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DISTRICT IV

February 3, 2015

To:

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You are hereby notified that the Court has entered the following opinion and order:

2014AP245

Sylvester Thomas v. Krista Rick and Deborah McCulloch
(L.C. # 2012CV241)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Sylvester Thomas, pro se, appeals the circuit court's order that dismissed Thomas's claims for property damage at Sand Ridge Secure Treatment Center. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We summarily affirm.

In August 2012, Thomas filed this action against Sand Ridge's director, Deborah McCulloch, and client rights facilitator, Krista Rick. Thomas alleged that: (1) Sand Ridge staff damaged Thomas's fan and legal books upon Thomas's arrival at Sand Ridge; (2) staff later

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

confiscated Thomas's damaged legal books as contraband; and (3) staff broke Thomas's sunglasses during a pat-down. Thomas asserted that Rick and McCulloch denied Thomas's requests for compensation within Sand Ridge's grievance system. Thomas sought damages under state tort law and under 42 U.S.C. § 1983, alleging that he had been deprived of his property without due process.²

McCulloch and Rick moved to dismiss Thomas's complaint for failure to state a claim. They argued that Thomas had not stated an actionable state law or constitutional violation, and that, even if he had, he failed to allege that McCulloch or Rick had personal involvement in the claimed violations. The circuit court dismissed all of Thomas's claims except for his claim of a procedural due process violation. The court explained that it could not determine from the pleadings whether Thomas's property had been damaged pursuant to authorized conduct. *See Parratt v. Taylor*, 451 U.S. 527, 543-44 (1981) (inmate may not maintain an action under 42 U.S.C. § 1983 against state prison officials for the loss of personal property if the loss was the result of a random, unauthorized, or negligent act, so long as the state makes available a meaningful post-deprivation remedy).

McCulloch and Rick then moved for summary judgment on Thomas's procedural due process claim. They argued that they were not liable because it was undisputed that they lacked

² Under 42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

personal involvement in any claimed violation of Thomas's procedural due process rights. *See Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) (“[A]n *individual* cannot be held liable in a [42 U.S.C.] § 1983 action unless he caused or participated in an alleged constitutional deprivation.”). McCulloch's and Rick's submissions asserted that neither of them was involved in any way with the damage or taking of Thomas's property. McCulloch and Rick submitted affidavits asserting that they reviewed Thomas's grievances that claimed his property had been wrongfully damaged or taken by Sand Ridge staff, but had no other involvement in the property inventory or searches underlying Thomas's claims. Thomas did not dispute those facts by affidavit or other evidentiary material. The court granted summary judgment to McCulloch and Rick as to Thomas's procedural due process claim.³

Thomas argues that McCulloch and Rick are liable for his damages under 42 U.S.C. § 1983 based on their involvement in the grievance process. He cites cases holding that an official is personally involved in a constitutional deprivation if “she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent.” *See Black v. Lane*, 22 F.3d 1395, 1401 (7th Cir. 1994) (quoted source and internal quotation marks omitted). He contends that when, as here, officials deny relief through an institution's grievance system, they are personally involved in the deprivation. *See id.* (official liable for unconstitutional disciplinary actions at prison when official affirmed disciplinary decisions).

³ The circuit court's decision states that it granted summary judgment to McCulloch and Rick for the reasons stated on the record at the January 21, 2014 hearing. The record does not contain a transcript of that hearing. In any event, we review the circuit court's decision on summary judgment de novo, (continued)

The case law Thomas cites, however, holds that officials may be liable if they deny relief while the constitutional violation is ongoing. *See id.* (explaining that an official is liable under 42 U.S.C. § 1983 if she knew of the unconstitutional actions of her subordinates and failed to take any preventive action). Here, however, the undisputed facts establish that McCulloch and Rick did not learn of the alleged constitutional violations until those alleged violations had already been completed. Generally, the denial of a grievance “by persons who otherwise did not cause or participate in the underlying conduct states no claim.” *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011); *see also George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007).

Because the undisputed facts establish that McCulloch and Rick had no personal involvement in any deprivation of Thomas’s constitutional rights, the circuit court properly dismissed Thomas’s constitutional claims. To the extent Thomas attempts to raise any other challenge to the dismissal of his claims, we deem those arguments insufficiently developed to warrant a response. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

employing the same methodology as the circuit court. *See Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).