

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2216

RICKEY BARNES

VERSUS

RANDY DUCOTE, LIEUTENANT COLONEL; ASSISTANT WARDEN
GREGOR MCKEY, ASSISTANT WARDEN JOHN CALVIN, ASSISTANT
WARDEN RICHARD PEABODY, JAMES M. LEBLANC, SECRETARY,
LINDA RAMSEY AND JOHN DOE

Filey

Judgment Rendered: JUN 12 2012

VGW by Filey

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 574,975

JFK by Filey

Honorable Janice Clark, Presiding

Rickey Barnes
Angola, LA

Plaintiff/Appellant
Pro Se

Terri L. Cannon
Angola, LA

Defendant/Appellee
Louisiana Department of Public
Safety and Corrections

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

Petitioner, Rickey Barnes, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department) at Angola State Penitentiary, appeals from a judgment of the district court ordering the defendants to pay petitioner \$468.00 for items missing from the January 3, 2006 personal property inventory, but denying all other relief. For the reasons that follow, we reverse in part, vacate in part, and affirm in part.

FACTS AND PROCEDURAL HISTORY

On August 18, 2008, petitioner filed a lost personal property claim, asserting that he was missing a number of property items that were inventoried by the Department on September 30, 2002, October 1, 2003, January 3, 2006, April 27, 2006, and April 26, 2007. Petitioner stated that he had attempted to raise his complaint regarding his missing items as a claim through the Administrative Remedy Procedure (ARP) on March 5, 2007, and when that complaint was rejected on August 15, 2008, he filed the instant lost property claim.

After the Warden and Secretary denied petitioner's claim for relief, he filed a petition for judicial review with the Nineteenth Judicial District Court. Following a hearing, the commissioner for the district court remanded the matter to the Department on June 21, 2010, for the Department to issue a response fully addressing the purported missing items raised in the petitioner's complaint. The commissioner ordered that the Department file the supplemental response within thirty days. On August 2, 2010, the Department filed a supplemental response, including a supplemental agency decision. Thereafter, petitioner filed a motion to strike the Department's response as untimely, unresponsive, and confusing.

Following oral argument on December 15, 2010, the commissioner issued a recommendation. First, with regard to petitioner's motion to strike, the commissioner recommended that due to the volume of documentation contained in

the supplemental response and the fact that the issues in this matter cover a nine-year time frame, the court should consider the supplement, despite its filing eleven days after the deadline. Additionally, the commissioner found the Department's position that petitioner's complaints regarding property missing from the September 30, 2002, October 1, 2003, and April 26, 2007¹ inventories were withdrawn on June 24, 2008 under ARP No. PC-2008-1291 to be reasonable based on the record, and in light of the standard of review provided by La. R.S. 15:1177(A)(9), recommended that the Department's denial of petitioner's request for relief relative to these claims be affirmed.

However, the commissioner noted that the supplemental response by the Department did not contain documentation to support the administrative finding that the petitioner withdrew his complaint regarding the January 3, 2006 inventory in any of the withdrawals of property claims cited in the supplemental response. Further, the commissioner found that documented refusals by the petitioner on January 28, 2006, and October 25, 2006, to sign for receipt of his property from the January 3, 2006 inventory supported a finding that the petitioner had a problem with the return of his property. Accordingly, the commissioner found that the administrative record did not support the Department's finding that the missing items from the January 3, 2006 inventory were returned to petitioner. The commissioner noted that the inventory for January 3, 2006, lists 138 pictures, 2 pairs of eyeglasses, 30 magazines, and 2 Bibles that petitioner contends were not returned to him, and recommended that petitioner be compensated in the amount of \$468.00 for his missing items. The commissioner recommended that all other relief be denied.

¹ We note that the commissioner incorrectly referred to the date as April 26, 2006. A review of the record indicates that the correct date is April 26, 2007.

On April 12, 2011, the district court signed a judgment in conformity with the commissioner's recommendation, ordering the Department to compensate petitioner in the amount of \$468.00 for items missing from the January 3, 2006 inventory and denying all other relief. Petitioner now appeals from this judgment.²

DISCUSSION

Judicial review of inmate lost property claims is governed by La. R.S. 15:1177 of the CARP. Vincent v. State, Dept. of Public Safety and Corrections, 02-2444 (La. App. 1st Cir. 6/6/03), 858 So. 2d 494. Accordingly, a reviewing court may reverse or modify an administrative decision only if substantial rights of the appellant have been prejudiced because the administrative decisions or findings are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary, capricious or characterized by an abuse of discretion; or (6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Curry v. Cain, 05-2251, pp. 4-5 (La. App. 1st Cir. 10/6/06), 944 So. 2d 635, 638 (citing La. R.S. 15:1177(A)(9)). On review of a district court's judgment in a suit for judicial review under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. McCoy v. Stalder, 99-1747, p. 6 (La. App. 1st Cir. 9/22/00), 770 So. 2d 447, 450-451.

From our review of the record, we generally agree with the district court's findings regarding the September 30, 2002, October 1, 2003, January 3, 2006, and April 26, 2007 inventories. However, we note that the January 3, 2006 inventory

² Petitioner asserts on appeal that the commissioner erred in denying his motion to strike the Department's supplemental response. Though this is not addressed in the judgment from which the petitioner appealed, we nevertheless find no abuse of the district court's discretion in denying petitioner's motion given the circumstances of this case.

lists items that were alleged by petitioner to be missing, but were not included in the commissioner's recommendation. These items include two books, thirty cosmetics items, and 275 letters. Accordingly, because we agree with commissioner's finding that the administrative record does not support a finding that these items were returned to the petitioner, the petitioner should also receive compensation for these additional items.

Further, we note that the commissioner did not address petitioner's claim that items from the April 27, 2006 inventory were not returned to him. The Department asserted in its supplemental response that petitioner withdrew his claim for items missing from this inventory under ARP No. PC-2008-430. However, our review of the record reflects that the record does not contain evidence that petitioner raised a complaint regarding the April 27, 2006 inventory under ARP No. PC-2008-430. Further, documentation submitted by the Department shows that petitioner refused to sign for receipt of his property for the April 27, 2006 inventory on October 25, 2006 and May 11, 2006. Similar to the commissioner's finding with regard to the January 3, 2006 inventory, we find that such documentation demonstrates that petitioner had a problem with the return of his property, and not that the property at issue was returned to him. Therefore, we find that the evidence in the record does not support the Department's determination that the missing items from the April 27, 2006 inventory were returned to petitioner.

The April 27, 2006 inventory lists 27 books, 1 bar of soap, 2 bottles of lotion, 5 ink pens, 2 deodorants, and three envelopes of letters and books. Therefore, based on this court's findings, the Department owes petitioner compensation for these items. Accordingly, we remand this matter to the district court for determination of the amount of compensation owed petitioner for the

aforementioned items on the April 27, 2006 inventory, as well as the additional items recognized by this court from the January 3, 2006 inventory.

CONCLUSION

For the foregoing reasons, we reverse that portion of the district court's judgment denying petitioner's claim for relief as related to items missing from his April 27, 2006 inventory. We also vacate the district court's award with regard to the items missing from the January 3, 2006 inventory. We remand the matter to the district court for determination of the amount of compensation owed to petitioner for items missing from the April 27, 2006 and January 3, 2006 inventories in accordance with the views expressed in this opinion. In all other respects, the judgment of the district court is affirmed. All costs of this appeal in the amount of \$2,649.00 are assessed equally to the defendants.

**REVERSED IN PART; VACATED IN PART AND REMANDED;
AFFIRMED IN PART.**