UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2728

September Term, 2014

CHRISTOPHER McCANN

v.

SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.

Filed: July 21, 2016

In this appeal, Appellant, Christopher McCann ("McCann"), challenges the Circuit Court's denial of his motion for a preliminary injunction pending the resolution of his administrative appeal. In his administrative appeal, McCann challenges the conditions of his confinement imposed on him by the Appellee, the Secretary of the Department of Public Safety and Correctional Services ("DPSCS"). On appeal, McCann presents one question for our review,[1] which we have rephrased as follows:

> Whether the circuit court erred by denying McCann's motion for an injunction to change his classification status pending the outcome of his administrative appeal.

For the reasons set forth herein, we shall affirm the judgment of the Circuit Court for Allegany County.

FACTS AND PROCEEDINGS

On October 3, 2013, McCann, an inmate confined at the North Branch Correctional Institution ("NBCI"), submitted a request for an administrative remedy to the warden of the institution. In his grievance, McCann complained of the conditions of his confinement. Specifically, McCann complained of his assignment to a housing unit where he enjoys fewer privileges than inmates housed elsewhere, his lack of a job assignment and adequate recreation time, and his subjection to "a 'levels' system that [DPSCS] shifted to a 'max 1' and 'max 2' system without following proper administrative procedures."

[1] The issue, as presented by McCann, is:

> Did [the] judge err by denying [a] stay/injunction.

On August 8, 2014, upon considering McCann's grievance and after a hearing in which McCann presented his arguments by way of video conference to an administrative law judge ("ALJ") at the office of administrative hearings, the ALJ rendered a decision denying McCann's claim for administrative remedies. Thereafter, on August 27, 2014, McCann filed a petition for judicial review in the circuit court for Allegany County. The circuit court, however, has not yet decided on McCann's petition for judicial review. On January 14, 2015, McCann filed a motion for a preliminary injunction seeking an order removing McCann "from Max II status." On February 5, 2015, the circuit court issued an order denying McCann's motion for a preliminary injunction. Following the denial of McCann's motion, on February 23, 2015, McCann filed a motion to reconsider the denial of his motion for an injunction. McCann simultaneously filed an interlocutory appeal with this Court challenging the circuit court's denial of his injunction.

DISCUSSION

In the instant appeal, McCann contends that the circuit court erred by denying his motion for a preliminary injunction "remov[ing him] from Max II status . . . ." The State, for its part, contends that the provisions of Md. Code (1999, 2008 Repl. Vol., 2015 Suppl.), § 10-201 et seq. of the Correctional Services Article ("CS"), is the exclusive mechanism by which an inmate may challenge the conditions of his or her confinement. Consequently, the State avers that the circuit court lacks jurisdiction to grant the preliminary injunction that McCann sought in this action. We agree with the State.

An injunction is "an order mandating or prohibiting a specified act." Md. Rule 15-501. Moreover, "'[a]n injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.'" *In re Adoption/Guardianship of Dustin R.*, 445 Md. 536, 555 (2015) (quoting *State Comm'n on Human Relations v. Talbot Cnty. Det. Ctr.*, 370 Md. 115, 139 (2002)). The injunction is a tool of equity that is within the scope of the court's inherent powers, *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 684 n.26 (2012), and is "designed to maintain the status quo between parties during the course of litigation." *Eastside Vend Distrib., Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 241 (2006).

A court's use of its inherent equitable authority to issue an injunction is governed by Title 15, Chapter 500 of the Maryland Rules. Under Md. Rule 15-502(b), "the court, at any stage of an action and at the instance of any party or on its own initiative, may grant an injunction upon the terms and conditions justice may require." Moreover, "[a] court may not issue a preliminary injunction without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance." Md. Rule 15-505(a). Finally, "[t]he reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing (2) be specific in terms, and (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited." Md. Rule 15-502(e).

Generally, the injunction is a distinct and separate sort of relief that can be sought on its own or in conjunction with other forms of relief in a civil action. Indeed:

> With the merger of law and equity, *see* Rule 2-301, an injunction may be requested as part of the total relief in a civil action that also includes a demand for money damages, but the injunctive relief itself is issued by the court, not a jury, applying the principles of equity. Injunctive relief may be claimed as the only remedy in a complaint or as one remedy among many, including, for example, claims for damages and declaratory relief.

Paul V. Niemeyer et al., Maryland Rules Commentary 809 (4th ed. 2014).

The availability of equitable injunctive relief, however, has traditionally been limited in the context of incarcerated individuals seeking to enjoin the actions of the executive. Prior to 1971 and the establishment of the Inmate Grievance Commission -- presently called the Inmate Grievance Office as codified in CS § 10-202 -- courts generally employed what came to be known as the "hands-off doctrine." *State v. McCray*, 267 Md. 111, 134 (1972). Under the hands-off doctrine "in this State the courts ha[d] steadfastly refused to review the complaints of persons confined in Patuxent and the various penal institutions, for the reasons that the redress of grievances of the inmates was for the executive branch of government." *Id*. Accordingly, the judiciary's role had traditionally been limited to determining the legality of an inmate's incarceration, and not the conditions of his or her confinement. *See State ex rel. Renner v. Wright*, 188 Md. 189, 192 (1947) ("'The courts have no function to superintend the treatment of prisoners in the penitentiary, but only to deliver from prison

those who are illegally detained there.'" (quoting *Sarshik v. Sanford*, 142 F.2d 676 (5th Cir. 1944))).

As early as 1972 when *McCray* was decided, however, the Court of Appeals recognized that the hands-off doctrine had begun to "erode[]," observing that "we do not close our eyes to the fact that an inmate may suffer deprivations which are not a necessary result of his lawful confinement but rather are attributable to arbitrary and capricious decisions by officials or to unduly restrictive regulations." *McCray*, *supra*, 267 Md. at 138. Indeed, over a decade after *McCray* was decided, the United States Supreme Court articulated that in order for the conditions of an inmate's confinement to be consistent with the Fourteenth Amendment, a prison's regulation must be "reasonably related to a legitimate penological interest." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

To be sure, the standard articulated in *Turner* is highly deferential to authorities of the executive branch. Yet this standard, deferential as it may be, was a significant departure from the hands-off doctrine that effectively precluded judicial review of an inmate's conditions of confinement altogether. Although in *Turner* the Supreme Court articulated a standard for determining when a prison regulation ran afoul of an inmate's substantive rights, it was formerly the General Assembly in 1971 that developed the particular legal vehicle upon which an inmate could mount a challenge to the conditions of his or her confinement. *McCray*, *supra*, 267 Md. at 144 ("The [Inmate Grievance Commission Act] effectively abrogates the hands-off doctrine by providing for judicial review.").

Presently, the procedural vehicle for challenging the conditions of an inmate's confinement in Maryland is articulated in subtitle two of title ten of the Correctional Services Article of the Maryland Code. That subtitle sets forth an administrative procedure under which an inmate may submit a grievance with regard to the conditions of his or her confinement to the Inmate Grievance Office. CS § 10-206. Then, if the grievance is wholly without merit it will be dismissed, CS § 10-207, or a hearing will be held by an ALJ at the Office of Administrative Hearings where the ALJ will render a proposed decision. CS § 10-208. Thereafter, the Secretary of the DPSCS will review the ALJ's decision and take any appropriate action in light of the ALJ's decision. CS § 10-209(c).

Only after a grievant has exhausted the above-described administrative remedy process may he or she seek "judicial review of the final decision of the Secretary under § 10-207(b)(2)(ii) or § 10-209(b)(1)(ii) or (c)(3)(ii) of this subtitle." CS § 10-210(a),(b). Critically, a court has no jurisdiction to "consider an individual's grievance that is within the jurisdiction of the Office of Administrative Hearing unless the individual has exhausted the remedies provided in this subtitle." CS § 10-210(a). Moreover, even when an individual has exhausted their administrative remedies, the scope of judicial review is limited to a "**review** of the final decision of the Secretary." CS § 10-210 (emphasis added).

In this case, in his motion for an injunction McCann does not seek a "review" of the Secretary's decision, but rather McCann asks for the circuit court to exercise original jurisdiction and grant him injunctive relief in the first instance. The subject matter of the

relief he seeks, however,--namely, "a grievance against an official or employee of the Division of Correction," CS § 10-207(a)--"is within the jurisdiction of the [Inmate Grievance] Office." CS § 10-210(a). Accordingly, when the legislature has expressly mandated that any and all requests for relief arising from an inmate's improper conditions of confinement be raised through the administrative procedures set forth in CS § 10-201 et seq., then "redress for the complaints . . . [are] not properly within the ambit of a declaratory or injunctive proceeding." *McCray*, 267 Md. at 146 ("In the light of the passage of the Inmate Grievance Commission Act we find it to have been the legislative intent that prisoners' grievances, even when involving constitutional rights, were not to be the subject of [an injunction[2]]."); *see also, Md. House of Corr. v. Fields*, 348 Md. 245, 259-60 (1997) ("[A] person confined under the custody of the Division of Correction . . . who has *any* grievance or complaint against *any* officials or employees of the Division of Correction . . . must invoke and exhaust the administrative remedy under the Inmate Grievance statute before obtaining an adjudication under an alternative common-law or state statutory judicial remedy." (emphases added) (internal quotations omitted)), *abrogated by Moats v. Scott*, 358 Md. 593 (2000)).

[2] The quoted language in *McCray* provides that inmate grievances "were not to be the subject of Code, Art. 31A or Rules BB70-BB80." *McCray*, *supra*, 267 Md. at 146. Maryland Rule 15-501, which define injunctions, was "adopted effective January 1, 1997, [and] carries forward the definitions from former Maryland Rule BB70 . . ." Niemeyer, *supra*, at 800. Likewise, Md. Rule 15-502 "collects into one place the general provisions on injunctions from former Maryland Rules BB71, 76, 77, 78, and 79 without any significant changes and, in some respects, is derived from Fed. R. Civ. P. 65(d)." *Id.* at 809.

While the provisions CS § 10-201, as well as various other State and Federal developments, have largely abrogated the outdated hands-off doctrine, we still adhere strictly to the principle that an incarcerated individual must exhaust his or her administrative remedies before calling upon the original jurisdiction of the judiciary. Were we not to require strict adherence to the principle of exhaustion mandated by CS § 10-210(a), we would undermine the legislature's directive that inmate grievance matters must be initially handled at the agency level through the procedural construct articulated in CS § 10-201 et seq. We, therefore, hold that an injunction under chapter 500 of title 15 of the Maryland Rules is not an available remedy to redress "a grievance against an official or employee of the Division of Correction." CS § 10-206(a). Accordingly, we affirm the judgment of the Circuit Court of Allegany County.

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