

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 100610-U

Filed 7/22/11

NO. 4-10-0610

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GERALD E. JONES,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
JOSEPH MATHY, JOHN (JACK) OVERFELT,	)	No. 09MR109
SYLVI MAHONE, JOHN GARLICK, GUY D.	)	
PIERCE, ROGER E. WALKER, JR., and MICHAEL	)	Honorable
P. RANDLE,	)	Jennifer H. Bauknecht,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Prison inmate denied injunctive and *mandamus* relief against employees of the Illinois Department of Corrections where he refused to sign for receipt of an envelope containing copies of all clinical records contained in any file maintained by the Illinois Department of Corrections because he believed the envelope did not contain a copy of each document contained in all clinical records.
- ¶ 2 On October 15, 2009, plaintiff, Gerald E. Jones, an inmate at Pontiac Correctional Center (Pontiac), filed a complaint for injunctive and *mandamus* relief against defendants, Joseph Mathy, John (Jack) Overfelt, Sylvi Mahone, John Garlick, Guy D. Pierce, Roger E. Walker, Jr., and Michael P. Randle, employees of the Illinois Department of Corrections (DOC). In his complaint, plaintiff sought an order directing defendants to provide him copies of his medical records and mental health records. On May 7, 2010, defendants Overfelt, Walker, and Randle filed a motion to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting defendants' motion to dismiss. We affirm.

¶ 4 On October 15, 2009, plaintiff filed a complaint for injunctive and *mandamus* relief against defendants seeking an order directing defendants to provide him copies of his medical records and mental health records. Defendant asserted he was denied copies of his records in retaliation for his complaining to defendant Overfelt that his files were missing pages and the contents were not in order. Plaintiff alleged the failure to provide him copies of his records would hinder his pursuit of an unrelated legal matter. Plaintiff asked the trial court to order defendants to provide him a complete copy of the records and to pay money damages.

¶ 5 On May 7, 2010, defendants Overfelt, Walker, and Randle filed a motion to dismiss pursuant to section 2–619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2–619 (West 2008)). Defendants argued (1) plaintiff admitted in his complaint he reviewed his medical records and mental health records and (2) plaintiff's assertion that his files were missing pages and the contents were not in order failed to state a cause of action for injunctive relief.

¶ 6 In support of its motion, defendants attached the affidavit of Ester Martin, a health-care unit administrator employed at Pontiac since August 2009. Martin stated plaintiff was transferred from Lawrence Correctional Center to Pontiac effective March 26, 2009. Plaintiff reviewed his records on March 20, 2009, April 8, 2009, May 20, 2009, and August 12, 2009. According to records maintained by the DOC, on September 3, 2009, and September 11, 2009, plaintiff "refused to sign for receipt of medical records, and therefore, did not receive copies."

¶ 7 In an affidavit attached to his response to defendants' motion to dismiss, plaintiff

admitted he refused to sign for receipt of the records. He did not know what was in the envelope and stated that "the thin and flatness size of the envelope indicated and showed it was not the medical or mental health records plaintiff requested."

¶ 8 On June 21, 2010, the trial court granted defendants' motion to dismiss. This appeal followed.

¶ 9 Plaintiff argues defendants denied him copies of his medical records and mental health records in violation of section 107.330 of title 20 of the Illinois Administrative Code (Administrative Code) . Defendants argue the appeal is moot because they complied with the DOC's regulations regarding access to and copying of medical records and mental health records. Defendants did not argue mootness before the trial court and do not assert the occurrence of an event since filing of the appeal making it impossible for the this court to render effectual relief. See *Balmoral Racing Club, Inc. v. Illinois Racing Board*, 151 Ill. 2d 367, 387, 603 N.E.2d 489, 496 (1992) ("A case becomes moot where the issues raised in and decided by the trial court no longer exist because events have occurred since filing of the appeal which make it impossible for the reviewing court to render effectual relief").

¶ 10 A reviewing court should not decide a case where the judgment would have only an advisory effect. *People ex rel. Black v. Dukes*, 96 Ill. 2d 273, 276, 449 N.E.2d 856, 857 (1983). However, where a decision "could have a direct impact on the rights and duties of the parties," there is life in the appeal. *People ex rel. Bernardi v. City of Highland Park*, 121 Ill. 2d 1, 6-7, 520 N.E.2d 316, 318 (1988). In addition, the supreme court has recognized that, where a decision could have "important consequences" for the parties before the court, it is proper to entertain the appeal. *Balmoral Racing Club*, 151 Ill. 2d at 387, 603 N.E.2d at 496-97. We find

the appeal is not moot and turn now to the issues raised by plaintiff.

¶ 11 "Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). A court will award a writ of *mandamus* "only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *People ex rel. Ryan v. Roe*, 201 Ill.2d 552, 555, 778 N.E.2d 701, 703 (2002). "A plaintiff must set forth every material fact necessary to show he or she is entitled to a writ of *mandamus*, and the plaintiff bears the burden to establish a clear, legal right to it." *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 483, 812 N.E.2d 72, 75 (2004) (citing *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 427 N.E.2d 153, 156 (1981)).

¶ 12 In ruling on a motion to dismiss pursuant to section 2–619 of the Procedure Code, "the trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party," and it should grant the motion "if the plaintiff can prove no set of facts that would support a cause of action." *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 349, 843 N.E.2d 379, 382 (2006). On appeal, this court reviews *de novo* the granting of a motion to dismiss a petition for mandamus. *Howell v. Snyder*, 326 Ill. App. 3d 450, 453, 760 N.E.2d 1009, 1011 (2001).

¶ 13 Like *mandamus*, an injunction is an extraordinary remedy. *Tamalunis v. City of Georgetown*, 185 Ill. App. 3d 173, 189, 542 N.E.2d 402, 413 (1989). Injunctive relief will be granted after a plaintiff proves "the existence of a lawful right, irreparable harm, and an inadequate remedy at law." *Tamalunis*, 185 Ill. App. 3d at 189, 542 N.E.2d at 413.

¶ 14 Section 107.310 of title 20 of the Administrative Code provides that "medical records shall be disclosed to a committed person \*\*\* upon receipt of a written request for the information and a release signed by the committed person." 20 Ill. Adm. Code 107.310(b), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). The DOC "may require payment of copying costs for any records produced." 20 Ill. Adm. Code 107.310(e), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996).

¶ 15 Section 107.330 of title 20 of the Administrative Code provides that a committed person may have access to and copy all clinical records contained in any file maintained by the DOC. 20 Ill. Adm. Code 107.330(b)(1), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). The Administrative Code defines clinical records as "[a]ny mental health record prepared by a therapist in the course of providing mental health services to a committed person, which is maintained by the Department of Corrections." 20 Ill. Adm. Code 107.330(a)(3), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). However, clinical record does not include "the therapist's personal notes, if such notes are kept in the therapist's sole possession for his or her own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist, or attorney." 20 Ill. Adm. Code 107.330(a)(3), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). "If at any time such notes are otherwise disclosed, they shall be considered part of the committed person's record for purposes of this Section." 20 Ill. Adm. Code 107.330(a)(3), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). Further, clinical record does not include testing material used in the course of providing services if the disclosure of such material would compromise the objectivity or fairness of the testing process. 20 Ill. Adm. Code 107.330(a)(3), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). Additionally, information contained in

clinical records, the disclosure of which a therapist certifies in writing is likely to result in physical harm to the committed person or others, is not subject to inspection and copying by a committed person. 20 Ill. Adm. Code 107.330(a)(4), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996).

¶ 16 All requests by a committed person to inspect or copy clinical records must be made in writing and must contain a release of the DOC and its employees "from any liability to the committed person as a result of disclosure or dissemination of the records or the information contained therein, resulting from the access permitted to the \*\*\* committed person." 20 Ill. Adm. Code 107.330(b)(2), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). Upon receipt of the request for records, the DOC shall either promptly make the records available for inspection by the committed person or promptly forward copies of the records to the committed person after payment or waiver of the costs. 20 Ill. Adm. Code 107.330(c)(2)(A), (B), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996).

¶ 17 Defendant argues he was denied copies of his records on April 2, 2009, in retaliation for his complaining to defendant Overfelt that his files were missing pages and the contents were not in order. However, an April 27, 2009, memorandum from defendant Overfelt to plaintiff states that defendant Overfelt spoke with the mental health director and they agreed on which copies of plaintiff's mental health records plaintiff should receive. Defendant Overfelt included a release for plaintiff's signature. Plaintiff admits he refused to sign for receipt of the records on September 3, 2009, and September 11, 2009, because he did not know what was in the envelope and believed "the thin and flatness size of the envelope indicated and showed it was not the medical or mental health records plaintiff requested." We note plaintiff was advised on

June 18, 2009, he would not be provided copies of his medical records. Although section 107.310 of title 20 of the Administrative Code provides that medical records shall be disclosed to a committed person (20 Ill. Adm. Code 107.310(b), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996)), the DOC may require payment of copying costs for any records produced (20 Ill. Adm. Code 107.310(e), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996)). Thus, the DOC provided plaintiff an opportunity to review his medical records and further to request copies if he secured the necessary funds.

¶ 18 Although plaintiff asserts the envelope could not have held his mental health records because of "the thin and flatness size of the envelope," he admits he refused the envelope and, therefore, cannot know the contents of the envelope. We note a mental health record may not include (1) the therapist's personal notes or (2) testing material used in the course of providing services. 20 Ill. Adm. Code 107.330(a)(3), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996). Further, information contained in a mental health record, the disclosure of which a therapist certifies in writing is likely to result in physical harm to the committed person or others, is not subject to inspection and copying by a committed person. 20 Ill. Adm. Code 107.330(a)(4-), as amended by 27 Ill. Reg. 6745 (eff. May 5, 1996).

¶ 19 Plaintiff cannot establish a section 107.310 or section 107.330 violation, thereby rendering his complaint for *mandamus* and injunctive relief without merit.

¶ 20 Plaintiff also contends that the trial court abused its discretion in denying his motion for leave to file an amended complaint and for appointment of counsel. An inmate is not entitled to appointment of counsel in a civil suit, although a trial court has the discretion to appoint counsel. *Newsome v. Illinois Prison Review Bd.*, 333 Ill. App. 3d 917, 922, 776 N.E.2d

325, 329 (2002). Plaintiff argues that the trial court abused its discretion by not appointing counsel to assist him in complying with section 2–604 of the Procedure Code (735 ILCS 5/2–604 (West 2008)). The trial court's dismissal was not based on lack of compliance with section 2–604 and, therefore, appointment of counsel would have had no effect on that issue.

¶ 21 Further, litigants have no absolute right to amend their complaint. *Lake County Grading Co. of Libertyville, Inc. v. Advance Mechanical Contractors, Inc.*, 275 Ill. App. 3d 452, 460, 654 N.E.2d 1109, 1117 (1995). This decision rests within the trial court's discretion and will not be disturbed on review absent an abuse of discretion. *Lake County*, 275 Ill. App. 3d at 461,654 N.E.2d at 1117. The test to determine whether the trial court properly exercised its discretion is " 'whether allowance of the amendment furthers the ends of justice.' " *Kumaran v. Brotman*, 247 Ill. App. 3d 216, 225, 617 N.E.2d 191, 198 (1993) (quoting *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill. App. 3d 40, 48, 594 N.E.2d 1344, 1349 (1992)). In this case, the amended complaint did not provide any substantive additions or changes to the allegations contained in the original complaint. The trial court, therefore, did not abuse its discretion in denying plaintiff's motion for leave to file an amended complaint and for appointment of counsel.

¶ 22 For the reasons stated, we affirm the trial court.

¶ 23 Affirmed.