

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2104

RICHARD DARBY

VERSUS

WARDEN MACK SHAW, COL. DONALD DAVIES AND THE
DEPARTMENT OF CORRECTIONS

DATE OF JUDGMENT: JUN 28 2010

ON APPEAL FROM THE NINETEENTH JUDICIAL COURT
NUMBER 568,026, SEC. 26, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE KAY BATES, JUDGE

Richard Darby
St. Gabriel, Louisiana

Plaintiff-appellant
Pro Se

Terri L. Cannon
Baton Rouge, Louisiana

Counsel for Defendants-Appellees
Assistant Warden Mack Shaw,
Colonel Donald Davies and the
Department of Public Safety
and Corrections

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

PARRO, J. CONCURS BY ~~SE~~
McDonald, J. concurs.

Disposition: REVERSED AND RENDERED.

KUHN, J.

Prison inmate-appellant, Richard Darby, appeals the district court judgment dismissing his petition for judicial review, seeking reimbursement of \$169.09 from defendants-appellees, Assistant Warden Mack Shaw and Colonel Donald Davies, and their employer, the Department of Public Safety and Corrections (DPSC).¹ For the following reasons, we reverse the district court judgment and render judgment, awarding Darby the requested relief.

FACTUAL AND PROCEDURAL BACKGROUND

A hobbycraft order and permit form submitted on December 24, 2007, by Darby was approved by Colonel Davies on December 26, 2007. The permit indicated that Darby was ordering from Grizzly Industries one drill press for the price of \$185. An additional \$69 was included in the approval form for shipping and handling. Thus, the total cost approved by Colonel Davies was \$254.

On January 4, 2008, a check in the amount of \$254 was issued from Darby's inmate account to Grizzly Industries, and on February 6, 2008, another check in the amount of \$5 was issued to Grizzly Industries from the account. On February 25, 2008, Darby was advised that a deposit in the amount of \$89.91, representing a refund check from Grizzly Industries, had been placed into his account.

On February 28, 2008, Darby contacted the package room supervisor seeking information on the status of the package he had ordered from Grizzly Industries. Darby was advised that on January 22, 2008, Assistant Warden Shaw

¹ Although in his lawsuit Darby names the Department of Corrections as the defendant-employer of Assistant Warden Mack and Colonel Davies, the answer filed on behalf of all these defendants was by the DPSC.

refused to authorize delivery of the drill press because Darby had failed to follow proper procedures in ordering it.

Darby subsequently filed an administrative remedy procedure action,² demanding reimbursement of \$169.09, *i.e.*, the original cost (\$254 + \$5) less \$89.91, the amount Grizzly Industries had refunded him after delivery of the package was refused.³ In response to all administrative remedy procedure steps, Darby was advised that Assistant Warden Shaw had refused to authorize delivery of the package based on Darby's failure to comply with the proper procedures. Darby then filed this petition for judicial review.

The Commissioner recommended that the agency decision be affirmed, finding that Darby had failed to show that DPSC had abused its discretion in applying the directives of the penitentiary. The district court judge agreed with the recommendation, and on May 15, 2009, a judgment dismissing Darby's request for judicial review issued. This appeal followed.

DISCUSSION

Louisiana State Penitentiary Directive #09.036, contained in the chapter addressing security and control, includes the subject "Hobbyshop Operations."

According to that directive:

It is the policy of the Louisiana State Penitentiary that inmate hobbyshops are operated in such a manner as to ensure the safety of inmates utilizing the hobbyshops while maintaining the necessary level of security supervision. ...

² *See generally* La. R.S. 15:1171 and 1172.

³ Evidence submitted by defendants showed that Grizzly Industries' ordering information included the following statement: "Original shipping and handling charges are not refundable. All returns must be in original packing, unused, and in resalable condition. All returns are subject to a 10% restocking fee and merchandise must be shipped to us prepaid." It is undisputed that the difference of \$169.09 encompassed these stated charges and fees.

Generally, crafts produced by inmates participating in hobbycraft activities at Louisiana State Penitentiary will be contingent on those crafts being available for retail sale at the Angola Prison Rodeo and Arts and Crafts Festivals.

Directive #09.036 further states, in pertinent part:

E. HOBBYCRAFT LIST

1. Inmates must seek the approval of the Assistant Warden over that area before requesting an item not listed on the approved hobbycraft list. The Assistant Warden must sign the hobbycraft permit prior to ordering the item.

It is undisputed that the drill press Darby ordered was not on the approved hobbycraft list. And in denying relief to Darby, DPSC cited Directive #09.036.E.1.

Darby asserts that on December 24, 2007, when he submitted his hobbycraft order and permit form, Assistant Warden Shaw was on an undetermined leave of absence and Colonel Davies, who was next in command, presided as the assistant warden in the interim. The record is devoid of any evidence that supports or controverts Darby's contention. Darby avers that due to Assistant Warden Shaw's absence, he presented his request for an item not on the approved hobbycraft list to Colonel Davies, who signed the permit approving the order.

The record contains a copy of the form, duly signed by Colonel Davies in the space indicating "APPROVAL," as well as statements from Darby's inmate account showing that two checks, totaling \$259, were issued from his inmate account to Grizzly Industries.

Louisiana Penitentiary Directive #02.001, contained in the chapter addressing fiscal management, states regarding the subject of "Inmate Funds":

It is the policy of Louisiana State Penitentiary to maintain inmate funds in [DPSC] control through the use of a highly controlled, fully

accountable financial management system that permits inmate support of family members

The stated purpose of the directive is “[t]o establish strict oversight of all transactions involving inmate funds and outline the accounting procedures for receiving, reporting, and disbursing inmate funds.”

According to Directive #02.001.G.1, “Under no circumstances will an inmate’s account be confiscated or funds withdrawn from the inmate’s account without proper authorization.” And Directive #02.001.H.1 states:

All mail orders (hobbycraft, catalog subscriptions, club purchases, etc.) MUST be sent to the Colonel or Lt. Colonel for his approval prior to ordering. The Unit Warden will review all orders upon completion.

Reading Directives #09.036.E.1, #02.001.G.1, and #02.001.H.1 together, it is evident that if the order and permit form lacked a necessary signature approving the transaction, the funds totaling \$259 issued by a check to Grizzly Industries should not have been withdrawn from Darby’s inmate account. Because the funds were withdrawn from the account, Darby’s request was in conformity with the penitentiary procedures.

La. R.S. 15:1177A(9) addresses the standard of reviewing DPSC’s decisions, providing:

The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.
- (d) Affected by other error of law.

(e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Because we have concluded that any error in processing Darby's order is not imputable to him, it is clear that the loss of 169.09 due to defendants' failure to follow Louisiana State Penitentiary directives resulted in prejudice to Darby of a substantial right, *i.e.*, loss of property without due process of law. *See* U.S. Const. Art. XIV; La. Const. Art. I, §4. Accordingly, we reverse the district court judgment and the decision of DPSC that denied Darby relief because the administrative decision was arbitrary, capricious, and characterized by an abuse of discretion. The relief Darby requested, *i.e.*, return of \$169.09 to his inmate account, is granted.

DECREE

For these reasons, the district court judgment, which affirmed DPSC's decision, is reversed. Judgment is rendered against DPSC, awarding Richard Darby the amount of \$169.09, representing the total sum he lost as a result of the failure of defendants to follow Louisiana State Penitentiary Directives #09.036.E.1, #02.001.G.1, and #02.001.H.1, which is to be deposited into his

inmate account. Appeal costs in the amount of \$1,013.00 are assessed against defendant-appellee, the Department of Public Safety and Corrections.

REVERSED AND RENDERED.