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2016 IL App (3d) 140953-U

Order filed February 10, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

AARON STEWART, JR.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-14-0953
)	Circuit No. 12-CH-5725
)	
MARCUS HARDY, MICHAEL LEMKE,)	
and C/O TANNER,)	Honorable
)	Roger Rickmon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it granted the defendants' motion to dismiss Stewart's amended complaint, and defendants' class certification issue is moot.

¶ 2 Plaintiff, Aaron Stewart, Jr., appeals from the trial court's order dismissing his amended complaint. On appeal, Stewart argues that the court erred in dismissing his complaint and denying his motion for class certification. We affirm.

¶ 3 **FACTS**

¶ 4 On August 29, 2013, Stewart filed the amended complaint that is the subject of this appeal and a petition for class certification. The complaint alleged a violation of section 1983 of the federal Civil Rights Act (42 U.S.C. § 1983 (2012)).

¶ 5 In the complaint, Stewart identified himself as an inmate at Stateville Correction Center (Stateville) and the representative plaintiff for all of the inmates incarcerated at Stateville. Stewart named Warden Michael Lemke¹ and food supervisor "C/O Tanner" as defendants.

¶ 6 Stewart alleged that, since 2009, Tanner misappropriated State funds that were set aside to purchase food for the inmates. As a result, Stateville inmates were not receiving the foods designated on the "Master Menu." Stewart alleged that the "Master Menu" was followed in all of the correctional institutions in the state except Stateville. Stewart claimed that Tanner's actions had deprived the Stateville inmates of the equal protection of the law because Tanner's conduct constituted disparate treatment from similarly situated inmates in other correctional institutions in Illinois.

¶ 7 Stewart claimed that Lemke engaged in and acquiesced to Tanner's misappropriation of funds intended to purchase food items on the "Master Menu." Stewart alleged that Lemke was legally responsible for ensuring that the "Master Menu" was honored, and Lemke failed to fulfill this responsibility when he allowed Tanner to deviate from the "Master Menu." Stewart concluded that Lemke's actions or inaction constituted disparate treatment from similarly situated inmates at other institutions in Illinois which violated Stewart and his fellow Stateville inmates' rights to equal protection.

¹In Stewart's first complaint, he named Marcus Hardy, the former warden at Stateville, as a defendant. Stewart did not name Hardy as a defendant in the amended complaint that is at issue in this appeal.

¶ 8 Stewart sought \$3,000,000 in compensatory damages for depriving the inmates of proper food for three years and \$3,000,000 in punitive damages.

¶ 9 In his motion for class certification, Stewart argued that he satisfied the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 23(a). Stewart contended that he had satisfied the numerosity, commonality, typicality, and adequacy requirements for class certification. *Id.* The court denied Stewart's motion.

¶ 10 Defendants moved to dismiss the amended complaint arguing that Stewart failed to state a claim upon which relief can be granted, and Stewart's claims for monetary relief were barred by sovereign immunity. 735 ILCS 5/2-615, 2-619 (West 2012). The trial court granted the defendants' motion to dismiss without specifying the grounds for the dismissal. Stewart did not seek leave to replead, but filed a motion to reconsider. The court denied Stewart's motion, and Stewart filed a notice of appeal.

¶ 11 ANALYSIS

¶ 12 I

¶ 13 Stewart argues that the court erred in dismissing his amended complaint because it sufficiently stated a section 1983 claim that defendants violated his right to equal protection. Specifically, defendants' failure to provide the food items listed on the "Master Menu" and allegedly served at correctional institutions throughout the state was disparate treatment between similarly situated prisoners. Upon review, we find that Stewart's complaint did not sufficiently allege an equal protection violation.

¶ 14 Initially, we note that the court did not specify the grounds for the dismissal. However, as we may affirm the dismissal of a complaint on any ground supported by the record, we first examine the sufficiency of Stewart's complaint. 735 ILCS 5/2-615 (West 2012); *Heepke v.*

Heepke Farms, Inc., 271 Ill. App. 3d 935, 940 (1995) (reviewing court may affirm a dismissal of a complaint on any grounds supported by the record regardless of whether the trial court relied on those grounds).

¶ 15 A section 2-615 motion attacks the legal sufficiency of a plaintiff's claims. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). We review a section 2-615 dismissal to determine "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.* Illinois is a fact-pleading jurisdiction, and a plaintiff must allege sufficient facts to bring his claim within the scope of the cause of action asserted. *Id.* We review *de novo* a dismissal under section 2-615. *Id.*

¶ 16 At the outset, we note that Stewart does not allege a claim under the eighth amendment of the United States Constitution (U.S. Const., amend VIII). Instead, Stewart contends that his right to equal protection was violated (U.S. Const., amend. XIV). Therefore, we limit our review to the legal sufficiency of Stewart's equal protection claim.

¶ 17 The equal protection clause of the fourteenth amendment of the United States Constitution (U.S. Const., amend. XIV) requires that the government treat similarly situated individuals in a similar manner. *People v. Masterson*, 2011 IL 110072, ¶ 24. Denial of equal protection is an "arbitrary and invidious discrimination against a person or class of persons." *Raimondo v. Kiley*, 172 Ill. App. 3d 217, 225 (1988). Such a denial occurs when a government official withholds a right, benefit or privilege as a result of a plaintiff's membership in a class, but gives it to others without any reasonable basis. *Id.* at 226.

¶ 18 In his complaint, Stewart alleged that defendants were responsible for the disparate treatment of inmates at Stateville. However, Stewart did not allege that defendants had any

involvement with menu preparation, food procurement, and meal preparation at any correctional institution other than Stateville. Therefore, Stewart's complaint did not establish that defendants were responsible for treating similarly situated inmates at other correctional institutions differently. Consequently, Stewart's complaint did not sufficiently plead an equal protection violation, and the court did not err in granting the State's motion to dismiss.

¶ 19

II

¶ 20

Stewart also argues that the trial court erred in denying his motion for class certification. We find that any issue regarding the trial court's denial of class certification is rendered moot by our finding that the court did not err in dismissing the underlying amended complaint. See *Oliveira v. Amoco Oil Company*, 201 Ill. 2d 134, 156 (2002) (finding that appeal of trial court's failure to certify a class was moot where the complainant's allegations failed to state a cause of action).

¶ 21

CONCLUSION

¶ 22

The judgment of the circuit court of Will County is affirmed.

¶ 23

Affirmed.