

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1413**

Michael P. Henderson,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

**Filed June 9, 2009
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-C7-07-005171

Michael P. Henderson, 8720 Clinton Avenue South, Bloomington, MN 55420 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2127 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Kalitowski, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Michael P. Henderson argues that the district court erred by granting summary judgment to respondent Commissioner of Corrections because (1) a genuine issue of material fact exists as to whether appellant's prison identification card was

reissued due to a change in his appearance or due to the destruction of the original card, and (2) the district court erred in failing to conclude that appellant's procedural due process rights were violated when respondent took money from appellant's prison fund to replace his identification card without a hearing. We affirm.

D E C I S I O N

On July 19, 2007, appellant filed a complaint with the Ramsey County District Court, arguing that he suffered economic loss when the Department of Corrections withheld his prison identification card upon his release from prison in March 2007 because he has been unable to transact business or apply for a social security card without that identification. In December 2007, respondent Joan Fabian, the Commissioner of Corrections (the Commissioner), filed a motion for summary judgment on the ground that appellant's "Complaint fails to state a cognizable claim against the Commissioner."

At the summary judgment motion hearing in January 2008, in addition to his argument that he suffered damages when he was released from prison without any identification, appellant argued that before five dollars was deducted from his inmate account to replace his prisoner identification card after it was damaged, he was entitled to a hearing under Minn. Stat. § 243.23, subd. 3(11). Counsel for the Commissioner argued that appellant's argument that he was entitled to a hearing before being charged for a replacement card was not properly before the court because it was raised for the first time at the hearing.

The district court granted respondent's motion for summary judgment and dismissed appellant's claim with prejudice. The court found that because appellant's

card was replaced, and five dollars was deducted from his account due to a change in his appearance, he was not entitled to a hearing. But the district court noted that if appellant's card had been replaced due to damage to the card, he would have been entitled to a hearing under Minn. Stat. § 243.23, subd. 3(11), before a deduction from his account would be permitted. This appeal followed.

On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

Genuine issues of material fact

Appellant argues that the district court erred by granting summary judgment to respondent because a genuine issue of material fact exists as to whether appellant's prison identification card was reissued due to a change in his appearance or due to destruction of the original card.

“A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution.” *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976). No genuine issue of material fact for trial exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). And a scintilla of evidence as to a material fact is insufficient to resist summary judgment. *Id.* at 70-71.

The Commissioner has broad discretion to enact policies in order to administer and maintain all state correctional facilities. Minn. Stat. § 241.01, subd. 3a(d) (2008); *see also Bell v. Wolfish*, 441 U.S. 520, 546-47, 99 S. Ct. 1861, 1878 (1979) (concluding that maintaining internal security within correctional facilities is an essential goal of correction that may require some limitation of prisoner's rights). And Minnesota Department of Corrections Policy 302.255 (2006) provides that the use of offender tracking cards "enhance[s] the security and control of department facility systems by ensuring the positive identification and tracking of offenders."

Minnesota Department of Corrections Policy 302.255 provides for replacement prisoner identification cards, stating that offenders will be charged a five dollar replacement fee if they (1) tamper, destroy, lose or alter the card, or (2) significantly alter their physical appearance without authorization. The policy provides that offenders will not be charged this replacement fee if, among other things, the card "was damaged by circumstances beyond the offender's control."

Appellant argues that there is a genuine issue of material fact because the district court erred in determining that appellant's identification card had to be reissued for change in appearance, rather than destruction of the card. We disagree.

Here, appellant did not allege or offer any evidence that his card was damaged by circumstances beyond his control that would justify not being charged for a replacement card under the prison policies. Nor did appellant directly assert before the district court that the reason for the charge was at issue. *See Fownes v. Hubbard Broad., Inc.*, 302 Minn. 471, 474, 225 N.W.2d 534, 536 (1975) (stating that "surmise and speculation"

cannot be relied on to meet the burden of showing a genuine issue as to a material fact). Moreover, the record indicates that appellant did not object at the time that the charge to his prison fund was made, stating at the summary judgment hearing, “I let that go.” Therefore, the issue of whether appellant’s card was replaced due to destruction or change in appearance was not properly at issue during the summary judgment hearing.

In appellant’s appendix, he includes a voucher stating that the reason for the five dollar deduction was because the card was “cracked in two.” But this document was not presented to the district court. Therefore, we grant respondent’s motion to strike the voucher because “[t]he district court record cannot be supplemented by new evidence after the court grants summary judgment.” *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. App. 1997), *review denied* (Minn. Apr. 27, 1997).

Because there was no evidence presented to the district court disputing the reason for the replacement card fee, we conclude that there was no genuine issue of material fact precluding summary judgment regarding the assessment of the fee.

Application of the law

Appellant argues that his due process rights were violated when he did not receive a hearing before five dollars was withdrawn from his account, as he claims is required by Minn. Stat. § 243.23, subd. 3(11). We disagree.

Appellant relies on the district court’s statement that if appellant’s card had been replaced due to damage to the card, “Minnesota Statute [§] 243.23, Subd. 3(11), would require a finding that he damaged the property, i.e., the identification card, before

restitution could be withheld from his account.” We conclude the district court erred in suggesting that this statutory provision could apply here.

Minn. Stat. § 243.23 (2008) is titled “Compensation Paid to Inmates” and provides that the Commissioner may take deductions from an inmate’s account in a listed order of priority. Minn. Stat. § 243.23, subd. 3 (2008). This list of deductions includes a provision that states, “[t]he commissioner shall make deductions for . . . (11) the payment of restitution to the commissioner ordered by prison disciplinary hearing officers for damage to property caused by an inmate’s conduct.” *Id.*, subd. 3(11).

We conclude that this provision does not apply to the reissuance of a prisoner’s identification card that was exclusively in the prisoner’s control. Rather, considering the context of the surrounding statutory language providing for restitution when an inmate damages the property of staff or injures another inmate, subdivision 3(11) applies only to property controlled by another. *See id.*, subds. 3(12), (13) (stating that deductions from an inmate’s account are made for “restitution to staff . . . for damage to property caused by an inmate’s conduct” and for “restitution to another inmate . . . for personal injury to another caused by an inmate’s conduct”). Because appellant was in control of his identification card during his imprisonment, Minn. Stat. § 243.23, subd. 3(11), is not applicable here.

We conclude instead that Minn. Stat. § 243.23, subd. 2 (2008), governs the deduction from appellant’s account. This provision states that, “[t]he commissioner may promulgate rules requiring inmates of adult correctional facilities under the commissioner’s control to pay all or a part of the cost of their board, room, clothing,

medical, dental, and *other correctional services.*” (Emphasis added.) Pursuant to this statute, the Commissioner has promulgated rules and policies regarding correctional services such as identification cards. The applicable prison policy permits the prison to deduct a five dollar charge from a prisoner’s account for a replacement identification card. And that policy does not provide for a hearing before this deduction is made. Because charging prisoners for replacement identification cards is governed by Minn. Stat. § 243.23, subd. 2, and the Commissioner’s promulgated policies, we conclude that the district court properly concluded that appellant was not entitled to a hearing before the five dollar deduction was made.

In conclusion, the district court did not err in granting summary judgment. There were no genuine issues of material fact presented to the district court, and although the district court relied on the incorrect statutory provision when granting summary judgment, this error did not affect appellant’s substantial rights. *See* Minn. R. Civ. P. 61 (“[N]o error or defect in any ruling or order . . . is ground for granting a new trial or for . . . otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.”).

Affirmed.