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DEC 28 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Gary NKA Supreme R.)
Ackbar, #275886,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 18-ALJ-04-0113-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Ronald Gary NKA Supreme R. Ackbar (Appellant), an inmate incarcerated in the South Carolina Department of Corrections (Department or SCDC).

On November 1, 2017, Appellant filed a Step 1 Grievance claiming that the Department lost three of four bags of his legal material when he was transferred from Lieber Correctional Institution (Lieber) to Perry Correctional Institution (Perry). He requested the Department either return the material or award him compensatory and punitive damages in the amount of \$600,000 for the property he claims was lost. On November 11, 2017, the Warden denied the grievance noting that Appellant signed that he had received all of his property upon his arrival at Perry. After the Step 2 Grievance was denied, Appellant filed his Notice of Appeal on March 20, 2018. The Notice of Assignment was filed April 5, 2018.

On June 14, 2018, the Record on Appeal was filed. On June 18, 2018, Appellant filed a "Brief and Motion for Preliminary Injunction for the Relief Sought and Declaratory Judgment." On July 24, 2018, the Department filed a Motion to Dismiss under *Slezak v. S.C. Dep't of Corr.*

Thereafter, Appellant filed a request for interrogatories on July 27, 2018. ~~that was denied~~ on August 9, 2018. In addition, Appellant filed a Notice of Verification on August 27, 2018, seeking verification of the Department's defense. On September 20, 2018, Appellant filed a Verified Statement of Fact and a Motion for Summary Judgment. On October 7, 2018, the Department filed a Response to the Motion for Summary Judgment. On October 10, 2018,

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October 17, 2018

SC ADMIN. LAW COURT

Appellant filed a “Replies to respondent’s responses to Appellant’s Motion for Summary Judgment.”¹

DISCUSSION

The Court’s jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Supreme Court limited the ALC’s jurisdiction to appeals in which an inmate asserts a state-created liberty interest, typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* When a state-created liberty or property interest is asserted, the ALC reviews the Department’s determination to ascertain whether it provided minimal due process. *Slezak v. S.C. Dep’t of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004). If a grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Id.* at 331, 605 S.E.2d at 508; *Furtick v. S.C. Dep’t of Corr.*, 374 S.C. 334, 649 S.E.2d 35 (2007).

Appellant seeks compensation for the loss of personal property. However, the ALC does not have jurisdiction to grant money damages, or alternative items, for negligence, even if negligence is proven. *See S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 186-87, 700 S.E.2d 468, 470 (Ct. App. 2010) (The ALC has no authority to decide civil matters or to award monetary damages in cases.) (quoting Randolph R. Lowell, *South Carolina Administrative Practice and Procedure*, 152 (2d ed. 2008)). Rather, it is the common pleas or the federal courts that have subject matter jurisdiction over tort claims. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). Furthermore, though “certain cases may be taken from the trial court’s original jurisdiction by the General Assembly,” no such action has been taken concerning this case. 567 S.E.2d at 234. The ALC thus lacks subject matter jurisdiction to consider this issue. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897, 900 (1989) (“Lack of subject matter

¹ Summary Judgment is inappropriate in this case because the Court is sitting in its appellate capacity. *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000) (“The ALJ sits in an appellate capacity to review [the] Department’s decisions.”). Therefore, Appellant’s Motion for Summary Judgment is manifestly without merit. *See* SCALC Rule 65.

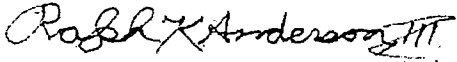
jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by [the] Court.”).

Moreover, in *Daniels v. Williams*, 474 U.S. 327, 330 (1986), the United States Supreme Court noted that “[h]istorically, [the] guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property.” Therefore, “the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” *Id.* at 328. The United States Fourth Circuit Court of Appeals further explained that “[t]he basic rationale for the *Daniels* decision is a powerful one.” *Pink v. Lester*, 52 F.3d 73, 75 (4th Cir. 1995). “The term ‘deprive,’ as employed in the Fourteenth Amendment, suggests more than a mere failure to take reasonable care: it connotes an intentional or deliberate denial of life, liberty, or property.” *Id.* at 75.. In fact, to allow claims based on theories of negligence would “trivialize the centuries-old principle of due process of law.” *Daniels*, 474 U.S. at 332.

Therefore, Appellant’s alleged property loss does not implicate a state-created liberty or property interest. In addition, it appears that Appellant signed inventory sheets acknowledging receipt of an of his property, including his legal material. Accordingly,

IT IS HEREBY ORDERED that the Department’s Motion to Dismiss is **GRANTED**, and this appeal is therefore **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

October 17, 2018
Columbia, South Carolina

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Ackbar v. SCDc

Appellate Case No. 2018-001949

Dear Clerk

Enclosed herewith is a clear copy of the requested order. This completes your request.

Sincerely
Supreme R. Ackbar

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SC Court of Appeals

12-20-18

Supreme R. Ackbar
a/k/a Ronald B. Gary #275886
Perry C.I.
430 Oaklawn Rd.
Pelzer, SC. 29669

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DEC 20 2018

P.C.I. MAILROOM

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SC Court of Appeals

V. Claire Allent, Deputy Clerk
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P.O. Box 11629
Columbia, SC 29211

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