UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RAYMOND SMITH,

Plaintiff,

v.

Case No. 02-10254-BC
Honorable David M. Lawson

ELLEN CAMPBELL,

Defendant.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT, AND DISMISSING COMPLAINT WITH PREJUDICE

The plaintiff, Raymond Smith, is incarcerated at the Michigan Department of Corrections' Mound Correctional Facility (NRF) in Detroit, Michigan. The plaintiff filed his *pro se* complaint on October 1, 2002 based on 42 U.S.C. § 1983, contending that the defendant, Ellen Campbell, who is a mail room clerk at NRF, deprived him of his constitutional right of access to the courts by illegally withholding a letter from the Michigan state court of appeals for approximately 25 days. The matter was referred to Magistrate Judge Charles E. Binder for full case management, and is now before the Court on the Report and Recommendation of the Magistrate Judge that the defendants' motion to dismiss or for summary judgment be granted, and the plaintiff's complaint dismissed. The defendant filed a motion for reconsideration of the Magistrate Judge's report, which the Court will construe as an objection. Accordingly, the Court has conducted a *de novo* review of the matter in light of the magistrate's report and the objections filed as required by 28 U.S.C. § 636(b)(1)(B). Because the Magistrate Judge correctly determined the applicable law and properly applied it to the allegations of the plaintiff's complaint, the Report and Recommendation will be adopted, and the plaintiff's complaint will be dismissed with prejudice.

I.

On May 19, 2002, prison officials at NRF delivered a letter to the plaintiff from the Michigan Court of Appeals that was postmarked on April 22, 2002. The letter informed the plaintiff that a proof of service was required in his state court case for superintending control over a state court judge, which the plaintiff apparently brought pursuant to Mich. Ct. R. 3.302.[1] On May 21, 2002, the plaintiff filed a Step I grievance with prison officials complaining about the late delivery of his legal mail. On May 22, 2002, the defendant responded to the plaintiff's grievance by informing the plaintiff that the Hamtramck, Michigan, Post Office did not deliver his letter from the court of appeals to the prison until May 17, 2002. The defendant also stated that she would make a copy of the envelope and give it to the Hamtramck Post Office for investigation.

---

[1] **Michigan Court Rule 3.302 provides as follows:**
(A) Scope. A superintending control order enforces the superintending control power of a court over lower courts or tribunals.(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be filed. See subrule (D)(2), and MCR 7.101(A)(2), and 7.304(A).(C) Writs Superseded. A superintending control order replaces the writs of certiorari and prohibition and the writ of mandamus when directed to a lower court or tribunal.(D) Jurisdiction.(1) The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals. In this rule the term "circuit court" includes the Recorder's Court of the City of Detroit as to superintending control actions of which that court has jurisdiction.(2) When an appeal in the Supreme Court, the Court of Appeals, the circuit court, or the recorder's court is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.(E) Procedure for Superintending Control in Circuit Court.(1) *Complaint.* A person seeking superintending control in the circuit court must file a complaint with the court. Only the plaintiff's name may appear in the title of the action (for example, *In re Smith*). The plaintiff must serve a copy of the complaint on the court or tribunal over which superintending control is sought. If the superintending control action arises out of a particular action, a copy of the complaint must also be served on each other party to the proceeding in that court or tribunal.(2) *Answer.* Anyone served under subrule (E)(1) may file an answer within 21 days after the complaint is served.(3) *Issuance of Order; Dismissal.*(a) After the filing of a complaint and answer or, if no answer is filed, after expiration of the time for filing an answer, the court may(i) issue an order to show cause why the order requested should not be issued,(ii) issue the order requested, or(iii) dismiss the complaint.(b) If a need for immediate action is shown, the court may enter an order before an answer is filed.(c) The court may require in an order to show cause that additional records and papers be filed.(d) An order to show cause must specify the date for hearing the complaint.

On June 7, 2002, the Michigan Court of Appeals entered an order dismissing the plaintiff's case without prejudice. The order stated:

> The complaint for superintending control is DISMISSED for failure to pursue the case in conformity with the rules. MCR 7.201(B)(3) and 7.216(A)(10). The Clerk of this Court provided notice regarding the nature of the defect in this filing, and the defect was not corrected in a timely manner. Dismissal is without prejudice to whatever other relief may be available consistent with the Court Rules.

Compl., at 5.

After exhausting the grievance procedure through step three, the plaintiff filed the instant civil rights action against the defendant claiming that her delay in delivering his letter from the court of appeals violated his right of access to the courts because it resulted in the dismissal of his state court case. The plaintiff stated in his complaint:

> I was denied the constitutional right [of] access to the court when . . . staff member Ellen Campbell withh[eld] my legal mail for 25 days from April 22, 2002 until May 19, 2002 when I receive[d] it from unit officer Lee. The deliberate act caused my case to be dismissed June 7, [20]02 . . . . I did not receive my legal mail when I was suppose [sic] to. Ellen Campbell's mail room office is in violation of established policy that was supposed to ensure timely handling of my legal mail.

Compl., at 4.

On December 22, 2002, the defendant filed a motion to dismiss or for summary judgment. In the motion, the defendant states that she played no role in the delay of the plaintiff's letter from the court of appeals and explains that when the letter was delivered to the NRF mailroom by the Hamtramck Post Office on May 17, 2002, she processed it in accordance with MDOC policy by first logging it into the NRF legal mail logbook, and then placed it in a mailbag for delivery to the plaintiff's housing unit. She attached to her motion a copy of the page of the legal mail logbook bearing the entry for the plaintiff's letter. The logbook page is numbered page 197 and contains 31 entries. Entry number 30 indicates that the plaintiff received mail from the "MI Court of Appeals" on May 17, 2002. *See* Def.'s Mot. Dismiss or for S. J., Ex. A.

In addition to asserting that the evidence demonstrates that she was not personally involved or responsible for the delay in the mail delivery, the defendant also argues that the plaintiff's claim for monetary damages against her in her official capacity is barred by the Eleventh Amendment, and that she is shielded by qualified immunity from the individual capacity claims.

In response to the defendant's motion, the plaintiff states in an affidavit that he was never informed of the result of the investigation by the Hamtramck Post Office, and he alleges that the logbook was fabricated by the defendant "to cover up the Negligence and Prejudice my law suit under the law." Pl.'s Resp. Br., Smith Aff. at ¶¶ 5, 11.

In his Report and Recommendation, the Magistrate Judge suggested that the plaintiff's claim for damages against the defendant in her official capacity is barred by the Eleventh Amendment. The magistrate judge also suggested that the plaintiff has not come forward with any evidence to refute the defendant's position that she played no role in the delay of his mail, and that alternatively, the plaintiff failed to demonstrate that he suffered actual injury as a result of the alleged delay in receiving his mail. In his objections to the report, the plaintiff argues that the Magistrate Judge's Report and Recommendation "is clearly bias and contrary to constitution [sic] law" and that prison officials "should not interfere with that [sic] process from the Courts."

II.

Motions to dismiss are governed by Rule 12(b) of the Federal Rules of Civil Procedure; Rule 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." "The purpose of Rule 12(b)(6) is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993). When deciding a motion under that Rule, "[t]he court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief." *Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996). "A judge may not grant a Rule 12(b)(6) motion based on a disbelief of a complaint's factual allegations." *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995). "However, while liberal, this standard of review does require more than the bare assertion of legal conclusions." *Ibid*. "In practice, 'a . . . complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under *some* viable legal theory.'" *In re DeLorean*, 991 F.2d at 1240 (emphasis in original) (quoting *Scheid v. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434, 436 (6th Cir.1988)). *See also Morgan v. Church's Fried Chicken,* 829 F.2d 10, 12 (6th Cir.1987) (liberal Rule

12(b)(6) review is not afforded legal conclusions and unwarranted factual inferences); *Ana Leon T. v. Federal Reserve Bank,* 823 F.2d 928, 930 (6th Cir.) (per curiam) (mere conclusions are not afforded liberal Rule 12(b)(6) review), *cert. denied,* 484 U.S. 945 (1987).

A motion for summary judgment under Federal Rule Civil Procedure 56 presumes the absence of a genuine issue of material fact for trial. The Court must view the evidence and draw all reasonable inferences in favor of the non-moving party, and determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 251-52 (1986). The "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotes omitted).

A fact is "material" if its resolution affects the outcome of the lawsuit. *Lenning v. Commercial Union Ins. Co.*, 260 F.3d 574, 581 (6th Cir. 2001). "Materiality" is determined by the substantive law claim. *Boyd v. Baeppler*, 215 F.3d 594, 599 (6th Cir. 2000). An issue is "genuine" if a "reasonable jury could return a verdict for the nonmoving party." *Henson v. Nat'l Aeronautics & Space Admin.*, 14 F.3d 1143, 1148 (6th Cir. 1994) (quoting *Anderson*, 477 U.S. at 248). Irrelevant or unnecessary factual disputes do not create genuine issues of material fact. *St. Francis Health Care Ctr. v. Shalala*, 205 F.3d 937, 943 (6th Cir. 2000). When the "record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," there is no genuine issue of material fact. *Simmons-Harris v. Zelman*, 234 F.3d 945, 951 (6th Cir. 2000). Thus a factual dispute which "is merely colorable or is not significantly probative" will not defeat a motion for summary judgment which is properly supported. *Kraft v. United States*, 991 F.2d 292, 296 (6th Cir. 1993); *see also Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. v. BVR Liquidating, Inc.*, 190 F.3d 768, 772

(6th Cir. 1999).

The party bringing the summary judgment motion has the initial burden of informing the district court of the basis for its motion and identifying portions of the record which demonstrate the absence of a genuine dispute over material facts. *Mt. Lebanon Pers. Care Home, Inc. v. Hoover Universal, Inc.*, 276 F.3d 845, 848 (6th Cir. 2002). The party opposing the motion then may not "rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact" but must make an affirmative showing with proper evidence in order to defeat the motion. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989). A party opposing a motion for summary judgment must designate specific facts in affidavits, depositions, or other factual material showing "evidence on which the jury could reasonably find for the plaintiff." *Anderson,* 477 U.S. at 252. If the non-moving party, after sufficient opportunity for discovery, is unable to meet his or her burden of proof, summary judgment is clearly proper. *Celotex Corp.*, 477 U.S. at 322-23.

The party who bears the burden of proof must present a jury question as to each element of the claim. *Davis v. McCourt*, 226 F.3d 506, 511 (6th Cir. 2000). Failure to prove an essential element of a claim renders all other facts immaterial for summary judgment purposes. *Elvis Presley Enters., Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 895 (6th Cir. 1991).

It is well established that prisoners have a "fundamental constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 828 (1977). In order to state a claim for denial of right of access to the courts, an inmate must plead that he has suffered an "actual injury" arising from the challenged conduct of prison officials. *See Lewis v. Casey*, 518 U.S. 346, 348-49 (1996); *Hadix v. Johnson*, 182 F.3d 400, 405-06 (6th Cir. 1999). That is, that a "nonfrivolous legal claim had been frustrated or was being impeded" due to the actions of prison officials. *Lewis*, 518 U.S. at 353; ***Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (holding that prisoner plaintiffs must "plead and prove prejudice stemming from the asserted violation"**).

For an inmate to state a claim that his constitutional right to access the courts was violated by the late delivery of his legal papers, the inmate must allege facts demonstrating that prison officials deliberately and maliciously interfered with his access to the courts, and that such conduct materially prejudiced a legal action he sought to pursue. *See Smith v. O'Connor*, 901 F.Supp. 644, 649 (S.D.N.Y. 1995); *Root v. Towers*, No. 99-70867, 2000 WL 424193 (E.D. Mich. March 31, 2000) (unpublished opinion).

It is not clear that the plaintiff is suing Ellen Campbell in her official capacity, or that this plaintiff perceives that the present matter constitutes an official capacity suit. The fact that she raises the defense of qualified immunity suggests otherwise. *See Rodgers v. Banks*, __ F.3d __, 2003 WL 211358977, at * 3-4 (6th Cir. Sept. 17, 2003). Of course, any claim the plaintiff may have against the defendant acting in her official capacity is barred by the Eleventh Amendment. **The Eleventh Amendment immunizes state officials from suit in their official capacities, because such suits are, in essence, suits against the state. *Hafer v. Melo*, 502 U.S. 21, 30-31 (1991)**; ***Gean v. Hattaway*, 330 F.3d 758, 766 (6th Cir. 2003) (holding that "defendants in their official capacities are not recognized as 'persons' under § 1983")**. **The Court need not address that issue, however, because other issues are dispositive of the case.**

As to the claim against the defendant in her individual capacity, the Court finds that the plaintiff has failed to allege facts demonstrating that the defendant deliberately and maliciously interfered with his access to the courts, and that such action materially prejudiced his state court action for superintending control over a state court judge. The plaintiff asserts in his response to the defendant's motion that the defendant fabricated the logbook to cover up her "negligence" in not delivering his letter from the court of appeals in a timely manner. However, a prison official's negligent act that causes a temporary loss of property does not violate the Constitution. *See Griffin v. DeTella*, 21 F.Supp. 2d 843, 846 (N.D. Ill. 1998) (citing *Daniels v.*

***Williams*, 474 U.S. 327, 328 (1986)). Nevertheless, the plaintiff does claim in his complaint that the defendant "deliberately" withheld his mail to cause his state court action to be dismissed. The plaintiff, however, has not adduced how the defendant acted deliberately to withhold his letter.**

Further, the plaintiff has not stated any facts demonstrating how the approximately three week delay in receiving his letter form the court of appeals actually prejudiced his ability to seek relief in the state judicial system. He does not allege that upon receiving the letter notifying him that a proof of service was required in his state court case, he immediately sent in the requested document. Nor does the plaintiff allege that had he received the letter sooner, his case would still be pending. The Michigan court of appeals did not dismiss the plaintiff's action until June 7, 2002, almost three weeks after the plaintiff received the letter. Surely three weeks was sufficient time for the plaintiff to send in the proof of service. Moreover, to meet the requirement of "actual injury," the prejudice to the plaintiff must have occurred in either a direct appeal, a habeas corpus application, or a civil rights claim. *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999). The plaintiff does not allege that his action for superintending control meets any of these criteria. Therefore, the plaintiff has not plead that he has suffered an "actual injury" arising from the challenged conduct of a prison official.

III.

The defendant has presented evidence that her conduct played no part in the delay of the plaintiff's mail, and the plaintiff has not come forward with any evidence to refute this position. Moreover, the plaintiff has not shown that he suffered an actual injury.

Accordingly, it is **ORDERED** that the Report and Recommendation [dkt # 12] is **ADOPTED**.

It is further **ORDERED** that the defendant's Motion to Dismiss or for Summary Judgment [dkt # 9] is **GRANTED**, and the plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the plaintiff's Motion for Reconsideration of the Magistrate Judge's Report and Recommendation, which the Court construed as an objection to the recommendation, [dkt # 13], is **DENIED AS MOOT**.

_____/s/_____
DAVID M. LAWSON
United States District Judge

Dated: September 30, 2003

Copies to: Raymond Smith – #222701
Julie R. Bell, Esquire
Magistrate Judge Charles E. Binder