

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).

2013 IL App (4th) 120737-U
NO. 4-12-0737
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
August 20, 2013
Carla Bender
4th District Appellate
Court, IL

| | | |
|-----------------------|---|------------------|
| CHARLES DONELSON, |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | Sangamon County |
| ROGER E. WALKER, JR., |) | No. 11MR97 |
| Defendant-Appellee. |) | |
| |) | Honorable |
| |) | John Schmidt, |
| |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, holding (1) plaintiff failed to establish that the circuit court's incomplete record prejudiced plaintiff's case and (2) the circuit court did not err in granting the Director's motion to dismiss plaintiff's petition for *mandamus* relief.
- ¶ 2 In April 2012, plaintiff, Charles Donelson, an inmate in the Illinois Department of Corrections (Department), filed a *pro se* complaint for *mandamus* relief against defendant, Roger E. Walker, Jr., then-Director of the Department (Director). The Director filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2010)), which the circuit court granted.
- ¶ 3 Plaintiff appeals, arguing (1) the absence of the complete record prejudiced plaintiff's case before the circuit court and (2) the circuit court erred in granting the Director's motion to dismiss his complaint for *mandamus* relief. We affirm.

¶ 4

I. BACKGROUND

¶ 5

On December 14, 2008, plaintiff, then an inmate at the Pinckneyville Correctional Center (Pinckneyville), was served with a disciplinary report charging him with three offenses: (1) intimidation or threats, (2) giving false information, and (3) abusing privileges. These offenses stemmed from allegations that on December 4, 2008, plaintiff, through suspected relative Floyd Puckett, placed several three-way calls during which he gave false information and made threatening statements to the recipients of the calls. The report indicated plaintiff, via Puckett, placed approximately 14 phone calls to attorney Edwin Stoker's office in Chicago, Illinois, dialing a number sequence when prompted by the recording until he reached the public defender's office. Once plaintiff connected with the public defender's office, he gave a false name in order to reach an employee's voice mail. The report reflects plaintiff then placed several three-way calls to the governor's office, during which plaintiff stated he (1) "is going to kill somebody or somebody is going to kill me" and (2) "has been assaulted," due to his unhappiness with his mental health designation. During an investigation by the reporting officer, correctional officer Sean Furrow, plaintiff admitted he had not been threatened or assaulted by Department staff, but gave false information in an attempt to make his situation appear life-threatening in hopes he would receive a different mental health designation and a transfer from Pinckneyville. Plaintiff also admitted, according to the report, making threatening statements during these phone calls. Furrow alleged plaintiff abused his phone privileges by placing the three-way calls.

¶ 6

On December 19, 2008, the Adjustment Committee (Committee) at Pinckneyville held a hearing on the allegations contained within the disciplinary report. Plaintiff pled not guilty and provided a written statement, reading, "No Edwin Stoker Attorney is on my list of allowed

numbers. See [illegible] Pin list. Therefore I did not call [sic] not guilty to all charges. I can't call through that person." The Committee incorrectly interpreted plaintiff's statement to read, "Edwin Stoker, Attorney, is on my list of allowed numbers, therefore I did not call any other numbers. I can't call through that person." Plaintiff did not request any witnesses to testify on his behalf. After reviewing the report and considering plaintiff's written statement, the Committee found plaintiff guilty of all three offenses, finding plaintiff offered a partial admission of guilt in his written statement by admitting he called Edwin Stoker. The Committee (1) demoted plaintiff to C-grade classification for six months, (2) placed plaintiff in segregation for six months, (3) revoked six months of plaintiff's good conduct credit, and (4) transferred plaintiff to a Level 1 facility.

¶ 7 Plaintiff grieved the Committee's disciplinary proceeding to the Administrative Review Board (Board) and the Director. In February 2009, the Board recommended denying plaintiff's grievance, and the Director concurred.

¶ 8 In April 2009, plaintiff filed in Will County, Illinois, a *pro se* petition for *mandamus* relief. Plaintiff alleged he was denied due process during the disciplinary proceedings when the Committee failed to (1) consider all relevant material in violation of section 504.80(g) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80(g) (2003)); (2) issue a decision supported by "some evidence," in violation of section 504.80(j)(1) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80(j)(1) (2003)); and (3) list the reasons why it "disregarded" his evidence, in violation of section 504.80(l)(2) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80(l)(2) (2003)). Plaintiff asked the circuit court to compel the Director either to expunge the disciplinary report or to remand the case for a new Committee

hearing consistent with due process. Within his supporting brief, plaintiff asserted (1) he did not have an uncle named Floyd Puckett, (2) attorney Edwin Stoker was not on his list of approved numbers, so he could not have placed a call to him, (3) he did not make any of the alleged phone calls, and (4) the Committee failed to look at plaintiff's phone PIN detail, which listed the approved numbers he was allowed to call.

¶ 9 The Director filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2010)), asserting plaintiff failed to state a claim for *mandamus* relief. The Director also requested a change of venue, which the Will County circuit court granted. The case was subsequently transferred to Sangamon County, the location of the Department headquarters. Plaintiff complained in his response to the Director's motion to dismiss that Will County failed to transfer the entire record of present proceedings to Sangamon County, to which the Director responded the missing documents were not relevant to the motion to dismiss. At the time the circuit court of Sangamon County issued its ruling on the Director's motion to dismiss, the record contained (1) the disciplinary report, (2) plaintiff's written statement, (3) the detailed findings by the Committee, (4) the denial of plaintiff's grievance, (5) plaintiff's petition for *mandamus* relief, as an exhibit attached to the Director's motion to dismiss, and (6) the Director's motion to dismiss and related briefs.

¶ 10 In July 2012, the Sangamon County circuit court granted the Director's motion to dismiss after finding "due process was afforded to" plaintiff. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff argues (1) the absence of the complete record prejudiced his case in the circuit court and (2) the circuit court erred in granting the Director's motion to dismiss

plaintiff's petition for *mandamus* relief. We address these contentions in turn.

¶ 13 A. Transfer of Records from Will County

¶ 14 As a preliminary matter, plaintiff argues the Director should be defaulted for failing to ensure the transfer of the entirety of plaintiff's circuit court file from Will County to Sangamon County. Plaintiff contends he was prejudiced by Will County's failure to provide the entire record to Sangamon County. The record, some of which the Director supplied as attachments to his motion to dismiss, contains (1) the disciplinary report, (2) plaintiff's written statement, (3) the detailed findings by the Committee, (4) the denial of plaintiff's grievance, (5) plaintiff's petition for *mandamus* relief, which was attached as an exhibit to the Director's motion to dismiss, and (6) the Director's motion to dismiss and related briefs. The Director concedes plaintiff's grievance is missing from the record but acknowledges the sufficiency of plaintiff's grievance in preserving plaintiff's right to appeal.

¶ 15 In instances where the appellant is not at fault for failing to provide the record, this court looks to whether "the missing record is material to a meaningful review of the contentions raised on appeal." *People v. Sims*, 403 Ill. App. 3d 9, 15, 931 N.E.2d 1220, 1227 (2010). The issue becomes whether the appellant has demonstrated a "colorable need" for the evidence. *Sims*, 403 Ill. App. 3d at 16, 931 N.E.2d at 1227.

¶ 16 Plaintiff has failed to explain (1) which missing documents would have been pertinent to the circuit court proceedings, (2) how he was prejudiced by their absence, and (3) why the Director should be defaulted for the Will County circuit clerk's failure to transfer records. Therefore, we conclude plaintiff has failed to demonstrate a "colorable need" for the missing portions of the record or that the missing portions are material to a meaningful review.

¶ 17

B. Plaintiff's Petition for *Mandamus* Relief

¶ 18

Plaintiff next contends the circuit court erred in granting the Director's motion to dismiss plaintiff's petition for *mandamus* relief. Specifically, plaintiff argues the Committee violated his right to due process during the Committee hearing and asserts the Director should either expunge plaintiff's disciplinary report or require the Committee to conduct a new hearing consistent with due process.

¶ 19

1. *Standard of Review*

¶ 20

The circuit court granted the Director's motion to dismiss under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2010)). A motion to dismiss pursuant to this section challenges the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). The central issue in ruling on a section 2-615 motion to dismiss is "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004). The circuit court should not grant a motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). A dismissal pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2010)) is subject to *de novo* review. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 21

2. *Mandamus Relief*

¶ 22

"*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). A petition for *mandamus* relief must be supported by facts alleging a violation of due process. *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). To successfully claim a due process violation, a plaintiff must show a deprivation of a life, liberty, or property interest. See *Webb v. Lane*, 222 Ill. App. 3d 322, 326, 583 N.E.2d 677, 681 (1991). To establish a claim for *mandamus* relief, a prisoner must show " 'a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)).

¶ 23 3. *Whether Plaintiff Alleged Sufficient Facts To Overcome the Director's Motion To Dismiss*

¶ 24 In this case, plaintiff asserts the circuit court erred in granting the Director's motion to dismiss because, as plaintiff argues, procedural due process violations during his Committee hearing entitle him to *mandamus* relief. Plaintiff then details the ways in which his due process rights were violated during the Committee hearing. However, before we reach the plaintiff's due process arguments, we must first determine whether plaintiff's petition alleges sufficient facts to overcome the Director's motion to dismiss.

¶ 25 Plaintiff's petition for *mandamus* relief requested the circuit court order the Director to (1) remand the case for a new Committee hearing consistent with due process or (2) expunge the disciplinary report and rescind the sanctions imposed by the Committee.

¶ 26 Following the filing of a grievance challenging the legal sufficiency of a Committee hearing, the Director, pursuant to section 504.80(p)(1) of Title 20 of the

Administrative Code, "may" (1) order new Committee proceedings, (2) overturn the Committee's recommendations, (3) confirm the Committee's recommendations, or (4) offer reduced sanctions in exchange for satisfactorily completing a work assignment. 20 Ill. Adm. Code 504.80(p)(1) (2003). The use of the term "may" confers discretion upon the Director in choosing an appropriate outcome. See *Anderson v. Financial Matters, Inc.*, 285 Ill. App. 3d 123, 135, 672 N.E.2d 1261, 1269 (1996) ("As a rule of statutory construction, the word 'may' is permissive or discretionary as opposed to mandatory."). The Director was not required to resolve the grievance in a certain manner; he had the discretion to either grant or deny the grievance.

¶ 27 In this instance, the Director clearly exercised his statutory discretion in denying the grievance and supported that decision in writing. Though a writ of *mandamus* can compel a public official to exercise his discretion, it may not compel a public official to exercise his discretion in a certain manner. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301, 803 N.E.2d 48, 52 (2003). Because the Director's decision was made in the exercise of his discretion, it cannot be challenged through a *mandamus* petition. *Helm v. Washington*, 308 Ill. App. 3d 255, 257, 720 N.E.2d 326, 328 (1999). Hence, *mandamus* provides plaintiff no further opportunity for relief on this issue. Plaintiff fails to allege any facts that would demonstrate plaintiff's clear, affirmative right to relief; therefore, the circuit court's decision to grant the Director's motion to dismiss was appropriate.

¶ 28 *4. Plaintiff's Due Process Arguments*

¶ 29 Because we conclude the plaintiff's petition for *mandamus* relief failed to state a legally sufficient claim and was appropriately dismissed under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2010)), we do not reach plaintiff's due process arguments.

¶ 30

III. CONCLUSION

¶ 31

For the reasons stated, we affirm the judgment of the circuit court.

¶ 32

Affirmed.