

SUPREME COURT OF VERMONT

Loveland v. Gorczyk

173 Vt. 501 (2001) · Decided November 7, 2001

OPINION

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PER CURIAM.

Plaintiff Michael Loveland appeals from a superior court grant of summary judgment to defendants, John Gorczyk and Kathleen Lanman, in a case involving review of a prison discipline decision. Plaintiff contends that defendant Lanman, superintendent of the Newport correctional facility, failed to notify him of her appeal decision within the 30 day limit set forth in Department of Corrections (DOC) Directive 410.01(I)(2), and, as a result, he is entitled to expungement of the disciplinary conviction. The superior court ruled that the directive does not require notice to the inmate within 30 days and denied relief on that basis. We affirm. The relevant facts are undisputed. Plaintiff was found guilty of a major disciplinary infraction on October 18, 1999, and appealed to the superintendent, who denied his appeal on November 16, 1999, but did not notify him of her decision at that time. On December 13, 1999, plaintiff filed a “complaint for the review of governmental action” in accordance with V.R.C.P. 75 in superior court, alleging that the DOC violated Directive 410.01(I)(2) by failing to “respond” to his appeal within thirty days as the language of the directive requires. The parties filed cross summary judgment motions, and the superior court granted summary judgment for defendants. The superior court held that “respond” does not require receipt, and that plaintiff’s argument to the contrary would alter the regulation. This appeal followed. We review this case under V.R.C.P. 75. See *Shuttle v. Patrissi*, 158 Vt. 127, 131-32, 605 A.2d 845, 848 (1992). The controversy in this case centers on the definition of “respond” as used in DOC directive 410.01(I)(2). This directive commands, “[t]he Superintendent will respond to the appeal within 30 days from the date the appeal was delivered by the offender to a staff member.” DOC Directive 410.01(I)(2). Failure to respond results in the action being dismissed and expunged from the inmate’s file. *Id.* Plaintiff argues that “respond,” as used in the directive, must include notification of the action of the superintendent. Defendants argue that the superintendent responded when she decided the appeal; the superior court accepted this construction. For three interrelated reasons, we agree with the interpretation of the superior court. First, we must defer to the Department of Corrections’ interpretation “[a]bsent compelling indications of error.” See *In re Capital Investment*, 150 Vt. 478, 482, 554 A.2d 662, 665 (1988).^{*} Second, plaintiff is seeking an automatic expungement remedy for violation of a time limit, irrespective of the merits of his appeal. In the one comparable^{*502} situation where such a remedy

has been used in our law, “we have strictly construed the remedy to apply only when it clearly implements the . . . purpose” of avoiding indecision and protracted deliberation. In *re Newton Enterprises*, 167 Vt. 459, 465, 708 A.2d 914, 918 (1998) (implementing 24 V.S.A. § 4470(a), which requires a zoning board to act on a permit application within 45 days, or the permit is deemed to have been approved). This case is a clear demonstration of why we must apply the same construction rule to this regulation. Plaintiff received notice of the adverse decision in time to appeal it on the merits, but is seeking to prevail solely on the technicality of untimely notice. There is no indecision or protracted deliberation, and plaintiff was not prejudiced by the lack of notice. Third, the superior court decision best comports with the common meaning of the term in the regulation. The common definition of the word “respond” is “to reply or answer.” *Random House Unabridged Dictionary* 1640 (2d ed. 1987). The term does not require receipt of the answer or reply. Plaintiff would have a stronger case that notice is implied in the term if the directive required the superintendent to respond to the grieving inmate within the time limit. Instead, it requires that the superintendent “respond to the appeal within thirty days.” We believe that the common meaning of the words chosen is that the superintendent must answer the appeal by deciding it within 30 days. Accordingly, we cannot find a compelling indication of error in defendants’ interpretation of the regulation, and defendants’ interpretation involves a strict construction that does not apply the expungement remedy beyond its purpose. Affirmed, The dissent relies on the language of DOC Directive 410.01(M) to show a compelling indication of error because that section requires the superintendent to provide a copy of her decision to the inmate within seventy-two hours. This section supports our analysis because it does not contain an expungement remedy; the expungement remedy is reserved for a failure to respond to the appeal within the specified period. By its placement in a separate section, the notice responsibility is separate and not subject to the expungement remedy.