

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-1574

KASEEN S. SMITH,
Plaintiff,

v.

STATE OF VERMONT and CORECIVIC, INC.
Defendants.

RULING ON DEFENDANTS' MOTION TO DISMISS

Plaintiff Kaseen S. Smith is an inmate in the custody of the Vermont Department of Corrections who, during the underlying events, was imprisoned at an out of state facility operated by Defendant CoreCivic, Inc., a contractor providing prison services. Mr. Smith filed a pro se complaint against Defendants CoreCivic and the State. Defendants have filed a motion to dismiss arguing that (1) this court lacks general personal jurisdiction over CoreCivic, (2) this court lacks specific personal jurisdiction over CoreCivic; (3) Mr. Smith has failed to state a claim; (4) Mr. Smith's claim is not subject to Rule 75 review; (5) a Rule 75 claim cannot be asserted against CoreCivic, a nongovernmental actor; and (6) as an alternative to dismissal, the court should transfer venue to an unidentified court in Mississippi.¹

Mr. Smith's legal claim is so vaguely asserted in the complaint as to be unintelligible. The clearest formulation of it is this: "The substance of the [g]rievance was; I have [b]latantly been singled out discriminated against as well as [b]een animalized by benighted prevaricating staff members such as Unit Manager Johnson and friends who [deliberately] go out of their way to express their hate by distributing alleged tales of misconduct boundary." Attached to the complaint are several grievance forms that might have helped to explain the nature of the claim he is trying to raise. However, as reproduced in the record, they are completely illegible. Mr. Smith's counsel has never filed an amended complaint or otherwise attempted to better articulate the claim in any detail. At a status conference, counsel said in the broadest terms that the claim is for discrimination on the basis of race, "association," and perceived sexual identity, without any explanation hinting at a cause of action. See Black's Law Dictionary 214 (7th ed. 1999) (defining cause of action to be a "group of operative facts giving rise to one or more bases for suing").

In the course of briefing their motion to dismiss, Defendants take the position that Mr. Smith's claim is that he had alleged some right to unilaterally choose his cell mate and corrections officers did not permit him to do so. In response, counsel for Mr. Smith insists

¹ Defendants do not indicate what authority this court has to transfer venue in such a manner.

that his claim is for a violation of the Vermont Public Accommodations Act (PAA), 9 V.S.A. §§ 4501–4507, without indicating what the violation may be and—confusing matters more—that the PAA claim in fact is a Rule 75 claim, presumably referring to relief in the nature of mandamus or certiorari, without explaining what the mandamus or certiorari claim may be and how it could be the same as a PAA claim.

To put it mildly, the legal claim that Mr. Smith is attempting to raise is substantially in doubt. Meanwhile, rather than attempting to first clarify the claim, Defendants seek its dismissal. The court declines to analyze any of Defendants’ dismissal arguments in these circumstances, including personal jurisdiction.²

However, in its reply, CoreCivic, relying on the Vermont Department of Corrections’ offender locator website, represents that Mr. Smith is no longer located at its out of state facility, that he has been transferred back to Vermont.³ CoreCivic says this may raise a mootness question.

All that is clear in the complaint to the court is that Mr. Smith is complaining of some type of condition of confinement in the out of state facility, and that he seeks injunctive relief to correct the perceived deficiency. There is no claim for compensatory damages. If he is no longer located at that facility, however, there presumably would be no utility in any such prospective relief and hence no controversy to further support this litigation. His claim will have become moot and subject to dismissal on that basis. See *Houston v. Town of Waitsfield*, 2007 VT 135, ¶ 5, 183 Vt. 543 (“In general, a case is moot when ‘the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’” (citation omitted)).

Order

For the foregoing reasons, Defendants’ motion to dismiss is denied. Mr. Smith shall show cause why this case should not be dismissed due to mootness within 10 days. Failing to do so will result in dismissal.

SO ORDERED this 2nd day of June, 2022.



Robert A. Mello
Superior Judge

² The contacts relevant to specific personal jurisdiction are *claim-specific*. See *Canaday v. Anthem Companies, Inc.*, 9 F.4th 392, 400 (6th Cir. 2021). Assessing claim-specific contacts without any cogent understanding of the claim would be less than ideal. Beyond that, however, CoreCivic’s argument, which positions itself as any ordinary third-party contractor with the State having nothing exceptional to do with the plaintiff in this case, is highly questionable. CoreCivic, which carries out the uniquely governmental function of imprisoning Vermonters out of state, including Plaintiff, is no ordinary third-party contractor. See generally, e.g., *Vontress v. Nevada*, No. 2:18-cv-01746-RFB-BNW, 2019 WL 4738018 (D. Nev. Sept. 28, 2019) (specific personal jurisdiction over CoreCivic in Nevada in relation to claim of Nevada inmate in Arizona facility).

³ A link to the DOC’s offender locator website is available here: <https://doc.vermont.gov/>.