2016 IL App (3d) 150113-U

Order filed April 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

JEFF MUSGROVE,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	
	)	
SALVADOR A. GODINEZ,	)	Appeal No. 3-15-0113
	)	Circuit No. 13-CH-2331
Defendant-Appellee	)	
	)	
(Marcus Hardy, John Doe #1, and John Doe #2,	)	
	)	
	)	Honorable Cory D. Lund,
Defendants).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff's complaint does not state a legally cognizable cause of action under 42 U.S.C. §1983. We affirm the circuit court's dismissal of plaintiff's complaint.

¶ 2 In July 2013, plaintiff, Jeff Musgrove, filed a complaint *pro se* against the following defendants: Salvador Godinez—Director of the Illinois Department of Corrections (DOC), Marcus Hardy—Warden of Stateville Correctional Center (Stateville), and two DOC

employees—John Doe #1 and John Doe #2. Plaintiff alleged defendants discriminated against him in violation of the federal Civil Rights Act (42 U.S.C. §1983 (2012)). Plaintiff sought compensatory damages and an order transferring him to another custodial setting. Godinez filed a motion to dismiss plaintiff's complaint; the trial court granted it, applying it to all defendants.

¶ 3 Plaintiff appeals, arguing his complaint should not have been dismissed because it challenges the constitutionality of the defendant's actions, and the trial court's ruling disregards its obligation to enforce federal law. We affirm.

¶ 4 BACKGROUND

¶ 5 In 1989, a Will County jury convicted the plaintiff of murder, attempted armed robbery, unlawful use of a weapon, and conspiracy. *People v. Musgrove*, 313 Ill. App. 3d 217, 218 (2000). In 1997, plaintiff escaped custody and was promptly caught. *Id*. at 218-19. Plaintiff was convicted of escape and sentenced to six years' imprisonment; this court reversed the trial court's ruling and remanded on appeal. *Id*. Ultimately, the State filed a motion to dismiss plaintiff's escape charge *nolle prosequi*. The trial court granted the motion.

¶ 6 In the wake of his escape, Stateville officials designated plaintiff as an "extremely high escape risk" in accordance with DOC policy. Once designated as being at high risk of escape, known as "Level E," the DOC restricts prisoners from participating in several prison programs and from having visitors. In 2011, plaintiff made several requests to Stateville personnel to lower his escape risk classification. Officials denied plaintiff's requests, initially because of his prior escape "conviction." Shortly thereafter, plaintiff obtained an order from the trial court clarifying that his escape charge had been dismissed. Plaintiff provided a copy of the order to personnel at Stateville and, again, asked that they reduce his escape risk designation. Again, the administration denied plaintiff's request.

¶ 7 In July 2013, plaintiff filed this discrimination complaint against the defendants pursuant to the federal Civil Rights Act (42 U.S.C. § 1983 (2012)). Plaintiff claimed Stateville's classification of him as a high risk of escape was discriminatory. Plaintiff also alleged that defendants' refusal to lower his escape risk level was an act of retaliation against him for obtaining the trial court order clarifying that he had not actually been convicted of escape. Plaintiff asserted that he was entitled to compensatory damages and transfer to a different correctional facility.

¶ 8 In his complaint, plaintiff claimed the Level E classification was discriminatory merely by using conclusory statements. He also detailed the restrictions he was subject to in accordance with DOC policy as a result of his designation in the Level E category. Plaintiff's only references to the United States Constitution or federal law—aside from the federal Civil Rights Act (42 U.S.C. § 1983 (2012)) itself—were to the first and fourteenth amendments.

¶ 9 In August 2014, Godinez moved to dismiss plaintiff's complaint pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2014)). Godinez claimed plaintiff's claims were barred by the doctrine of sovereign immunity because he sought money damages from the State and a mandatory injunction against it without the State's consent. Godinez relied on the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2014)) as well, claiming it removed the circuit court's jurisdiction to hear claims for damages against the State. While there was some question as to whether Hardy was properly served with a summons in the case, Godinez asserted that his arguments applied for Hardy as well. In response, plaintiff argued the trial court's dismissal of his complaint would be a violation of the supremacy clause of the United States Constitution (U.S. Const., art. VI, cl. 2) and that his section 1983 claim preempted Godinez's claim of sovereign immunity.

¶ 10 In February 2015, the trial court granted the State's motion to dismiss. The trial court noted that Godinez qualified as "the State," and that state courts cannot award money damages or injunctive relief against the State without its consent. The trial court further noted that its jurisdictional analysis applied to the remaining defendants as DOC employees. Plaintiff did not seek leave to replead, and appeals.

¶ 11 ANALYSIS

¶ 12 Plaintiff argues on appeal that the trial court erred in granting Godinez's motion to dismiss. Plaintiff asserts that state immunity rules do not apply in section1983 actions brought in state court and the trial court shirked its obligation to enforce federal law by granting Godinez's motion.

¶ 13 Godinez, on the other hand, argues the trial court appropriately dismissed plaintiff's claim. Godinez asserts that while plaintiff's complaint was dismissed pursuant to a section 2-619 motion to dismiss argument based on sovereign immunity, this court should affirm the trial court's dismissal pursuant to section 2-615, claiming: (1) plaintiff failed to state an equal protection claim; and (2) plaintiff's allegations do not demonstrate that Godinez retaliated against him. Godinez also argues plaintiff waived any argument about his transfer request and, in the alternative, his request for a transfer is now moot because plaintiff is no longer in custody at Stateville. Godinez further claims that even if plaintiff's request for injunctive relief was not moot, the court properly declined to intervene in the DOC's housing decision.

¶ 14 We review a trial court's grant of a motion to dismiss *de novo*. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 349 (2006). A reviewing court may rely on any basis in the record to affirm a trial court's grant of a section 2-619 motion to dismiss that was mislabeled and should have been brought pursuant to section 2-615, regardless of the trial court's

rationale. *Morris v. Williams*, 359 Ill. App. 3d 383, 386-87 (2005). This proposition is distinct from the proposition that parties on appeal may argue the trial court's grant of a motion to dismiss, which was brought under section 2-619 and based on one argument, and can be affirmed by arguing a separate argument it brings before this court pursuant to a section 2-615 motion to dismiss. As the appellee, however, the defendant in this case " ' "may urge any point in support of the judgment on appeal, *** so long as the factual basis for such point was before the trial court." ' " *People v. Ringland*, 2015 IL App (3d) 130523, ¶ 33 (quoting *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 470-71 (2008), quoting *Shaw v. Lorenz*, 42 Ill. 2d 246, 248 (1969)).

¶ 15 Here, plaintiff asserts that the DOC, through Stateville officials, discriminated against him. He seeks compensatory damages and injunctive relief, presumably in an effort to halt DOC's allegedly discriminatory practice of classifying him based on his potential for escape. As such, he asserts the gist of a constitutional claim. Generally, this court has jurisdiction to adjudicate section 1983 claims. See *Bilski v. Walker*, 392 Ill. App. 3d 153, 155 (2009).

¶ 16 Section 1983 protects citizens' "rights, privileges, or immunities secured by the Constitution and laws***." 42 U.S.C. §1983 (2014). There are two required elements in a cause of action based on section 1983: (1) the defendant was acting under color of state law when engaging in the conduct complained of by the plaintiff; and (2) the defendant's conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution of the United States or a federal statute. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981); *Riley v. Fairfield*, 160 Ill. App. 3d 397, 399 (1987). In his complaint, plaintiff alleges his Level E classification is a violation of his "right, secured by the Fourteenth Amendment, and State law, to be free of discrimination while

serving his sentence." Plaintiff further asserts the alleged retaliation he is suffering from is a violation of his first amendment right.

¶ 17 "The Constitution does not require that prisons be comfortable [citation], only that they supply basic human needs [citation]. Inmates thus have a constitutional right to adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety. [Citations.] Prisoners also have a reasonable right of access to courts and a right to a reasonable opportunity to exercise religious freedom under the first amendment. [Citation.] *Beyond these, prisoners possess no other rights, only privileges*." (Emphasis added.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258-59 (2000). Moreover, the specific policy-based restrictions plaintiff alleges are discriminatory have already been deemed constitutional under state law. See *Parker v. Snyder*, 352 Ill. App. 3d 886, 890 (2004) (quoting 730 ILCS 5/3-2-2(d), (m) (West 2000)) (finding "[t]he restrictions attached to the Level E classification were 'reasonable security measures to classify those inmates who have exhibited behavior which indicates they are likely to attempt an escape.' "). As pled, nothing in plaintiff's complaint alleges or can possibly be construed to allege a violation of the enumerated rights of a prisoner in DOC custody. Thus, plaintiff's complaint failed to state a cause of action against any defendant. Accordingly, we affirm the trial court.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 20 Affirmed.