

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).

2014 IL App (4th) 131132-U

NO. 4-13-1132

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2014

Carla Bender

4th District Appellate

Court, IL

JOHN RUSHING,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
THE DEPARTMENT OF CORRECTIONS;)	No. 13MR19
CHRISTOPHER BUFFORD; RONALD)	
KROMINGA; ALLISON LOVRANT; LOGAN)	
NOBLE; RANDY PFISTER, warden; SCOTT)	
PUNKE; MICHAEL SARTAIN; JOSHUA)	
SCHWAHN; SCOTT TESKE; JASON)	
BROWNFIELD; MICHAEL NUDING; SUSAN)	
PRENTICE; TIMOTHY LYLE; PAT QUINN,)	
Governor; BRIAN MAIER; and THE PRISONER)	Honorable
REVIEW BOARD)	Jennifer H. Bauknecht,
Defendants-Appellees.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed where plaintiff failed to show he exhausted his administrative remedies before filing his complaint.

¶ 2 In February 2013, plaintiff, inmate John Rushing, filed a *pro se* complaint seeking *mandamus* relief against defendant, the Illinois Department of Corrections (DOC). Thereafter, through a series of affidavits, plaintiff asserted DOC, various DOC employees, and various government officials conspired to cause his death by "assaulting" him with needles contaminated with infectious diseases. Plaintiff served summonses and copies of the complaint on these

individuals. In December 2013, the trial court granted defendants' motions to dismiss for failure to state a claim.

¶ 3 On appeal, plaintiff argues the trial court erred by dismissing his complaint. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Plaintiff's Complaint

¶ 6 In February 2013, plaintiff, an inmate at the Pontiac Correctional Center (Pontiac), filed a complaint for *mandamus* relief. Initially, plaintiff named DOC as the sole defendant. Therein, plaintiff alleged correctional officers at Pontiac were "assaulting [him] with contaminated needles to cause infectious diseases and death." Plaintiff further alleged DOC was the "culprit" and was responsible for the "biological warfare" being waged against him. Plaintiff asserted DOC had a clear duty "to stop [its] employees from assaulting [him] with contaminated needles at [Pontiac] and others [*sic*] [DOC] facilities in the State of Illinois," but refused to do so despite his requests and clear entitlement to the performance of these duties. As a result of defendants' actions, plaintiff alleged, he would suffer irreparable damages and be subject to the human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), hepatitis, and death due to the DOC officials' violations of state and federal law.

¶ 7 Plaintiff's complaint sought an order of *mandamus* compelling DOC to stop its employees from "assaulting" plaintiff with contaminated needles. Plaintiff also sought to compel DOC to "allow [him] to press charges on all culprits involved" and open a federal investigation into DOC's use of "biological warfare" against him.

¶ 8 Plaintiff attached an affidavit to his complaint detailing one of the alleged "assaults." Plaintiff's affidavit stated on October 26, 2012, he was "assaulted" with a

contaminated needle in his lower back, buttock, and left hand by an unspecified correctional officer. The unspecified correctional officer refused plaintiff's request to speak with the lieutenant on duty. Plaintiff then "wrote the Warden Randy Pfister" but "never heard back from him." Plaintiff filed a grievance and spoke to Major Blackard, who turned "a blind eye and deaf ears to [his] cry for help." When plaintiff asked Major Blackard for the correctional officer's name who was in charge of his "gallery," Blackard refused to give him the information and walked away.

¶ 9 B. Plaintiff's Affidavits

¶ 10 Plaintiff subsequently filed a series of affidavits in which he recounted various similar "assaults." Plaintiff alleged he was "assaulted" by the following DOC employees: (1) Joshua Schwahn on October 26, 2012; (2) Ronald Krominga on December 22, 2012; (3) Michael Sartain on February 2, 2013 (Lieutenant Scott Punke allegedly authorized this "assault"); (4) Scott Punke on February 27, 2013 (Punke moved a "strange inmate" named Miller into the neighboring cell, and the strange inmate "assaulted" plaintiff); (5) Allison Lovrant on March 26, 2013 (Punke allegedly authorized this "assault"); (6) Scott Teske on April 21, 2013 (while Krominga was "watching out"); (7) Christopher Bufford on May 11, 2013 (the incident took place on Lieutenant Susan Prentice's watch); (8) Logan Noble on May 20, 2013; (9) Brian Maier on June 20, 2013; (10) Timothy Lyle on June 28, 2013; and (11) Susan Prentice on December 13, 2013. In a later pleading, filed on August 9, 2013, plaintiff asserted he submitted these "affidavits" to be "attached to his *mandamus* complaint." The record shows service of summons on each of these individuals, as well as Governor Pat Quinn, Randy Pfister (Warden at Pontiac), Michael Nuding, and Jason Brownfield.

¶ 11 C. Defendants' Motions To Dismiss

¶ 12 In July, August, and September 2013, defendants filed various motions to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), all citing the same grounds for dismissal. Therein, defendants asserted (1) plaintiff's request was inappropriate because he sought to direct a nonministerial duty; and (2) even if plaintiff could identify a particular ministerial duty, he failed to show a clear right to the requested relief. Specifically, defendants argued *mandamus* relief was not appropriate where, as here, plaintiff sought to enforce a general right to bodily integrity, and not to direct a ministerial duty. Further, defendants argued, a blanket order directing DOC and its employees to stop exercising their lawful authority would be improper, as a case-by-case analysis would be necessary to determine whether each defendant had a specific ministerial duty. Additionally, Quinn asserted plaintiff's complaint should be dismissed because it failed to allege any facts pertaining to him.

¶ 13 In July 2013, plaintiff filed a response to defendants' motions to dismiss. Plaintiff attached three grievance forms to his response, each of which showed they were filed prior to his complaint. The grievance forms showed the grievance officer denied each of plaintiff's grievances but failed to show plaintiff pursued them any further.

¶ 14 In December 2013, the trial court granted defendants' motions to dismiss and memorialized its decision in a docket entry. The court concluded it could not enter "a blanket order directing [DOC] to stop exercising [its] lawful authority." Additionally, the court held because plaintiff's allegations against the individual employees required fact-specific inquiries, those issues had to be dealt with on a case-by-case basis.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17

A. Applicable Law and the Standard of Review

¶ 18

A motion to dismiss filed pursuant to section 2-615 of the Code attacks the legal sufficiency of the complaint. *Beahringer v. Page*, 204 Ill. 2d 363, 369, 789 N.E.2d 1216, 1221 (2003). "The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Id.* When ruling on a section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Poo-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009). Dismissal pursuant to section 2-615 is warranted only where it is clear no set of facts can be proved that will entitle the plaintiff to recover. *Beahringer*, 204 Ill. 3d at 369, 789 N.E.2d at 1221. We review *de novo* a dismissal under section 2-615. *Id.* We may affirm on any basis supported by the record, regardless of whether the trial court relied on the same basis. *Turner-El v. West*, 349 Ill. App. 3d 475, 479, 811 N.E.2d 728, 733 (2004).

¶ 19

"*Mandamus* is an extraordinary remedy used to compel a public officer to perform nondiscretionary official duties." *People ex rel. Senko v. Meersman*, 2012 IL 114163, ¶ 9, 980 N.E.2d 1115. To be entitled to such relief, the plaintiff must show (1) a clear right to the requested relief, (2) a clear duty on behalf of the defendant to act, and (3) clear authority of the defendant to comply with the writ. *Id.*

¶ 20

B. Exhaustion of Administrative Remedies

¶ 21

Defendants argue plaintiff failed to show a clear right to *mandamus* relief because he failed to allege—and the record fails to show—he exhausted his administrative remedies before filing his complaint. We agree.

¶ 22 Before seeking judicial review of an administrative decision, the party aggrieved by the decision must first pursue all available administrative remedies. *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 12, 985 N.E.2d 1037. The doctrine requiring exhaustion of administrative remedies applies to grievances filed by inmates. *Id.* "Where an inmate fails to show his grievance had administrative finality, he does not meet his burden of showing exhaustion of administrative remedies." *Id.* Clearly, plaintiff cannot demonstrate exhaustion of administrative remedies as to the multiple allegations stemming from incidents plaintiff alleges occurred after he filed his complaint. Moreover, plaintiff has also failed to demonstrate exhaustion of administrative remedies regarding the incidents he alleges took place prior to the filing of his complaint.

¶ 23 The Illinois Administrative Code sets forth the grievance procedures promulgated by DOC. The process begins by requiring an inmate to attempt to resolve the problem informally, through his or her counselor. 20 Ill. Adm. Code 504.810(a) (2003). If the inmate cannot resolve the issue informally, he or she may file a written grievance within 60 days of his or her discovery of the facts giving rise to the grievance and submit it to the grievance officer. *Id.* The grievance officer may either (1) deny the inmate's grievance with no further investigation if the grievance is deemed to be without merit; or (2) consider the grievance and report his or her findings and recommendations to the chief administrative officer. 20 Ill. Adm. Code 504.830(a), (d) (2003). The chief administrative officer must issue a written decision to the inmate within two months of his or her decision. 20 Ill. Adm. Code 504.830(d) (2003). If the chief administrative officer does not resolve the grievance to the inmate's satisfaction, the inmate may appeal to the director of DOC. 20 Ill. Adm. Code 504.850(a) (2003). After reviewing the grievance and the decisions of the grievance officer and chief administrative

officer, the director may either (1) order a hearing before the Administrative Review Board; or (2) if the grievance has no merit or can be resolved without a hearing, inform the inmate in writing of the disposition. 20 Ill. Adm. Code 504.850(b) (2003).

¶ 24 In this case, plaintiff's complaint failed to set forth any facts, which, if true, show he exhausted his administrative remedies. While the affidavit attached to his complaint states plaintiff "wrote the Warden Randy Pfister" but "never heard back from him" and filed a grievance, plaintiff did not set forth any facts showing he fully exhausted the administrative-grievance procedure by appealing to the director of DOC before he filed his complaint. See 20 Ill. Adm. Code 504.850 (2003). The three grievance forms attached to plaintiff's July 11, 2013, response to defendants' motion to dismiss also fail to show administrative finality. While the record shows these grievances were submitted to the grievance officer before plaintiff filed his complaint, the record is devoid of any indication plaintiff pursued the appeals process contained within DOC's grievance procedures. See *id.* Accordingly, the trial court properly granted defendants' motions to dismiss.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.