2015 IL App (2d) 141094-U
No. 2-14-1094
Order filed October 9, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ANTONIO KENDRICK, Plaintiff-Appellant, v. THE COUNTY OF DU PAGE, JOHN E ZARUBA, individually and as Du Page County Sheriff, and SALVADOR GODINEZ, individually and as Director of the Department of Corrections, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 14-L-429 Honorable Patrick O'Shea Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly dismissed plaintiff's section 1983 complaint: per his allegations, the county and its sheriff had no responsibility for his alleged mistreatment, the DOC director was not personally aware of it (and was not subject to section 1983 in his official capacity), and there was no continuing violation subject to injunctive relief and (2) as this was a civil case, plaintiff was not entitled to appointed counsel.

¶ 2 Plaintiff, Antonio Kendrick, appeals from the dismissal of all counts of his section 1983 civil-rights suit (see 42 U.S.C. § 1983 (2012)) against Du Page County, John E. Zaruba, and

Salvador Godinez. He asserts that his complaint stated claims for damages and injunctive relief against all the defendants and was not otherwise barred, so that the dismissal of the complaint was error. He further asserts that the court erred in not appointing counsel for him. We find no merit in any of these claims of error. We therefore affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed his section 1983 complaint against Du Page County, John E. Zaruba in his capacity as Du Page County sheriff and individually, and Salvador Godinez in his capacity as Director of the Department of Corrections (DOC) and individually (collectively, defendants). The factual gist of the complaint was that, on July 10, 2012, three DOC employees transported plaintiff and another prisoner from Stateville Correctional Center to the Du Page County Justice Complex for court appearances. After the appearances, at about 11:30 a.m., the three transported plaintiff to the jail so that the other prisoner could be processed into the jail. The processing took more than three hours. While it was taking place, plaintiff, in a jumpsuit and "black box"[1] restraints, remained in a DOC van parked in the jail's sally port.

¶ 5 The plaintiff alleged that the temperature in the van was 97 to 100 degrees. The DOC employees took turns supervising plaintiff in the van so that one of the three was always present with him; the two employees who were not with him waited in an air-conditioned area of the jail.

[1] A black-box restraint has been described as follows:

"[The restraint] is a hard plastic box placed over the lock apparatus that runs between the prisoner's handcuffs. The box does not cover the hands, but is situated between them. A chain runs through the box and encircles the prisoner's waist. The chain is tightened and then locked in back so that the prisoner's hands, restrained by handcuffs and the black box, are pulled against his stomach." *Knox v. McGinnis*, 998 F.2d 1405, 1407 (7th Cir. 1993).

During the wait, plaintiff was denied water and restroom access. He eventually urinated on his clothing. He asked the DOC employees if he could go to the air-conditioned part of the jail to get water and cool off, but they told him that that would be against jail policy. Plaintiff never received any water during this period. One transport officer ("Rashard") noticed plaintiff's "obvious discomfort" and turned on the van's motor and air conditioning. A jail employee told Rashard that the motor could not run when the vehicle was in the sally port.

¶ 6 The temperature in the van caused plaintiff to sweat profusely, develop a severe headache, have labored breathing, blurred vision, and become light-headed. Plaintiff had "well document[ed]" rheumatoid arthritis. He was in pain from the restraints when he returned to Stateville.

¶ 7 In light of these allegations, we turn to plaintiff's claims of wrongful conduct.

¶ 8 Against Du Page County, plaintiff asserted that the structure of the sally port (its lack of ventilation in particular) was a violation of the eighth-amendment prohibition on cruel and unusual punishment.

¶ 9 Against Zaruba, plaintiff argued that the enforcement of the policy prohibiting inmates who were not being processed into the jail from entering the air-conditioned area was a violation of the eighth amendment. Further, permitting use of the sally port as a prisoner waiting area during extreme weather encouraged the eighth-amendment violations.

¶ 10 Against Godinez, he asserted that the DOC lacked a policy or training program for transport officers that would alert them to the dangers of high temperatures and the like. Further, no policies were in place to prevent use of restraints when that was medically inappropriate.

¶ 11 Plaintiff sought damages and injunctions against all defendants. Against Du Page County, he sought a requirement that it build a waiting area with restrooms, heating, and cooling.

Against Zaruba, he sought the waiting area and a requirement of a policy to protect prisoners from other agencies. From Godinez, he sought an injunction requiring that black-box restraints not be used on prisoners with "painful joint conditions," that prisoners not be kept in black-box restraints for more than 10 minutes while awaiting transfer, and that Godinez create a policy to protect prisoners being transported from harsh weather conditions. Plaintiff also sought appointment of free counsel.

¶ 12 All defendants answered and filed motions to dismiss—the county and Zaruba filed a joint motion. Both motions asserted that plaintiff had failed to plead facts that would establish a right to any of the forms of relief that he sought. Plaintiff moved for leave to file an amended complaint against the same defendants. This was distinguished from the original primarily in that it sought declaratory relief as well as damages and injunctive relief.

¶ 13 On October 15, 2014, the court dismissed the complaint and denied leave to file the amended complaint. It ruled that, as to the county and Zaruba, the claims failed because neither had custody or control of plaintiff—that is, both lacked any duty to protect plaintiff from conditions in the sally port. As to Godinez, the court ruled that the matter was within the exclusive jurisdiction of the Court of Claims. Plaintiff filed a timely notice of appeal.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff makes three claims of error. First, he asserts that the court erred in ruling that Zaruba and the county lacked a duty of care toward him as to the conditions in the sally port. Second, he argues that the court erred in ruling that all claims against Godinez were within the exclusive jurisdiction of the Court of Claims. Third, he argues that the court erred in failing to appoint free counsel for him.

¶ 16 All defendants have responded. Director Godinez, notably, does not address the propriety of the jurisdictional argument. Instead, he argues that, because the complaint failed to state a claim either for damages or for injunctive relief, the court did not err in dismissing the complaint. Sherriff Zaruba and Du Page County argue that they had no control of plaintiff or his DOC custodians and therefore were not appropriate targets for the complaint.

¶ 17 We hold that the court was correct to dismiss the complaint. As to the individual-capacity damages claims, we hold that the complaint did not allege that either Zaruba or Godinez had the kind of culpability necessary to support a claim for damages. As to the requests for injunctive relief, we hold that plaintiff did not allege a pattern of abuse such that a claim for an injunction was sustainable. In particular, we hold that Godinez in his official capacity was not a person against whom a section 1983 claim for damages could be brought and that plaintiff failed to allege culpability by Godinez sufficient to state a claim for damages against Godinez personally. Finally, we do not agree that plaintiff had a right to counsel; no such right exists in a civil case such as this.

¶ 18 We give plaintiff the benefit of *de novo* review as to all issues, as the issues are questions of law. Review of the grant of a motion to dismiss for failure to state a claim is *de novo. Friedman v. White*, 2015 IL App (2d) 140942, ¶ 10. Further, where the decision to deny an injunction turns entirely on an issue of law, review is *de novo*. See *C.J. v. Department of Human Services*, 331 Ill. App. 3d 871, 879 (2002). Finally, we may affirm a complaint's dismissal on any basis supported by the record. *Donovan v. Community Unit School District 303*, 2015 IL App (2d) 140704, ¶ 25.

¶ 19 A well-pled claim for individual liability under section 1983 must include allegations of facts, that if proven would show the defendant's personal responsibility for the deprivation of a

constitutional right, with that person having directed the relevant conduct or it having occurred with the person's knowledge or consent. *E.g.*, *Blossom, v. Dart*, 64 F. Supp. 3d 1158, 1162 (N.D. 2014). Simple *respondeat superior* liability is not a basis for individual monetary liability. *E.g.*, *Blossom*, 64 F. Supp. 3d at 1162. Relatedly, "only deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Thomas v. Walton*, 461 F. Supp. 2d 786, 793 (S.D. Ill. 2006). We will assume here for the sake of argument that plaintiff did suffer a cognizable deprivation of rights. We do this primarily to direct our discussion to the most straightforward issues of law. However, a further matter is that we do not wish to minimize the concerns associated with keeping a person in a high-temperature environment without ready access to drinking water.

¶ 20 Because the county was not the source of any of plaintiff's deprivations of rights, plaintiff failed to state a claim for damages or for an injunction against it. Under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978), local governing bodies are "persons" subject to suit for all forms of relief available under section 1983. However, for liability to exist, the constitutional tort must be the consequence of a "policy of some nature." *Monell*, 436 U.S. at 691. Post-*Monell* precedent identifies three modes through which a local governing body's policy may be deemed to have caused a constitutional tort: "(1) through an express policy that, when enforced, causes a constitutional deprivation; (2) through a 'wide-spread practice' that although not authorized by written law and express policy, is so permanent and well-settled as to constitute a 'custom or usage' with the force of law; or (3) through an allegation that the constitutional injury was caused by a person with 'final decision policymaking authority.' " *Calhoun v. Ramsey*, 408 F.3d 375, 379 (7th Cir. 2005) (quoting *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995)). Here, although the allegations in

the complaint allows an inference that county policy influenced the DOC employees in their treatment of plaintiff, nothing in the complaint allows the inference that county policy dictated the way the DOC employees treated him. Plaintiff's allegations clearly imply that he was in the custody of DOC employees at all times, so, lacking evidence that county policy somehow completely prevented the DOC employees from keeping plaintiff in less problematic conditions, we conclude that the complaint failed to plead that county policy caused the alleged constitutional tort.

¶ 21 Plaintiff's claims against Zaruba fail for the same reason his claims against the county do. Nothing suggests any responsibility on Zaruba's part for plaintiff's treatment.

¶ 22 The damages claim against Godinez in his official capacity was properly dismissed because Godinez in his capacity as director was not a person subject to suit for damages under section 1983. Under section 1983, a suit against a state official in his or her official capacity is equivalent to a suit against the state of which he or she is an official. *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). States are not subject to suit under section 1983 (*Will*, 491 U.S. at 62-70), so no official-capacity claim against Godinez was cognizable under section 1983.

¶ 23 The damages claim against Godinez individually was properly dismissed because nothing in plaintiff's allegations suggests that Godinez had any knowledge of what happened to plaintiff. Further, nothing in plaintiff's allegations suggests that Godinez had any awareness of similar incidents. As we noted above, simple *respondeat superior* liability is not a basis for individual monetary liability; such liability is available only where the individual directed the relevant conduct or the conduct occurred with the person's knowledge or consent.

¶ 24 Plaintiff failed to state a claim for injunctive relief against any of the defendants, because he failed to allege any facts tending to show a pattern of constitutional violations. Note that "a state official in his or her official capacity, when sued for injunctive relief, [is] a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.' " *Will*, 491 U.S. at 71 n. 10 (quoting *Kentucky v. Graham*, 473 U.S., 159, 167, n. 14 (1985). Under section 1983, injunctive relief is proper only if there is an *ongoing* constitutional violation. *Green v. Mansour*, 474 U.S. 64, 73 (1985); *Kress v. CCA of Tennessee, LLC*, 694 F.3d 890, 894 (7th Cir. 2012). Thus, in *Kress*, where the defendant put forward an unchallenged affidavit that the deficient conditions giving rise to the claim had been corrected, summary judgment as to a request for an injunction against those conditions was proper. Here, the complaint does not allow us to infer any pattern of deprivations of rights relating to the use of the sally port. Plaintiff also sought an injunction against use of black-box restraints on inmates with painful joint conditions such as himself. Here again, the complaint was insufficient because it failed to show any ongoing violation. Indeed, as to the black-box restraints, it failed to show any violation at all. Plaintiff alleged that he had "well document[ed]" rheumatoid arthritis, but he failed to allege facts that would suggest that any non-medical personnel knew or should have known that he had a condition that would contraindicate restraints. Absent such an allegation, nothing suggests that the restraints were used in violation of his rights. The final injunction he sought, against putting inmates in restraints more than 10 minutes before their transport, is only indirectly related to preventing a violation of rights. Again plaintiff did not allege an ongoing problem to which such a rule would be the cure, so the complaint failed as to this claim as well.

¶ 25 Plaintiff also argues that the court erred when it failed to appoint counsel for him. We do not agree. No right to appointed counsel exists in civil cases such as this one. *E.g.*, *Tedder v.*

Fairman, 92 Ill. 2d 216, 225 (1982). Moreover, plaintiff does not direct us to any authority from this state holding that he is entitled to the appointment of counsel in a §1983 case.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the court's dismissal of plaintiff's complaint.

¶ 28 Affirmed.