IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 9, 1998

DANIEL B. TAYLOR v. DONAL CAMPBELL, ET AL.

Appeal from the Chancery Court for Davidson County
No. 97-2435-I Irvin H. Kilcrease, Jr., Chancellor

No. M1998-00913-COA-R3-CV - Filed February 9, 2001

This appeal involves a dispute between a prisoner and the Department of Correction regarding the prisoner's request for access to the Department's rules governing prisoner sentence credits. The Department responded by informing the prisoner that its policies governing prisoner sentence reduction credits could be found in the prison law library. Thereafter, the prisoner filed suit in the Chancery Court for Davidson County complaining that he had been wrongfully denied access to public records. The Commissioner of Correction moved to dismiss the complaint. Alternatively, the Commissioner sought a summary judgment and supported his motion with affidavits asserting that the prisoner had already received all the information he sought. Based on these affidavits, the trial court granted the Commissioner's summary judgment motion and dismissed the prisoner's complaint. We have determined that the Commissioner has not demonstrated that he is entitled to a judgment as a matter of law and, therefore, reverse the summary dismissal of the prisoner's complaint.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Daniel B. Taylor, Only, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Michael L. Haynie, Assistant Attorney General, Nashville, Tennessee, for the appellees, Donal Campbell and Connie S. Klein.

OPINION

Daniel B. Taylor, who views himself as a "political prisoner," is currently incarcerated at the Turney Center in Only, Tennessee. In the fall of 1980, he shot an unarmed man with a rifle for

"messing in his business."[1] In October 1982, a Shelby County jury found Mr. Taylor guilty of second degree murder, and he was sentenced to life imprisonment as a Class X felon. The Tennessee Court of Criminal Appeals later affirmed Mr. Taylor's conviction on direct appeal[2] and affirmed the denial of his petitions for post-conviction relief[3] and for writ of habeas corpus.[4]

In May 1997, Mr. Taylor wrote a letter to the Commissioner of Correction requesting unspecified "information pertaining to the rules" governing the awarding of prisoner sentence credits. The Commissioner, through an administrative assistant, promptly replied, directing Mr. Taylor to Tennessee Department of Correction Policy 505.01 regarding sentence credits. The Commissioner also informed Mr. Taylor that he could obtain a copy of Policy 505.01 by contacting the staff at the prison law library. Within a short time Mr. Taylor wrote a second letter asking that the Department of Correction "simply forward to him the Rules and Regulations, which gave birth to the baby known as T.D.O.C. Policy Index 505.01, Effective Date September 1, 1996, with any deletions or amendments." The Department did not respond to Mr. Taylor's second letter.

On July 21, 1997, Mr. Taylor filed a pro se lawsuit in the Chancery Court for Davidson County, asserting that the Department had unlawfully denied him access to public records.[5] Specifically, he asked the trial court to "[d]eclare that the defendants . . . have arbitrarily and capricious [sic] violated T.C.A. §§ 4-5-218, and 10-7-503, by withholding the rules governing T.D.O.C. Policy Index 505.01, Sentence Credits Effective Date September 1, 1996." Rather than answering Mr. Taylor's complaint, the Commissioner, through the Attorney General and Reporter moved to dismiss the complaint for lack of standing and failure to state a claim upon which relief can be granted. Alternatively, the Commissioner moved for a summary judgment and supported this

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[1] *State v. Taylor*, 668 S.W.2d 681, 683 (Tenn. Crim. App. 1984).

[2] *State v. Taylor*, 668 S.W.2d at 685.

[3] *Taylor v. State*, No. 02C01-9703-CR-00091, 1998 WL 119506, at *2-4 (Tenn. Crim. App. Mar. 18, 1998), *perm. app. denied* (Tenn. Dec. 14, 1998).

[4] *Taylor v. Morgan*, No. M1999-01416-CCA-R3-PC, 2000 WL 1278373, at *3 (Tenn. Ct. App. Aug. 31, 2000), *per. app. filed* (Tenn. Nov. 2, 2000).

[5] This is neither the first nor the last pro se lawsuit Mr. Taylor has filed. During the past decade, he has filed numerous suits challenging his sentence on various theories and seeking damages from the court-appointed attorneys who have represented him and the judges who have denied his petitions. *See, e.g., In re Taylor*, No. 01A01-9211-CH-00439, 1993 WL 73905 (Tenn. Ct. App. Mar. 17, 1993), *perm. app. denied* (Tenn. Apr. 16, 1993) (unsuccessfully seeking access to the Judiciary Department's Annual Report); *Taylor v. State*, No. 02A01-9508-BC-00229, 1996 WL 367782 (Tenn. Ct. App. July 3, 1996) (No Tenn. R. App. P. 11 application filed) (unsuccessful monetary claim against the State alleging legal malpractice by a court-appointed lawyer); *Taylor v. State*, No. 01A01-9707-CH-00338, 1999 WL 58599 (Tenn. Ct. App. Feb. 9, 1999), *perm. app. dismissed* (Tenn. Oct. 11, 1999) (unsuccessfully challenging the retroactive application of the statute disenfranchising convicted felons); *Taylor v. Campbell*, No. M2000-00217-COA-R3-CV, 2000 WL 1050787 (Tenn. Ct. App. July 31, 2000) (No Tenn. R. App. P. 11 application filed) (vacating on procedural grounds the dismissal of Mr. Taylor's challenge to the calculation of his sentence reduction credits); *Taylor v. Heldman*, No. M1999-00729-COA-R3-CV, 2000 WL 1367960 (Tenn. Ct. App. Sept. 22, 2000), *pet. to rehear denied* (Tenn. Ct. App. Feb. 2, 2001) (unsuccessful suit for damages against trial judges who denied Mr. Taylor's petition for writ of habeas corpus).

motion with affidavits asserting that Mr. Taylor had already received the rules he had requested. Mr. Taylor opposed the summary judgment motion with his own affidavit stating that he had not received all the information he had requested.

On December 8, 1997, the trial court filed an order granting the Commissioner's motion for summary judgment. The court concluded that Mr. Taylor did not have standing to request access to public records because he was a felon, that the Department has discharged its duty to make its rules available by providing prisoners with access to these rules in the prison law libraries, and that Mr. Taylor had already been given access to the information he had requested. Mr. Taylor has perfected this appeal.

I.
STANDARD OF REVIEW

Summary judgments enjoy no presumption of correctness on appeal. *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997); *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891, 894 (Tenn. 1996). Accordingly, reviewing courts must make a fresh detemination concerning whether the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Mason v. Seaton*, 942 S.W.2d 470, 472 (Tenn. 1997). Summary judgments are appropriate only when there are no genuine factual disputes with regard to the claim or defense embodied in the motion and when the moving party is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Courts reviewing summary judgments must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor. *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997); *Mike v. Po Group, Inc.*, 937 S.W.2d 790, 792 (Tenn. 1996). Thus, a summary judgment should be granted only when the undisputed facts reasonably support one conclusion -- that the moving party is entitled to a judgment as a matter of law. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *Carvell v. Bottoms*, 900 S.W.2d at 26. A party may obtain a summary judgment by demonstrating that the nonmoving party will be unable to prove an essential element of its case, *Byrd v. Hall*, 847 S.W.2d 208, 212-13 (Tenn. 1993), because the inability to prove an essential element of a claim necessarily renders all other facts immaterial. *Alexander v. Memphis Individual Practice Ass'n*, 870 S.W.2d 278, 280 (Tenn. 1993); *Strauss v. Wyatt, Tarrant, Combs, Gilbert & Milom*, 911 S.W.2d 727, 729 (Tenn. Ct. App. 1995).

II.
MR. TAYLOR'S STANDING TO REQUEST PUBLIC RECORDS

The first basis for the trial court's decision to grant summary judgment was its conclusion that Mr. Taylor lacked standing to seek public records because he was a convicted felon. After the trial court granted the summary judgment motion, the Tennessee Supreme Court made it clear that the conviction of a felony does not prevent a person from being a "citizen" under Tenn. Code Ann. § 10-7-503(a) (1999) for purposes of being able to inspect public records. *Cole v. Campbell*, 968

S.W.2d 274, 277 (Tenn. 1998). Accordingly, we find that Mr. Taylor had standing to invoke the Public Records Act in this case.

III.
MR. TAYLOR'S REQUEST FOR RULES

Holding that Mr. Taylor had standing to request information under the Public Records Act does not dispose of this appeal. We must now consider the remainder of the trial court's ruling – that Mr. Taylor failed to create any issue of fact that information he requested has not already been made available to him. Addressing this issue requires us to take into account the distinctions and interrelationships between statutes, rules and regulations, and policies because prisoner sentence credits implicate all three.

The General Assembly enacted a new program governing sentence credits when it enacted the Tennessee Comprehensive Correction Improvement Act of 1985.[6] This program, now codified at Tenn. Code Ann. § 41-21-236 (1997), governs the process for accruing and administering "prisoner sentence reduction credits" ("PSRC") for all prisoners who committed a felony on or after December 11, 1985. It did not, however, displace the former program for eaming "prisoner performance sentence credits" ("PPSC") that had been in place since 1980.[7] Prisoners who committed a felony before December 11, 1985, were permitted to opt into the new program by signing a written waiver. Tenn. Code Ann. § 41-21-236(c)(3). Prisoners who did not elect to opt into the new program continued to accrue PPSC under the former law. Tenn. Code Ann. § 41-21-236(g).

The Department issued TDOC Policy No. 505.01 to implement the PSRC program[8] and distributed copies of the policy to all prison libraries to assure that all prisoners have access to the policy. Section VI.(K) of TDOC Policy No. 505.01 touches on the operation of the PPSC program. However, the operation of the PPSC program is set out in greater detail in the Department's rules originally promulgated in 1981. Tenn. Comp. R. & Regs. r. 0420-3-1-.01, -.14 (1999). The Department has not rescinded these rules, and thus they are still in effect and govern administration of the PPSC program. Arguably, the information regarding the PPSC program in TDOC Policy No. 505.01 was abstracted from Tenn. Comp. R. & Regs. r. 0420-3-1-.01, -.14.

As far as this record shows, the PPSC program could theoretically impact Mr. Taylor because he committed his crime prior to December 11, 1985. Thus, his search for rules or regulations governing the administration of the PPSC program is apparently not unwarranted.

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[6] Act of Dec. 5, 1985, ch. 5, § 14, 1985 Tenn. Pub. Acts (1st Ext. Sess.) 22, 26.

[7] Act of April 17, 1980, ch. 805, § 2, 1980 Tenn. Pub. Acts 942, 945.

[8] The Department was not required to promulgate the policy as a rule under the Uniform Administrative Procedures Act because it concerned only the internal management of state government. Tenn. Code Ann. § 4-5-102(10)(A), (G) (1997); *Mandela v. Campbell*, 978 S.W.2d 531, 533-34 (Tenn. 1998).

The affidavits and evidentiary materials supporting the Commissioner's summary judgment motion state that TDOC Policy No. 505.01 is available at the prisoner law library where Mr. Taylor is incarcerated. They also state that Mr. Taylor has access to this policy and may even obtain a copy of the policy for his personal use by paying a copying fee of ten cents per page. There are no disputes regarding these facts. However, Mr. Taylor is not suing to obtain a copy of TDOC Policy No. 505.01. He is seeking access to the administrative rules behind this policy. These rules could only be the rules found in Tenn. Comp. R. & Regs. r. 0420-3-1-.01, -.14. There is no evidence in this record that Tenn. Comp. R. & Regs. r. 0420-3-1-.01, -.14 is available for review in the prisoner law library. Without this evidence, there exists a material factual dispute requiring the denial of the Commissioner's summary judgment motion. The courts cannot hold, as a matter of law, that Mr. Taylor has been afforded access to all the regulations governing prisoner sentence credits.

We have noted in prior cases that the courts have been deluged by a torrent of pro se lawsuits and appeals by prisoners who dispute the calculation of their sentence credits. *Teaster v. Tennessee Dep't of Corr.*, No. 01A01-9608-CH-00358, 1998 WL 195963, at *2 (Tenn. Ct. App. Apr. 24, 1998) (No Tenn. R. App. P. 11 application filed). While many, if not most, of these lawsuits are patently frivolous and frequently incomprehensible, the prisoners filing them are exercising a fundamental right to seek judicial redress from what they perceive to be an abuse of governmental power. Even though prisoners are not a favored group in society, *Crawford v. Indiana Dep't of Corr.*, 115 F.3d 481, 486 (7th Cir. 1997), they are entitled to fair and even-handed consideration.

This appeal could have been prevented had the Department, its in-house lawyers, or the lawyers employed by the Attorney General and Reporter simply read Mr. Taylor's request for information and then glanced over the Department's rules contained in the Official Compilation of Rules and Regulations published by the Secretary of State. As long as the information sought is not privileged from disclosure for some policy reason, no person – not even a prisoner – should be forced to file suit simply to obtain six pages of bureaucratese. We cannot help but conclude that the resources of the parties, the courts, and ultimately the taxpayers have been put to ill use by this litigation.

IV.

We reverse the order granting the summary judgment and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to the State of Tennessee.

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WILLIAM C. KOCH, JR., JUDGE