Institute, filed a civil complaint in the Circuit Court for Allegheny County against several individuals, including the warden, Frank Bishop, and several correctional officers, the appellees herein.^{1,2} The appellees filed a motion to dismiss or for summary judgment based on (1) failure to state a claim; (2) failure to exhaust administrative remedies; and (3) immunity as State actors. The court summarily granted the motion without a hearing and entered judgment in favor of appellees “as to all claims.” Mr. Tarpley appeals and presents two questions for our review, which we quote:

I. Did the lower court err in granting summary judgment on the grounds appellant failed to exhaust all administrative remedies?

II. Did the lower court err in finding that defendants are immune from liability as state personnel?

Because we hold that Mr. Tarpley had failed to exhaust administrative remedies, we affirm.

BACKGROUND

On March 20, 2016, correctional officers brought inmate Defone Canty to Mr. Tarpley’s cell to be his new cell mate. Mr. Tarpley claims that rooming with Mr. Canty was against the prison’s policy and directive because Mr. Canty was a “maximum security level II” inmate while Mr. Tarpley was a “maximum security level I” inmate. A few days

¹ The names of the other appellees are Christopher Anderson, William Bohrer, John Doe, Timothy Harris, Steven J. Miller Jr., Jeffery A. Nines, and Bradley A. Wilt.

² The appellees assert that Mr. Tarpley was released from prison in October 2018.

later, Mr. Tarpley and Mr. Canty got into an altercation. Mr. Tarpley submitted a request slip to be moved to another cell, but he was not immediately moved.

The next day, Mr. Tarpley claims that Mr. Canty “snatched” him from his bunk while he was sleeping and slammed him on the concrete floor causing the back of his head to bleed. Then, in an attempt to get officers to move him from his cell, for several hours Mr. Tarpley held his arm out of the food slot, violating prison rules, until an officer moved him to a “contingency cell” for the weekend and then to an open cell that Monday. Mr. Tarpley claims that over the weekend he was not provided medical attention or any hygiene products. When seen by a nurse on Monday, he claims he had a large bruise on the back of his head and was given medication for his headaches. Tarpley then filed a Request for Administrative Remedies with the prison warden, alleging that the officers breached prison policy by assigning Mr. Canty to room with him, not moving him immediately after the alleged assault, and not providing him with prompt medical attention.

His request was dismissed after an investigation revealed that Mr. Tarpley had demanded to be moved because he was “not getting along with his cellmate,” that he had never alleged an assault, and he did not appear to have been assaulted or injured. The investigation concluded that he was moved temporarily for the weekend, and then again on Monday, “without incident.” Mr. Tarpley appealed the warden’s decision to the Commissioner of the Department of Corrections, who also dismissed for essentially the same reasons.

Mr. Tarpley claims he then, in June of 2016, mailed a grievance to the Executive Director of the Inmate Grievance Office (IGO). After learning that the IGO never received

his grievance, Mr. Tarpley claims he mailed it again, in October of 2016, but nothing resulted. It appears he did not pursue the matter further with the IGO.

In January 2017, Mr. Tarpley filed a civil complaint against the appellees. The appellees filed a motion to dismiss or for summary judgment, which included an affidavit from the custodian of records at the IGO attesting that the IGO had never received a grievance from Mr. Tarpley concerning this incident. As noted, the circuit court granted the appellees' motion and entered judgment in their favor.

DISCUSSION

Mr. Tarpley contends that, because he mailed his grievance to the Executive Director of the IGO, he did all that was required to exhaust his administrative remedies. He asserts that, because there is a factual dispute regarding his claim that he properly mailed the grievance to the IGO and the IGO's affidavit that it never received his grievance, summary judgment was not appropriate. He also contends that the officers were not immune from liability because their actions constituted gross negligence.

Section 5-1003 of the Courts and Judicial Proceedings Article provides that a court shall dismiss a civil action if the prisoner filing the action has not completely exhausted administrative remedies, including any available proceedings for judicial review. Administrative remedies include procedures under the Administrative Procedure Act and the Inmate Grievance Office. Cts. & Jud. Proc. § 5-1001(b)(2).

We review the granting of summary judgment and motions to dismiss under the legally correct standard, first determining, for summary judgment, whether there were disputes of material facts. *See Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013) and

Schisler v. State, 177 Md. App. 731, 742 (2007). Mr. Tarpley claims that the disputed material fact is his contention that he properly mailed the grievance versus the IGO’s affidavit that it never received it. He argues that he needed only to “place the grievance and related items in a sealed envelope and address it to the [IGO]” in order to comply with COMAR 12.07.01.04C, which provides the procedure for filing grievances. However, whether or not Mr. Tarpley filed his grievance correctly, it is undisputed that Mr. Tarpley failed to pursue this matter with the IGO “to completion” as required by Section 5-1003 of the Courts and Judicial Proceedings Article. Although he claims he twice mailed a grievance to the IGO, he did not follow up when the matter was not addressed and did not receive a final disposition.

Mr. Tarpley also claims that, because his grievance did not reach the IGO, the officers must have been preventing him from accessing the prison grievance system. However, there are no facts to support this allegation. As the appellees point out, “none of the appellees were associated with the IGO and none of the appellees are alleged to have been in the mail room or otherwise confiscated his alleged IGO paperwork.”

In sum, there is no dispute that Mr. Tarpley failed to exhaust administrative remedies and, therefore, the circuit court did not err in granting the appellees’ motion.

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