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2011 IL App (3d) 100635-U

Order filed October 20, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

SCOTT KELLICK,	) Appeal from the Circuit Court
	) of the 9th Judicial Circuit,
Plaintiff-Appellant,	) Fulton County, Illinois,
	)
v.	) Appeal No. 3-10-0635
	) Circuit No. 06-MR-29
RICHARD S. BIRKEY,	)
	) Honorable
Defendant-Appellee.	) Steven R. Bordner,
	) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment in favor of a prison warden was affirmed because the motion's affidavits and attachments showed that there was no genuine issue of material fact that the revocations of the inmate's good conduct credits were properly submitted to the Prisoner Review Board for review.

¶ 2 Plaintiff Scott Kellick, an inmate, filed a complaint against the defendants, Richard S. Birkey and Roger Walker. Birkey was the warden of Illinois River Correctional Center, where Kellick was an inmate for all times relevant to Kellick's complaint. Kellick sought *mandamus* and *habeas corpus* relief in connection with the revocation of some of his good conduct credits.

On prior appeal to this court, we reversed the trial court's grant of Birkey's motion to dismiss, finding that Kellick stated a cause of action in *mandamus*. *Kellick v. Birkey*, No. 3–06–0918 (2009) (unpublished order under Supreme Court Rule 23). On remand, the trial court granted Birkey's motion for summary judgment, and Kellick appealed. We affirm.

¶ 3 FACTS

¶ 4 Kellick was taken into custody on murder charges on July 17, 1982. On December 20, 1985, Kellick pled guilty to murder and was sentenced to 40 years in the Illinois Department of Corrections (DOC). While incarcerated, Kellick was found guilty of unlawful possession of contraband in a penal institution, which resulted in an additional four years' imprisonment, to be served consecutively to the murder sentence.

¶ 5 On 19 occasions between 1985 and 1998, the DOC revoked 30 or more days of Kellick's good conduct credits for violations of DOC rules. Kellick filed a petition of *mandamus* and *habeas corpus*, alleging that the revocation of 4,470 days of good conduct credits were improper because the revocations were never brought before the Prisoner Review Board (the Board). Birkey filed a motion to dismiss, alleging that Kellick failed to state a *mandamus* claim or a due process cause of action because he had no clear legal right to have the good conduct credits restored. The trial court granted the motion to dismiss, but this court reversed and remanded, finding that the trial court was correct that Kellick had no due process right to have the Board review a decision to revoke good conduct credits, but that the complaint stated a cause of action for *mandamus* relief to compel Birkey to comply with his statutory ministerial duties outlined in the Unified Code of Corrections.

¶ 6 After remand, Birkey filed a motion for summary judgment, contending that there was no

genuine issue of material fact that each revocation that exceeded 30 days was submitted to the Board. Attached to the motion for summary judgment were two affidavits from Julie A. Bohler, an employee in the Records Office at Illinois River Correctional Center, copies of 11 letters from the Director of the DOC, and two documents entitled "Good Conduct Credits/Statutory Good Time Restoration/Revocation Recommendation." Kellick did not file a response to the motion for summary judgment. The trial court granted the motion, and Kellick appealed.

¶ 7 ANALYSIS

¶ 8 Kellick contends that the trial court erred in granting Birkey's motion for summary judgment, arguing that the documents attached to the summary judgment motion failed to provide evidence that the revocation of Kellick's good conduct credits were properly submitted for review by the Board. Kellick acknowledges that the two "Good Conduct Credits/Statutory Good Time Restoration/Revocation Recommendation" were sufficient evidence that the revocations were submitted to the Board. However, Kellick argues that the other letters "merely show that the Prisoner Review Board blindly rubber-stamped the revocation of good conduct credit," and were not evidence that the revocations were submitted to the Board. Birkey contends that Kellick has forfeited any argument on appeal by not responding to the motion for summary judgment and by failing to develop any relevant argument in his appellate brief. Birkey also argues that Kellick tacitly admitted that the revocations were submitted to the Board. Alternatively, Birkey argues that the trial court properly granted summary judgment based upon the evidence contained in the uncontroverted affidavits.

¶ 9 Under the law in effect when Kellick was convicted of murder, and later of unlawful possession of contraband in a penal institution, the Unified Code of Corrections (Code) provided

for one day of good conduct credit for each day of imprisonment. 730 ILCS 5/3-6-3(a)(2) (1984); 730 ILCS 5/3-6-3(a)(2.1) (1996). However, the Code also stated that the DOC may revoke good conduct credits from an inmate who is found to be guilty of violating the departmental rules. 730 ILCS 5/3-6-3(c) (West 1984). Where the revocation exceeds 30 days, the DOC must bring the charges against the prisoner before the Prisoner Review Board as provided in section 3-3-2(a)(4) of the Code. 730 ILCS 5/3-6-3(c) (West 1984). Section 3-3-2(a)(4) provides that the Board will decide cases brought by the DOC against a prisoner for violations of Department rules in which the DOC seeks to revoke more than 30 days of good conduct credits. 730 ILCS 5/3-3-2(a)(4) (West 1984).

¶ 10 "A grant of Summary judgment is appropriate if the pleadings, depositions, admissions, and affidavits on file, liberally construed in favor of the nonmoving party, show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law." *Helfers-Beitz v. Degelman*, 406 Ill. App. 3d 264, 267 (2010); 735 ILCS 5/2-1005(c) (West 2008). An appellate court's review of an order resolving a summary judgment motion is *de novo*. *Espinoza v. Elgin, Joliet & E. Ry.*, 165 Ill. 2d 107 (1995).

¶ 11 We have reviewed the record, and we find it to be sufficient to warrant summary judgment in favor of Birkey. Birkey's ministerial duty under the Code was to submit the revocations that exceeded 30 days' good conduct credit to the Board. In the affidavits submitted in support of summary judgment, a records employee at the prison where Kellick was an inmate stated that each of the enumerated revocations had been submitted to the Board for approval and that the Board had approved each of the enumerated revocations. Attached to the affidavits were 11 letters from the Director of the DOC and 2 revocation forms, supporting the information

in the affidavits. There is no contrary evidence in the record that would raise a genuine issue of material fact. We conclude that the affidavits and the attachments were sufficient evidence that the revocations were submitted to the Board, so we affirm the grant of summary judgment. Whether or not that review was sufficient, or whether the Board "rubber-stamped" the approvals, is not before this court.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Fulton County is affirmed.

¶ 14 Affirmed.