

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

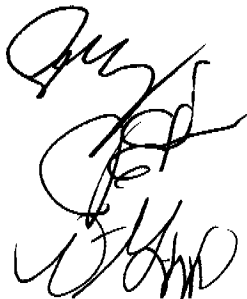
NUMBER 2011 CA 2015

RICHARD JOHN MAHOGANY

VERSUS

MELISSA SMITHEE, JAMES DULANEY, HOWARD PRINCE AT ELAYN
HUNT CORRECTIONAL CENTER AND JAMES LEBLANC, SECRETARY
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: MAY - 2 2012



Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit number 594,034

Honorable Timothy Kelly, Presiding

Richard John Mahogany
Homer, LA

In Proper Person

William L. Kline
Baton Rouge, LA

Counsel for Defendant/Appellee
James LeBlanc

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

Petitioner, Richard John Mahogany, an inmate in the custody of the Department of Public Safety and Corrections (the Department) at Elayn Hunt Correctional Center,¹ appeals from a judgment of the district court, dismissing his suit without prejudice. For the reasons that follow, we affirm.

Mahogany instituted a complaint in the prison's Administrative Remedy Procedure (ARP), requesting that the social worker assigned to his case, Melissa Smithee, be removed, because she was using her services to "violate the law[s] of her Practice Act" and because her sessions aggravated his depression. The Department responded to Mahogany's complaint, stating that no offender gets to select which case manager they will see, because that is the job of the mental health supervisor. However, the Department stated that since the filing of Mahogany's ARP request, the mental health supervisor had replaced Ms. Smithee with another social worker for other reasons. Because this was Mahogany's only complaint, and because there was no longer a point of contention, the Department denied his request for administrative remedy. This decision was upheld by the Secretary of the Department, finding:

The response provided is clear and concise, as well as has addressed your request appropriately. You have failed to provide any evidence to substantiate your allegations or that you would cause us to believe otherwise. As stated in the first step response, your case manager has been changed due to the decision of the supervisor, not due to your request. Mental Health opinion is controlling. As such, this office concurs with staff and finds no further investigation warranted.

Mahogany filed a petition for judicial review of the final agency decision of the Department with the Nineteenth Judicial District Court, seeking reversal of the Department's decision and a declaratory judgment that the Department, through Ms. Smithee, violated the Professional Practices Act. The commissioner issued a

¹ It appears from the record that Mahogany was subsequently transferred to Wade Correctional Center.

screening report, finding that the issue before the Administration and considered by the administration, i.e. that Ms. Smithee be removed as Mahogany's case manager/social worker, had been made moot by her subsequent replacement. Further, the commissioner found that even if the administrative record could be expanded to include the claim that the Department violated the Professional Practices Act, the Court can offer no relief based on the facts alleged. Specifically, the commissioner noted that Mahogany bore the burden of showing that a substantial right was violated, and based on the lack of evidence in the record to support his claim, Mahogany failed to meet his burden. Accordingly, the commissioner recommended that the Department's decision be affirmed and that Mahogany's suit be dismissed without prejudice, because the issue is moot and alternatively, because the decision is neither arbitrary, manifestly erroneous, nor in violation of Mahogany's rights. The district court, after a *de novo* review, adopted the recommendation of the commissioner and rendered judgment dismissing Mahogany's suit with prejudice. Mahogany now appeals from this judgment.

After a thorough review of the record, we find no error in the judgment of the district court. Accordingly, we issue this summary opinion in accordance with Uniform Rules-Courts of Appeal 2-16.2(A)(5)-(8), affirming the judgment of the district court. All costs of this appeal are assessed to Richard John Mahogany.

AFFIRMED.