

(1)

Sean Buchan planned
this whole thing
he never had
any intention of
ever going to Federal
Court for my
Denial of books
legal books.

if he wanted to
go to Federal
Court he would
have filed the
complaint

as a Section 1983

Like it have been.
should have been.
he knew what he did
for his "200,000
pay

and he never responded to
the motion to the
dismiss from the
ODRC he did
nothing and
just let
it get
dismissed

also I never recieved
any notice of any
Dismissals or motions
of Dismissals from ODRC

also he was
Leaving the case
open with
The "Denial of books"
excuse just so
he could get
a ~~SEA~~ second
Dismissal and
every thing Dismissed
with prejudice
(so I could never
file the same
claims of abuse
ever again)
so I'd never have a chance
see Attachment D (1)

(2)

also The mail room

at Dayton Correctional

~~the~~ hid my Dismissals

from me so I would
never know what
was happening

behind my back.

Buchanan and his
para legals

Miss Mel Hunter
and

Miss Sandy Zdegar

hid this and

Knew odre and

Buchanan never wanted
me to learn about civil
law because then
I would figure IT
OUT what they DID

but I DID
find out with the
"help" of Mr Hill

a % at ORW,
and the "inmate law

library clerks and
Librarian miss Kuhn

who looked up this case

on the internet and
printed every thing

out for me.

and I never knew every thing
was dismissed

behind my back

because of Buchanan
and the staff

AT and DCI
ORW hid it from me see attachment (1)

Never
received

attach
D(1)

IN THE COURT OF CLAIMS OF OHIO

2020 DEC 14 PM 3:05
JUDGE CLAIMS
OF OHIO

TERRI GARKO

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2020-00369JD

Judge Dale A. Crawford
Magistrate Holly True Shaver

ENTRY OF PARTIAL DISMISSAL

On July 13, 2020, defendant filed a motion to dismiss plaintiff's complaint, in part, pursuant to Civ.R. 12(B)(1), lack of jurisdiction over the subject matter, and 12(B)(6), failure to state a claim upon which relief can be granted. Plaintiff did not file a response. For the reasons discussed below, defendant's motion shall be granted.

Standard of Review

1 year
he never responded
just let it get
dismissed

When deciding a motion to dismiss based on lack of subject-matter jurisdiction, the court must determine "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 532 N.E.2d 753 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling her to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).

JOURNALIZED

2020 DEC 14 PM 3:05

Case No. 2020-00369JD

-2-

ENTRY

Sean Buchanan
filed complaint

Factual Background

According to her complaint, plaintiff is an inmate in the custody and control of defendant at Dayton Correctional Institution. Complaint, ¶ 2. In 2017, plaintiff was housed at the Ohio Reformatory for Women (ORW). *Id.*, ¶ 6. Plaintiff asserts that while she was housed at ORW, she was physically and sexually abused by corrections officers. *Id.*, ¶ 7-8. Plaintiff asserts that she was placed under various security restrictions in retaliation for her use of the grievance procedure about the abuse she sustained. *Id.*, ¶ 10. In June 2019, plaintiff was diagnosed with a traumatic eye injury, and eventually lost vision in one eye. *Id.*, ¶ 13, 17. Plaintiff asserts that the eye injury and permanent loss of vision were caused by physical abuse by defendant's employees. *Id.*, ¶ 15. Plaintiff also alleges that throughout her incarceration, she has been denied mail and various publications in violation of her constitutional rights. *Id.*, ¶ 20. Plaintiff asserts that the "denial of publications and books violated Article 1, Section 11 of the Constitution of the State of Ohio and the First Amendment to the Constitution of the United States of America." *Id.*, ¶ 25. Plaintiff asserts claims of cruel and unusual punishment under the Fourth, Eighth, and Fourteenth Amendments; claims of First Amendment violations for denying her books and publications, and; claims under 42 U.S.C. 1983 et seq. *Id.*, ¶ 27-29. Plaintiff also seeks punitive damages. *Id.*, page 4.

Law and Analysis

Inmate claims regarding retaliation are treated as constitutional claims under 42 U.S.C. 1983. *Deavors v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 98AP-1105, 1999 Ohio App. LEXIS 2338 (May 20, 1999). Claims regarding access to the institutional grievance system are treated as challenges to the conditions of confinement arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91 (1994). A claim for cruel and unusual punishment is construed as alleging a violation of Eighth Amendment rights. *Hiles v. Franklin County Bd. of Commissioners*,

never
said I
sexually
abused

NO.
The
eye
injury
was
caused
by
deliberate
indifference
to
my
serious
medical
needs

no
punitive
in court of
claims

my legal
books were
never given to me

(2)

FILED
COURT OF CLAIMS
OF OHIO

2020 DEC 14 PM 3:05

Case No. 2020-00369JD

-3-

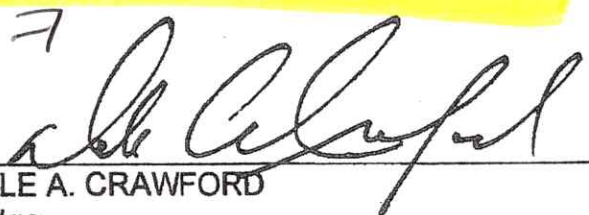
ENTRY

10th Dist. Franklin No. 05AP-253, 2006-Ohio-16, ¶ 22. It is well-settled that such claims are not actionable in the Court of Claims. *Young v. State*, 10th Dist. Franklin No. 17AP-272, 2018-Ohio-2604, 116 N.E.3d 781, ¶ 49 ("At the outset, we note this court has consistently held that the Court of Claims does not have jurisdiction over actions brought pursuant to 42 U.S.C. 1983."). Accordingly, plaintiff's constitutional claims and challenges to the conditions of confinement must be dismissed for lack of subject-matter jurisdiction. In addition, plaintiff seeks punitive damages. However, punitive damages are not recoverable in the Court of Claims. See *Drain v. Kosydar*, 54 Ohio St.2d 49 (1978).

Conclusion

Based on the foregoing, defendant's motion to dismiss plaintiff's state and federal constitutional claims, and her claim for punitive damages is GRANTED. Plaintiff's claims regarding violations of constitutional rights and conditions of confinement are DISMISSED pursuant to Civ.R. 12(B)(1). Plaintiff's claim for punitive damages is DISMISSED pursuant to Civ.R. 12(B)(6). Plaintiff's other claims remain for trial.

The
mailed
issues
were
never
going
to
trial

7

DALE A. CRAWFORD
Judge

cc:

Jeanna V Jacobus
Lauren D Emery
Assistant Attorneys General
150 East Gay Street 18th Floor
Columbus OH 43215-3130

Sean C Buchanan
One Cascade Plaza Suite 2210
Akron OH 44308

002

JOURNALIZED

