

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0899

LEROY JOHNSON

VERSUS

N. BURL CAIN, WARDEN, LOUISIANA STATE
PENITENTIARY; SECRETARY, JAMES LEBLANC;
CAPTAIN PERRY DIXON; LT. LANDRY; MSGT. DUNBAR

Judgment Rendered: December 21, 2011

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 597,620

Honorable William A. Morvant, Judge Presiding

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Leroy Johnson
Angola, LA

Plaintiff -Appellant,
In Proper Person

William Kline
Baton Rouge, LA

Attorney for Defendant -Appellee,
Louisiana Department of Public Safety and
Corrections

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

TMH
RW
RHB

HIGGINBOTHAM, J.

Plaintiff, Leroy Johnson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department), appeals a judgment of the district court, dismissing his claim without prejudice, and without service on the defendants.

Johnson alleges that on November 26, 2009, he suffered from food poisoning while he was an inmate in Louisiana State Penitentiary. Johnson provided an exhibit to show he requested medical treatment on November 27, 2009. In Administrative Remedy Procedure (ARP) No. LSP-2009-3849, the Department denied Johnson's request for relief, stating it had "reviewed the investigation by the State Health Department and Louisiana State Penitentiary and we concur with their decision." Johnson filed a petition for judicial review of the final agency decision of the Department with the 19th Judicial District Court, requesting that the decision of the warden and secretary be overturned as well as an order prohibiting prison officials from retaliating against him. The district court, after a *de novo* review, adopted the recommendation of the commissioner and dismissed Johnson's lawsuit.

The commissioner's recommendation to the district court raised the issue of venue *sua sponte* and recommended that the case be dismissed because it attempted to state a cause of action for personal injuries arising in tort in the wrong venue and in the wrong format. A careful consideration of Johnson's petition, including his description of why the Department is liable to him, and the Department's final response to Johnson's request for review, leads to the inevitable conclusion that Johnson's claim is in tort.¹ Therefore, after a thorough review of

¹ The commissioner's screening report states "[t]he petitioner claims he suffered injury...as a result of food poisoning by prison personnel, for which he seeks a jury trial and monetary damages." Although Johnson's petition does not explicitly set forth the nature of his cause of action, the analysis in the commissioner's recommendation was correct because Johnson's claim is "clearly based in tort."

the record we agree with the district court's judgment adopting the commissioner's recommendation that Johnson's claim be dismissed. See Pope v. State, 99-2559 (La. 6/29/01), 792 So.2d 713, 719-720 (claims for monetary damages for personal injuries arising in tort are properly heard under the district court's original jurisdiction). See also La R.S. 15:1177(C) stating, "this Section shall not apply to delictual actions for injury or damages, however styled or captioned. Delictual actions for injury or damages shall be filed separately as original civil actions."

Further, La. R.S. 15:1184(F) provides "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." Johnson was housed at the Louisiana State Penitentiary in West Feliciana Parish; thus, venue was mandatory in that parish, not in East Baton Rouge Parish.

For the foregoing reasons, we issue this summary opinion in accordance with Uniform Rules-Courts of Appeal Rule 2-16.2(A)(4)-(8), affirming the judgment of the district court and dismissing Johnson's appeal. Appeal costs are assessed against plaintiff-appellant, Leroy Johnson.

AFFIRMED.