The Supreme Court of the State of Louisiana

JOSEPH BALLARD NO. 2018-CI-0052

VS.

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

- - - - - -

IN RE: Joseph Ballard; - Plaintiff; Applying For Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. A, No. C628123; to the Court of Appeal, First Circuit, No. 2017 CA 0460;

- - - - - -

April 8, 2019

Denied.

JDH

GGG

MRC

SJC

JTG

WEIMER, J., recused.

HUGHES, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
April 8, 2019

Deputy Clerk of Court
For the Court

Appendix-AA
31 pages

SUPREME COURT OF LOUISIANA

No. 2018-CI-52

JOSEPH BALLARD

VS.

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

APR 08 2019

Hughes, J., additionally concurs.

Proper venue for the review of an LPLRA proceeding is in the parish where the offender's prison is situated. *See* R.S. 15:1184(F); *see also* La. Dist. Ct. R. 60.1(C) & 60.3(A). Thus, the 19th JDC was not empowered here to grant petitioner the relief that he prayed for in his ARP petition. Petitioner is entitled to a hearing on the motion to set aside the dismissal for abandonment.

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2017 CA 0460

JOSEPH BALLARD

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

Judgment rendered NOV 0 1 2017

* * * * *

On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C628123 Sec. 27

The Honorable Todd Hernandez, Judge Presiding

* * * * *

Joseph Ballard Louisiana State Penitentiary Angola, LA	Plaintiff/Appellant In Proper Person
James W. Craig New Orleans, LA	Attorney for Plaintiff/Appellant Joseph Ballard
Terri L. Cannon Legal Programs Department Louisiana State Penitentiary Angola, LA	Attorney for Defendant/Appellee Louisiana Department of Public Safety and Corrections

* * * * *

BEFORE: HIGGINBOTHAM, HOLDRIDGE, PENZATO, JJ.

HOLDRIDGE, J.

Joseph Ballard, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC) appeals a judgment dismissing his petition for judicial review in this administrative remedy proceeding. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On September 29, 2006, while incarcerated, Ballard filed a tort suit seeking personal injury damages against the Louisiana State Penitentiary. (R37) The civil case was assigned to Division B of the 20th Judicial District Court for the Parish of West Feliciana (sometimes hereafter referred to as "the tort suit"). On October 2, 2006, the trial court permitted Ballard to proceed in forma pauperis in the litigation and ordered that Ballard make monthly payments of 20% of the preceding month's income credited to his prison account. DPSC's Centralized Inmate Banking Section was ordered to automatically forward monthly payments to the court for DPSC without further action by Ballard. The pauper order further instructed DPSC's inmate banking section to forward monthly payments from Ballard's prison account to the clerk of court each time the amount in Ballard's prison account exceeded $10.00 until the initial advance deposit of $900.00 and all costs accruing after the filing had been paid.

On May 9, 2013, the Attorney General filed an ex parte motion to dismiss Ballard's tort suit on the basis of abandonment pursuant to La. R.S. 15:1186(B)(2)(c), which provides that if a prisoner does not pay full court costs within three years of the date they are incurred, the court "shall enter a formal order of dismissal as of the date of the abandonment." The Attorney General submitted the affidavit of a 20th JDC employee who attested that Ballard was required to pay costs in the amount of $900.00, and that accounting records showed those costs were satisfied on April 3, 2013, more than three years from the

date they were incurred, which was October 2, 2006, when the pauper order was entered. The Attorney General also sought to have the lawsuit dismissed pursuant to article 561 of the Louisiana Code of Civil Procedure, which provides that a case is abandoned when a party fails to take a step in its prosecution or defense for a period of three years. In support thereof, the Attorney General submitted an affidavit of a state's attorney who attested that the state had been served on April 8, 2013, and that prior to the service on the state, there had been no activity in the case since the pauper order was entered, on October 2, 2006.

On May 9, 2013, the trial court signed an order dismissing Ballard's tort suit without prejudice and casting Ballard with costs in the mater pursuant to Articles 561 and 5188 of the Code of Civil Procedure. Ballard filed a motion to set aside the dismissal under La. R.S. 15:1186(B)(2)(c), which gives a prisoner whose lawsuit has been dismissed for failure to pay court costs thirty days from the date of service of the order of dismissal to move to set the dismissal aside. In the motion, Ballard insisted that DPSC had deliberately withheld payments from his prison account in the first three years after he incurred the filing fee to ensure dismissal of the case pursuant to La. R.S. 15:1186. He maintained that had DPSC actually paid the proper percentage of the funds that had been deposited into his prison account to the clerk of court, as required by law, the filing fee would have been satisfied within the three year statutory time period set forth in La. R.S. 15:1186(B)(2)(c). Ballard requested that the court hold a contradictory hearing on his motion.

On June 3, 2013, the trial court issued an order stating that the hearing on Ballard's motion to set aside the dismissal on the basis of abandonment would be set after costs were paid. Several days later, Ballard wrote a letter to inmate banking services referencing the order and requesting that he be provided with the

amount of money owed in the tort suit so he could arrange to pay the court costs immediately. The following day, Ballard was informed by DPSC that the prison's debt screen showed that $860.00 in costs had been paid, leaving no balance owed. Ballard also wrote a letter to the 20th JDC on June 14, 2013, requesting that he be informed of the amount he owed in court costs so he could get them paid and have his hearing without further delay. He noted that offender banking services had informed him that he did not owe anything for costs in the tort suit.

On July 15, 2013, Ballard initiated the administrative remedy procedure (ARP) forming the basis for the instant appeal. Therein, he asserted that he had been informed that a motion in his tort suit would not be heard until he paid all costs that were owed, and that while inmate banking services told him he did not owe anything in court costs, the 20th JDC informed him that he did owe costs and that it was deferring a hearing in his tort suit until costs were paid. Ballard demanded to know how much he owed the 20th JDC in costs and stated that his complaint was that the prison banking system was not up-to-date with current costs owed by offenders, resulting in unreasonable delays for inmates to have their day in court. Ballard asserted that at the very least, offenders should have access to information regarding costs through the internet. Ballard sought the following relief:

> That I immediately be provided an up-to-date listing of the amount of money I currently owe [as of the filing date of this ARP], in [the tort suit] so I may arrange to pay the fee and get a hearing date in Court which has been made contingent on my paying the fees.
>
> That DPS&C upgrade their Offender Banking Services to begin providing this information and paying court costs ordered by the Court without any further unnecessary delay.

While the ARP was pending at the first step, Ballard apparently received a statement dated August 15, 2013, from the 20th JDC indicating that the balance owed on his account was $72.06. On August 20, 2013, Ballard's request for relief

was granted in part at the first step. Ballard was informed that a debt had been set up in 2007 in connection with the tort suit for $860.00, which had been paid. Thereafter, headquarters set up another debt for additional cost for the same court case on June 26, 2013, and the total now owed for that court order was $299.20.

On August 21, 2013, Ballard requested that $72.06 be withdrawn from his account and sent to the 20th JDC. He also challenged the first step response, complaining that prison banking was not set up to know of or pay court orders. He noted that a statement he just received proved he only owed the court $72.06 on his tort suit, while DPSC erroneously maintained he owed almost $300.00. Ballard concluded, "I challenge your banking system."

Ballard's request for relief was denied at the second step on December 13, 2013, for the following reasons:

> The response provided is clear and concise, as well as has addressed your request appropriately. At the time of the First Step response, you owed $299.00 for court costs associated with [the tort suit]. We requested and received a current statement dated 12/4/2013 from the Clerk of Court in West Feliciana Parish which indicates that you currently owe $245.20. Your current Debt Account Detail also reflects this amount. As such, this office concurs with staff and finds no further investigation warranted.

On February 6, 2014, Ballard filed a petition for judicial review in the 19th Judicial District Court, attacking the manner in which court-ordered pauper payments were being paid under DPSC's current banking system. He asserted that after paying $72.06 in costs, his account should have been paid; however, DPSC indicated he still owed $245.20 in costs. Ballard claimed that he received more than $400.00 in deposits in his prisoner account since accruing court costs and DPSC failed to pay anything further to the court. He challenged the prison banking system for not being up-to-date with current costs owed by offenders, resulting in unreasonable delays for them to have their day in court. Ballard

claimed that DPSC was charging fees in excess of what was being charged by the court so that he could not receive his hearing date concerning DPSC refusing to pay court costs. Ultimately, Ballard contended that DPSC's banking department failed in its duty to follow rules outlined in La. R.S. 15:1186 regarding proceedings in forma pauperis in paying accrued costs from his offender account and that DPSC was using the statutes as a liability shield to prevent tort actions against it.

In his petition for judicial review, Ballard sought the following relief: (1) declarative and injunctive relief against DPSC to enjoin it from using the law as a shield to obtain judgments of abandonment by deliberately failing to timely and correctly make prisoner pauper payments; (2) judicial inquiry to obtain full disclosure as to how DPSC Headquarters sets up an account and where the costs of $299.20 originated when the court only charged $72.06; (3) declarative and injunctive relief concerning DPSC's deliberate failure to pay costs in order to obtain an automatic dismissal of his tort suit; (4) a declaration that DPSC is not current with court costs or accrued costs owed and that DPSC fails to pay costs as ordered resulting in significant delays, which contribute to judgments of automatic dismissal under La. R.S. 15:1186(B)(2)(c); (5) the establishment of a system requiring DPSC to give prisoner litigants an itemized accounting of costs paid and owed at least once per month; (6) the establishment of a system to pay costs from the full amount of funds deposited monthly into prisoner accounts; (7) reimbursement of all monies withdrawn from his prison account in having this matter adjudicated; and (8) declarative and injunctive relief requiring DPSC to restructure its offender banking payment procedures and protocols for prisoner pauper litigants to be in full conformity with statutory law.

Numerous orders were entered by the commissioner appointed to hear the appeal to permit Ballard and DPSC to introduce documents to expand the

administrative record, including: (1) Ballard's DPSC inmate debts account detail computer printouts referencing deposits into his account and withdrawals made to pay court costs; (2) orders received by DPSC from the 20th JDC and the manner in which they were handled by DPSC; (3) records maintained by the 20th JDC's clerk of court's office showing total deposits made in connection with Ballard's tort claim and costs incurred in connection with that lawsuit; (4) DPSC's regulations on inmate banking accounts; and (5) various court records in Ballard's tort suit.

In her April 6, 2015 affidavit, Nekeia Kimmie, an inmate banking account supervisor at DPSC's headquarters, attested that she reviewed Ballard's banking records and reported that his original court costs in the amount of $860.00 had been paid in full. She stated that thereafter, DPSC received another court ordered charge in the amount of $245.20, which was entered into the banking system on June 26, 2013. Her review indicated that three withdrawals totaling $44.00 had been withdrawn from Ballard's account to pay court costs from February through June of 2014. Ms. Kimmie explained that typically a "flag" is automatically placed on the court cost debt when it is set up, which lets the system know that when an offender gets a deposit, funds should be applied to the debt. After consulting with the OIS department, it was learned that a flag was not present on Ballard's court costs debt, which caused the court fees not to be deducted from his account and applied to court fees. Ms. Kimmie noted that there was no evidence indicating that the flag on Ballard's account had been manually lifted, and therefore, she assumed "that there was a glitch in the banking system." Ms. Kimmie attested that the court ordered cost flag had been restored to Ballard's prison banking account.

Additional documentary evidence in the record includes correspondence between DPSC employees showing that the original court order of $860.00 had

been paid and was not in question. The court order in question totaled $245.20, on which Ballard paid a total of $44.00 as of March 2015, leaving a balance owed of $201.20. 20th JDC records indicate that on December 4, 2013, Ballard owed a total of $245.20 in court costs. A 20th JDC ledger detail report shows that from October 18, 2006, through October 12, 2016, deposits in the amount of $1,136.06 had been made by inmate banking towards Ballard's total court costs of $1,229.26, leaving a balance of $93.20. Specifically, after the filing of the motion to set aside the dismissal on the ground of abandonment, inmate banking made total deposits of $236.06 towards Ballard's 20th JDC court costs, which includes the $72.06 deposit that Ballard requested be withdrawn from his account and sent to the 20th JDC.

After reviewing the evidence, the commissioner concluded that DPSC was not arbitrary or capricious, nor did it act in violation of any of Ballard's rights. The commissioner observed that although Ballard asserted there were mathematical discrepancies in the amount sent to the court from Ballard's account, based on the amount he claims was in his account on several occasions, Ballard offered no proof that the amounts were actually correct. The commissioner found that even if the amounts were correct, the requested relief fell outside of the court's jurisdiction in that Ballard was seeking to have statutory provisions utilized to pay inmate court costs deemed illegal, through an administrative process.

On January 13, 2017, the trial court entered judgment affirming DPSC's decision and adopting the commissioner's report as reasons for the ruling. From this judgment, Ballard appeals, asserting that the trial court failed to use the manifest error and arbitrary and capricious test in reviewing DPSC's conclusions and exercises of discretion. Ballard submits that the court failed to rule on his motion to conduct a full scale judicial inquiry pursuant to La. R.S. 49:964(D) and (F) in order to narrowly tailor relief to bring the DPSC offender banking system

into substantial compliance with statutory legal obligations imposed on DPSC. Ballard maintains that judicial review in this case should not have been confined to the record alone, but full judicial inquiry should have been had auditing DPSC's banking system to determine why it "glitches" and failed to pay costs required by statute, allegedly resulting in the dismissal of his tort suit by the 20th JDC.

In his final assignment of error, Ballard argues that the trial court relied on erroneous findings and conclusions and refused to address the issue before it. He contends that the operation of the abandonment and dismissal provisions of the law, coupled with DPSC's failure to provide and maintain a banking system capable of making timely and accurate pauper payments, violated his federally protected rights of due process and meaningful access to the courts. Ballard insists that the evidence shows that throughout these proceedings, DPSC has consistently failed to withdraw funds available in his banking account and forward them to the 20th JDC. He asks that this court order the trial court to hold a full-scale investigation into the type, age, and manner of the inmate banking system in use to determine the reason for "glitches" in the system so that it is capable of timely and accurately withdrawing funds and paying costs in prisoner pauper cases.

DISCUSSION

Judicial review of an inmate's ARP claim is governed by La. R.S. 15:1177 of the Corrections Administrative Remedy Procedure Act. Judicial review is confined to the record made in the administrative proceeding, although a court may order that additional evidence be presented. La. R.S. 15:1177(A)(5); **Curry v. Cain**, 2005-2251 (La. App. 1 Cir. 10/6/06) 944 So.2d 635, 638. Under La. R.S. 15:1177(A)(5), judicial review is further limited to the issues presented in the petition for judicial review and the administrative request filed at the agency level.

The scope of the trial court and this court's review of an administrative action taken by DPSC is limited by La. R.S. 15:1177(A)(9), which provides that a court may reverse or modify an administrative decision only if the substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary or capricious or characterized by an abuse of discretion; or (6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. This court may only intervene if it is shown that a substantial right of Ballard's has been prejudiced by the DSPC action or inaction under review. See **Wallace v. Louisiana Department of Public Safety & Corrections**, 2017-0287 (La. App. 1 Cir. 9/28/17), ____ So.3d ____2017 WL 4316315 at **2.

Ballard has not demonstrated that his substantial rights have been prejudiced by any action or inaction on DPSC's part with respect to his inmate banking account. Ballard initiated this ARP to ascertain the amount he owed in court costs on the tort suit after the filing of the motion to set aside the dismissal of his lawsuit, because he purportedly received different amounts owed in court costs from the 20th JDC and from DPSC. The record demonstrates that DPSC conducted an investigation into the amount Ballard owed in court costs, furnished him with that information, reissued the flag on his account after it had inexplicably dropped, and monitored his account to ensure that deposits were being sent to the 20th JDC to cover costs. As pointed out by DPSC in its motion to dismiss this petition for judicial review, Ballard's confusion stemmed from the fact he received a bill from the 20th JDC in the amount of $72.06, which he paid through the prison banking system, and was informed of a different amount owed by DPSC due to the

dismissal order based on abandonment. Costs simply were incurred by Ballard after the bill reflecting the $72.06 balance had been sent to him, and deposits were made to cover those costs, accounting for the discrepancies in the amounts owed in court costs in DPSC records and the 20th JDC records. Contrary to Ballard's allegations, there is no evidence that DPSC ever charged him for additional amounts beyond the costs set by the 20th JDC.

Furthermore, even though Ballard complains that his tort suit was dismissed because DPSC did not timely forward court costs from his prison banking account, that complaint was not raised in the ARP. Even if the petition for judicial review could be construed to raise this issue, Ballard failed to demonstrate how any alleged irregularities or "glitches" in DPSC's inmate banking system actually prejudiced him. He has not demonstrated that his motion to set aside the dismissal of the tort suit has in fact been denied. Ballard is free to argue in connection with the pending motion in the 20th JDC that DPSC's actions or inactions in timely forwarding costs to that court from his inmate banking account led to the dismissal of his tort suit.[1] Thus, Ballard has an adequate remedy by which to challenge DPSC's banking practices as they relate to his particular interests in the court-ordered pauper payments.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Joseph Ballard.

AFFIRMED.

[1] Ballard also has available to him appellate review through supervisory writs or an appeal to challenge any decision of the trial court which he thinks may be in error including the question as to whether the trial court may refuse to hold a hearing on the motion to set aside the dismissal until all costs are paid.

Additional material from this filing is available in the Clerk's Office.