



are necessary and relevant to certain court actions, and mental health treatment in order for the Plaintiff to obtain his freedom from restraint."

¶ 5 Defendants Larry Phillips and Lynne Shelton, DHS administrators, filed a motion to dismiss July 7, 2010, arguing Bauer failed to state a cause of action because he was prohibited by law from accessing his DOC records. The circuit court granted the motion that same day. On July 13, 2010, Bauer filed a motion to reconsider. That motion was denied July 21, 2010, and Bauer filed, *pro se*, this notice of appeal July 27, 2010.

¶ 6 II. ANALYSIS

¶ 7 We review *de novo* a trial court's dismissal of a complaint for failure to state a cause of action. *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 421, 804 N.E.2d 519, 525 (2004). Such a dismissal is appropriate only if it clearly appears that no set of facts can be proved under the pleadings that will entitle the plaintiff to recover. *Bajwa*, 208 Ill. 2d at 421, 804 N.E.2d at 525. "*Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion." *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001).

¶ 8 A. DOC Master Files

¶ 9 Bauer's argument centers on DHS's regulations. Section 299.130(a)(2)(A) of Title 59 of the Illinois Administrative Code (Administrative Code) provides:

"Prior to the admission of a new resident, the Department shall request a detention summary from the transferring authority.

The Department shall request that the detention summary contain any relevant medical, psychiatric or psychological information

in the transferring authority's records to allow Department treatment and evaluation staff to prepare for behavioral or health needs of the resident. The Department shall further request that the transferring authority share the master file, medical file, and clinical and field services information pertaining to the resident as necessary for the proper evaluation and treatment to the resident and for program safety and security." 59 Ill. Adm. Code 299.130(a)(2)(A) (2010).

Section 299.130(b)(1) of Title 59 of the Administrative Code provides:

"Records of a resident may be accessed by the resident, treatment staff, and persons authorized by the resident, and as necessary to complete the functions of the Act or as otherwise ordered by a court." 59 Ill. Adm. Code 299.130(b)(1) (2010).

¶ 10 In contrast, section 3-5-1(b) of the Unified Code of Corrections, which applies to DOC, provides that "[a]ll files shall be confidential and access shall be limited to authorized personnel of the respective Department." 730 ILCS 5/3-5-1(b) (West 2008). "The master file of a person no longer in the custody of the respective Department shall be placed on inactive status and its use shall be restricted subject to rules and regulations of the Department." 730 ILCS 5/3-5-1(d) (West 2008). DOC regulations provide that although medical records shall be disclosed, "[t]he master record files of committed persons shall be confidential and access shall be limited to authorized persons. Committed persons shall not be permitted access to their master record files except as expressly permitted by law or this Subpart." 20 Ill. Adm. Code

107.310(a) (2010). "Access to the master record file of a person no longer in custody of the Department shall be provided in accordance with procedures applicable to committed persons."

20 Ill. Adm. Code 107.310(d) (2010).

¶ 11 Bauer attached a number of exhibits to his complaint for *mandamus*, including copies of his requests and defendant's responses. For example, exhibit C requests documents that are in the possession of the Department of Human Services–Treatment Detention Facility. The handwritten response states: "Please contact your primary therapist so the correct request form can be filled out for the copies. You may request a copy of your TDF clinical and medical files. You have to request DOC files from DOC. Thank you. L. Shelton." Bauer has an independent right of access to some of the records maintained by DOC: his medical records (20 Ill. Adm. Code 107.310(b) (2010)), "clinical" (mental health) records (20 Ill. Adm. Code 107.330(a)(3), (b)(1) (2010)), and criminal history records (20 Ill. Adm. Code 107.420 (2010)). He can request copies of those documents at any time by applying directly to DOC.

¶ 12 The issue in this case is whether Bauer can obtain his DOC master file. The Unified Code of Corrections and DOC regulations, quoted above, make it clear that he cannot. The DHS regulation providing that "[r]ecords of a resident may be accessed by the resident" (59 Ill. Adm. Code 299.130(6)(1) (2010)) cannot be read to overrule the specific prohibition on release of master files contained in the Unified Code of Corrections and DOC regulations. Sexually violent person detainees do not have more access to their DOC records than DOC inmates and former inmates. The DHS regulation was clearly intended to guarantee a right of access to *treatment* records. We reject Bauer's claim that detainees are entitled to any document in DHS's possession merely because DHS possesses it.

¶ 13

B. Right To Respond to Motion To Dismiss

¶ 14

Bauer argues that when the trial court granted DHS's motion to dismiss on the day it was filed, he was denied an opportunity to reply (citing 735 ILCS 5/14–104 (West 2008)). Section 14–104 provides that, in *mandamus* actions, "plaintiff may reply or otherwise plead to the answer, within 5 days after the last day allowed for the filing of the answer." 735 ILCS 5/14–104 (West 2008). In *Scotti v. Taylor*, 351 Ill. App. 3d 884, 888, 815 N.E.2d 1013 (2004), this court reversed and remanded the trial court's *sua sponte* dismissal of a complaint for *mandamus* three days after it was filed, where the trial court had dismissed the complaint for failure to state a cause of action. We reversed and remanded because "[o]n this record, we fail to see how Scotti's petition fails to state a cause of action for *mandamus* relief or is otherwise frivolous." *Scotti*, 351 Ill. App. 3d at 888, 815 N.E.2d at 13. We find a number of differences between *Scotti* and this case. First, the dismissal here was not *sua sponte*; the case was dismissed after defendants filed a motion to dismiss. Also, Bauer was afforded an opportunity to reply; he filed a motion to reconsider, which the trial court considered and denied eight days later. Finally, unlike *Scotti*, the record here provides clear support for the dismissal of the complaint.

¶ 15

III. CONCLUSION

¶ 16

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

¶ 17

Affirmed.