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DISTRICT IV

December 18, 2015

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2015AP343 Prince D. Key v. Deirdre Morgan, Michael Dittmann, Tony
Ashworth and Kristine Scanlan (L.C. # 2014CV2868)

Before Lundsten, Higginbotham and Sherman, JJ.

Prince Key, a prisoner at Columbia Correctional Institution, appeals an order dismissing his complaint against several prison officials. 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 (2013-14).¹ We affirm.

Key requested that \$100 be disbursed from his prison savings account to his son for birthday gifts. At the time of the request, Key had over \$15,000 in his savings account and owed \$4,187 in restitution. Key's social worker denied the request unless Key also paid \$100 toward

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

his restitution obligation. Key considered the social worker's response to be blackmail, and he filed an inmate complaint seeking review of the social worker's decision. The Inmate Complaint Examiner concluded that the decision was authorized by WIS. ADMIN. CODE § DOC 309.45, and dismissed Key's complaint. That decision was upheld on review by the Corrections Complaint Examiner and the secretary of the Department of Corrections.

Key then filed a "§ 1983 Lawsuit/Civil Rights Complaint" in circuit court alleging that the social worker and the prison officials who upheld her decision had interfered with his obligation to support his child. The circuit court dismissed Key's complaint for failing to state a claim on which relief may be granted.

Whether a complaint states a claim upon which relief can be granted is a question of law that we review de novo. *See Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. A complaint must allege facts which, if true, would entitle the plaintiff to relief. *Id.*, ¶21. Factual allegations in a complaint are accepted as true but legal conclusions are not, and legal conclusions are insufficient to withstand a motion to dismiss. *See id.*, ¶¶18-19.

In his complaint, Key alleged that the social worker's decision was blackmail, and that the other defendants were complicit in the illegal blackmail. Key's allegation of blackmail, however, is nothing more than a legal conclusion and it does not save the complaint from dismissal. The *facts* alleged are that Key requested a \$100 disbursement from his prison account, an amount that required the approval of prison officials. *See* WIS. ADMIN. CODE § DOC 309.49(3). His social worker, the person initially charged with reviewing the request, denied the request unless Key made a similar payment toward his restitution obligation.

Nothing in those allegations rises to a violation of Key's constitutional rights. The Department of Corrections is authorized to "manage inmate funds and permit and forbid spending to achieve" several objectives, including "develop[ing] a sense of responsibility on the part of inmates for payment of ... debts." WIS. ADMIN. CODE § DOC 309.45(3). Court-ordered restitution is obviously a debt, and the defendants' decision to link a large personal expenditure, regardless of the reason, to a payment toward that debt was reasonable. Thus, to the extent that Key's complaint alleges that the defendants' conduct violated his due process rights, it does not state a claim. See *Monroe Cty. DHS v. Kelli B.*, 2004 WI 48, ¶19, 271 Wis. 2d 51, 678 N.W.2d 831 (substantive due process protects against arbitrary governmental actions); *State v. Laxton*, 2002 WI 82, ¶10 n.8, 254 Wis. 2d 185, 647 N.W.2d 784 (procedural due process requires that governmental action be implemented fairly).

In his appellate brief, Key points to his Eighth Amendment right to be free from cruel and unusual punishment. However, Key does not cite to any cases suggesting that a limitation on inmate expenditures constitutes cruel and unusual punishment, nor does he make any argument supporting that proposition. Arguments not supported by legal authority will not be considered. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

In his brief, Key also points to equal protection and argues that he was "intentionally treated differently from others similarly situated." In his complaint, however, Key alleged that it "[i]s not known" whether the social worker had required any white inmate to make a similar restitution payment "thereby ... declaring that the finanacial [sic] upkeep needs of white children, are of a greater importance than the upkeep needs of black children" (capitalization omitted). Because Key admits in his complaint that he does not know whether inmates were treated differently based on race, his claim is necessarily based not on facts but on conjecture.

Therefore, Key's complaint does not state a claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level").

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals