



**LGIT'S COMMANDER'S LOG
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An inmate's claim of an occasional incident of tainted food or food containing foreign objects does not raise a question of constitutional proportion.

QUESTION: Will a prisoner suit based upon occasionally being served tainted food at a detention center survive in federal court?

ANSWER: No. As a general rule, inmates should be served good, wholesome, clean, and palatable food. However, claims of occasional incidents of tainted food or food containing foreign objects will not be deemed constitutionally significant in federal court and such claims generally will be dismissed.

**CASE: *Benjamin Ashley Gardner v. Douglas Devenyns*
United States District Court, Decided March 2, 2012 (unpublished)**

On the date this case was decided, Benjamin Ashley Gardner was a pretrial detainee held at the Talbot County Detention Center. Gardner was confined to a wheel chair, suffering from numerous physical ailments: gout, diabetes, high blood pressure, angina, morbid obesity, bone diseases, herniated discs, and complications, osteoarthritis, sleep apnea, and acid reflux. Gardner was on a calorie restricted diet.

Gardner claimed that during his stay at the Detention Center, he had lost more than 30 pounds as a result of gastric upsets caused by consuming the spoiled milk provided by the Detention Center. He filed a lawsuit alleging that Detention Center personnel had denied him "wholesome, unspoiled, and adequate food." Specifically, he claimed that he was repeatedly served cartons of spoiled milk, in violation of the state and federal constitutions, the Americans With Disabilities Act (ADA), and the Rehabilitation Act of 1973 (RA). Gardner also claimed he had been denied juice or other alternative beverages, the whole milk substitute provided was either watery or gloppy, styrofoam cups were contaminated, and the plumbing system contaminated the water. He also claimed that he had been retaliated against for making complaints.

Defendant moved for summary judgment, arguing, in part, that Gardner had failed to exhaust administrative remedies with respect to his claims, as required by the Prison Litigation Reform Act (PLRA). The record revealed that Gardner had initiated the Detention Center's administrative grievance process concerning his complaints about the milk just days before he filed suit. So, the Court ruled that only Gardner's claims related to the milk were before it.

Concerning those claims, the Court examined them and concluded that, on the merits, they provided no basis for an award of money damages. As a general rule, the food served to inmates should be good, wholesome, clean, and palatable. However, claims of occasional incidents of tainted food or food containing foreign objects, while regrettable, do not raise a question of constitutional proportion. Indeed, such allegations simply raise a problem of internal prison administration to be dealt with by prison authorities. Furthermore, the deliberate and unnecessary withholding of essential to normal health can violate a convicted prisoner's or pretrial detainee's constitutional rights.

In this case, the Detention Center had investigated Gardner's numerous complaints that the expiration date for the cartons of milk he was served had passed or that the milk was otherwise contaminated. The expiration dates had not passed and the milk, which was tested, was not contaminated. A dark substance Gardner allegedly found in the milk was determined to have been caused by the water system being flushed. In response to the flood of complaints, the Detention Center began serving Gardner powdered milk rather than milk in a carton. Gardner was given the nutritional information concerning the powdered milk. Ultimately, and after consultation with medical staff, Gardner was transitioned from milk to juice provided in sealed containers. From this evidence, the Court concluded that "[n]othing more [was] constitutionally required."

NOTE: The critical important of the defense to this lawsuit was the timely, thorough and documented response of the Detention Center to Gardner's many complaints. The Detention Center responded to all complaints, ranging from the trivial to the important. Whether it is complaints related to security, food, mail, religious practice, exercise, etc., the rule of thumb is to respond to the complaint and do so timely and completely, regardless of outcome. In this way, allegations by an inmate of "deliberate indifference" to the conditions of his confinement generally can be defeated.

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