

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-181

FEBRUARY TERM, 2008

Byron Martin	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Robert Hofmann, Commissioner of the Department of Corrections	}	DOCKET NO. 276-5-06 Wncv
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff Byron Martin appeals pro se from the trial court’s order granting judgment to defendant on his V.R.C.P. 75 complaint. He argues that the court erred by: (1) denying his motion for “relation back”; (2) misconstruing his claim; and (3) limiting its analysis to issues that he raised in a prison grievance form. We affirm.

At the time he filed his V.R.C.P. 75 complaint in May 2006, plaintiff was an inmate committed to the custody and control of the Vermont Department of Corrections (DOC). Plaintiff alleged in his complaint that while he was incarcerated in Kentucky and Virginia, he was charged for expenses related to litigating cases despite the fact that he was indigent and “should not have [had] to pay a single dime.” He sought a declaration from the court that defendant could not take any money from any inmate’s account unless authorized by statute and department policy, as well as a declaration that all of the money taken from his account was taken in violation of a specific department policy. He also sought compensatory and punitive damages. Plaintiff attached a grievance that he had filed with the DOC, in which he sought reimbursement of \$500 for copying costs as well as money that he had spent on postage. After a status conference, the trial court clarified that plaintiff was specifically alleging that he was overcharged for copying costs in violation of DOC policy and Title 13, V.S.A.

In August 2006, plaintiff moved to amend his complaint and to dismiss certain named defendants. The court granted his request. The parties filed cross-motions for summary judgment, and defendant also filed a motion to dismiss.\*

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\* Two attorneys represent the Commissioner in this case—one in connection with plaintiff’s out-of-state confinement, and the second in connection with plaintiff’s in-state confinement.

While these motions were pending, plaintiff filed a “motion for ‘relation back’ per V.R.C.P. 15(c) and Motion for Supplemental Pleadings.” He apparently sought to reinstate certain defendants that he had removed through his earlier motion. The court denied the motion, and in a May 2007 order, it granted defendant’s motion for summary judgment and its motion to dismiss. The court explained that despite the parties’ voluminous filings, the case presented a straightforward issue. Plaintiff had filed a Rule 75 complaint, and the governmental action that he challenged was the DOC’s denial of his generalized claim for reimbursement for items such as pens, paper, postage and photocopying incurred in relation to numerous lawsuits that he had pursued while incarcerated. Plaintiff estimated that he was owed several hundred dollars, and he claimed that while he was incarcerated, DOC policies entitled him to be provided with the items above at no expense to him because he was indigent. Because he had been charged for these items during the course of his incarceration, plaintiff sought reimbursement from the DOC. The court noted that plaintiff was not alleging that he had requested such supplies and was denied, nor did he set forth any facts suggesting that he had ever been denied effective access to courts. Thus, the court found, the issue properly before it under Rule 75 was whether the DOC abused its discretion in denying plaintiff’s grievance on his request for reimbursement.

The court concluded that to support his claim, plaintiff needed to show, at a minimum, a legal basis for reimbursement, facts supporting his claim to reimbursement, and circumstances showing that the DOC’s denial of reimbursement amounted to an abuse of discretion that warranted reversal or a remand for further proceedings. Defendant maintained that plaintiff’s interpretation of its policies was incorrect, and that, in any event, the policies would not have applied to plaintiff when housed out of state. The court concluded that even if the policies did apply to plaintiff and he had interpreted them correctly, they simply did not govern the outcome of the case. It reiterated that the issue before it was the DOC’s denial of plaintiff’s request for reimbursement, and that plaintiff had provided no legal basis for any entitlement to after-the-fact reimbursement. Moreover, the court concluded, because plaintiff failed to grieve any specific denial of supplies at the time that he actually sought to obtain those supplies, the DOC could not have abused its discretion in denying plaintiff the retrospective reimbursement that he requested. The court therefore granted judgment to defendant. This appeal followed.

Plaintiff first argues that the court erred in denying his “relation back” motion. He maintains that he should have been allowed to amend his complaint to reinstate certain defendants who had personal involvement in this case. He maintains that the court’s denial of this motion will lead to unnecessary litigation. This argument appears to have no relation whatsoever to the ultimate issue decided by the trial court, or the grounds on which its decision rested. Even assuming that the court erred in denying plaintiff’s motion to add new defendants, any error was harmless.

Plaintiff next suggests that the court misconstrued the claim he sought to raise. According to plaintiff, this was a breach-of-contract case involving money that was taken from him and a debt that was “falsely imposed.” We find this argument unpersuasive. As stated above, plaintiff filed a Rule 75 complaint seeking review of governmental action. The action at issue was the DOC’s denial of his request for reimbursement for supplies. Plaintiff did not file a breach-of-contract complaint, nor does there appear to be any contract between plaintiff and the DOC. As the trial court explained, plaintiff sought reimbursement for supplies that had been provided to him, apparently over the course of four years, but he cited no authority to support his

request for reimbursement. The court did not err by failing to treat this case as a breach-of-contract action, nor did it err in concluding that defendant was entitled to judgment in its favor.

Finally, plaintiff asserts that he filed a grievance with the DOC solely as a formality so that he could litigate this issue in court. He states that the trial court erroneously construed his grievance as his complaint in this case. As the trial court found, however, the grievance represented the only issue on which plaintiff had exhausted his administrative remedies. See, e.g., Rennie v. State, 171 Vt. 584, 585 (2000) (mem.) (“This Court has consistently held that when administrative remedies are established by statute or regulation, a party must pursue, or ‘exhaust,’ all such remedies before turning to the courts for relief.”). Thus, the court’s review was limited to the issue raised therein. Plaintiff’s claims of error are unpersuasive, and we find no basis to disturb the court’s decision.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice