2015 IL App (4th) 140637-U

NO. 4-14-0637

Order filed March 16, 2015

Modified upon denial of rehearing April 22, 2015

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DAVID STARKS, SR., Plaintiff-Appellant, v. RANDY PFISTER, Warden, Defendant-Appellee.	)))))))	Appeal from Circuit Court of Livingston County No. 13MR109 Honorable Jennifer H. Bauknecht, Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed in part, reversed in part, and remanded for further proceedings, concluding (1) the three-tiered classification system for inmates in administrative detention was not inconsistent with DOC regulations; (2) due process required defendant's compliance with the DOC regulation concerning review of an inmate's placement in administrative segregation; (3) plaintiff had no right to DOC grievance procedures; and (4) plaintiff's request for a remand for the purpose of developing standards applicable to defendant's "double bunking" policy was not properly before the court.

¶ 2 In September 2013, plaintiff, David Starks, Sr., an inmate at Pontiac Correctional Center (Pontiac), *pro se* filed a complaint seeking *mandamus* relief. In January 2014, defendant, Randy Pfister, the warden at Pontiac, filed a motion to dismiss plaintiff's complaint. In June 2014, the trial court granted defendant's motion to dismiss.

¶ 3 Plaintiff appeals, arguing the trial court erred by dismissing his *mandamus* complaint where (1) the three-tiered classification system for inmates in administrative detention

is inconsistent with the Department of Corrections (DOC) regulation providing for administrative detention; (2) defendant failed to review his administrative-detention status pursuant to DOC regulations; (3) defendant failed to comply with the grievance procedures under DOC regulations; and (4) the court failed to address defendant's policy of requiring plaintiff to share his cell with another inmate despite the fact he is a heightened safety and security risk. We affirm in part, reverse in part, and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 A. Plaintiff's Placement in Administrative Detention

¶ 6 On December 22, 2012, plaintiff was transferred to Pontiac after the institution in which he was previously housed, Tamms Correctional Center, was closed. Upon plaintiff's arrival at Pontiac, the warden placed him in administrative detention, which is a discretionary, nondisciplinary form of confinement. See 20 Ill. Adm. Code 504.660 (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)). Because plaintiff killed a corrections officer in 1989, the warden determined plaintiff was a safety and security threat warranting placement in administrative detention.

¶ 7 B. The Grievances

¶ 8 Within one week of his transfer to Pontiac, plaintiff filed a grievance seeking release from administrative detention, but he never received a response. Plaintiff subsequently filed several grievances demanding the review of his administrative-detention status, documentation regarding such review, release from administrative detention, and information regarding a three-tiered classification system applicable to inmates in administrative detention. Plaintiff received no responses to these grievances. Plaintiff also filed a grievance after defendant informed him he would be required to share his cell with another inmate, but he

received no response. Plaintiff later discovered officials at Pontiac were allegedly disregarding inmate grievances and throwing them away to prevent the inmates from exhausting their administrative remedies.

¶ 9 C. *Mandamus* Complaint

¶ 10 In September 2013, plaintiff *pro se* filed a complaint seeking *mandamus* relief. The complaint alleged defendant was not complying with DOC regulations regarding administrative detention and the inmate-grievance procedures. Plaintiff sought an order of *mandamus* compelling defendant to (1) remove the three-tiered administrative-detention system; (2) provide him with all privileges enjoyed by the general prison population; (3) prevent the disregarding of grievances by prison staff; and (4) review his administrative-detention status and provide written records of the same. Additionally, plaintiff sought an injunction, $5,000 in damages for "due[-]process violations on grievances," and $1,000,000 in damages "for adm[inistrative-]detention violations."

¶ 11 Plaintiff attached to his complaint a statement of facts and memorandum of law in support of his complaint. Therein, plaintiff set forth the circumstances surrounding his transfer to Pontiac, his placement in administrative detention, and his unanswered grievances. He contended the three-tiered classification system for inmates in administrative detention was inconsistent with section 504.660 of Title 20 of the Illinois Administrative Code (Administrative Code) (20 Ill. Adm. Code 504.660 (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))), which is the departmental regulation concerning administrative detention, but he did not set forth the terms of the three-tiered classification system. Plaintiff acknowledged defendant was entitled to place him in administrative detention but maintained defendant was required to comply with the applicable regulation. Plaintiff also asserted defendant had not reviewed his administrative-

detention status as required by section 504.660. Further, he contended the policy requiring him to share a cell with another inmate was inconsistent with the justification for his placement in administrative detention—he was a safety and security threat.

¶ 12 Attached to plaintiff's memorandum were six affidavits, one of which was from plaintiff and the remaining five from inmates at Pontiac. All six inmates averred they had filed grievances concerning their administrative-detention status, all of which were disregarded. No written grievances were attached to plaintiff's complaint or memorandum.

¶ 13 D. Defendant's Motion To Dismiss

¶ 14 In January 2014, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2012)) and attached a memorandum of law in support thereof. Therein, defendant argued plaintiff did not have a clear right to the relief he sought. Specifically, defendant contended nothing in section 504.660 of Title 20 of the Administrative Code conflicted with the creation of the three-tiered classification system for inmates in administrative detention. Additionally, because the Administrative Code does not create additional rights, defendant argued plaintiff could not properly base his complaint on violations of the Administrative Code. Defendant also argued plaintiff had no clear right to grievance procedures or to be free from having to share his cell with another inmate.

¶ 15 In March 2014, plaintiff filed a reply to defendant's motion. He clarified he was not challenging defendant's decisions to place him in administrative detention or require him to share his cell with another inmate; rather, he was seeking only to compel defendant's compliance with section 504.660 of Title 20 of the Administrative Code. Plaintiff argued he had a right to defendant's compliance with section 504.660 and that the three-tiered classification system was

inconsistent with that regulation. Specifically, plaintiff argued administrative detention is a nondisciplinary form of confinement but the three-tiered classification system was designed to punish inmates. Plaintiff alleged inmates classified in "level one" received one yard visit and shower per week and one phone call and one commissary visit per month, while inmates classified in "level two" or "level three" received additional phone, yard, commissary, and visitation privileges.

¶ 16 Additionally, plaintiff claimed he had a liberty interest in being free from administrative detention and a due-process right in defendant's compliance with section 504.660. According to plaintiff, defendant's failure to meaningfully review his administrative-detention status was a violation of his due-process rights. Plaintiff asserted he had a due-process right to defendant's compliance with the grievance procedures contained in the Administrative Code (see 20 Ill. Adm. Code 504.830 (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))) and defendant had failed to do so. Plaintiff requested the trial court (1) protect the privileges afforded him under section 504.660; (2) ensure he would not be subjected to punishment inconsistent with section 504.660; (3) provide him with meaningful review of his administrative-detention status; and (4) protect his right to file a grievance.

¶ 17 E. The Trial Court's Order

¶ 18 In June 2014, the trial court granted defendant's motion to dismiss. The court entered a docket entry memorializing its order, which stated, in pertinent part:

> "Plaintiff has filed a *mandamus* petition asking this court to order defendant to comply with the administrative code concerning grievance procedures and detention. Plaintiff has failed to properly set forth a claim for *mandamus*. He has not shown any clear right

to which he is entitled. Further, to the extent the actions of the defendant involve discretion, *mandamus* would not lie."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, plaintiff argues the trial court erred in dismissing his *mandamus* complaint.

¶ 22 A. Standard of Review

¶ 23 Plaintiff appeals from the grant of defendant's motion to dismiss, which was filed under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)). A motion to dismiss filed pursuant to section 2-615 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 deciding a section 2-615 motion to dismiss, the 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*, 2014 IL App (5th) 130543, ¶ 14, 13 N.E.3d 350. Rather, the court considers 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. *Pooh-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. 2d at 369, 789 N.E.2d at 1221. We review *de novo* a dismissal under section 2-615. *Id.*

¶ 24 Illinois is a fact-pleading jurisdiction. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 26, 965 N.E.2d 1092. "While this does not require the plaintiff to set forth evidence in the complaint, it does demand that the plaintiff allege facts sufficient to bring a claim within a legally recognized cause of action." *Id.* In doing so, the plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations. *Id.*

¶ 25 *Mandamus* is an extraordinary remedy whereby a court compels a public official to perform a ministerial duty where no exercise of discretion is involved. *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 15, 985 N.E.2d 1037. To obtain *mandamus* relief, the plaintiff must show " 'a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply with the writ.' " *Id.* ¶ 16, 985 N.E.2d 1037 (quoting *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 39, 944 N.E.2d 337, 341 (2011)).

¶ 26 B. The Three-Tiered Classification System

¶ 27 Plaintiff contends he is entitled to *mandamus* relief compelling defendant to rescind the three-tiered classification system for inmates in administrative detention. Specifically, plaintiff contends that system is inconsistent with section 504.660 of Title 20 of the Administrative Code because (1) nothing in the language of that section authorizes the creation of a three-tiered system and (2) it is a form of punishment requiring due-process protections.

¶ 28 Section 504.660 provides, in pertinent part:

> "Administrative detention is a nondisciplinary status of confinement which removes an offender from general population or restricts the individual's access to general population.
>
> * * *

> (d) Living conditions in administrative detention shall meet, at minimum, the standards set forth in [s]ection 504.620. Telephone privileges shall be afforded in accordance with 20 Ill. Adm. Code 525.150." 20 Ill. Adm. Code 504.660 (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)).

¶ 29 Plaintiff's complaint and the attached statement of facts failed to allege facts setting forth the terms of the three-tiered classification system for inmates in administrative detention. He also failed to allege the level in which he was classified. Instead, plaintiff simply stated his legal conclusion the three-tiered system was inconsistent with section 504.660. Illinois law requires more when pleading a cause of action—it requires the plaintiff to plead with specificity each fact required to bring his claim within a recognized cause of action. *Simpkins*, 2012 IL 110662, ¶ 26, 965 N.E.2d 1092. Plaintiff's failure to do so here is fatal to this claim.

¶ 30 Additionally, we note even if plaintiff had alleged sufficient facts to establish a claim for *mandamus* relief on this basis, our review of the terms of the three-tiered classification system reveals it is not inconsistent with section 504.660. Section 504.660 provides, in relevant part, the living conditions in administrative detention shall meet the minimum standards set forth in section 504.620 of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.620 (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))). 20 Ill. Adm. Code 504.660(d) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)). In turn, section 504.620 provides inmates shall receive at least one shower per week (20 Ill. Adm. Code 504.620(g)(1) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))), one phone call per month (20 Ill. Adm. Code 504.620(q) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))), commissary privileges comparable to those applicable to the general population except for restrictions on certain items imposed for safety and security reasons (20 Ill.

Adm. Code 504.620(i) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003))), and visiting privileges subject to the rules and regulations established by each facility's chief administrative officer (20 Ill. Adm. Code 504.620(k) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)); see also 20 Ill. Adm. Code 525.20 (amended at 27 Ill. Reg. 8039 (eff. July 1, 2003))). Further, an inmate in administrative detention for more than 90 days shall receive at least five hours of recreation outside his or her cell per week. 20 Ill. Adm. Code 504.620(p) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)).

¶ 31 The record contains a memorandum from defendant specifying the conditions for each level of administrative detention in the three-tiered system. At the most restrictive level, "phase I," the conditions satisfy the minimum requirements contained in section 504.620, as is required by section 504.660. Inmates placed in "phase I" receive two showers per week; one 15-minute phone call per month; one stop at the commissary per month, where the inmates can buy basic hygiene and correspondence materials; and at least five hours of recreation outside their cell per week. Further, nothing indicates the restricted visitation privileges are inconsistent with section 525.20 of Title 20 of the Administrative Code (20 Ill. Adm. Code 525.20 (amended at 27 Ill. Reg. 8039 (eff. July 1, 2003))). Accordingly, we conclude the trial court correctly granted defendant's motion to dismiss on plaintiff's claim he was entitled to the rescission of the three-tiered classification system.

¶ 32 C. Defendant's Failure To Review Plaintiff's Administrative Detention

¶ 33 Plaintiff contends the trial court erred when it dismissed his complaint because he was seeking defendant's compliance with section 504.660(c) of Title 20 of the Administrative Code, which states the warden "shall review the record of each offender in administrative detention every 90 days to determine whether continued placement is appropriate." 20 Ill. Adm.

Code 504.660(c) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)). Although section 504.660(c)(2) requires the warden to "document the decision in writing," it does not require the warden to provide the inmate with the written decision. 20 Ill. Adm. Code 504.660(c)(2) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)).

¶ 34 It is well settled DOC's regulations, including those found in the Administrative Code, "were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000); see also *Montes*, 2013 IL App (4th) 120082, ¶ 20, 985 N.E.2d 1037; *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 22, 966 N.E.2d 1233. "Instead, Illinois DOC regulations, as well as the Unified Code [of Corrections], were designed to provide guidance to prison officials in the administration of prisons." *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Moreover, "Illinois law creates no more *rights* for inmates than those which are constitutionally required." (Emphasis in original.) *Id.* However, states may under certain circumstances, through their statutes and regulations, create liberty interests which are protected by the due-process clause. *Sandin v. Conner*, 515 U.S. 472, 483 (1995). These state-created interests, however, are "limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the [d]ue [p]rocess [c]lause of its own force [citations], nonetheless imposes *atypical and significant hardship* on the inmate in relation to the ordinary incidents of prison life." (Emphasis added.) *Id.* at 484.

¶ 35 Inmates have no liberty interest in avoiding transfer to discretionary segregation, such as the administrative detention used in Illinois prisons. *Townsend v. Fuchs*, 522 F.3d 765, 771 (2008). "[T]here is nothing 'atypical' about discretionary segregation[.]" *Id.* Instead, it is

"an 'ordinary incident of prison life' that inmates should expect to experience during their time in prison." *Id.*; see also *Meriwether v. Faulkner*, 821 F.2d 408, 414 (1987).

¶ 36 Plaintiff raises no issue with his initial transfer to administrative detention. Rather, he takes issue with his *continued* placement in administrative detention, which results in a loss of certain privileges available to the general prison population, without any review or opportunity to demonstrate his placement in such segregation is no longer appropriate. An inmate may not be held indefinitely in administrative segregation unless a valid and subsisting reason for his placement in segregation exists. *Kelly v. Brewer*, 525 F.2d 394, 400 (1975). "[W]here an inmate is held in segregation for a prolonged or indefinite period of time[,] due process requires that his situation be reviewed periodically in a meaningful way and by relevant standards to determine whether he should be retained in segregation or returned to population." *Id.*; see also *Hewitt v. Helms*, 459 U.S. 460, 477 n. 9 (1983) ("Prison officials must engage in some sort of periodic review of the confinement of such inmates [in administrative segregation]."), *abrogated on other grounds*, *Sandin*, 515 U.S. at 484.

¶ 37 Accordingly, plaintiff had a clear right to defendant's compliance with section 504.660(c) of Title 20 of the Administrative Code, as that regulation provides an inmate with a periodic and meaningful review of his placement in administrative detention. In his complaint, plaintiff alleged, since his arrival at Pontiac in December 2013, he has been placed in administrative detention. Further, he alleged defendant failed to review his placement in administrative detention as is required by section 504.660. Accordingly, we conclude the trial court erred in granting defendant's motion to dismiss plaintiff's claim seeking review of his placement in administrative detention and remand for further proceedings. In doing so, however, we make no evaluation of plaintiff's claim on its merits.

¶ 38 D. Defendant's Failure To Comply With Grievance Procedures

¶ 39 Plaintiff also argues the trial court erred in dismissing his *mandamus* complaint where defendant failed to process his grievances. We disagree.

¶ 40 Inmates have no constitutional right to a grievance process. See *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (stating prison grievance procedures are not required by the first amendment and do not create interests protected by the due-process clause); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (stating state-created inmate grievance procedures do not give rise to liberty interests protected by the due-process clause). Further, as stated above, prison regulations "were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." (Emphasis in original.) *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Here, plaintiff does not have a right enforceable through *mandamus* to any grievance procedures. Plaintiff has therefore failed to allege any specific constitutional violations or facts that would entitle him to have his grievances processed in accordance with DOC regulations.

¶ 41 Plaintiff also expresses concern that defendant's failure to process his grievances prevents him from exhausting his administrative remedies (see *Montes*, 2013 IL App (4th) 120082, ¶ 12, 985 N.E.2d 1037) and threatens his access to the courts. We disagree.

¶ 42 In *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 9, 975 N.E.2d 1266, the Third District held the inmate had satisfied the exhaustion requirement by setting forth the grievance procedure he pursued and the lack of response from prison officials. Here, plaintiff alleged he attempted to follow the grievance procedure as set forth in DOC regulations, and any lack of response to his grievances from DOC does not constitute a failure to exhaust administrative remedies. See *id.* Accordingly, we conclude the trial court correctly dismissed the portion of plaintiff's *mandamus* requesting an order compelling defendant to process his grievances.

¶ 43 E. Trial Court's Failure To Address "Double Bunking" Policy

¶ 44 Finally, plaintiff contends we should remand this case so the trial court may consider defendant's "double bunking" policy, in which he is required to share a cell with another inmate despite the justification for his placement in administrative detention—he is a safety and security threat due to his 1989 murder of a corrections officer. By requiring him to share his cell with another inmate placed in administrative detention, plaintiff argues, defendant is ignoring the justification for his placement in administrative detention and placing him and others in a dangerous situation. Plaintiff requests we instruct the circuit court and defendant on remand to develop some sort of standard as to when "double bunking" is or is not appropriate.

¶ 45 We decline to address this contention. Although the memorandum of law and statement of facts in support of plaintiff's *mandamus* complaint mentions he filed a grievance based on defendant's "double bunking" policy, his prayer for relief does not include a request for an order compelling defendant to rescind the policy. In his response to defendant's motion to dismiss, plaintiff clarified his position, stating he was not challenging defendant's "double bunking" policy. On page two of his brief to this court, plaintiff acknowledges the "double bunking" policy "is something a prisoner must deal with." However, later in his brief, plaintiff requests we remand the matter with instructions to set standards applicable to when "double bunking" is appropriate.

¶ 46 Given plaintiff's statements to the trial court that he was not challenging the policy or defendant's decision to require plaintiff to share his cell, we find any error in not addressing this issue was invited by plaintiff, and he has therefore waived review of this issue. See *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 63, 16 N.E.3d 345 (A party may not request to proceed in one manner and then later contend on appeal that the course of

action was in error.). Additionally, the relevant prison regulations permit defendant to "double bunk" inmates who are in administrative detention. Section 504.660(d) of Title 20 of the Administrative Code provides "[l]iving conditions in administrative detention shall meet, at minimum, the standards set forth in Section 504.620." 20 Ill. Adm. Code 504.660(d) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)). Section 504.620 permits "double bunking" upon approval of the warden, who must first conduct a review "to determine whether there are reasons why the offenders should not be double celled." 20 Ill. Adm. Code 504.620(a) (amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)). Plaintiff's complaint failed to allege, and the record does not otherwise indicate, defendant failed to perform any such review. Even then, section 504.620 gives defendant the discretion to place an inmate in a cell with another. *Id.*

¶ 47 Moreover, plaintiff's request for remand with instructions would require the court to inject itself into the day-to-day management of prisons and to second-guess what are essentially prison managerial decisions. See *Ashley*, 316 Ill. App. 3d at 1259, 739 N.E.2d at 903 (noting the Supreme Court's decision in *Hewitt* led to the "undesirable trend[]" of court's injecting themselves deeply in the day-to-day management of prisons); *Sandin*, 515 U.S. at 482-83 (noting the involvement of the federal courts in the day-to-day management of prisons squanders judicial resources "with little offsetting benefit to anyone"). We reject plaintiff's request.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm in part and reverse in part the trial court's judgment. We remand for further proceedings only on plaintiff's claim regarding defendant's failure to review his continued placement in administrative detention.

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