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2012 IL App (4th) 110251-U

Filed 3/12/12

NO. 4-11-0251

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

ANTONE SHEWARD,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
THE DEPARTMENT OF CORRECTIONS; and)	No. 10MR82
MICHAEL P. RANDLE, Director of the)	
Department of Corrections,)	
Defendants-Appellees,)	
and)	Honorable
THE PRISONER REVIEW BOARD,)	Jennifer H. Bauknecht,
Defendant.)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Because plaintiff's complaint for *mandamus* is conclusory and fails to allege specific facts establishing his clear right to the performance of a ministerial duty, the dismissal of the complaint is affirmed.

¶ 2 Plaintiff, Antone Sheward, an inmate at Pontiac Correctional Center, brought this action for *mandamus*, in which he seeks the restoration of good-conduct credits. One of the named defendants, the Illinois Department of Corrections (DOC), filed a motion for dismissal pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). The trial court granted the motion on two grounds: (1) the complaint failed to state a cause of action, and (2) plaintiff had failed to exhaust administrative remedies. Plaintiff appeals.

¶ 3 Because the rather conclusory complaint offers no facts that would entitle plaintiff

to *mandamus* relief, we agree with the dismissal of the complaint for failure to state a cause of action. Given the legal insufficiency of the complaint, we do not reach the other ground of dismissal, the failure to exhaust administrative remedies. We affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

The "Petition of Mandamus" is a fill-in-the blank form. Paragraphs 4 through 7 read as follows:

"4. The plaintiff has requested that the defendants perform specific ministerial duties. The defendants have refused to perform such duties regardless of plaintiff's clear entitlement to performance of the specific duties which are set forth as follows: 1) to take into consideration evidence of plaintiff's mental illness in the disciplinary process (see *Matters of Huggins v. Coughlin*, 76 N.Y.2d 904, 561 N.Y.S.2d 910, 563 N.E.2d 281, 282 (N.Y. 1990))[,] 2) a fair hearing at the adjustment committee and the Prisoner Review Board.

5. As a result of Defendant's actions, Plaintiff will suffer irreparable damages and be subjected to cruel or unusual punishment, the deprivation of life and liberty by way of not receiving a proper hearing [at] the adjustment committee, and the Prisoner Review Board.

6. WHEREFORE, Plaintiff prays the Court will grant any such relief as the Court deems just and necessary for ruling Defendant's actions of the revocation of said time to be of a violation

to plaintiff's constitutional rights.

7. WHEREFORE, plaintiff further prays the Court will issue an ORDER OF MANDAMUS compelling Defendant to:

(a) Reinstate plaintiff's good time, rehear the IDR [(inmate disciplinary report)] issued, and to act according to the Department's rules and regulations at the time they happen to render its basis of decision.

(b) To take into consideration evidence of plaintiff's mental illness in the disciplinary process.

(c) To grant plaintiff leave to file brief in support of PETITION OF MANDAMUS.

(d) To grant such other relief as the Court deems just necessary."

¶ 6

II. ANALYSIS

¶ 7

When a plaintiff appeals the dismissal of a complaint for failure to state a cause of action (see 735 ILCS 5/2-615 (West 2010)), we review the dismissal *de novo*, that is, without any deference to the trial court. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009). We assume that all the "well-pleaded facts" in the complaint are true, and whenever it is reasonably defensible to do so, we draw inferences in the plaintiff's favor. *Id.* Nevertheless, "conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted." *Id.*

¶ 8

Thus, to state a cause of action for *mandamus*, the complaint must set forth specific facts demonstrating that (1) the plaintiff has a clear right to the relief requested, (2) there is a clear

duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting *mandamus* relief. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34 (2007). This duty on the defendant's part must be "purely ministerial in nature," requiring no exercise of judgment or discretion. *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109 (1997).

¶ 9 A. "Taking into Consideration Plaintiff's Mental Illness"

¶ 10 In his complaint, plaintiff alleges that defendants have failed to perform their duty "to take into consideration evidence of plaintiff's mental illness in the disciplinary process." On its face, this allegation is ambiguous. It could mean that, in the disciplinary proceedings, defendants excluded evidence of plaintiff's mental illness. Or, alternatively, it could mean that although defendants allowed him to adduce evidence of his mental illness, they attached no weight or significance to the evidence. We assume the latter meaning is what plaintiff intends, considering that in one of the "final summary reports" attached to the complaint as exhibits, the "inmate" reportedly "plead[ed] insanity" as a defense to the charge of "intimidation or threats" and no mention is made that this line of defense was forbidden. So, in plaintiff's opinion, defendants misjudged the significance of his mental illness. Judgment calls, however, are outside the purview of *mandamus*. *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996); *Baldacchino*, 289 Ill. App. 3d at 109.

¶ 11 B. A Fair Hearing Before the Adjustment Committee

¶ 12 The complaint seeks an order requiring defendants to perform their duty of affording defendant "a fair hearing at the adjustment committee." Again, on its face, this allegation is ambiguous. It could mean that plaintiff has received no hearing at all before the adjustment committee, fair or otherwise. Or, alternatively, it could mean that although he has received a hearing

before the adjustment committee, the hearing was unfair and consequently he wants another hearing—which this time should be fair. Because the "final summary reports" attached to the complaint reveal that plaintiff received hearings before DOC's adjustment committee, we assume the latter meaning is what he intends. The premise that the hearings before the adjustment committee were unfair is merely a conclusion, which we do not consider to be true for purposes of a motion for dismissal pursuant to section 2-615. See *Alpha*, 391 Ill. App. 3d at 735.

¶ 13 C. A Fair Hearing Before the Prisoner Review Board

¶ 14 The complaint also seeks an order compelling the Prisoner Review Board to give plaintiff a "fair hearing." Because DOC, however, was the only defendant served with a summons and because the Prisoner Review Board is an agency independent of DOC (730 ILCS 5/3-3-1(a) (West 2010)), the trial court never acquired jurisdiction over the Prisoner Review Board and hence could not order it to do anything. See 735 ILCS 5/14-102, 14-103 (West 2010). Evidently, plaintiff never sought the issuance of a summons to the Prisoner Review Board and never requested service of process on that agency.

¶ 15 III. CONCLUSION

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

¶ 17 Affirmed.