

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).

2016 IL App (4th) 150259-U

NO. 4-15-0259

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 25, 2016
Carla Bender
4th District Appellate
Court, IL

JOSHUA KRUGER, MICHAEL SAPP, JOSE)	Appeal from
MEDRANO and JOE SHERROD,)	Circuit Court of
Plaintiffs-Appellants,)	Sangamon County
v.)	No. 10CH1413
ROGER WALKER, Director of the Illinois Department)	
of Corrections; and TONY SMALL, Deputy Director of)	
Finance for the Illinois Department of Corrections,)	Honorable
Defendants-Appellees.)	John P. Schmidt,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err by granting defendants' motion to dismiss.

¶ 2 In November 2010, plaintiffs, Joshua Kruger, Michael Sapp, Jose Medrano, and Joe Sherrod, all inmates at Pontiac Correctional Center (Pontiac), brought suit against Roger Walker, Director of the Illinois Department of Corrections (Department), and Tony Small, Deputy Director of Finance for the Department, alleging that Pontiac's commissary was overcharging defendants in violation of section 3-7-2a of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-7-2a (West 2010)).

¶ 3 In January 2011, defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2010)). In March 2015, the trial court granted defendants' motion to dismiss pursuant to section 2-619,

finding plaintiffs lacked standing based on this court's decision in *Jackson v. Randall*, 2011 IL App (4th) 100790, 957 N.E.2d 572. Plaintiffs appeal, arguing the trial court erred by dismissing their complaint. We affirm.

¶ 4

I. BACKGROUND

¶ 5

In November 2010, plaintiffs sued defendants, seeking declaratory and injunctive relief, compensatory and punitive damages, and costs and attorney fees. Specifically, plaintiffs claimed defendants overcharged plaintiffs for items sold in the commissary at Pontiac in violation of section 3-7-2a of the Unified Code (730 ILCS 5/3-7-2a (West 2010)), which provides a methodology for setting the prices of items sold at a prison's commissary. Plaintiffs alleged that an audit of the prison commissary revealed the defendants had set prices in excess of the statutory surcharges found in section 3-7-2a.

¶ 6

In January 2011, defendants filed a motion to dismiss plaintiffs' complaint, arguing (1) the trial court lacked subject-matter jurisdiction, given the Department enjoyed sovereign immunity; and (2) plaintiffs lacked standing, given section 3-7-2a of the Unified Code does not create a private right of action.

¶ 7

In March 2015, the trial court granted defendants' motion to dismiss, finding plaintiffs lacked standing pursuant to this court's decision in *Jackson*, 2011 IL App (4th) 100790, 957 N.E.2d 572 (prisoner lacked standing under section 3-7-2a to challenge price of commissary items). This appeal followed.

¶ 8

II. ANALYSIS

¶ 9

Plaintiffs appeal, arguing, *inter alia*, this court should overturn its decision in *Jackson* and find that plaintiffs have standing to sue. We decline to do so and affirm.

¶ 10

Section 2-619(a)(9) of the Code permits a trial court to involuntarily dismiss a

claim when "the claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). The phrase "affirmative matter" refers to something "in the nature of a defense that negates the cause of action completely," such as a lack of standing. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220, 720 N.E.2d 1034, 1039 (1999). We review an order granting a section 2-619(a)(9) motion to dismiss *de novo*. *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 359, 904 N.E.2d 18, 24 (2009).

¶ 11 "[T]he doctrine of standing *** precludes a plaintiff from bringing a private cause of action based on a statute unless the statute expressly confers standing on an individual *** to do so." *Jackson*, 2011 IL App (4th) 100790, ¶ 14, 957 N.E.2d 572 (citing *Glisson*, 188 Ill. 2d at 222, 720 N.E.2d at 1040 (refusing to expand the doctrine of standing to include "member[s] of [a] class designed to be protected by the statute, or one for whose benefit the statute was enacted, and to whom a duty of compliance is owed"))).

¶ 12 In *Jackson*, this court held section 3-7-2a does not expressly confer standing on prison inmates "to enforce the cost percentages outlined therein." *Id.* ¶ 16. The court relied on its previous decision in *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258-59, 739 N.E.2d 897, 902-03 (2000), and held "[Department] regulations and the Unified Code were designed to provide guidance to prison officials in the administration of prisons, not to create more rights for inmates than those that are constitutionally required." *Jackson*, 2011 IL App (4th) 100790, ¶ 17, 957 N.E.2d 572. According to *Jackson*, section 3-7-2a does not create a "constitutionally protected right[] to commissary items at a specified price." *Id.* Accordingly, section 3-7-2a of the Unified Code serves as a guideline for the Department and does not create a private right of action. *Id.*; see generally *Ashley*, 316 Ill. App. 3d at 1257-59, 739 N.E.2d at 902-03 (prisoner lacked standing to enforce provisions of the Unified Code).

¶ 13 Plaintiffs urge this court to overrule its decision in *Jackson*. However, they provide no compelling reason for us to do so. Plaintiffs argue the Unified Code was enacted "to prevent arbitrary or oppressive treatment of persons adjudicated offenders ***; and *** [to] restore offenders to useful citizenship." 730 ILCS 5/1-1-2(c),(d) (West 2014). According to plaintiffs, the Unified Code's stated purpose is thwarted when "illegal conduct"—*i.e.*, alleged overcharging for commissary items—is allowed. Plaintiffs assert there exists an implied private right of action to enforce the "statutory limitations" in section 3-7-2a. Plaintiffs suggest this court should find the case of *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302, 597 N.E.2d 616 (1992), a case where our supreme court found the X-Ray Retention Act (Ill. Rev. Stat. 1987, ch. 111 1/2, ¶ 157-11) supports a private right of action, so analogous to the present case that we should ignore our decision in *Jackson* and find a private right of action exists here. In *Rodgers*, the supreme court determined the plaintiff was an intended beneficiary of the statute's X-ray retention provisions.

"It is clear that the X-Ray Retention Act was designed to prevent the loss of evidence that may be essential to the pursuit or defense of a medical malpractice claim. Therefore, there can be little dispute that [the plaintiff], a plaintiff with a malpractice claim, is a member of the class for whose benefit the statute was enacted, and that [the plaintiff's] injury is one the statute was designed to prevent." *Rodgers*, 149 Ill. 2d at 308, 597 N.E.2d 616.

We do not find this case and *Rodgers* to be similar. Plaintiffs fail to persuade us that the statutory provision here was designed to do anything more than to assist prison officials in their administrative efforts.

¶ 14 We find the holding in *Jackson* that an inmate lacks standing under section 3-7-2a to challenge the price of commissary items continues to be sound and has been cited favorably by other courts. See *Ruhl v. Department of Corrections*, 2015 IL App (3d) 130728, ¶ 25, 35 N.E.3d 982 (finding "no reason to deviate from the holding of *Jackson*" that section 3-7-2a does not imply a private right of action); *O'Quinn v. Olkoski*, 2015 WL 5042124 at *8 (No. 15-CV-00796) (S.D. Ill. Aug. 25, 2015) (court dismissed inmate's state law claims based on "conditions in segregation" due to lack of standing, citing *Jackson* and *Ashley*). We further note courts have found other provisions of the Unified Code similarly fail to confer standing to inmates. See *Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶ 14, 42 N.E.3d 462 (citing *Ashley*, the court found the Unified Code does not confer standing to inmates); *Blankenship v. Kittle*, 2003 WL 22048712 at *2-3 (No. 3-C-3573) (N.D. Ill. Aug. 6, 2003) (finding the Unified Code does not confer rights on prisoners) (citing *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902); *Henry v. Blagojevich*, 2010 WL 2680531 at *2 (No. 10-C-3683) (N.D. Ill. June 30, 2010) (finding plaintiffs have no legal right (1) to buy commissary items at particular prices, or (2) for the Department to charge certain prices), *aff'd other grounds*, *Tenny v. Blagojevich*, 659 F.3d 578 (7th Cir. 2011).

¶ 15 The trial court did not err by granting defendants' motion to dismiss due to plaintiffs' lack of standing. Accordingly, we need not address plaintiffs' remaining arguments on appeal.

¶ 16 III. CONCLUSION

¶ 17 For the foregoing reasons, we affirm the trial court's judgment.

¶ 18 Affirmed.