

Case Summary

Jay F. Vermillion is incarcerated at the Westville Correctional Facility. Vermillion was found guilty of a violation of the Disciplinary Code for Adult Offenders (“Disciplinary Code”) and received a sanction of one year of disciplinary segregation. Later, his television was confiscated. Vermillion filed a complaint, alleging that his disciplinary sanction and the confiscation of his television were in violation of Department of Correction (“DOC”) policy. He sought declaratory relief only. The DOC filed a motion to dismiss, arguing that Vermillion cannot obtain declaratory relief from an agency of the State, prison disciplinary proceedings are not subject to judicial review, and proper relief for the loss of his television – if any – is through the Indiana Tort Claims Act.¹ The trial court granted the motion to dismiss on each of the grounds advanced by the DOC. We affirm.

Facts and Procedural History

The following facts are taken from the allegations of Vermillion’s complaint and the supporting documents attached to the complaint. On July 31, 2009, Vermillion was charged with a violation of the Disciplinary Code. On August 12, 2009, the Indiana State Prison Disciplinary Body (“Disciplinary Body”) found him guilty of a class A offense and imposed a sanction of one year of disciplinary segregation. At the time, the DOC apparently was in the process of making comprehensive revisions to the Disciplinary Code. In the meantime,

¹ Both Appellees, the Indiana State Prison Disciplinary Body and the Westville Control Unit, are part of the DOC; therefore, we will refer to them collectively as “the DOC.”

Executive Directive 09-07, effective February 15, 2009, indicated that the maximum allowable disciplinary segregation for a single class A offense was thirty days. Vermillion pursued an administrative appeal of his sanction, and on October 8, 2009, his sanction was reduced to thirty days.

On January 20, 2010, Vermillion's television was confiscated because the casing was black instead of clear. He was informed that the television would be destroyed in sixty days unless he made arrangements for its disposal. On January 21, Vermillion wrote a letter to DOC Policy Manager Michael J. Pavese inquiring whether DOC policy permitted offenders to keep televisions that are not made with clear casing if purchased before the DOC changed its policy to require clear televisions. In a letter dated February 4, 2010, Pavese responded that the correctional facilities had been advised that they were to allow offenders who had purchased televisions prior to the policy change to keep them even if they were not clear. However, Pavese explained that there were certain exceptions: for example, if a television "was confiscated because of the offender's behavior, the offender could be advised that the television would need to [be] disposed of by sending it out of the facility." Appellant's App. at 22. It is not clear from the record whether the confiscation of Vermillion's television was connected with any disciplinary action. While awaiting Pavese's response, Vermillion filed a grievance. The Grievance Response Report attached to the complaint indicates that

Vermillion would receive a “loaner” television for ninety days and would have to purchase a new television after that time.² *Id.* at 23.

Thereafter, Vermillion filed a complaint in the LaPorte Superior Court. The first count outlined the facts relating to his disciplinary action and expressed concern that Executive Directive 09-07 would be misapplied in the future. Vermillion requested a judgment declaring:

- a. That I.D.O.C. Executive Directive # 09-07 dictates the authority of I.D.O.C. Disciplinary Hearing Bodies to impose disciplinary sanctions.
- b. That I.D.O.C. Executive Directive # 09-07, except where otherwise specified therein, sets forth unequivocally that thirty (30) days is the maximum allowable disciplinary segregation sanction that may be imposed for a single Class “A” offense. And,
- c. That the one (1) year disciplinary segregation sanction Plaintiff received on August 12, 2009 was done in violation of clearly established I.D.O.C. policy.

Id. at 5-6 (emphasis in original).

The second count outlined the facts relating to the confiscation of his television. He requested a judgment declaring:

- a. That I.D.O.C. Policy # 02-01-101 includes a “Grandfathering Clause” to the effect that offenders who had purchased black televisions prior to the sale of clear televisions would be allowed to keep them.
- b. That the arbitrary decision of the Westville Control Unit to require the disposition and/or destruction of Plaintiff’s television is contrary to I.D.O.C. Policy. And,
- c. That Plaintiff is legally entitled to have his television returned to him.

² It is not clear from the record whether this was the DOC’s final decision on the disposition of his television.

Id. at 9-10.

On April 5, 2010, Senior Judge Paul J. Baldoni issued an order stating, “[T]he Court now orders this claim docketed, without first receiving filing fee, in order to conduct a review as required by Indiana Code 34-58-1-2.” *Id.* at 25. On May 12, 2010, the Attorney General entered an appearance on the DOC’s behalf and filed a motion to dismiss with a supporting memorandum of law. On May 20, 2010, Judge Jennifer L. Koethe granted the motion to dismiss, citing the following reasons:

The Plaintiff is seeking declaratory relief from an agency of the State of Indiana, which is not permitted pursuant to the Uniform Declaratory Judgments Act. In addition, the declaratory relief requested seeks a determination regarding Department of Correction policies and this is not proper declaratory relief. Plaintiff is also seeking judicial review of prison disciplinary proceedings, which is prohibited. Moreover, the Plaintiff has an adequate remedy at law, namely the Indiana Tort Claims Act, to seek relief regarding the disposition of his television; therefore his injunctive relief requested is not warranted.

Id. at 41. Vermillion now appeals.

Discussion and Decision

Vermillion’s complaint was dismissed pursuant to Indiana Trial Rule 12(B)(6).

Our review of the grant of a motion to dismiss for failure to state a claim is ... de novo. A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. On review, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant’s favor. A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief.

Greer v. Buss, 918 N.E.2d 607, 614 (Ind. Ct. App. 2009) (citations omitted).

Vermillion argues that the court erroneously dismissed his complaint because it did not follow the procedures of Indiana Code Chapter 34-58-1 (“Screening of Offender Litigation”). That chapter requires the trial court to review complaints filed by offenders to determine whether they are frivolous before any other action is taken. Ind. Code §§ 34-58-1-1 and -2. If the trial court determines that the claim may not proceed, it must issue an order explaining why it may not proceed and stating whether there are any claims remaining in the complaint that may proceed. Ind. Code § 34-58-1-3.

It appears that the trial court dismissed Vermillion’s complaint in response to the DOC’s motion to dismiss. Vermillion’s argument, as we understand it, is that until the trial court issued an order pursuant to Chapter 34-58-1, his complaint was not considered filed; therefore, the DOC could not file a motion to dismiss and the trial court not rule on it. We find no merit in his contentions. The chronological case summary clearly shows that Vermillion’s claim was filed and docketed. *See also* Ind. Code § 34-58-1-1 (“Upon receipt of a complaint or petition filed by an offender, the court shall docket the case....”). Although the trial court is required to explain its reasons for not allowing a claim to proceed, nothing in Chapter 34-58-1 requires the court to issue an order when it allows the claim to proceed, which appears to be the case here.

Even assuming that the dismissal was ordered pursuant to Chapter 34-58-1 rather than Trial Rule 12(B)(6), Vermillion makes no argument that Judge Koethe’s order did not comply with the requirements of Chapter 34-58-1. Vermillion seems to suggest that it was improper for Judge Koethe to issue orders in his case because Senior Judge Baldoni issued

the first order in his case. He is incorrect. Administrative Rule 5(B)(4) provides that a senior judge has the same jurisdiction as the presiding judge but only during the days that the senior judge is serving in such court; a senior judge retains jurisdiction in an individual case only on the order of the presiding judge. Judge Koethe did not order Senior Judge Baldoni to retain jurisdiction of Vermillion's case.

We turn now to the merits of the ruling. The trial court ordered dismissal on each of the grounds advanced by the DOC: (1) Vermillion may not seek declaratory relief from a State agency; (2) judicial review of disciplinary proceedings is prohibited; and (3) the Indiana Tort Claims Act provides Vermillion with a legal remedy for the loss of his television.

In *State v. LaRue's*, our supreme court held that the version of the Uniform Declaratory Judgment Act then in effect did not make the State in its sovereign capacity subject to such an action. 239 Ind. 56, 64-65, 154 N.E.2d 708, 712 (1958). In the absence of statutory authority, the State could not be made a defendant to a declaratory action; however, an action may be brought against State officials as individuals in their official capacity. *Id.* The Declaratory Judgment Act has been recodified and amended several times, but we have reaffirmed the rule that the State is not subject to a declaratory judgment action. *See, e.g., Harp v. Ind. Dep't of Highways*, 585 N.E.2d 652, 660-61 (Ind. Ct. App. 1992) (noting the rule that a declaratory action may not be brought against the State, but finding that the Department had waived its argument). Vermillion does not identify anything in the Declaratory Judgment Act that would authorize him to obtain a declaratory judgment against the Disciplinary Body or the Westville Control Unit. Although he argues that he could have

sued individual members of the Disciplinary Body, the fact remains that he did not do so. Therefore, the trial court did not err by dismissing the complaint on the ground that declaratory relief could not be obtained against the defendants.

Alternatively, to the extent Vermillion is seeking judicial review of DOC disciplinary decisions, his complaint was also properly dismissed on that ground. *See Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 510 (Ind. 2005) (holding that Ind. Code § 4-21.5-2-5 and longstanding precedent prohibit judicial review of DOC disciplinary decisions).³ Vermillion acknowledges *Blanck*, but argues that the Declaratory Judgment Act “is the ‘missing link’ that does in fact provide a ‘right of action’ where no statutory method of appeal is otherwise provided.” Appellant’s Br. at 7. However, Vermillion has not identified any provision within the Act that authorizes his suit notwithstanding the explicit prohibitions found in Indiana Code Section 4-21.5-2-5 and decisional law.

Finally, dismissal of Count 2 of Vermillion’s complaint (regarding the confiscation of his television) was also proper on the ground that he has an adequate remedy at law. Our courts generally will not exercise equitable powers when there is an adequate remedy at law. *Nationwide Ins. Co. v. Heck*, 873 N.E.2d 190, 196 (Ind. Ct. App. 2007) (affirming summary judgment in declaratory action because plaintiff had an adequate remedy at law). The Indiana Tort Claims Act includes a procedure for inmates to make claims for damages for the loss of property. Ind. Code § 34-13-3-7. Vermillion offers no response to the DOC’s

³ In *Smith v. Indiana Department of Correction*, we stated that we did not believe that Indiana Code Section 4-21.5-2-5 could be read so broadly as to shield unconstitutional actions from review. 871 N.E.2d 975, 983 (Ind. Ct. App. 2007), *trans. denied, cert. denied*. However, Vermillion does not allege that any of his constitutional rights were violated.

argument that this procedure affords him with an adequate legal remedy. As the dismissal was proper on several grounds, we affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.