

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).

NO. 4-10-0469

Filed 5/25/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

CEDRIC DUPREE, Plaintiff-Appellant, v. JORGE MONTES and ANN TAYLOR, Defendants-Appellees.) Appeal from) Circuit Court of) Livingston County) No. 09MR112)) Honorable) Jennifer H. Bauknecht,) Judge Presiding.
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JUSTICE POPE delivered the judgment of the court. Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

Held: (1) The trial court did not err in granting defendants motion to dismiss plaintiff's petition for *mandamus* where it was barred by the doctrine of *laches*.

(2) The trial court did not err in denying plaintiff's request for appointed counsel where he has no right to counsel in a civil proceeding and a petition for *mandamus* is civil in nature.

(3) The trial court did not err in failing to rule on plaintiff's motion for default judgment where plaintiff did not obtain a ruling on the motion prior to filing his notice of appeal; plaintiff abandoned his motion.

Plaintiff, Cedric Dupree, is an inmate in the Illinois Department of Corrections (DOC) serving a 15-year term of imprisonment for theft and impersonation of a police officer. In October 2009, plaintiff filed a *pro se* petition for *mandamus* against defendants, Jorge Montes and Ann Taylor, who plaintiff identified as the Illinois Prisoner Review Board (Board) "chair-

man." In December 2009, defendants filed a motion to dismiss, which the trial court granted in May 2010.

Plaintiff appeals *pro se*, arguing the trial court erred in (1) dismissing his *mandamus* petition where defendants failed to provide him with the factual information, including access to his master file, regarding the revocation of his good-conduct credits, (2) denying his request for appointed counsel, and (3) failing to rule on his motion for default judgment.

I. BACKGROUND

On October 15, 2009, plaintiff, while an inmate at the Pontiac Correctional Center, filed a *pro se* petition for *mandamus* relief. Plaintiff claimed the Board revoked approximately 7 1/2 years of good-conduct credits without providing him with a factual basis for the revocations. Plaintiff argued the Board had a nondiscretionary statutory duty pursuant to section 3-5-1(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-5-1(b) (West 2008)), to provide him with the factual information it relied on to revoke his good-conduct credits. Plaintiff contended the Board's failure to provide him with the information violated his right to due process. Plaintiff requested (1) an order compelling defendants to comply with section 3-5-1(b) and provide him with the factual information justifying the revocation of his good-conduct credits and (2) the restoration of those credits.

On November 16, 2009, plaintiff filed a supplemental claim, alleging he had a statutory right pursuant to section 3-5-1(b) of the Unified Code to access his master file. Plaintiff contends defendants have violated that right by refusing his request to access the file. Plaintiff argues the master file contains the information used to revoke his credits.

On December 17, 2009, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)), arguing plaintiff failed to state a valid claim because he had no clear legal right to a written explanation from the Board of the information underlying the reasons for the revocation of his good-conduct credits. Defendants contended the factual basis provided by the Adjustment Committee (Committee) for the revocation of plaintiff's credits met the section 3-5-1(b) requirements. Defendants also argued plaintiff did not have a clear right to access his master file under either the Unified Code or DOC rules.

On December 18, 2009, plaintiff filed a motion for default judgment, arguing defendants failed to file timely responsive pleadings to his complaint. Plaintiff did not obtain a ruling on that motion.

On March 5, 2010, the trial court granted the parties leave to supplement the record and provide copies of any reports from the Committee pertaining to the loss of good-time credit.

The court stated while it was aware the Board does not need to provide a factual basis independent of that provided by the Committee, it still needed some documentation to determine whether the Committee provided sufficient factual information to plaintiff. Plaintiff had not attached any Committee reports or final Board orders to his original complaint.

On April 9, 2009, defendants supplemented the record with the Committee's final summary reports and sentence-calculation worksheets for all 19 instances--between September 1999 and May 2008--where plaintiff's good-conduct credits were revoked. Each report shows, *inter alia*, the facts supporting the basis for the decision. In addition, the reports show the disciplinary action taken, *i.e.*, the amount of credit revoked. Moreover, each report shows the date and time plaintiff was served with a copy of the report and identifies the officer who served it.

On May 27, 2010, the trial court granted defendants' motion to dismiss, finding "[t]he record is clear that plaintiff received all of his due process rights in connection with the underlying disciplinary matter."

On June 7, 2010, plaintiff filed a motion to reconsider, which the trial court denied.

This appeal followed.

II. ANALYSIS

On appeal, plaintiff, proceeding *pro se*, argues the

trial court erred in (1) dismissing his *mandamus* petition because defendants (a) failed to provide him with the factual information regarding the revocation of his good-conduct credits and (b) denied him access to his master file, which contains that information; (2) denying his request for appointed counsel; and (3) failing to rule on his motion for default judgment.

A. *Mandamus*

Plaintiff argues the trial court erred in dismissing his *mandamus* petition because defendants failed to comply with their statutory duties to provide him with the factual information the Board relied on to revoke his good-conduct credits. We disagree.

"*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 petition for *mandamus* will be granted "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." *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is

entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 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)). We review *de novo* a trial court's grant of a motion to dismiss a petition for *mandamus*. *Hadley*, 379 Ill. App. 3d at 407, 883 N.E.2d at 706.

1. *Doctrine of Laches*

We initially note defendants argue all of plaintiff's claims are barred by *laches* because he filed his petition more than six months after the Board's action.

Plaintiff argues defendants should be barred from asserting the doctrine of *laches* because he believes defendants failed to make the *laches* argument in the trial court. However, in defendants' April 9, 2010, motion to supplement the record, which the trial court allowed, defendants did in fact raise the issue and argued plaintiff's claims were barred by *laches*.

The defense of *laches* may apply in a case where a party is seeking *mandamus* relief. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739, 791 N.E.2d 666, 671 (2003). The *laches* defense "bars claims by those who neglect their rights to the detriment of others." *People v. Wells*, 182 Ill. 2d 471, 490, 696 N.E.2d 303, 312 (1998). "A complaint for *mandamus* must be brought within six months unless there is a reasonable explanation for delay." *Caruth v. Quinley*, 333 Ill. App. 3d 94, 99, 775 N.E.2d 224, 228

(2002).

Generally, a party asserting the defense of *laches* must prove (1) a lack of due diligence by the party asserting the claim and (2) prejudice to the party asserting the defense. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. A plaintiff's lack of due diligence is established by a showing of a lapse of more than six months from the accrual of the cause of action and the filing of the *mandamus* petition, unless the plaintiff offers a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. As to the prejudice prong, "in cases 'where a detriment or inconvenience to the public will result,' prejudice is inherent." *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671 (quoting *City of Chicago v. Condell*, 224 Ill. 595, 598-99, 79 N.E. 954, 956 (1906)).

In this case, plaintiff failed to exercise due diligence in bringing his *mandamus* action with respect to his claims relating to good-conduct-credit revocations, which occurred between September 1999 and May 2008. Plaintiff filed his *mandamus* petition in October 2009, almost a year and a half after the Board's most recent action underlying his cause of action took place.

Further, plaintiff also has not offered a reasonable excuse for his delay in filing his petition. With regard to prejudice, an inconvenience to the public exists "in cases where

inmates file petitions for writs of *mandamus* more than six months after the completion of the original DOC disciplinary proceedings and no reasonable excuse exists for the delay." *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. This court has noted the prejudice that can result with the passage of time in grievance proceedings as follows:

"The [DOC] inmates who might serve as witnesses may no longer be in the same prison or incarcerated at all. Moreover, the employees who were involved may have transferred or quit since that time, or even more likely, these employees would not be able to recall the events that occurred over six months ago. Possible records may have been disposed of in the ordinary course of business as well." *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303, 803 N.E.2d 48, 54 (2003).

In this case, the prejudice against defendants is inherent based on plaintiff's failure to file his *mandamus* petition within six months. Thus, plaintiff's complaint is barred by *laches*.

2. *Merits of Plaintiff's Petition*

Laches aside, plaintiff has failed to state a cause of action entitling him to *mandamus* relief. Plaintiff's *mandamus*

complaint alleged the Board failed to comply with section 3-5-1(b) of the Unified Code by not providing him with the factual information it relied on in revoking his good-conduct credits.

Defendants argue section 3-5-1(b) does not require the Board to provide written reasons for revocation of good-conduct credits where the Committee has already provided those reasons. We agree with defendants.

Section 3-5-1(b) of the Unified Code provides, in part, the following:

"If [DOC] or the [Board] makes a determination *** which affects the length of the period of confinement or commitment, the committed person and his counsel shall be advised of factual information relied upon *** to make the determination[.]" 730 ILCS 5/3-5-1(b) (West 2008).

This court has found where the Committee has provided written reasons supporting the revocation of good-conduct credits, section 3-5-1(b) is satisfied. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1126, 888 N.E.2d 123, 128 (2007).

In this case, plaintiff has not alleged the Committee failed to provide him with reasons for revoking his good-conduct credits. Instead, plaintiff alleged only he did not receive factual information from the Board. However, section 3-5-1(b)

does not require the Board provide written reasons in making its decision. A review of the record shows plaintiff was advised of the factual basis for each of the revocations at the Committee level of the proceedings. "Section 3-5-1(b) does not require more than this." *Ford*, 377 Ill. App. 3d at 1126, 888 N.E.2d at 128.

3. *Master-File Access*

Plaintiff also argues pursuant to section 3-5-1(b) of the Unified Code, he is entitled to access his DOC master file because it contains the information the Board used to revoke his good-conduct credits.

However, neither the Unified Code nor DOC rules provide plaintiff the right to access his master file. Section 3-5-1(b), entitled "Master Record File," provides "[a]ll files shall be confidential and access shall be limited to authorized [DOC] personnel ***. Personnel of other correctional, welfare[,] or law enforcement agencies may have access to files under rules and regulations of the respective Department." 730 ILCS 5/3-5-1(b) (West 2008).

Title 20 of the Administrative Code also reflects the section 3-5-1(b) restrictions concerning access to a committed person's master file. See 20 Ill. Adm. Code §107.310 (2011). Like statutes, administrative rules have the force and effect of law and are presumed valid. *People v. Molnar*, 222 Ill. 2d 495,

508, 857 N.E.2d 209, 217 (2006). Title 20, section 107.310(a), provides "Committed persons shall not be permitted access to their master record files except as expressly permitted by law or this Subpart." See 20 Ill. Adm. Code §107.310(a) (2011).

Subsection (b) of section 107.310 pertains to a committed person's medical records. See 20 Ill. Adm. Code §107.310(b) (2011). Subsection (c) permits access to personnel from correctional, welfare, or law enforcement agencies. See 20 Ill. Adm. Code §107.310(c) (2011). Subsection (d) concerns access to the master file by persons no longer committed to DOC. See 20 Ill. Adm. Code §107.310(d) (2011). None of these exceptions are at issue in this case.

The trial court did not err in dismissing plaintiff's complaint because (1) the Board is not required to provide the factual information for credit revocation where the Committee has provided written reasons for the revocation and (2) plaintiff has no right to access his master file.

B. Court-Appointed Counsel

The October 15, 2009, docket entry shows the trial court denied plaintiff's request for appointment of counsel. Plaintiff argues the court erred in denying his request for appointed counsel to represent him during the proceedings. We disagree.

The sixth amendment of the United States Constitution

provides, in part, "In all *criminal* prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defence." (Emphasis added.) U.S. Const., amend. VI. "[A]n individual in a civil action [also] has no right to counsel under the Illinois Constitution." *Ratcliff v. Apantaku*, 318 Ill. App. 3d 621, 627, 742 N.E.2d 843, 847 (2000). "'Complaints for writs of *mandamus* *** are civil in nature. Consequently, indigent prisoners do not have a constitutional right to the appointment of counsel in such cases.'" *Marrero v. Peters*, 229 Ill. App. 3d 752, 754, 593 N.E.2d 1166, 1168 (1992) (quoting *Doherty v. Caisley*, 104 Ill. 2d 72, 76, 470 N.E.2d 319, 321 (1984)). Thus, the trial court did not err in denying plaintiff's request for appointed counsel.

C. Motion for Default Judgement

In an October 15, 2009, letter to the parties, the trial court "request[ed] that any motions in [this case] be filed within 60 days of the date of this letter" and that "if additional time is needed, please file your request before [February 23, 2010]." Plaintiff argues he is entitled to a default judgment because defendants did not file their motion to dismiss until December 17, 2009, more than 60 days after plaintiff filed his complaint on October 15, 2009.

While plaintiff filed a motion for default judgment on December 18, 2009, he did not obtain a ruling on that motion

prior to filing his June 2010 notice of appeal. "[I]t is the responsibility of the party filing a motion to request the trial judge to rule on it, and when no ruling has been made on a motion, the motion is presumed to be abandoned absent circumstances indicating otherwise." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007). Because the circumstances in this case do not indicate otherwise, we conclude plaintiff abandoned his motion. As a result, we need not address this issue on appeal.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.