



list of visitors, but he did not include his mother and sister on the new list. On July 4, 2010, prison administrators refused to allow the plaintiff's mother and sister to visit him because their names were not on the new list. The plaintiff challenged the denial of the visit through the grievance process, arguing that he had lost money that he had given to his mother and sister for travel expenses. The grievance was denied without a formal hearing. The Administrative Review Board (Board) found that the plaintiff had not followed proper procedure when amending his visitor list and thus there was no merit to his grievance.

¶ 6 On May 17, 2010, the plaintiff was issued a disciplinary ticket for having items hidden behind his television set during a compliance check. On May 19, 2010, the plaintiff was issued a disciplinary ticket for talking too loudly in the day room. On May 25, 2010, the plaintiff appeared before the prison disciplinary committee for a hearing on both charges. At the hearing, the plaintiff argued that the rule under which he was charged was not posted anywhere in the facility and the plaintiff did not know that he had violated any rule. The plaintiff also asked for a continuance of the hearing until his requested witnesses could appear. The hearing examiner refused the plaintiff's request and found the plaintiff guilty of both violations, demoting the plaintiff to "C" grade for a month for the first violation and "B" grade for a month for the second violation. Warden Ott, the warden at the time, approved the hearing examiner's decision. The plaintiff grieved both decisions. The grievance officer found that both rules that the plaintiff claims to have never known about were included in the inmate orientation manual that was given to the plaintiff upon his arrival at Graham. As a result, the grievance officer denied the grievances. The Director concurred in the decision.

¶ 7 On July 4, 2010, the plaintiff was issued a disciplinary ticket for having his cell door open. The plaintiff attended a disciplinary hearing and argued that he lacked notice of the rule, and requested a continuance so that his requested witness could attend. The hearing

examiner refused the request and found the plaintiff guilty of the offense. As a result, the plaintiff was ordered to 21 days of room restriction. The warden approved of this discipline. The plaintiff grieved the result. The Board denied the grievance, determining that the plaintiff had ample time to learn the rules and that the specific rule that the plaintiff violated was posted in the housing units.

¶ 8 The plaintiff then filed a *pro se* complaint for *mandamus*, declaratory judgment, and damages. In his *mandamus* petition, the plaintiff requested that the circuit court (1) grant a declaration that the acts and omissions of the defendant violated Illinois law, (2) issue a writ compelling the defendant to make all Illinois Department of Corrections (IDOC) and Graham rules, policies, bulletins, memoranda, and directives available to all Graham inmates, (3) issue a writ compelling the defendant to expunge three convictions from plaintiff's record, (4) award the plaintiff damages in excess of \$50,000 for each act or omission, and (5) award plaintiff costs, fees, and "statutory interests."

¶ 9 The plaintiff submitted a request for service on Warden Ott with his complaint. The summons was returned showing substitute service on Graham's coordinator of litigation. A month later, the plaintiff discovered that service had been ineffective. He wrote to the circuit clerk to request a date-certain summons form and to request that he receive a printout of the docket every time there was a new entry. The circuit clerk responded that docket entries were only sent by court order. The plaintiff then filed three motions asking the circuit court to direct the sheriff to return process, direct the circuit clerk to provide him with copies of future docket entries, and grant him a default or summary judgment because Warden Ott had been served but had not answered. The circuit court denied all three motions. The plaintiff attempted to re-serve his complaint on simply the "Warden" at Graham, but such attempt was unsuccessful. Finally, the plaintiff moved to substitute William Murray as Ott's successor as warden. The circuit court granted the motion, and

Warden Murray was successfully served with the plaintiff's complaint on September 7, 2012.

¶ 10 On September 17, 2012, the defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). On November 1, 2012, the circuit court entered an order granting the defendant's motion to dismiss and dismissing the plaintiff's complaint for *mandamus* with prejudice, specifically finding that the plaintiff had not carried his burden to show a clear legal right to *mandamus* relief. This appeal follows.

¶ 11

#### ANALYSIS

¶ 12 The plaintiff argues several issues on appeal. First, the plaintiff argues that the defendant's failure to plead within 30 days after service entitled the plaintiff to an order of default. Next, the plaintiff argues that he is entitled to an order directing the clerk to furnish him with copies of future docket entries. The plaintiff also argues that the clerk unlawfully interfered with the plaintiff's claim by refusing to issue a five-day summons. The plaintiff next argues that the filing by the sheriff of a second affidavit of service indicating no service on the first summons after the first affidavit showing service was filed was unlawful. The plaintiff further contends that he pled all the elements to establish that he was entitled to *mandamus* relief. Finally, the plaintiff argues that the defendant was required by law to make rules available to him. We address each argument in turn.

¶ 13

#### Default Judgment/Circuit Court Proceedings

¶ 14 A circuit court's refusal to grant a default judgment is reviewed for abuse of discretion. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 51. Although a court may enter a default judgment for failure to appear, a default judgment is a drastic measure, and should only be employed as a last result. *Rockford Housing Authority v. Donahue*, 337 Ill. App. 3d 571, 574 (2003).

¶ 15 In this case, service of process on the initially named defendant, Warden Ott, was

returned for being ineffective. The return of service indicated that Warden Ott was no longer employed at Graham. When process was served on Warden Murray, Murray moved to have the complaint dismissed three days after having been served. Default judgment would not have been appropriate against the defendant, here, because process was ineffective, and thus any failure to defend against the claim was delayed by the plaintiff's failure to properly serve the defendant.

¶ 16 We also find that the plaintiff's claims that the circuit court's various procedural decisions warrant reversal of his cause to be unfounded. The court did not abuse its discretion when it refused to sanction the circuit clerk and the sheriff, when it refused to order the clerk to furnish the plaintiff with copies of every future docket entry, and when it refused to issue a five-day summons. The circuit court's actions were appropriate given the circumstances. It was not the fault of the circuit clerk or sheriff that service was ineffective; it was the plaintiff's fault. Also, it is not the practice of the circuit clerk to furnish the plaintiff with every future docket entry, nor is it regular practice to issue a five-day summons in cases such as these. The plaintiff was not prejudiced by the circuit court's directives. He was still able to file his suit even after having ineffectively served the defendant.

¶ 17 *Mandamus*

¶ 18 We review *de novo* the order granting a motion to dismiss a *mandamus* petition, specifically, a motion to dismiss filed pursuant to section 2-615 or 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)). *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public officer where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). The purpose of *mandamus* is not to substitute the court's discretion and judgment for the discretion of the official. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001). *Mandamus* relief will not be granted unless the petitioner can

demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Id.* *Mandamus* relief will be granted only if the petitioner sets forth every material fact needed to demonstrate that he has satisfied the elements of a *mandamus* action. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* is not a means to reverse an official's discretionary acts. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131 (2004). A writ of *mandamus* is issued to compel an official to perform a ministerial, nondiscretionary duty. *Doe v. Carlson*, 250 Ill. App. 3d 570, 573 (1993).

¶ 19 One of the plaintiff's *mandamus* claims demands that the defendant provide the plaintiff with all IDOC rules applicable to him. However, the plaintiff is not currently incarcerated in any facility. Instead, he is serving his term of MSR. Therefore, this claim is moot. "An appeal is moot when the issue presented before the trial court no longer exists because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party the relief he sought." *Caro v. Whitaker*, 386 Ill. App. 3d 485, 487 (2008). Here, the plaintiff is no longer housed at Graham, or any other IDOC facility for that matter. Providing him with the Graham rules would be a pointless endeavor because the rules no longer apply to him.

¶ 20 Next, the plaintiff argues in his *mandamus* complaint that his three disciplinary violations should be expunged, claiming that he was deprived of due process when he was denied fair notice of the rules he was charged with violating, and that the disciplinary hearings were deficient because he was denied continuances so that his requested witnesses could appear. An allegation of a due process violation states a cause of action in *mandamus*. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124 (2007). Due process rights are triggered when prison discipline deprives an inmate of property or a protected liberty interest. *Arnett v. Snyder*, 331 Ill. App. 3d 518, 527 (2001). An inmate does not have a liberty interest in

having witnesses testify at a disciplinary hearing. *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118 (2011). Whether a witness may be called in a disciplinary hearing is left to the prison official's discretion. *Id.* The plaintiff has failed to meet the first prong of a *mandamus* claim, that he has a clear right to relief, because he has failed to demonstrate that any of his rights were violated. Furthermore, the plaintiff has failed to show that the prison officials had a duty to act. The prison officials were exercising discretion when deciding that the plaintiff could not have witnesses present at his disciplinary hearings. Allowing witnesses at a disciplinary hearing is not a ministerial act, and by its very nature requires an official's discretion.

¶ 21 Declaratory Judgment

¶ 22 The plaintiff sought a declaratory judgment that would declare that his three disciplinary sanctions, the denial of the visit from his mother and sister, and the warden's failure to supply him with prison rules, bulletins, and directives, violated his rights. As indicated above, the plaintiff was provided with the rules of Graham upon his entry into the facility. Further, we have found that the plaintiff's rights were not violated when he was disciplined. The plaintiff has failed to establish that he is entitled to such declaratory relief.

¶ 23 Damages

¶ 24 The plaintiff's final claim is that he is entitled to damages, including financial loss and compensation for mental and emotional distress resulting from the denial of the visit from his mother and sister. The plaintiff's claim for money damages is barred by sovereign immunity. The State Lawsuit Immunity Act provides that, unless expressly provided by law, the State may not be sued for money damages. 745 ILCS 5/1 (West 2010). The Court of Claims Act provides that the Court of Claims is the only forum for claims against the State. 705 ILCS 505/8(d) (West 2010). The plaintiff, here, has indicated that he is suing the warden in his official capacity for money damages. Thus, the Court of Claims was the

proper forum to bring this cause of action.

¶ 25 The plaintiff has failed to establish a valid *mandamus* complaint because he did not have a clear right to relief when his due process rights were not violated. Additionally, the plaintiff is not entitled to money damages or a declaratory judgment.

¶ 26 **CONCLUSION**

¶ 27 For the foregoing reasons, the judgment of the circuit court of Montgomery County is affirmed.

¶ 28 Affirmed.