

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).

2015 IL App (4th) 140432-U
NO. 4-14-0432
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
July 17, 2015
Carla Bender
4th District Appellate
Court, IL

BRIAN DUGAN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
HELEN R. HAMILTON; VICKIE K. KENDRICK;)	No. 13MR549
RANDY PFISTER; MICHAEL LEMKE; MARVIN)	
REED; MAJOR JOHNSON; MAJOR BLACHARD;)	
EDWARD VILT; PATRICIA WEST; JULES)	
MAXFIELD; LIEUTENANT STROGUM;)	
SERGEANT LEONARD; JEFFREY EILTS;)	
SALVADOR GODINEZ; THE DEPARTMENT OF)	Honorable
CORRECTIONS; and PATRICK HASTINGS,)	John W. Belz,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred by (1) granting defendants' section 2-615 motion to dismiss plaintiff's claim for *mandamus* relief where plaintiff alleged sufficient facts to state a denial-of-due-process claim in prison disciplinary proceedings, and (2) granting defendants' section 2-619(a)(9) motion to dismiss where plaintiff's claim is not barred by sovereign immunity.

¶ 2 In July 2013, plaintiff, Brian Dugan, an inmate at Stateville Correctional Center, *pro se* filed a complaint seeking a declaratory judgment, writ of *certiorari*, *mandamus* relief, injunctive relief, and damages under section 1983 the Civil Rights Act of 1871 (42 U.S.C. § 1983 (2012)). In December 2013, defendants, employees of the Department of Corrections (DOC), filed combined motions to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)). In May 2014, the circuit court granted

defendants' motions to dismiss, finding plaintiff's complaint failed to state a cause of action and was barred by sovereign immunity. Plaintiff appeals, arguing the court erred by dismissing his complaint. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

The following facts are taken from plaintiff's complaint, the attachments thereto, orders of record, and docket entries contained in the record on appeal.

¶ 5

A. Disciplinary Proceedings

¶ 6

On December 22, 2011, while an inmate at Pontiac Correctional Center (Pontiac), plaintiff was placed under investigative status following reports he was soliciting his cellmates to assault him. The disciplinary report states as follows:

"[Plaintiff] is being placed in investigative status for the safety and security of [Pontiac]. [Plaintiff] is to be housed in an area of confinement during the investigation period. At the conclusion of the investigation [plaintiff] will either be charged with violating departmental rules under DR 504A or released from investigative status."

A section at the bottom of the disciplinary report indicates plaintiff was served with a copy of the report on December 23, 2011, at 8:30 p.m. The report also shows plaintiff did not check the box next to the statement, "I hereby agree to waive 24-hour notice of charges prior to the disciplinary hearing."

¶ 7

On January 27, 2012, a two-person adjustment committee conducted a hearing. The adjustment committee's final summary report states plaintiff pleaded not guilty and claimed he "never received a copy of the ticket." The record of proceedings contained in the report

further states, "the disciplinary report was served by correctional officer Maxfield on 1/24/2012 at 5:00 p.m." The adjustment committee found plaintiff guilty of conspiracy/solicitation to assault any person (20 Ill. Adm. Code 504 app. A (rules 601 and 102) (eff. May 1, 2003)) and dangerous communications (20 Ill. Adm. Code 504 app. A (rule 208) (eff. May 1, 2003)). The adjustment committee supported its decision with the following facts:

"As the result of an investigation conducted by Pontiac['s] Intel Unit, it has been determined that [plaintiff] violated departmental rules relevant to solicitation to commit assault and dangerous communication.

During interviews with inmates assigned to the same living unit as [plaintiff], it was discovered that [plaintiff] advised the cellmates that he wanted to be in a single man cell and also wanted something to happen to him so he could file a lawsuit against the [DOC] for not providing him with a single man cell. [Plaintiff] also showed his cellmates letters he had written indicating that he would kill any cellmate that he had. [Plaintiff] instructed a cellmate to read court transcripts relating to [plaintiff]'s criminal case in which [he] kidnapped, sexually assaulted and murdered a young child. After the cellmate read the transcripts [plaintiff] asked the cellmate if he still wanted to be in a cell with a person who had done those types of things. When the cellmate did not respond, [plaintiff] grabbed a hold of the cellmates arm and stated 'Hit me...Hit me.' "

¶ 8 The adjustment committee recommended the following discipline: revocation of six months' good-conduct credits, six months' C-grade status, six months in segregation, and six months' audiovisual restriction. Randy Pfister, warden at Pontiac, concurred in the adjustment committee's disciplinary recommendations.

¶ 9 B. Plaintiff's Grievances

¶ 10 In February 2012, plaintiff filed "emergency grievances" requesting "new or additional proceedings." In March 2012, plaintiff filed additional grievances, claiming his due process rights were violated because the adjustment committee (1) failed to serve him with a copy of the disciplinary report, (2) provided an incomplete summary of the proceedings, and (3) denied him a meaningful opportunity to respond to the charges. Plaintiff also set forth his version of events and asserted, "[i]f Lieutenant Edward J. Vilt had conducted a fair investigation this information would've been provided to the [adjustment] committee and [plaintiff] would've been exonerated." Plaintiff requested the following relief: (1) expungement of the disciplinary sanctions, (2) service of the disciplinary report, (3) a new investigation and hearing, and (4) "appropriate action."

¶ 11 In January 2013, Sherry Benton, from the DOC administrative review board, office of inmate issues, recommended plaintiff's grievance be denied. Benton explained she reviewed the disciplinary report dated January 23, 2012, which indicated plaintiff was served with a copy of the report on January 24, 2012. Benton concluded plaintiff's due process claims were not substantiated.

¶ 12 C. Plaintiff's Complaint

¶ 13 On July 2, 2013, plaintiff *pro se* filed a complaint seeking a declaratory judgment, writ of *certiorari*, *mandamus* relief, injunctive relief, and damages under section 1983

the Civil Rights Act of 1871 (42 U.S.C. § 1983 (2012)). He alleged his due process rights were violated during prison disciplinary proceedings because (1) defendants did not conduct a full investigation, (2) the disciplinary report was based on "incomplete or false information," (3) he was never served with the disciplinary report and had no notice of the charges against him, and (4) defendants omitted relevant facts from the record of the proceedings. Plaintiff further alleged his due process rights were violated because defendants conducted a "sham review or investigation" into plaintiff's grievances. Plaintiff sought (1) compensatory and punitive damages, (2) expungement of his violations, and (3) costs and reasonable attorney fees.

¶ 14 In August 2013, plaintiff requested leave to file an amended complaint. He asserted his "original complaint is confusing and contain [sic] far to [sic] many complex claims to be litigated in a single cause of action by a *pro se* litigant." Plaintiff attached a proposed amended complaint, which asserted substantially the same claims as his original complaint. The record shows the circuit court never ruled on plaintiff's motion for leave to file an amended complaint.

¶ 15 On December 5, 2013, defendant Salvador Godinez filed a motion for leave to file *instanter* a motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)). The motion acknowledged defendant Godinez's answer or other pleading was due December 2, 2013, but counsel was unable to meet the deadline due to a jury trial and the Thanksgiving holiday. Pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), defendant Godinez moved for dismissal, arguing he exercised his statutory discretion in denying plaintiff's grievance and, thus, plaintiff failed to allege any facts demonstrating a clear right to relief. Pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)),

defendant Godinez moved for dismissal, asserting plaintiff's claims are barred by sovereign immunity.

¶ 16 On December 10, 2012, defendants Anderson, Maxfield, Kendrick, Hastings, Pfister, and Hamilton filed a combined motion to dismiss pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2012). Defendants supported the section 2-615 portion of their motion by attaching a disciplinary report dated January 23, 2012. The bottom of the report indicates it was served on plaintiff on January 24, 2012, at 5 p.m. Defendants argued plaintiff was not denied his due process rights because (1) he was served with the disciplinary report on January 24, 2012, which informed him of the charges; (2) he was provided a written statement of the adjustment committee's factual findings and the basis of the discipline; and (3) plaintiff does not allege he was denied an opportunity to call witnesses. Defendants asserted plaintiff had no clear right to grievance procedures and failed to state a claim for *mandamus* relief. Defendants' motion to dismiss pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619 (West 2012)) asserted plaintiff's claims are barred by sovereign immunity.

¶ 17 In March 2014, plaintiff moved to strike defendant Godinez's motion to dismiss based on his failure to answer or otherwise plead within 30 days of service. Ill. S. Ct. R. 181(a) (eff. Jan. 4, 2013). Plaintiff argued "being out of the office" for Thanksgiving and attending a jury trial in another case does not constitute "good cause" for purposes of Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) and asked the trial court to enter a default judgment.

¶ 18 On April 23, 2014, the circuit court held a telephone hearing on defendants' motions to dismiss and took the matter under advisement. On May 1, 2014, the court took the following action described in its docket entry:

"[T]he Court denies the Plaintiff's Motion for a default judgment and Motion to Strike. The Court grants the Defendant[s'] Motion to Dismiss with prejudice. The Court finds the [plaintiff] was afforded all due process procedures and sufficient evidence exists to support the decision of the adjustment committee. Additionally, the Court finds the complaint for declaratory relief is deficient at law. Finally, the plaintiff's action is barred by sovereign immunity."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Sufficiency of Plaintiff's Complaint

¶ 22 We initially note plaintiff's brief before this court contains no argument as to the propriety of the dismissal of his claims for declaratory judgment, injunctive relief, or money damages under section 1983. Any arguments pertaining to the propriety of the dismissal of those claims have been forfeited. Ill. S. Ct. Rule 341(h) (eff. Feb. 6, 2013); *Vancura v. Katris*, 238 Ill. 2d 352, 369, 939 N.E.2d 328, 340 (2010) (stating that the failure to argue a point in the appellant's opening brief results in forfeiture of the issue). Accordingly, we affirm the circuit court's dismissal of these claims.

¶ 23 On appeal, plaintiff argues the circuit court erred by dismissing his claims for *mandamus* relief and writ of *certiorari* pursuant to section 2-615 of the Code (730 ILCS 5/2-615 (West 2012)).

¶ 24 1. *Standard of Review*

¶ 25 "Dismissal of an action pursuant to section 2-615 is inappropriate where '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.' " *Oliver v. Pierce*, 2012 IL App (4th) 110005, ¶ 11, 964 N.E.2d 666. "In ruling on a section 2-615 motion to dismiss, 'a court must accept as true all well-pleaded facts in the complaint and all reasonable inferences therefrom.' " *Id.* "The court must consider '[a]ll facts apparent from the face of the pleadings, including the exhibits attached thereto.' " *Id.* We review a section 2-615 dismissal *de novo*. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25, 988 N.E.2d 984.

¶ 26 *2. Mandamus*

¶ 27 An inmate may state a cause of action for *mandamus* by properly stating a due process violation. *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 15, 985 N.E.2d 1037. "Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). To obtain *mandamus* relief, a plaintiff 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)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004).

¶ 28 Here, plaintiff claims his due process rights were violated during the disciplinary proceedings and grievance proceedings.

¶ 29 a. Due Process in Disciplinary Proceedings

¶ 30 Inmates subject to disciplinary action that could result in the loss of good-time credit are entitled to due process protection. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 436, 876 N.E.2d 659, 666 (2007). The full array of rights due to a defendant in a criminal prosecution does not apply to an individual subject to a prison disciplinary proceeding. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Instead, the process required in prison disciplinary proceedings includes the following: (1) notice of the charges at least 24 hours prior to the hearing, (2) an opportunity to call witnesses and present documentary evidence when consistent with institutional safety and correctional goals, and (3) a written statement by the fact finder of the evidence upon which it relied and the reasons for the disciplinary action. *Id.* at 563-66. In addition, the findings must be supported by some evidence in the record. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455 (1985).

¶ 31 In this case, plaintiff contends his due process rights were violated because (1) the adjustment committee conducted a "sham investigation" and "sham hearing"; and (2) he did not receive notice of the charges at least 24 hours prior to the hearing.

¶ 32 As to plaintiff's allegation the adjustment committee conducted a "sham investigation" and "sham hearing", we find plaintiff failed to adequately plead a due process violation. He alleges no facts and makes no specific argument as to how defendants conducted a "sham investigation" and "sham hearing." Nor does plaintiff make any claim he was denied his right to appear at the disciplinary hearing, call witnesses, or receive a written summary of the adjustment committee's decision. Thus, plaintiff has failed to adequately plead a due process violation based upon his allegation defendants conducted a deficient hearing and investigation.

¶ 33 However, with respect to plaintiff's allegation he did not receive written notice of the disciplinary charges at least 24 hours prior to the adjustment committee's January 27, 2012, hearing, we find his complaint sufficiently alleges a due process violation. According to the well-pleaded facts in plaintiff's complaint, plaintiff was placed on investigative status on December 22, 2011. Plaintiff alleges he first became aware of the charges against him at the January 27, 2012, disciplinary hearing, when the adjustment committee read aloud a two-page disciplinary report. Although plaintiff alleges he was previously served with a disciplinary report (dated December 23, 2011) placing him on investigative status, this particular report, attached as an exhibit to his complaint, does not contain a description of the disciplinary charges. Plaintiff alleges he never received the disciplinary report that charged him with conspiracy/solicitation and dangerous communication. These factual allegations, if proved, would establish plaintiff did not receive notice of the charges at least 24 hours prior to the hearing, which would constitute a violation of his due process rights. Therefore, plaintiff's complaint alleges sufficient facts showing a right to *mandamus* relief. See *Armstrong v. Snyder*, 336 Ill. App. 3d 567, 571, 783 N.E.2d 1101, 1104 (2003) (alleging a violation of due process rights in a prison disciplinary proceeding states a cause of action in *mandamus*).

¶ 34 We note defendants attempted to refute plaintiff's allegations that he did not receive notice of the charges by attaching a disciplinary report dated January 23, 2012, which set forth the charges, as an exhibit in support of their section 2-615 motion to dismiss. They argued this exhibit demonstrated plaintiff was timely served with notice of the charges. This was not proper practice. Regarding a section 2-615 motion to dismiss, a court "may not consider affidavits, the products of discovery, documentary evidence not incorporated into the pleadings as exhibits, testimonial evidence, or other evidentiary materials." *Hartmann Realtors v. Biffar*,

adopt the Administrative Review Law and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). Because the statutes relating to prison disciplinary procedures neither adopt the Administrative Review Law nor provide another method of judicial review of disciplinary procedures, *certiorari* review of prison discipline is generally appropriate. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001).

¶ 41 Here, although Illinois recognizes a writ of *certiorari* as a distinct cause of action, we find it duplicative of plaintiff's claim for *mandamus* relief. Both claims are based upon the same alleged conduct and seek the same relief. Since plaintiff failed to plead his claim for writ of *certiorari* in the alternative, dismissal of the claim as duplicative is appropriate. *Radtko v. Murphy*, 312 Ill. App. 3d 657, 665, 728 N.E.2d 715, 721 (2000) (affirming the dismissal of the plaintiff's breach of agency claim where it alleged the same facts as the plaintiff's legal malpractice claim and was not pleaded in the alternative). We affirm the dismissal of plaintiff's claim for writ of *certiorari*.

¶ 42 B. Sovereign Immunity

¶ 43 Plaintiff next asserts the circuit court erred by dismissing his *mandamus* claim pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)) as being barred by sovereign immunity. We agree.

¶ 44 In cases such as this, a *mandamus* action to compel a public officer to perform a clear and mandatory duty is not an action against the State and, thus, is properly brought in the circuit court. *Senn Park Nursing Center v. Miller*, 104 Ill. 2d 169, 189, 470 N.E.2d 1029, 1039 (1984). Indeed, the circuit court has ruled on the merits of a prisoner's *mandamus* claim against prison officials in numerous cases. See, e.g., *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 60-63, 536 N.E.2d 875, 877-79 (1989); *Blythe v. Lane*, 194 Ill. App. 3d 451, 454-55,

551 N.E.2d 680, 681-82 (1990). Thus, the circuit court erred when it dismissed plaintiff's *mandamus* claim based on sovereign immunity.

¶ 45 C. Motion To File an Amended Complaint

¶ 46 Plaintiff also claims the circuit court erred when it failed to rule on and grant his motion for leave to file an amended complaint. We disagree.

¶ 47 Our supreme court has often observed, "a movant has the responsibility to obtain a ruling on his motion if he is to avoid forfeiture on appeal." *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41, 981 N.E.2d 981. Moreover, "[a] subsequently filed notice of appeal following the failure by a litigant to obtain a ruling on a motion serves as an abandonment of the previously filed motion." *Rodriguez*, 376 Ill. App. 3d at 433, 876 N.E.2d at 663. Here, plaintiff's failure to obtain a ruling from the circuit court on his motion for leave to file an amended complaint prior to filing his notice of appeal resulted in his abandonment of the motion and forfeiture on appeal.

¶ 48 Forfeiture aside, we have reviewed plaintiff's proposed amended complaint and find it does not add any factual allegations which would cure the defects we have already addressed. As such, the circuit court did not err in failing to rule on and grant plaintiff's motion to file an amended complaint. See *Brandon v. Bonell*, 368 Ill. App. 3d 492, 511, 858 N.E.2d 465, 485 (2006) ("the denial of a plaintiff's request to amend a complaint is appropriate if even after the amendment, no cause of action can be stated").

¶ 49 D. Defendant Godinez's Failure To Answer or
Otherwise Plead Within 30 Days

¶ 50 Plaintiff argues the circuit court erred by denying his motion to strike and motion for default judgment. We disagree. Although defendant Godinez's motion to dismiss was filed outside the 30-day period pursuant to Illinois Supreme Court Rule 181(a) (eff. Jan. 4, 2013), the court may, for good cause shown, extend the time for filing any pleading, either before or after

the expiration of time. Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). Whether good cause exists is fact-dependent and rests within the sound discretion of the trial court. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353, 875 N.E.2d 1065, 1079 (2007).

¶ 51 Here, the record shows defense counsel was not able to meet the December 2, 2013, deadline due to a jury trial and the Thanksgiving holiday. Nothing in the record before us indicates the circuit court abused its discretion when it accepted defense counsel's proffered reason for the late filing and granted a three-day extension of time. Additionally, the court's decision to allow the late filing is consistent with the broad policy goal of resolving cases on the merits rather than on technicalities. For these reasons, the court did not abuse its discretion in denying plaintiff's motion to strike and motion for default judgment.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we reverse the circuit court's dismissal of plaintiff's claim for *mandamus* relief since he adequately pleaded a due process violation and his claim is not barred by sovereign immunity. We otherwise affirm the circuit court's judgment. We remand for further proceedings solely on plaintiff's claim for *mandamus* relief.

¶ 54 Affirmed in part and reversed in part; cause remanded.