

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).

2012 IL App (3d) 110482-U

Order filed July 24, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

| | | |
|----------------------------------|---|-------------------------------|
| PATRICK PURSLEY, |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| Plaintiff-Appellant, |) | Will County, Illinois, |
| |) | |
| v. |) | Appeal No. 3-11-0482 |
| |) | Circuit No. 07-L-465 |
| TERRY MCCANN, ED BUTKIEWICZ, and |) | |
| DARRYL JOHNSON, |) | Honorable |
| |) | Marzell L. Richardson, Jr., |
| Defendants-Appellees. |) | Judge, Presiding |

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

ORDER

- ¶ 1 Held: Trial court's dismissal of inmate's certiorari and civil rights claims for failure to exhaust administrative remedies and to state a cause of action implicating constitutional issues affirmed.
- ¶ 2 Plaintiff Patrick Pursley, an inmate at Stateville Correctional Center, filed a complaint against defendants Warden Terry McCann and Lieutenants Ed Butkiewicz and Darryl Johnson, members of the prison adjustment committee, alleging that he was wrongly issued a disciplinary ticket and that his civil rights were violated. The trial court granted the defendants' motion to dismiss. Pursley

appealed. We affirm.

¶ 3

FACTS

¶ 4 Plaintiff Patrick Pursley was convicted of first degree murder and sentenced to a term of natural life in prison. *People v. Pursley*, 284 Ill. App. 3d 597 (1996). At the time of the instant action, he was incarcerated at Stateville Correctional Center. On June 24, 2006, Pursley filed a grievance, #1314, protesting conditions in “F-house” segregation, alleging that he was without soap for one month, and that his cell was infested with cockroaches and lacked adequate heat. He complained that the windows were not covered with plastic and no extra blankets were provided. In a response dated October 3, 2006, the grievance officer determined that soap was provided weekly, cleaning supplies were available to inmates who requested them, and the heat was not turned on until October 15 per policy. Pursley’s request for monetary damages was denied and the warden concurred in the denial. The grievance response form indicates that Pursley did not appeal to the Administrative Review Board (ARB) and the director of the Department of Corrections (DOC).

¶ 5 On October 9, 2006, Pursley, a practicing Muslim, was questioned about his necklace by the warden while in the “chow” line. Pursley told McCann, “these are my Muslim prayer beads, Sir!” and that he was allowed to wear them. McCann questioned Pursley’s attitude, to which Pursley responded, “I don’t like your attitude either, Sir! You have brought much misery and suffering to the land.” As a result of the confrontation, Pursley was taken to segregation and issued a disciplinary ticket charging him with insolence and intimidation or threats, both violations of DOC rules. The disciplinary ticket stated that Pursley’s response was directed to the warden in a “defiant and [i]ntimidating manner” and that he told McCann, “ ‘all you’re bringing here is a bunch of strife and turmoil’ as though he were [sic] implying that unrest among the inmate population was possible.”

Pursley did not return the witness request form attached to the ticket but filed a separate notice, identifying nine witnesses and requesting that he be given a lie detector test.

¶ 6 The adjustment committee, consisting of Johnson and Butkiewicz, conducted a hearing. Its October 17, 2006, report indicated that Pursley admitted insolence, denied his conduct was intimidating or threatening, and argued that the disciplinary ticket misrepresented his statements to McCann. The adjustment committee found Pursley guilty of both counts. Also on October 17, 2006, Pursley filed an emergency grievance, #1390. It was denied by McCann because it was not of an urgent nature. Pursley was directed to pursue the grievance through the normal procedures. He did so, and the grievance officer denied the grievance, and McCann concurred in the denial. Pursley appealed the denial to the DOC director and to the ARB. He filed a duplicate grievance #1390 on November 1, 2006, the response to which indicated that Pursley could forward his original grievance to the ARB. The record does not include a response from the ARB or the director. Pursley's disciplinary ticket was ultimately reconsidered by the adjustment committee, which decreased his punishment and expunged the intimidation or threats charge.

¶ 7 Grievance #1571 is not in the record but the ARB response, dated April 2, 2007, is included. According to the ARB response, Pursley alleged inadequate heat and roach infestation in his segregation cell. The ARB determined in response to Pursley's claim that his cell was unbearably cold that the cell "vent was covered with paper and tape," presumably concluding that Pursley blocked the heat vent. The ARB remanded the issue to McCann. The DOC director concurred in the ARB's determination and ordered, "Warden McCann is to proceed accordingly."

¶ 8 Pursley filed a lost property grievance on March 8, 2007. The record does not include the grievance or the responses of the grievance officer or the warden. Grievance #0169 appears to have

alleged that Pursley's personal property, including food, was missing from his cell after his return from segregation and that his remaining property had been destroyed by rats. The ARB ruling, which is included in the record, remanded the issue back to the warden. The director concurred in the ARB decision and the grievance was remanded. On May 20, 2007, Pursley filed another lost property grievance, again complaining that his food items and items of personal property were stolen or destroyed by rats while he was in segregation. The grievance officer denied the grievance and there is no indication in the record that this grievance was appealed.

¶ 9 In July 2007, Pursley filed a complaint seeking certiorari review of his disciplinary proceeding. He alleged violations of his rights under the first, eighth and fourteenth amendments. Pursley moved, and was allowed, to proceed in forma pauperis. On defendants' motion, which argued in part that Pursley should not have been granted leave to proceed in forma pauperis, the trial court dismissed the complaint. Pursley appealed, and this court vacated the dismissal and remanded. *Pursley v. McCann*, No. 3-08-0765 (2009) (unpublished order under Illinois Supreme Court Rule 23). On remand, Pursley filed an amended writ of certiorari and a civil rights complaint. He challenged his disciplinary ticket and alleged various constitutional violations, including his rights to due process, freedom of religion and freedom of speech. He also brought claims under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) (42 USC § 2000cc (2000)) and the eighth amendment. Pursley included multiple exhibits with his complaint, including affidavits from other inmates concerning the conditions in the segregation cells. The defendants moved to dismiss Pursley's complaint, arguing that he failed to exhaust his administrative remedies, except for the heat and infestation claims, and that those claims did not implicate his constitutional rights. The trial court agreed, granted the defendants' motion, and dismissed the complaint with prejudice. Pursley moved

for reconsideration, which the trial court denied. He followed with this appeal.

¶ 10

ANALYSIS

¶ 11 On appeal, the issue is whether the trial court erred when it granted the defendants' motion to dismiss. Pursley argues that dismissal was improper in that he exhausted his administrative remedies before bringing his complaint in the trial court and he sufficiently stated a claim implicating a violation of his constitutional rights. He includes an additional argument on appeal, claiming an equal protection violation based on Will County's allegedly disproportionate dismissal of inmate complaints. Pursley initially brought this issue in his motion to reconsider, which the trial court did not decide because his appeal had been filed. Accordingly, we decline to address the issue. *In re J.J.*, 201 Ill. 2d 236, 248 (2002) (issue raised first on appeal is waived).

¶ 12 A section 2-615 motion to dismiss is proper when the complaint fails to a claim on which relief can be granted. 735 ILCS 5/2-615 (West 2008). A 2-619 motion to dismiss is properly granted when the plaintiff's claim is barred by other affirmative matter that avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2008). When reviewing the grant of a motion to dismiss, we must accept as true all well-pleaded facts and view those facts in a light most favorable to the plaintiff. *Gonnella Baking Co. v. Clara's Pasta Di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003). Illinois is a fact-pleading jurisdiction and a plaintiff must allege facts sufficient to state a cause of action to survive a motion to dismiss. *Behringer v. Page*, 204 Ill. 2d 363, 369 (2003). Our review of the grant of a motion to dismiss is *de novo*. *Barth v. Kantowski*, 409 Ill. App. 3d 420, 424 (2011).

¶ 13 An inmate's writ for certiorari is a means to obtain review of DOC disciplinary proceedings. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1125 (2004). However, until a final administrative decision

has been entered, certiorari will not lie. *Reyes*, 358 Ill. App. 3d at 1125. The finality requirement necessitates that an inmate exhaust his administrative remedies before bringing a certiorari action. *Beahringer*, 204 Ill. 2d at 376. The exhaustion of remedies applies to an inmate's constitutional claims. *Beahringer*, 204 Ill. 2d at 376. When pursuing a state law certiorari claim, a section 1983 civil rights claim, or a civil rights claim under RLUIPA, a plaintiff must plead that he exhausted his administrative remedies before pursuing his action in the trial court. *Reyes*, 358 Ill. App. 3d at 1125-26 (certiorari); *Toney v. Briley*, 351 Ill. App. 3d 295, 297 (2004) (section 1983); *Lovlace v. Lee*, 472 F.3d 174, 184 (4th Cir. 2006) (RLUIPA). DOC regulations direct that an inmate must first file a grievance with the grievance officer, who submits his findings to the chief administrative officer. 20 Ill. Adm. Code 504.810 (2008). If unsatisfied with those responses, the inmate next appeals to the DOC director and the ARB. 20 Ill. Adm. Code 504.830, 850 (2008). To properly plead exhaustion, a plaintiff must put copies of the final administrative decisions in the record or allege that the grievances were not addressed. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124 (2007).

¶ 14 Pursley maintains that the exhibits he submitted at trial establish that he satisfied the exhaustion requirements for each of his grievances. The record includes copies of grievances #1314 and #1390. Grievance #1314 includes the grievance officer's response and the warden's concurrence. There is nothing in the record to support Pursley's claim that he appealed the denial of this grievance to the ARB and DOC director as required by DOC regulations. Grievance #1390, the grievance officer's denial of it and the warden's concurrence are in the record. The record does not include responses from the ARB or the DOC director. Grievance #1571 is not in the record. However, the decision of the ARB and director, which are in the record, indicate that the grievance concerned conditions in segregation, specifically, inadequate heat and cockroach infestation in the cells. The

ARB response remanded the infestation issue to the warden for further action. There is no information in the record what, if any, further action was taken. The record does not indicate Pursley pursued any further grievance or appeal of the infestation issue. He thus failed to exhaust his administrative remedies concerning the above grievances.

¶ 15 The record also includes Pursley's two grievances complaining that his property was stolen or destroyed by rats when he was in segregation. These grievances are dated March 8, 2007, and May 20, 2007. The March grievance, #0169, was reviewed by the ARB and DOC director and remanded to the warden for further investigation. However, the director did not order the grievance remanded until after this instant action was filed. Pursley was required to exhaust his remedies before bringing suit. There is no evidence in the record what was revealed by the further investigation or that Pursley pursued review of any finding made after remand. The May 20 grievance indicates that the counselor determined that Pursley's claims of missing property could not be verified. There is no further evidence in the record that Pursley pursued the May 20 grievance. Pursley thus also failed to exhaust his administrative remedies regarding the property grievances. We find that because Pursley did not exhaust his administrative remedies, his certiorari claim was properly dismissed.

¶ 16 The record establishes that Pursley properly exhausted administrative remedies only for the inadequate heat claim in grievance #1571. Regarding his allegation of inadequate heat, Pursley maintains that the conditions of his segregation constituted cruel and unusual punishment in violation of the eighth amendment of the United States Constitution. U.S. Const. amend VIII.

¶ 17 To establish his eighth amendment claim under section 1983, a plaintiff must demonstrate (1) a person acting under color of state law committed the allegedly unconstitutional conduct and (2) the conduct deprived him of rights secured under the United States Constitution. *Jackson v. County of*

Kane, 399 Ill. App. 3d 451, 455 (2010). The conditions under which an inmate is confined and the treatment he receives in prison are subject to the eighth amendment's proscriptions against cruel and unusual punishment. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). "The Constitution 'does not mandate comfortable prisons,' " but it does not allow them to be inhumane. *Farmer*, 511 U.S. at 832, quoting *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981). To establish that prison conditions violate the eighth amendment, a plaintiff must establish: " '(1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials.' " *Jackson*, 399 Ill. App. 3d at 455, quoting *Strickler v. Waters*, 989 F.2d 1375, 1379 (4th Cir. 1993).

¶ 18 Although Pursley's grievance is not in the record, we deduce from other grievances and pleadings in the record that Pursley claimed his segregation cell was kept at cold temperatures and that he had inadequate clothing or bedding to keep him warm. The allegations in his complaint assert that the heat was turned on according to a set schedule, running from October 15 to April 15; that the temperatures were in the 60s, 40s, and 30s during periods when the heat was not activated; his cell radiator worked inadequately; his cell window was cracked; plastic placed over the windows did not sufficiently cover them; ice formed on the window bars and cell walls; a glass of water placed on the bars would freeze; he was unable to wash for days because it was too cold; he laid in bed up to 22 hours a day to preserve body heat; and he was not allowed extra clothing, sheets or blankets.

¶ 19 Pursley's allegations fail to contain any specifics as required by Illinois' fact-pleading requirements, such as the dates of extreme cold or the temperature in his cell. He asserted that although the heat operated from October 15 to April 15, on many days when the heat was not operating, outside temperatures fell below 60, 40 and 30 degrees. He does not provide the dates when the cold spells occurred or the temperature in his cell as a result of the cold. He also acknowledged

that while many radiators in the segregation area did not work, the radiator in his cell worked, albeit “barely.” He included with his complaint the affidavits of five inmates who also served time in segregation and experienced the cold temperatures and other conditions. However, the affidavits demonstrate the affiants were in segregation after the period about which Pursley complains and do not support his claims. While we recognize Pursley’s discomfort, prison conditions are not required to be comfortable. Significantly, Pursley does not allege that he suffered any long-term injury beyond temporary physical discomfort. Furthermore, Pursley merely states in a conclusory manner that the warden knew and disregarded the risks to inmate health and safety. To the contrary, the record includes a response from Pursley’s counselor that officials were aware of the cold and working to alleviate the heating problems. His complaint even asserts that the administration would annually put plastic on the cell windows in an attempt to insulate the cells. We consider his allegations are insufficient to establish that Stateville officials exhibited a deliberate indifference to conditions in segregation cells. Because Pursley failed to exhaust his administrative remedies or state a claim implicating constitutional concerns, we find that the trial court did not err when it dismissed Pursley’s complaint.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.