

**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 (4th) 100855-U

Filed 3/27/12

NO. 4-10-0855

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JEFF MUSGROVE,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S. A. GODINEZ, Director of the Department of	)	No. 10MR246
Corrections; DONALD D. GAETZ; REBECCA COWAN;	)	
LAMONT GILBERT; MICHAEL SULLIVAN;	)	Honorable
KRISTA ALLSUP; J. CLENDENIN; and JOHN DOE,	)	Leslie J. Graves,
Defendants-Appellees.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* Because the plaintiff, an inmate in the Department of Corrections, failed to exhaust administrative remedies available to prisoners aggrieved by disciplinary proceedings, we affirm the trial court's order granting the defendant's motion to dismiss.

¶ 2 In April 2010, plaintiff, Jeff Musgrove, a prisoner, filed a petition for writ of *mandamus* in the trial court, alleging defendants, prison officials and employees, deprived him of due process in the course of prison disciplinary proceedings against him. In October 2010, the court dismissed Musgrove's complaint with prejudice. Musgrove appeals, arguing dismissal was improper. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 According to Illinois Department of Corrections (DOC) prison inmate search results, Musgrove is currently incarcerated in Stateville Correctional Center on his convictions of

murder, attempted armed robbery, and conspiracy to commit armed robbery.

¶ 5 On March 3, 2010, while an inmate at Menard Correctional Center, Musgrove and a prison librarian had a dispute over Musgrove's request to copy materials. Musgrove told the librarian he planned to report her for misconduct, stating, "I'm filing a grievance, and I'll have your job, bitch. You won't be doing this anymore." The librarian completed a disciplinary report alleging Musgrove had committed disciplinary offense Nos. 206 (intimidation or threats) and 304 (insolence). Musgrove was served with a copy of the disciplinary report that day.

¶ 6 On March 9, 2010, following a disciplinary hearing, the Adjustment Committee, a group responsible for conducting disciplinary hearings on allegations of major offenses (see 20 Ill. Adm. Code 504.50(d)(3) (2011)), found Musgrove committed both alleged offenses. The Adjustment Committee's report indicated testimony by the librarian, a paralegal, and a corrections officer supported the allegations in the disciplinary report. The Adjustment Committee sanctioned Musgrove for his offenses with six months of "C Grade," six months of segregation, and six months of commissary restriction.

¶ 7 On March 9, 2010, Musgrove filed his initial administrative grievance attacking the Adjustment Committee's findings and procedures. Musgrove alleged he was served with an illegible copy of the disciplinary report. When he was served, according to the grievance, he submitted a written statement and a written witness request. Musgrove complained the Adjustment Committee denied his request for a legible copy of the disciplinary report at his hearing. He complained he had not been given a copy of the Adjustment Committee's final summary report. (That document shows Musgrove was not served with the report until March 16, 2010.) He further asserted the proceedings against him were an improper retaliation for his

use of protected speech—namely, stating his intention of filing a grievance against the prison librarian for denying his copy request.

¶ 8 In a March 18, 2010, grievance, Musgrove supplemented and amended his original grievance. He complained the final summary report reflected neither his request for a legible copy of the disciplinary report nor the written statement he had submitted to the Adjustment Committee prior to the hearing. Further, he complained the report did not specifically record the testimony of the paralegal and the corrections officer who testified. Musgrove also claimed that he was denied due process because he was denied a legible copy of the disciplinary report and that he was punished in violation of prison administrative rules for invoking the grievance process against a prison employee.

¶ 9 On April 16, 2010, Musgrove filed several legal documents with the trial court. Among them, he filed a petition for leave to take presuit discovery, requesting access to and depositions of possible witnesses while, according to Musgrove, he exhausted his administrative remedies in this case. He also filed his complaint for writ of *mandamus*, which for no apparent reason is not included in the record on appeal. (Musgrove has included a file-stamped copy of the complaint as an appendix to his appellate brief, and defendants referred to that document in their response. Accordingly, we will treat the copy in Musgrove's appendix, though unsworn by the Sangamon County Circuit Clerk, as a supplement to the record by implied stipulation of the parties.) The complaint named as defendants Michael P. Randle, then-Director of DOC; Donald Gaetz; and Lamont Gilbert. (As Randle has been replaced in his official capacity by S.A. Godinez, Godinez may be substituted as defendant in this matter by operation of law. 735 ILCS 5/2-1008(d), 14-107 (West 2008).) In his petition for *mandamus*, Musgrove alleged he was

denied due process because he was not served a legible copy of the disciplinary report and he was unduly punished for exercising his rights under the process for filing grievances against prison employees. He requested that the court issue a *mandamus* order requiring a "new or additional" Adjustment Committee hearing. Defendants did not file an answer. (Their claim that, of them, only Randle was served with process will be discussed briefly in our analysis as it relates to jurisdiction. However, we note—without ruling on it—their position that only Randle is a proper party to this litigation, including on appeal. Neither of the other defendants made an appearance at trial, and only Randle has submitted a brief to this court.)

¶ 10 In August 2010, Musgrove filed his motion for summary judgment, maintaining that the unquestioned facts established he was denied due process during the disciplinary proceedings against him. Later that month, Randle moved to dismiss, arguing Musgrove would be unable to prove a set of facts entitling him to *mandamus* relief. He argued Musgrove was aware of the disciplinary charges against him as he was able to respond and to prepare a defense, the Adjustment Committee's report sufficiently set forth the reasons for the assessed penalties, and the disciplinary proceedings were not improperly retaliatory. In October 2010, the trial court granted Randle's motion to dismiss.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Musgrove argues the trial court erred by dismissing his complaint. Because Musgrove failed to exhaust his administrative remedies, we disagree.

¶ 14 Initially, we note our finding that the trial court disposed of Musgrove's claims against all defendants even though, apparently, only Randle was served and moved to dismiss.

Ordinarily, where the plaintiff's claims against some defendants remain, an order granting a single defendant's motion to dismiss is not an appealable final order under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). *Merritt v. Randall Painting Co.*, 314 Ill. App. 3d 556, 559, 732 N.E.2d 116, 117 (2000). However, where the claims against the remaining defendants may be said to be "one and the same" as those against the defendants who moved to dismiss, an otherwise partial dismissal may be considered dispositive of all claims for questions of appellate jurisdiction. (Internal quotation marks omitted.) See *id.* at 559, 732 N.E.2d at 118 (holding the trial court's order dismissing the plaintiff's complaint was appealable even though only one of several defendants moved to dismiss since the plaintiff's claims against the nonmoving defendants were identical to and dependent upon those against the moving defendant). In this case, we find the court expressly intended to dispose of Musgrove's complaint in its entirety when it granted Randle's motion to dismiss as the grounds for dismissal applied equally to Musgrove's claims against the two remaining defendants. Accordingly, we find we have jurisdiction of this appeal pursuant to Rule 301.

¶ 15 This appeal is from the trial court's judgment granting Randle's motion to dismiss—not, as Musgrove contends, an order denying a motion for summary judgment. The parties agree that, although Randle's motion averred dismissal was appropriate under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), the motion could be more appropriately considered a section 2-615 motion (see 735 ILCS 5/2-615 (West 2008)) because it challenged the legal sufficiency of Musgrove's complaint. Under section 2-615, dismissal is warranted where, "viewing the allegations in the light most favorable to the plaintiff, it is clear that no set of facts can be proved under the pleadings that will entitle the plaintiff to

relief." (Internal quotation marks omitted.) *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 127 (2007). "A trial court's dismissal of a complaint pursuant to section 2-615 is subject to *de novo* review." *Id.* We may affirm "on any basis appearing in the record," regardless of whether the appellee raised it or the trial court relied on it below. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007).

¶ 16 "A party aggrieved by an administrative decision cannot seek judicial review unless he has first pursued all available administrative remedies." *Ford*, 377 Ill. App. 3d at 1124, 888 N.E.2d at 126-27. In the case of a prisoner who is disciplined for violating prison rules, the inmate must "show his grievance had administrative finality" before he may seek review in the circuit court. *Id.*, 888 N.E.2d at 127 (citing *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1125-26, 833 N.E.2d 379, 382 (2005)). This requirement gives "the administrative agency the opportunity to consider the facts of the case before it, use its expertise, and allow the aggrieved party to obtain relief without the need for judicial review." *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006). An inmate who alleges a deprivation of due process "cannot establish a clear affirmative right to *mandamus* \*\*\* relief" without showing he has exhausted DOC grievance procedures. *Id.*

¶ 17 In this case, Musgrove filed his complaint in April 2010. At that time, he had a grievance and an amended grievance pending. Musgrove acknowledged the stage of these proceedings in his petition for leave to take presuit discovery, where he stated, in relevant part, "Prisoner is in [the] process of exhausting administrative remedies, which may take up to one year or more." By filing a suit before receiving a final administrative decision on his grievance, Musgrove deprived the grievance officers, warden, and DOC Director of an opportunity to

resolve his due-process claims. Further, he failed to establish his clear right to *mandamus* relief. This failure justified the trial court's dismissal of his complaint. We note no leniency in our application of strict exhaustion requirements is justified since Musgrove apparently knew of these rules, yet ignored them in filing suit prematurely.

¶ 18 We do not address Randle's further contentions in support of affirming the trial court's judgment in deference to the apparently ongoing, parallel administrative proceedings.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment.

¶ 21 Affirmed.