

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

GREGORY HAGAN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 81-1030-R
)	
E. S. KITCHEN,)	
)	
Defendant.)	

ORDER

This matter is before the court on defendant's motion for summary judgment under Rule 56 (b) of the Federal Rules of Civil Procedure. For the reasons stated in the accompanying memorandum opinion, defendant's motion is GRANTED, accordingly, plaintiff's suit is dismissed.

Let the Clerk send a copy of this order and the accompanying memorandum opinion to plaintiff and to all counsel for the defendant.

DATE: _____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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Richmond Division

GREGORY HAGAN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 81-1030-R
)
 E. S. KITCHEN,)
)
 Defendant.)

MEMORANDUM OPINION

This matter is before the court on a Rule 56 (b) motion for summary judgment. Defendant Kitchen asserts that neither the complaint nor the amended complaint stated a claim upon which relief can be granted. Defendant's motion for summary judgment is granted and the plaintiff's case is dismissed.

I. Factual Background

Plaintiff filed a 42 U.S.C. § 1983 suit against the Sussex County Sheriff's Department in November of 1981. In the original complaint, plaintiff alleged that four of his letters had not been mailed by the jailer as he had directed. He claims that he had funds in his account and that there was no reason for the delay. On November 25, 1981, this court ordered plaintiff to file an amended complaint and to state with specificity any

factual allegations showing malice on the part of the defendant in not mailing plaintiff's letters. Plaintiff was advised at that time that mere negligence of the defendant in not mailing the letters did not state a claim. On December 9, 1981, plaintiff sent in a response which this court characterized as an amended complaint. In his answer, defendant filed for summary judgment and sent a copy of the Stamp Log of the Sussex County Jail. On April 5, 1982, this court advised plaintiff that he had 20 days within which to file rebuttal material. After not having received a thing from the plaintiff, this court advised him on July 19, 1982, that defendant's motion for summary judgment was granted on the ground that the only named defendant was a municipality and that the plaintiff failed to allege that the acts or omissions of which he complained follow from any such official position as is prescribed in Monell v. New York City Dep't of Social Service, 436 U.S. 658 (1978). This court, however, did not dismiss the action at that time because of its obligation to indigent plaintiffs to assist them in naming the proper defendants. Accordingly, the plaintiff was granted twenty days leave within which to name the proper defendants. Plaintiff was at that time reminded that the mere negligent failure to mail letters for prisoners did not state a claim justifying relief under 42 U.S.C. § 1983. In addition, plaintiff was advised that interference with one legal letter is an isolated incidence and does not amount to claim of constitutional magnitude. Crowell v. Morris, No. 80-6493 (4th Cir., March 2, 1980)(unpublished). On August 6, 1982, plaintiff sought leave to name E. S. Kitchen,

Sheriff of the Sussex County Jail, as the defendant. This court granted plaintiff's motion and on August 31, 1982, ordered that the defendant file his responsive pleading within twenty days of receipt of the order. Defendant Kitchen filed a motion for summary judgment on September 22, 1982. The motion was not accompanied by any affidavits. On September 28, 1982, plaintiff was granted twenty days to respond to the motion with any rebuttal material he so wished to file. As of this date, plaintiff has not filed anything in rebuttal, nor alleged with any more specificity the facts showing malice on the part of the defendant.

Even in the light most favorable to the plaintiff this court can find no basis upon which it could grant him relief under 42 U.S.C. § 1983. If the facts are as plaintiff has stated in the complaint, he still shows nothing more than negligent behavior.

Plaintiff has been given ample and generous time by this court within which to amend his complaint and to respond to defendant's motion for summary judgment. He was advised in very clear terms that the negligent handling of his mail did not state a claim upon which relief could be granted. Hence, this court has no other alternative but to grant defendant his summary judgment and dismiss the case with prejudice.

Let the Clerk send a copy of this memorandum opinion and the attached order to the plaintiff and to counsel for the defendant.

DATE: _____

UNITED STATES DISTRICT JUDGE