

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0655

JERRY HOWARD

VERSUS

**THE LOUISIANA DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS, JAMES LEBLANC, WARDEN ROY
WILLIAMS, WARDEN ROEBUSH, MAJOR THOMAS,
CLASSIFICATION AGENT PIERCE AND ELAINE BURGESS**

Judgment Rendered: November 9, 2011

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 589,114**

The Honorable Janice G. Clark, Judge Presiding

**Jerry Howard
Homer, Louisiana**

**Plaintiff/Appellant
*Pro Se***

**William L. Kline
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
Louisiana Department of Public
Safety and Corrections**

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

GAIDRY, J.

Jerry Howard, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“DPSC”), filed this tort and “constitutional tort” suit in the Nineteenth Judicial District Court, seeking damages, as well as injunctive and declaratory relief based upon his placement in administrative segregation. In his petition, Howard alleges that after he was adjudicated guilty of violating disciplinary rule 21 – aggravated sex offense, he was sent to Housing Unit Seven, an administrative segregation unit which houses inmates guilty of such violations. He alleges that his placement subjected him to ridicule and harassment and stigmatized him as a sex offender. Howard alleges that he filed an Administrative Remedy Procedure (“ARP”) on June 30, 2008, and appealed the denial of his request for relief; however, there is nothing in the record to support this assertion that he filed an ARP or exhausted his administrative remedies. Because Howard failed to file his delictual action in the exclusive venue provided by La. R.S. 15:1184(F), it was dismissed without prejudice. Howard has appealed.

DISCUSSION

On appeal, Howard raises the following assignments of error:

Whether the lower Court erred in determining judicial relief was not warranted upon the substantive issues presented?

Whether the lower Court erred reversibly in determining the acts and omissions described were met [sic] arbitrary, capricious, and contrary to constitutional dictates?

Whether, as a matter of first impression, the Court should consider the procedural due process claims and adopt the same rationale universally recognized by several federal district courts?

Mr. Howard did not brief any of these assignments of error on appeal. He simply argues that he filed his suit in the proper venue. We disagree.

Louisiana Revised Statutes 15:1184(F) provides that the *exclusive* venue for delictual actions for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. This exclusive venue provision is intended to address those delictual actions concerning conditions of confinement or the effects of actions by governmental officials on the lives of persons confined in prison. *Poullard v. Pittman*, 39,549 (La.App. 2 Cir. 4/13/05), 900 So.2d 310, *rehearing denied, writ denied* 05-1507 (La. 1/13/06), 920 So.2d 237. At the time the cause of action arose, Howard was housed at Phelps Correctional Center in Beauregard Parish. Thus, venue was mandatory in that parish, not in East Baton Rouge Parish.

Mr. Howard also argues that if we find that his suit was filed in an improper venue, then the district court should have transferred his suit to a court of proper venue rather than dismissing his suit without prejudice. However, La. R.S. 15:1184(B) provides that the court, on its own motion, may raise an exception of improper venue and transfer the suit to a court of proper venue *or* it may dismiss the suit. As the decision to dismiss or transfer the suit was discretionary, we find no error in the court's decision to dismiss Mr. Howard's suit without prejudice.

Mr. Howard also filed a Motion for Appointment of Counsel in this court, alleging that he is unable to afford counsel, the case involves complex issues, his access to the prison library is limited, he has a limited knowledge of the law, and the ends of justice would be best served by the appointment of counsel to represent him in this matter. Although constitutional due process requires the appointment of counsel to indigents in civil matters when fundamental constitutional rights are involved, this court has held that an incarcerated, indigent plaintiff's suit to recover damages for an alleged

violation of his civil rights was not a fundamental constitutional right which would entitle him to appointed counsel. *Ardoin v. Bourgeois*, 04-1663 (La.App. 3 Cir. 11/2/05), 916 So.2d 329, 333, citing *Lay v. McElven*, 96-1325 (La.App. 1 Cir. 3/27/97), 691 So.2d 311, *writ denied*, 97-2398 (La. 2/6/98), 709 So.2d 730-731. Therefore, Mr. Howard's request for appointed counsel is denied.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed to defendant, Jerry Howard.

AFFIRMED.