

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Herman Staple,	:
	:
Petitioner	:
	:
v.	: No. 361 M.D. 2013
	: Submitted: February 28, 2014
Commonwealth of Pennsylvania,	:
Department of Corrections,	:
	:
Respondent	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: June 26, 2014

This case in our original jurisdiction arises out of a *pro se* amended petition for review filed by Herman Staple naming as respondents the Department of Corrections (DOC) and John E. Wetzel, Secretary of DOC.¹ In his amended petition for review, Staple, an inmate currently incarcerated at the State Correctional Institution (SCI) Houtzdale, seeks an order compelling DOC to return

¹ Staple identified DOC as the sole respondent in the caption of his amended petition for review, but names John E. Wetzel, Secretary of DOC, as the sole respondent in the body of the amended petition. The preliminary objection was filed on behalf of DOC, alone, but because the legal issues and arguments apply equally to both Wetzel and DOC we treat the preliminary objection as being filed on behalf of both respondents and we refer to the respondents in this opinion as simply “DOC.”

religious books that DOC confiscated from Staple. Presently before this Court is a preliminary objection in the nature of a demurrer filed by DOC, seeking dismissal of the amended petition for review. We sustain DOC's preliminary objection and dismiss the amended petition for review.

In the amended petition for review, Staple alleges that on March 12, 2013 prison authorities at SCI Camp Hill, where Staple was then incarcerated, confiscated several religious books in his possession because those books had been altered. (Amended Petition for Review (Am. Petition) ¶¶4-5, Exhibit A.) Staple alleges that the confiscated books did not present a security issue as he had only removed a small number of blank pages from these books. (*Id.* ¶5.) Staple further alleges that the removal of his property was contrary to DOC policy and was based upon an erroneous assumption that the religious materials did not assist in Staple's rehabilitation. (*Id.* ¶¶5, 6.) Staple alleges that the confiscation of the books deprived him of his property rights and impaired his right to contract with booksellers. (*Id.* ¶7.)

On March 13, 2013, Staple filed a grievance challenging the confiscation. (*Id.* ¶4.) On June 20, 2013, the Chief Grievance Officer of the Secretary of DOC's Office of Inmate Grievances and Appeals issued a decision upholding the confiscation. (*Id.* ¶4, Exhibit B.) In the decision, the Chief Grievance Officer stated:

A review of the record shows that you are filing an appeal based on your claim that your religious books were confiscated based on a false pretense and you cannot replace them.

An investigation into the matter reveals that the 5 confiscated religious books each had their covers altered and the paper items were glued together with toothpaste.

Per policy DC-ADM 815, property items that are altered from their original state are considered to be contraband. Due to the fact that the book covers are altered, they are considered to be contraband. Your explanation of why you altered them does not negate the alteration itself and confirms that the confiscation was correct. There was no evidence to substantiate your claim that these books were yours and you failed to provide any written evidence such as a purchase receipt or Inmate Personal Property Sheet to show that you purchased them. Therefore, the Superintendent's response is upheld and your request to have the books returned is denied.

(*Id.* Exhibit B.)

Staple filed a petition for review in this Court on July 17, 2013, which he later amended on August 2, 2013. In the amended petition for review, Staple requested that this Court (i) enter an order requiring DOC to return the confiscated religious books, (ii) issue a declaratory judgment that DOC's actions were contrary to the law, and (iii) award damages pursuant to Section 8303 of the Judicial Code. 42 Pa. C.S. § 8303. On August 2, 2013, Staple also filed an Application for Summary or Special Relief, in which Staple sought judgment as a matter of law and an order requiring the return of the books; this Court denied the Application for Summary or Special Relief by order dated September 9, 2013.

On September 5, 2013, DOC filed its preliminary objection in the nature of a demurrer to the amended petition for review.² In its preliminary objection, DOC argues that Staple failed to state a claim because prison officials

² In ruling on a preliminary objection in the nature of a demurrer, this Court must accept as true all well-pled allegations of material fact, as well as all of the inferences reasonably deducible from those facts. *Armstrong County Memorial Hospital v. Department of Public Welfare*, 67 A.3d 160, 170 (Pa. Cmwlth. 2013). We are not, however, required to accept as true legal conclusions, unwarranted factual inferences, argumentative allegations or expressions of opinion. *Id.*

have a legitimate penological interest in protecting institutional security and Staple, as an inmate, has no cognizable protected interest in possessing property that presents a security issue to other inmates or DOC personnel. As DOC policy provides that prison officials may seize as contraband any item altered from its original state and Staple concedes that the confiscated religious books were altered, DOC contends that Staple has not shown a clear legal right to the return of the books and thus Staple's claim may not stand. DOC further argues that Staple had an alternate remedy to address the confiscation of his religious books through the DOC grievance procedure. Finally, DOC argues that Staple was not entitled to money damages because such damages are barred by sovereign immunity.

In its preliminary objection, DOC treats the amended petition for review as an action in the nature of mandamus. While the amended petition does not describe itself as one of mandamus, to determine the nature of a claim asserted we must look beyond the terms used by the parties and examine the relief sought. *Kretchmar v. Commonwealth*, 831 A.2d 793, 797 (Pa. Cmwlth. 2003). Here, Staple seeks an order requiring the return of his confiscated books and damages from DOC, citing a provision in the Judicial Code that allows for damage liability for any person who has failed or refused to perform a legal duty without justification. 42 Pa. C.S. § 8303. Thus, we agree with DOC that these claims are in the nature of mandamus, *Kretchmar*, 831 A.2d at 797; however, Staple's claim seeking a declaratory judgment that DOC's actions in seizing the books were illegal is distinct from the mandamus claim for the return of property, and this claim is treated separately below.

A writ of mandamus is an extraordinary remedy used to compel performance of a ministerial act or mandatory duty when (1) the petitioner has a

clear legal right to enforce the performance of an act, (2) the respondent has a corresponding duty, and (3) there is no appropriate remedy at law. *Danysh v. Wetzel*, 49 A.3d 1, 2 (Pa. Cmwlth. 2012); *Maute v. Frank*, 670 A.2d 737, 739 (Pa. Cmwlth. 1996). The writ of mandamus is available only where the petitioner has a clear legal right and may not be used to establish a legal right or to require the respondent to exercise its discretion in a particular way. *Clark v. Beard*, 918 A.2d 155, 159 (Pa. Cmwlth. 2007); *Maute*, 670 A.2d at 739. Therefore, for Staple to prevail on his claim and require the return of his religious books, he must show that his right to relief is so clear that DOC has no choice but to return those materials to him. *Maute*, 670 A.2d at 739.

In the amended petition for review, Staple alleges that DOC violated an internal DOC policy, DC-ADM 815, which provides that “any item altered from its original state (state issued or personal) may be considered contraband” and confiscated and destroyed by prison officials. *Id.* Procedures Manual § (3)(C)(1), (8). Staple asserts that the alteration of the religious books was minimal, and that the books did not create a security threat authorizing their confiscation. Staple further alleges that, by being denied access to his religious books, he was denied the rehabilitative and educational objectives of incarceration, citing a DOC regulation that provides that one of DOC’s goals is to provide opportunities for rehabilitation for inmates, 37 Pa. Code § 91.2, and various provisions of the Administrative Code of 1929 that authorize DOC to enact regulations concerning the administration of correctional institutions, including regulations concerning the education and training for inmates.³

³ See Sections 506, 900-B, 901-B, 905-B and 906-B of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §§ 186, 310-0, 310-1, 310-5, 310-6.

None of these provisions, however, provides Staple with the clear legal right that would permit him to prevail on a mandamus claim and allow this Court to grant an order requiring the return of the confiscated religious books. It is well-established that prison officials must be given wide latitude in the promulgation and enforcement of policies to govern internal prison operations and to carry out those policies free from judicial interference in order to preserve order and maintain security within its facilities. *Bell v. Wolfish*, 441 U.S. 520, 546-48 (1979); *Bronson v. Central Office Review Committee*, 721 A.2d 357, 358 (Pa. 1998). Allegations that DOC failed to follow its regulations or internal policies cannot support a claim for mandamus because administrative rules and regulations, unlike statutory provisions, do not create rights in prison inmates.⁴ *Tindell v. Department of Corrections*, 87 A.3d 1029, 1035 (Pa. Cmwlth. 2014); *Bullock v. Horn*, 720 A.2d 1079, 1082 n.6 (Pa. Cmwlth. 1998). DOC policies, including DC-ADM 815 at issue here, “embody decisions that are inherently committed to the agency’s discretion,” *Small v. Horn*, 722 A.2d 664, 670 (Pa. 1998), and are not subject to judicial second guessing in a mandamus action. Furthermore, regulations and statutes that enshrine DOC’s goals of providing for the rehabilitation, education and training of inmates do not establish a specific right in inmates to a particular form of rehabilitation, education and training that would be actionable in a mandamus claim; these goals must always be balanced against the countervailing objective of providing for a secure environment within DOC facilities.

⁴ Indeed, DC-ADM 815 specifically disavows that it creates any rights in any person and states that it “should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of” DOC. DC-ADM 815 Policy Statement § VI.

In requesting that this Court enter an order requiring the return of his books, Staple cites two additional provisions in the amended petition for review that do touch upon his rights: Staple alleges that, because the confiscated books were religious in nature, the confiscation violated Pennsylvania's Religious Freedom Protection Act (RFPA)⁵ and that the confiscation of the books impaired his ability to contract in violation of the Contracts Clause of the Pennsylvania Constitution.⁶ While prison inmates do not enjoy the identical constitutional protections of non-incarcerated individuals, an inmate does not entirely relinquish his constitutional rights when he enters a correctional facility. *Sandin v. Connor*, 515 U.S. 472, 485 (1995); *Bronson*, 721 A.2d at 359; *Maute*, 670 A.2d at 739. Regulations that affect the individual rights of an inmate are permissible when prison officials "reasonably conclude that those rights possess the likelihood of disrupting prison order or stability or otherwise interfering with the legitimate penological objectives of the prison environment." *Bailey v. Wakefield*, 933 A.2d 1081, 1084 (Pa. Cmwlth. 2007) (quoting *Department of Public Welfare, Farview State Hospital v. Kallinger*, 580 A.2d 887, 890-91 (Pa. Cmwlth. 1990)); *see also Turner v. Safley*, 482 U.S. 78, 89 (1987); *Brittain v. Beard*, 974 A.2d 479, 486 (Pa. 2009). Inmates do not have an absolute right to acquire and keep any property they wish and DOC is permitted to deprive inmates of property so long as those decisions are reasonably related to legitimate penological interests. *Bell*, 441 U.S. at 554-55; *Iseley v. Beard*, 841 A.2d 168, 174 (Pa. Cmwlth. 2004).

⁵ Act of December 9, 2002, P.L. 1701, 71 P.S. §§ 2401-07.

⁶ Article I, Section 17 of the Pennsylvania Constitution provides: "No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed."

RFPA “was enacted in order to provide more protection to the exercise of religious beliefs than that currently afforded by the Free Exercise Clause of the First Amendment to the Federal Constitution.” *Brown v. City of Pittsburgh*, 586 F.3d 263, 285 (3d Cir. 2009). RFPA provides that a Commonwealth agency “shall not substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability” except where the burden is the least restrictive means of furthering a compelling interest of the agency. Section 4 of RFPA, 71 P.S. § 2404. The ability of inmates to assert a claim under the statute is limited such that no violation shall be found where the action or rule at issue “is reasonably related to legitimate penological interests, including the deterrence of crime, the prudent use of institutional resources, the rehabilitation of prisoners or institutional security.” Section 5(g) of RFPA, 71 P.S. § 2405(g). RFPA thus does not afford automatic relief when agency action burdens an individual’s religious activities but rather requires a balancing of the individual’s right to free exercise of religion against the interest of the agency, which in DOC’s case is measured by legitimate penological interests, such as institutional security. *Maute*, 670 A.2d at 740. “The mere fact that whether religious articles are permitted is balanced against the need for orderly administration of the prison makes it a discretionary act and not a ministerial one, making mandamus not maintainable.” *Id.* (dismissing inmate’s mandamus claim alleging a duty under the substantially similar federal Religious Freedom Restoration Act of 1993). Accordingly, Staple cannot state a mandamus claim pursuant to RFPA.

The alleged impairment of Staple’s right to contract in violation of the Contracts Clause of the Pennsylvania Constitution also does not provide a basis on

which to assert a mandamus claim. The analysis of a Contracts Clause claim requires the resolution of three questions: (i) whether there is a contractual relationship; (ii) whether a change in law impaired the contractual relationship; and (iii) whether the impairment was substantial. *Corman v. National Collegiate Athletic Association*, 74 A.3d 1149, 1170 (Pa. Cmwlth. 2013); *South Union Township v. Commonwealth*, 839 A.2d 1179, 1188 (Pa. Cmwlth. 2003), *aff'd sub nom.*, *South Union Township v. Department of Environmental Protection*, 854 A.2d 476 (Pa. 2004). Staple only obliquely alleges in the amended petition for review that he had entered into a contract to purchase books, (Am. Petition ¶7), and failed to attach the alleged contract, describe its terms or even identify the counterparty. When a writing is the basis of a claim, the writing must be attached to the pleading or, if not feasible, the pleading must set forth the substance of the writing. *See* Pa. R.C.P. No. 1019(i); *Office of Attorney General ex rel. Corbett v. East Brunswick Township*, 980 A.2d 720, 726 (Pa. Cmwlth. 2009). Moreover, Staple has not alleged that there was any change in the law of the Commonwealth that impaired the alleged contract. In the absence of allegations specifying a contract or a law impairing that contract, Staple cannot allege a clear legal right to relief under the Contracts Clause.

Accordingly, we sustain DOC's preliminary objection to Staple's mandamus claim. Because DOC did not have a legal duty to return the confiscated religious books, we also dismiss Staple's claim for incidental damages brought pursuant to Section 8303 of the Judicial Code.⁷

⁷ Section 8303 provides that "[a] person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal." 42 Pa. C.S. § 8303. Because we dismiss on other grounds, we need not reach DOC's argument that Staple's damage claim is barred by sovereign immunity.

Finally, we address Staple’s request for a declaration that the confiscation of his books by DOC was contrary to law. Under the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531–7541, courts of original jurisdiction have the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa. C.S. § 7532. The party seeking declaratory judgment “must allege an interest which is direct, substantial and present, and must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of [his] legal rights.” *Waslow v. Pennsylvania Department of Education*, 984 A.2d 575, 580 (Pa. Cmwlth. 2009). Here, Staple makes no additional allegations relative to the declaratory judgment claim, and instead this claim rests on the same alleged violations of law as the mandamus claim. As we discern no actual controversy related to any of Staple’s rights, his claim for a declaratory judgment must therefore be dismissed.

For the foregoing reasons, we sustain DOC’s preliminary objection in the nature of a demurrer and dismiss Staple’s amended petition for review.

JAMES GARDNER COLINS, Senior Judge

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ORDER

AND NOW, this 26th day of June, 2014 the preliminary objection in the nature of a demurrer filed by the Commonwealth of Pennsylvania, Department of Corrections is SUSTAINED, and the amended petition for review filed by Herman Staple is DISMISSED.

JAMES GARDNER COLINS, Senior Judge