

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) 120783-U

NO. 4-12-0783

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 26, 2013
Carla Bender
4th District Appellate
Court, IL

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|---|---|------------------------|
| JAMAL SHEHADEH, |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | Logan County |
| SHERYL THOMPSON, Warden, Logan Correctional |) | No. 12MR73 |
| Center, |) | |
| Defendant-Appellee. |) | Honorable |
| |) | Thomas M. Harris, Jr., |
| |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed plaintiff's appeal as moot because plaintiff, who filed a complaint for writ of *mandamus* seeking to direct the warden of Logan Correctional Center to lower Logan's copy fees, was subsequently transferred to Big Muddy Correctional Center.

¶ 2 In May 2012, plaintiff, Jamal Shehadeh, filed a complaint for writ of *mandamus* naming as defendant Alex Dawson, then-warden of Logan Correctional Center (Logan).

(Because Dawson has been replaced in his official capacity by Sheryl Thompson, Thompson has been substituted as defendant on appeal by operation of law (see 735 ILCS 5/2-1008(d) (West 2012))). In August 2012, the trial court granted defendant's motion to dismiss plaintiff's complaint.

¶ 3 Plaintiff filed a notice of appeal, arguing the trial court erred by dismissing his complaint. Because we conclude plaintiff's appeal is moot based on his transfer to Big Muddy

Correctional Center (Big Muddy), we dismiss.

¶ 4

I. BACKGROUND

¶ 5

In May 2012, plaintiff filed a complaint for writ of *mandamus*, seeking the return of money plaintiff paid for copies of legal documents. Specifically, plaintiff stated that he learned from a Freedom of Information Act (FOIA) request that Logan paid less than 1 cent per page for legal copies; however, according to plaintiff, Logan charged its inmates 10 cents per page for copies. Plaintiff asserted Logan's fee violated the Illinois Administrative Act (5 ILCS 100/5-20 (West 2012)) and the Department's policies on rulemaking (20 Ill. Adm. Code 430.40(a) (2012)). Plaintiff alleged defendant was the "chief administrative officer" of Logan and had a ministerial duty to ensure compliance with state law and Department policies.

According to plaintiff, since his December 2010 arrival at Logan, he spent between \$500 and \$1,000 in copies, of which more than 90% was for fees in excess of the amount authorized by the Illinois Administrative Code (20 Ill. Adm. Code 430.40(a) (2012)). Plaintiff asserted he "filed an offender grievance over the matter but was denied at all levels of review[.]" Plaintiff requested the trial court (1) enter a finding that Logan's fees violated the law; (2) enter an order directing defendant to lower the fee to the actual cost of one cent per copy; (3) reimburse plaintiff all fees paid in excess of one cent; and (4) award him costs, fees, statutory interest, civil penalties, and any other remedy the court deemed just and fair.

¶ 6

In June 2012, defendant filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2012)), arguing plaintiff lacked standing and failed to set forth facts supporting a clear right to the requested *mandamus* relief because prison regulations do not confer rights on inmates and do not impose

any nondiscretionary ministerial duty on defendant. Defendant also alleged plaintiff's request for reimbursement was barred by sovereign immunity. In addition to dismissing plaintiff's petition, defendant requested the court make a finding of frivolity, noting plaintiff was litigating several lawsuits, including one in another county (Shehadeh v. Illinois Department of Corrections, No. 2012-MR-26 (Cir. Ct. Christian Co.)), in which plaintiff was challenging copy fees for responses to requests under the FOIA.

¶ 7 In July 2012, plaintiff filed a response, alleging (1) defendant's failure to deny the facts set forth in plaintiff's complaint resulted in an admission of those facts; (2) sovereign immunity did not bar plaintiff's complaint, as his claim was not a suit against the State, but rather, an action to compel defendant to comply with the Department's regulations and reimburse him for the alleged violation; (3) defendant had both a constitutional obligation to provide offenders with meaningful access to the courts and an obligation to abide by administrative regulations; (4) summary judgment should be granted in plaintiff's favor; and (5) plaintiff's complaint was not frivolous, and the multiplicity of his litigation proved the Department habitually failed to comply with its rules.

¶ 8 In August 2012, the trial court granted defendant's motion to dismiss the complaint for each of the reasons stated in defendant's memorandum of law in support of the motion to dismiss. The trial court did not make a finding of frivolity.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff contends the trial court erred by dismissing his complaint because (1) the Department's administrative regulations created a liberty interest in access to

legal copies, (2) plaintiff pled all elements necessary to entitle plaintiff to *mandamus* relief, (3) the pleadings on file supported granting plaintiff's summary judgment motion, and (4) reimbursement is not barred by the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2012)). Defendant responds because plaintiff was transferred from Logan to Big Muddy, plaintiff's claim for *mandamus* relief is moot. We agree with defendant.

¶ 12 An appeal is rendered moot when an intervening event precludes a reviewing court from granting effective relief to the complaining party. *Holly v. Montes*, 231 Ill. 2d 153, 157, 896 N.E.2d 267, 271 (2008). According to the Department's website, subsequent to the dismissal of his complaint, plaintiff was transferred to the Big Muddy Correctional Center. See *People v. Mitchell*, 403 Ill. App. 3d 707, 709, 936 N.E.2d 659, 661 (2010) (taking judicial notice of the Department's website because it is an official public record of the Department). Illinois courts have held when an inmate is transferred to another prison, a claim for injunctive relief against an official at the first prison is moot unless the inmate demonstrates he is likely to be transferred back to the former facility. *Murillo v. Page*, 294 Ill. App. 3d 860, 867, 690 N.E.2d 1033, 1039-40 (1998). Injunctive relief is similar to the relief requested in plaintiff's *mandamus* complaint because plaintiff has asked that we direct defendant to lower the copy fee. See *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93, 909 N.E.2d 783, 791 (2009) ("*Mandamus* is an extraordinary remedy to enforce the performance by a public officer of nondiscretionary official duties."). Thus, this court cannot provide plaintiff any effectual relief as to his claims concerning Logan's copy fees because plaintiff is no longer incarcerated at Logan, nor has he shown any likelihood of being returned to Logan. Accordingly, we conclude plaintiff's transfer to Big Muddy renders his *mandamus* petition against Logan's warden moot.

¶ 13 We note, as part of his complaint, plaintiff has requested monetary damages for Logan's allegedly improper fees. However, damages are not cognizable in a *mandamus* action unless the plaintiff successfully obtains a writ of *mandamus*. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 741, 759 N.E.2d 585, 589 (2001). Therefore, because plaintiff's claim for *mandamus* relief is moot, his request for monetary damages is likewise moot.

¶ 14 Because we conclude plaintiff's appeal is moot, and because plaintiff has not argued any of the mootness exceptions apply to his case, we dismiss.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we dismiss plaintiff's appeal.

¶ 17 Dismissed.