

2007 WL 5210192 (Colo.Dist.Ct.) (Trial Order)
District Court of Colorado.
Crowley County

Jason M. ABRAHAMSON, et. al., Plaintiffs,
v.
CORRECTIONS CORPORATION OF AMERICA, et. al., Defendants.

No. 2006 CV 8.
March 6, 2007.

Div.: B

Order

Michael Schiferl, Judge.

This matter is before the Court upon a motion of the Defendants to dismiss the Plaintiff's complaint. The Defendants urge dismissal as a result of three arguments: 1.) Failure to exhaust remedies (C.R.S. 13-17.5-102.3); 2.) Failure to allege any actual or compensatory injury; and 3.) Premature allegation of punitive damages (C.R.S. 13-21-102(1.5)(a)).

The Plaintiffs have responded to this motion and the Court orders as follows: FAILURE TO EXHAUST REMEDIES

The center of this issue is an interpretation of C.R.S. 13-17.5-103.3. That statute states in part the following:

(1) No inmate shall bring a civil action based upon prison conditions under any statute or constitutional provision until all available administrative remedies have been exhausted in a timely fashion by the entity operating the detaining facility and inmate. For purposes of this subsection (1), an inmate shall be considered to have exhausted all available administrative remedies when the inmate has completed the last step in the inmate grievance process as set forth in the regulations promulgated by the entity operating the detaining facility. Failure to allege in the civil action that all available administrative remedies have been exhausted in accordance with this subsection (1) shall result in dismissal of the civil action.

There is only one appellate court case that has touched upon interpretation of this statute and that is *Glover v. State*, 129 P.3d 1083 (Colo.App.2005). In that case the Colorado Court of Appeals had an inmate who was suing the State of Colorado because he alleged that they had hooked him on cigarettes and he wanted damages as well as injunctive relief.

The Court of Appeals held the following:

When administrative remedies are provided by statute or ordinance, in order for a court to allow relief, the procedure outlined must be followed if the contested matter is within the jurisdiction of the administrative authority. *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1197 (Colo.1993). This requirement allows the agency with expertise in a particular subject matter to develop the necessary factual record on which the agency and reviewing courts may base their decisions. *City & County of Denver v. United Air Lines, Inc.*, 8 P.3d 1206 (Colo.2000). It also promotes efficiency by preventing the interruption and fragmentation of the administrative process and conserves judicial resources by ensuring that courts intervene only if the administrative process fails to provide adequate remedies. *City & County of Denver*

v. United Air Lines, Inc., supra. Nevertheless, exhaustion is not necessary when (1) further administrative review by the agency would be futile because the agency will not provide the relief requested, or (2) the agency lacks the authority or capacity to determine the matters in controversy. *State v. Golden's Concrete Co.*, 962 P.2d 919, 923 (Colo.1998).

In this case, the Defendants ask the Court to dismiss the complaint because of a failure to exhaust the available administrative remedy provided by Colorado Department of Corrections Regulation Administrative Regulation AR 850-04.

The Plaintiffs have responded that they feel that C.R.S. 13-17.5-102.3 does not apply to this case because of the language "under any statute or constitutional provision". Instead their claim is that the claims of the Plaintiffs arise under the common law and not any statute or constitutional provision.

Further they state that the Colorado Court of Appeals in *Grover v. State*, 129 P.3d 1083 (Colo.App.2005), did not hear this argument and therefore did not decide this specific issue.

In *Martin v. People*, 27 P.3d 846 (Colo.2001) the Colorado Supreme Court gave the trial Courts some guidelines in interpreting a statute: They held:

Our fundamental responsibility in interpreting a statute is to give effect to the General Assembly's purpose or intent in enacting the statute. *Reg'l Transp. Dist. v. Lopez*, 916 P.2d 1187, 1192 (Colo.1996); *Lakeview Assocs. v. Maes*, 907 P.2d 580, 584 (Colo.1995). Our interpretive efforts begin with the language of the statute itself. *Lopez*, 916 P.2d at 1192; *Maes*, 907 P.2d at 584. If the statutory language unambiguously sets forth the legislative purpose, we need not apply additional rules of statutory construction to determine the statute's meaning. *Lopez*, 916 P.2d at 1192; *Maes*, 907 P.2d at 584. Conversely, if the statutory language does not unambiguously establish the General Assembly's purpose in enacting the statute, or if the statute appears to conflict with other provisions, then we may rely on other factors, such as legislative history, prior law, the consequences of a given construction of the statute, and the end to be achieved by the statute, to determine the meaning of a statute. § 2-4-203, 1 C.R.S. (1999); *Schubert v. People*, 698 P.2d 788, 793-94 (Colo.1985). Our analysis of a statute is founded on the assumption that the General Assembly intended that the entire statute be effective. § 2-4-201(1)(b), 1 C.R.S. (1999). We "must read and consider the statutory scheme as a whole to give consistent, harmonious and sensible effect to all its parts." *Charnes v. Boom*, 766 P.2d 665, 667 (Colo.1988); see also *Bynum v. Kautzky*, 784 P.2d 735, 738 (Colo.1989) ("If possible, we must try to reconcile statutes governing the same subject."). In interpreting a comprehensive legislative scheme, we must construe each provision to further the overall legislative intent behind the statutes. *A.B. Hirschfeld Press, Inc. v. City & County of Denver*, 806 P.2d 917, 920 (Colo.1991).

The Court went on to hold the following:

When the language is clear and unambiguous, the statute must be construed as written, without resort to interpretive rules of statutory construction. *People v. Zapotocky*, 869 P.2d 1234 (Colo.1994). However, if the statutory language lends itself to alternative constructions, and its intended scope is unclear, a court may apply other rules of statutory construction to determine which alternative construction is in accordance with the objectives sought to be achieved by the legislation. *People v. Terry*, 791 P.2d 374 (Colo.1990). If the statutory language does not unambiguously establish the General Assembly's intent, we may also consider the consequences of a given construction of the statute and the end to be achieved by the statute. *Martin v. People*, 27 P.3d 846 (Colo.2001). In addition, we must read and consider the statutory scheme as a whole to give consistent, harmonious, and sensible effect to all its parts. *People v. Cooper*, 27 P.3d 348 (Colo.2001).

In applying these general rules of statutory construction to C.R.S. 13-17.5-102.3 this Court is struck by the fact that the words "under any statute or constitutional provision" do not directly carve out an exception that is based upon the common law. In

fact the legislative history cited by the Plaintiffs makes no mention to common law causes of action.

A reading of the statute makes it clear that the legislature wanted to provide for all administrative remedies to be exhausted for any claim based on prison conditions.

The Court agrees that this complaint should be dismissed for failure to exhaust administrative remedies. FAILURE TO ALLEGE ANY ACTUAL OR COMPENSATORY INJURY

A plain reading of the complaint shows that the Plaintiff, in light of the notice pleading requirements, has alleged sufficient injury. PREMATURE ALLEGATION OF PUNITATIVE DAMAGES

C.R.S. 13-21-102(1.5)(A) requires that any allegation of punitive damages be dismissed at this time.

THEREFORE the complaint is dismissed for failure to exhaust administrative remedies and any allegation of punitive damages is dismissed.

Done this 6th Day of March 2007.

By the Court

<<signature>>

Michael Schiferl, Judge

CC: Plaintiff

Defendants