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2016 IL App (3d) 150268-U

Order filed September 1, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

RONNIE CARROLL,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellant,)	Knox County, Illinois.
)	
v.)	Appeal No. 3-15-0268
)	Circuit No. 13-MR-97
KEVWE AKPORE, SALVADOR GODINEZ,)	
and STEPHANIE DORETHY,)	
)	Honorable Paul L. Mangieri,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err in dismissing plaintiff's *pro se mandamus* petition. Plaintiff failed to state a cause of action under section 10 of the Sanitary Food Preparation Act (410 ILCS 650/10 (West 2014)).

¶ 2 Plaintiff, Ronnie Carroll, appeals from the trial court's dismissal of his amended *mandamus* petition. On appeal, plaintiff argues the court should have ordered the defendants to: (1) fully comply with the rules and laws regarding food service; and (2) test all current and future food handlers at Hill Correctional Center for communicable and sexually transmitted diseases.

We affirm.

FACTS

¶ 3

¶ 4 In July 2013, plaintiff, an inmate at Hill Correctional Center (HCC), filed a *pro se mandamus* petition against Kevwe Akpore, the HCC warden, and Salvador Godinez, the Director of the Department of Corrections (DOC). In the petition, plaintiff asked the trial court to issue an order of *mandamus* requiring the defendants to test all current and future food handlers for communicable and sexually transmitted diseases. See 410 ILCS 650/10 (West 2010).

¶ 5 In August 2013, before plaintiff had served either defendant, the trial court *sua sponte* dismissed plaintiff's petition. Plaintiff appealed, and this court reversed and remanded for service of plaintiff's *mandamus* petition upon defendants.

¶ 6 On remand, plaintiff filed a motion to "add new defendant" Stephanie Dorethy, as she was the current HCC warden. The trial court granted plaintiff's motion and added Dorethy as a defendant.

¶ 7 In December 2014, plaintiff served Dorethy and Godinez with a summons and copy of the petition. In January 2015, defendants moved to dismiss plaintiff's complaint, arguing that plaintiff: (1) failed to state a claim for relief; and (2) lacked standing.

¶ 8 Later that month, plaintiff filed a motion for leave to amend his *mandamus* petition. Plaintiff's amended petition for *mandamus* relief alleged that: (1) plaintiff was cleared to be a food handler at HCC and was only given the skin test for tuberculosis; (2) the skin test for tuberculosis is the only test the medical staff at HCC gives to food handlers; and (3) no inmates at HCC have the required food safety and sanitation certificate (410 ICS 625/3 (West 2014)).

¶ 9 In March 2015, defendants moved to dismiss plaintiff's amended complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). Plaintiff thereafter filed an objection and response to defendants' combined motion.

¶ 10 On April 8, 2015, the trial court dismissed plaintiff's amended complaint. The court explained that plaintiff failed to state a cause of action because none of the statutes or regulations he cited required an employer to test all food handlers for disease either prior to or in the course of their employment. In addition, plaintiff lacked standing to sue because he failed to allege the existence of a concrete or particularized injury he had sustained as a result of defendants' alleged failure to test all food service workers at HCC for communicable and sexually transmitted diseases.

¶ 11 Plaintiff appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, plaintiff argues the trial court erred in dismissing his petition for *mandamus* relief because section 10 of the Sanitary Food Preparation Act (Act) requires the DOC and HCC to test inmates and other staff members who work in the food services industry for communicable and sexually transmitted diseases. See 410 ILCS 650/10 (West 2014).

¶ 14 *Mandamus* is an extraordinary remedy used to compel public officers to perform nondiscretionary official duties. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain *mandamus* relief, a plaintiff must establish: (1) a clear right to the requested relief; (2) a clear duty of the public officer to act; and (3) clear authority of the public officer to comply with the order. *Id.* "A writ of *mandamus* is appropriate when used to compel compliance with mandatory legal standards but not when the act in question involves the exercise of a public officer's discretion." *Id.* We review orders dismissing a petition for *mandamus* relief *de novo*. *Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶ 9.

¶ 15 Section 10 of the Act provides, in relevant part:

“It shall be unlawful for any employer to require, allow or permit any person who is affected with any communicable or sexually transmitted disease to work, or for any person so affected to work, in a building, room, basement, inclosure[*sic*], premises or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution, or transportation of food.” 410 ILCS 650/10 (West 2014).

¶ 16 A clear reading of section 10 establishes that while the Act prohibits individuals affected with any communicable or sexually transmitted diseases from working in the food service industry, nothing in that section requires an employer to test its food service workers for such diseases at any point prior to or in the course of their employment. As such, plaintiff has failed to demonstrate a clear ministerial duty on the part of the DOC or HCC to act—a requirement for *mandamus* relief.

¶ 17 Because plaintiff failed to allege the existence of facts that would identify a clearly established right to have the DOC and HCC test its food service workers for communicable and sexually transmitted diseases, the trial court was correct in determining that plaintiff failed to state a cause of action upon which relief could be granted.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the circuit court of Knox County’s dismissal of plaintiff’s *mandamus* petition.

¶ 20 Affirmed.