

NOTICE
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2011 IL App (4th) 100703-U

Filed 10/14/11

NO. 4-10-0703

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

ALVIN WILLIAMS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
ROGER E. WALKER, JR., Director of the Department of)	No. 08CH475
Corrections; and TONY SMALL, Deputy Director of)	
Finance for the Department of Corrections,)	Honorable
Defendants-Appellees.)	Patrick W. Kelly,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The issue regarding the construction of section 3-7-2a of the Unified Code of Corrections (730 ILCS 5/3-7-2a (West 2006)) was a question of law, which could be properly resolved via summary judgment.
- ¶ 2 This case involves the Department of Corrections' (DOC) pricing policy for goods sold in the prison commissaries. The basis for plaintiff Alvin Williams's request for an injunction was his belief DOC was violating section 3-7-2a of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-7-2a (West 2006)) by automatically increasing the price of goods for sale in the commissary by a specific percentage of the price DOC paid. The price increase at issue in this injunction request was in addition to the percentage price increases specifically enumerated in section 3-7-2a of the Unified Code, *i.e.*, 35% for tobacco products and 25% for non-tobacco products.

¶ 3 In March 2010, the named defendants, Roger Walker, director of DOC, and Tony Small, deputy director of finance for DOC, filed a motion for summary judgment in this case. In August 2010, the trial court granted defendants' motion, finding no genuine issues of material fact existed and agreeing with defendant's interpretation of section 3-7-2a of the Unified Code. Plaintiff appeals, arguing the trial court erred in granting defendants' motion for summary judgment because (1) he demonstrated a genuine issue of material fact and (2) the trial court improperly made credibility determinations for the purpose of granting defendant's motion for summary judgment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2008, plaintiff, an inmate, filed a verified complaint for injunctive and other relief against defendants. Plaintiff alleged the defendants violated section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2006)) by implementing a policy where DOC charged more for goods sold in the prison commissary than allowed by statute. DOC initially added 3% to the price they paid for the products. Later, they raised this percentage to 7% and then to 9.5%. These increases were in addition to the specifically enumerated adjustments (25% for non-tobacco products and 35% for tobacco products) allowed by section 3-7-2a of the Unified Code.

¶ 6 Plaintiff alleged the Auditor General's office informed DOC the mark-up at issue violated section 3-7-2a of the Unified Code. DOC informed the Auditor General it did not agree with his interpretation of section 3-7-2a of the Unified Code. Plaintiff asked the trial court to find defendants had violated section 3-7-2a of the Unified Code, enjoin defendants from adding this initial mark-up to the price DOC paid for goods, award plaintiff actual and punitive damages, and order defendants to pay plaintiffs costs of prosecuting this case.

¶ 7 In August 2008, defendants filed a motion to dismiss. In October 2009, the trial court allowed defendants' motion to dismiss in part, striking plaintiff's prayer for monetary relief. However, the court ordered defendants to answer plaintiff's complaint for injunctive relief, which they did in November 2009.

¶ 8 In March 2010, defendants filed a motion for summary judgment. In the motion, defendants argued DOC's pricing system was in compliance with section 3-7-2a of the Unified Code. In support of their argument, defendants attached an affidavit from Mary Ann Bohlen, assistant deputy director of fiscal accounting compliance for DOC. Bohlen stated in the affidavit she had a "thorough knowledge of how prices are set at commissaries at [DOC] facilities." Bohlen stated in the affidavit the statute does not define the term "costs." DOC relied on a definition in the Comptroller's SAMS manual for "costs of sales and services" to justify the surcharge. Bohlen's affidavit states:

"The Comptroller's SAMS manual defines 'costs of sales and services' as the invoice and other such costs pertaining to the item sold or the services rendered, including direct and indirect costs. Examples such as purchases, freight costs, salaries, factory overhead costs and other related direct costs. (SAMS Manual 27.50.20)"

Bohlen further stated in her affidavit DOC reviewed the costs of goods for sale in the prison commissaries in 2005, including the wholesale price of the goods and the other costs incurred in delivering the goods to the inmates. Bohlen stated DOC found its costs far exceeded the revenue generated. "The amount of the shortage was over 7% of the wholesale cost of the goods." As a

result, DOC began adding 3% to the wholesale costs of the goods. Eventually, DOC was adding 9.5% to the price it paid for the goods.

¶ 9 Defendants also argued plaintiff's claim was barred by the doctrine of sovereign immunity and did not meet the requirements for injunctive relief. In addition, defendants argued plaintiff did not have standing to enforce the Unified Code.

¶ 10 In July 2010, plaintiff responded to defendants' motion for summary judgment, arguing a genuine question of material fact existed sufficient to preclude summary judgment. According to plaintiff, this question of material fact was the disagreement between DOC and the Auditor General as to the meaning of section 3-7-2a of the Unified Code.

¶ 11 In August 2010, the trial court granted defendant's motion for summary judgment, finding DOC's pricing system did not violate section 3-7-2a of the Unified Code.

¶ 12 This appeal followed.

¶ 13 **II. ANALYSIS**

¶ 14 Section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2006)) states:

"If a facility maintains a commissary or commissaries serving inmates, the selling prices for all goods shall be sufficient to cover *the costs* of the goods and an additional charge of up to 35% for tobacco products and up to 25% for non-tobacco products. The amount of the additional charges for goods sold at commissaries serving inmates shall be based upon the amount necessary to pay for the wages and benefits of commissary employees who are employed in any commissary facilities of the Department. The

Department shall determine the additional charges upon any changes in wages and benefits of commissary employees as negotiated in the collective bargaining agreement. If a facility maintains a commissary or commissaries serving employees, the selling price for all goods shall be sufficient to cover the costs of the goods and an additional charge of up to 10%. A compliance audit of all commissary funds shall be included in the regular compliance audit of the Department conducted by the Auditor General in accordance with the Illinois State Auditing Act.

Items purchased for sale at any such commissary shall be purchased, wherever possible, at wholesale costs. If a facility maintains a commissary or commissaries as of the effective date of this amendatory Act of the 93rd General Assembly, the Department may not contract with a private contractor or vendor to operate, manage, or perform any portion of the commissary services. The Department may not enter into such a contract for commissary services at a facility that opens subsequent to the effective date of this amendatory Act of the 93rd General Assembly." 730 ILCS 5/3-7-2a (West 2006).

¶ 15 Plaintiff argues the trial court erred in granting defendants' motion for summary judgment because he adequately demonstrated the existence of a genuine issue of material fact. According to plaintiff, this genuine issue of material fact was the disagreement between DOC

and the Auditor General as to the proper interpretation of section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2006)). Plaintiff further argues the trial court's finding DOC's interpretation of section 3-7-2a of the Unified Code was correct was a credibility determination, which was improperly made for purposes of summary judgment. Both of these arguments are meritless.

¶ 16 The disagreement between DOC and the Auditor General over the meaning of section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2006)) constitutes a question of law, not a question of fact. The trial court's ruling was based on its interpretation of the statute. "The interpretation of a statute is a matter of law for the court and appropriate for summary judgment." *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 433, 837 N.E.2d 29, 47-48 (2005). The trial court's agreement with DOC's interpretation of section 3-7-2a of the Unified Code was not a judgment on either plaintiff or DOC's credibility.

¶ 17 Plaintiff makes no argument why the trial court's interpretation of section 3-7-2a of the Unified Code is incorrect. As a result, plaintiff forfeited any argument on this issue. Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006) states an appellant's brief shall contain:

"Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored.

Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."

While plaintiff is proceeding *pro se*, *pro se* appellants are held to the same standards as attorneys on appeal. *In re A.H.*, 215 Ill. App. 3d 522, 529-30, 575 N.E.2d 261, 266 (1991).

¶ 18 Finally, we note we can also affirm the trial court based on this court's recent decision in *Jackson v. Randle*, 2011 IL App (4th) 100790, 2011 WL 4031215 (Sept. 9, 2011). In *Jackson*, an inmate claimed DOC, through its commissary, had been overcharging him and other inmates for goods sold in the prison commissary in violation of section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2008)). This court stated:

"As this court explained more than a decade ago in *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258-59, 739 N.E.2d 897, 902-03 (2000), [DOC] regulations and the Unified Code were designed to provide guidance to prison officials in the administration of prisons, not to create more rights for inmates than those which are constitutionally required. Inmates have a constitutional right to adequate water, shelter, food, drinking water, clothing, sanitation, and medical care, personal safety, reasonable access to courts, and the reasonable opportunity to exercise religious freedom. *Ashley*, 316 Ill. App. 3d at 1258-59, 739 N.E.2d at 903. Prisoners like Jackson do not have constitutionally protected 'rights' to commissary items at a specified price, and section 3-7-2a does not somehow magically create one." *Jackson*, 2011 IL App (4th) 100790,

¶17, 2011 WL 4031215.

Because defendant does not have a clear and ascertainable right in need of protection with regard to the price of the commissary items, he is not entitled to injunctive relief. To be entitled to permanent injunctive relief, a plaintiff must demonstrate the following: "(1) a clear and ascertainable right in need of protection; (2) that he or she will suffer irreparable harm if the injunction is not granted; and (3) that there is no adequate remedy at law." *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772, 919 N.E.2d 76, 85 (2009).

¶ 19

III. CONCLUSION

¶ 20

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

¶ 21

Affirmed.