

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) 150374-U

NO. 4-15-0374

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 31, 2016

Carla Bender
4th District Appellate
Court, IL

FREDRICK S. HARRIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
SHARON SIMPSON, RANDY PFISTER, and)	No. 14MR54
SHARON HANSEN,)	
Defendants-Appellees.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion in dismissing the petition for *mandamus* relief where a suit involving the same parties and the same cause was pending in federal court.

¶ 2 In December 2012, plaintiff, Frederick S. Harris, filed a civil-rights action in federal district court, seeking, in part, injunctive relief from the mail policy in place at the Pontiac Correctional Center (Pontiac), where plaintiff is imprisoned. In May 2014, plaintiff filed a *pro se* petition for *mandamus* relief in the Livingston County circuit court, asking the trial court to order defendants (1) Sharon Simpson, a grievance officer at Pontiac, to process and consider plaintiff's grievance claims; (2) Sharon Hansen, the mailroom supervisor at Pontiac, to process plaintiff's outgoing mail; and (3) Randy Pfister, the warden at Pontiac, to discipline Simpson and Hansen for allegedly failing to perform their duties. In July 2014, defendants filed a motion to dismiss pursuant to sections 2-619(a)(3) and 2-615 of the Code of Civil Procedure (Code) (735

ILCS 5/2-619(a)(3), 2-615 (West 2014)). In November 2014, the court dismissed the petition for *mandamus* relief.

¶ 3 Plaintiff appeals, arguing the trial court abused its discretion in granting the motion to dismiss where (1) plaintiff set forth sufficient facts to state a claim for relief pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), and (2) the court failed to consider relevant factors in finding plaintiff's federal suit involved the same parties and the same cause and dismissing the petition pursuant to section 2-619(a)(3) of the Code (735 ILCS 5/2-619(a)(3) (West 2014)). We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Plaintiff's Federal Suit

¶ 6 In November 2012, plaintiff filed a suit in federal court. The suit named, among others, the Director of the Illinois Department of Corrections (DOC), Pfister, and Hansen. In pertinent part, plaintiff alleged Hansen enforced a mail policy which illegally interfered with plaintiff's outgoing personal mail in violation of his constitutional rights. Specifically, plaintiff alleged Hansen would hold his outgoing personal letters, sent in prestamped envelopes plaintiff obtained from other inmates. Instead of sending these personal letters, Hansen would apply the postage to plaintiff's legal mail, which the State would otherwise pay for because plaintiff had a negative balance in his trust account. Plaintiff's complaint requested "[a] preliminary and [p]ermanent injunction ordering [d]efendants Godinez, Pfister[,] and Hansen to stop the implementation of the 'mail policy' in question." Plaintiff further alleged Hansen enforced the mail policy in retaliation for plaintiff's previously filed federal suit (even though Hansen was not a defendant in the prior federal action).

¶ 7 In August 2013, Hansen filed an affidavit with the federal court. The affidavit explained inmates are allowed to send and receive unlimited mail at their own expense.

However, if an inmate has insufficient funds in their trust account for postage, "offenders are permitted to send reasonable amounts of legal mail and certain types of privileged mail at the State's expense if the offender attaches a signed money voucher authorizing deduction of future funds to cover the cost of postage." If an inmate has sufficient funds in their trust account, they may purchase writing supplies and postage from the commissary. Where an inmate cannot purchase these supplies, the law library provides an "indigent packet" with writing supplies to be used solely for legal correspondence.

¶ 8 In November 2013, Hansen filed responses to plaintiff's interrogatories. The interrogatories and responses suggest Pontiac has a mail room policy applicable to inmates who send a high volume of mail without the ability to pay for postage. The documents regarding this policy are not in the record. However, Hansen stated plaintiff improperly used the free materials from the "indigent packet" for personal, not legal, correspondence. The interrogatory response further stated plaintiff "sent a high volume of personal mail, [was] unable to pay for his postage, and [was] not entitled to unlimited free postage." Essentially, it appears Hansen would hold plaintiff's personal mail sent in stamped envelopes obtained from other inmates and apply the postage to plaintiff's legal mail, thereby preventing plaintiff from sending personal mail at his own "expense" and having the State fund the postage for his legal mail.

¶ 9 B. Grievance Report

¶ 10 In September 2013, plaintiff filed a grievance report complaining of various issues with Hansen's affidavit and interrogatory responses filed with the federal court, including a claim Hansen had provided false information to the federal court in violation of the Illinois

Administrative Code. On October 15, 2013, the grievance office returned the report to plaintiff with a note mentioning the federal suit and informing plaintiff his claim was not within the scope of the grievance office. On October 17, 2013, plaintiff returned the grievance to Simpson and asserted his federal suit alleged Hansen violated his first-amendment rights and was unrelated to his grievance claim alleging Hansen violated DOC rules by lying in her filing in that federal suit. Plaintiff demanded Simpson process the grievance report and take disciplinary action against Hansen. On October 22, 2013, plaintiff sent a letter to the supervisor of clinical services informing him of his grievance allegations. The letter asked for disciplinary measures against Hansen for providing false information in her court filings and interfering with plaintiff's mail and against Simpson for failing to process the initial grievance report.

¶ 11 On October 29, 2013, the grievance was again returned to plaintiff with a note directing him to contact his correctional counselor. On November 14, 2013, the counselor responded, writing, "[t]his is a legal issue and this needs to be followed through legal means." A January 4, 2014, memorandum from the grievance office contained a note indicating plaintiff's grievance pertained to his federal lawsuit and the grievance office had no jurisdiction to consider his complaint.

¶ 12 C. Plaintiff's Petition for *Mandamus*

¶ 13 In May 2014, plaintiff filed his petition for *mandamus* relief, the subject of this appeal. In his petition, plaintiff asserted Hansen interfered with his mail in retaliation for a prior unrelated federal lawsuit he filed. Based on this allegedly retaliatory action, plaintiff filed the federal lawsuit discussed above. Plaintiff further alleged Hansen lied in the affidavit filed in federal court and admitted withholding plaintiff's mail in violation of DOC rules.

¶ 14 In his petition, plaintiff outlined the sequence of events regarding his grievance. Plaintiff also alleged he had spoken with Pfister about "this issue" multiple times. Plaintiff asserted Simpson's and Pfister's failure to initiate disciplinary proceedings against Hansen subjected plaintiff to continued harassment in the form of interference with his mail. Specifically, plaintiff contended Hansen was retaliating against him for filing a prior unrelated federal suit when she intercepted his outgoing personal mail.

¶ 15 Plaintiff argued Simpson must process and consider the grievance against Hansen and "must make an attempt to solve the problem(s) in the mailroom." Plaintiff asserted Hansen must process the mail and not "concern herself with where plaintiff's 'prestamped envelopes' come from or whether plaintiff has money in his account." Finally, plaintiff argued Pfister must discipline Simpson for failing to perform her duty as a grievance officer and Hansen for giving false information in her filings in the federal suit and for withholding plaintiff's mail.

¶ 16 In July 2014, defendants filed a motion to dismiss pursuant to sections 2-619(a)(3) and 2-615 of the Code (735 ILCS 5/2-619(a)(3), 2-615 (West 2014)). The trial court, after giving plaintiff the opportunity to respond, took the matter under advisement. In November 2014, the court entered, in pertinent part, the following order:

"This matter comes before the court today for ruling on the defendants' motion to dismiss. The court having carefully considered that motion together with the written arguments of the parties, pertinent portions of the court file[,]and other relevant authorities, hereby finds and orders as follows: in his mandamus petition, plaintiffs seeks a court order compelling defendants to (1) respond to plaintiff's grievance[,] *** (2) to order defendant

Simpson [*sic*] to process ingoing and outgoing mail, [and] (3) to discipline Simpson and Hanson [*sic*] for allegedly violating [DOC] rules. Plaintiff has failed to set forth a clear affirmative right to the relief requested. Plaintiff has no constitutional right to have his grievance heard and/or have the officers disciplined. Moreover, plaintiff has failed to identify a specific constitutional right in regards to the mail handling policies. Finally, the court notes that there is a pending action in federal court that the court finds that action is based on substantially the same set of facts and involved the same defendants. For these reasons, defendants' motion to dismiss is granted. Plaintiff's petition is stricken."

In March 2015, the court denied plaintiff's amended motion for reconsideration.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Plaintiff appeals, arguing the trial court abused its discretion in granting the motion to dismiss where (1) plaintiff set forth sufficient facts to state a claim for relief pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), and (2) the court failed to consider relevant factors in finding plaintiff's federal suit involved the same parties and the same cause and dismissing the petition pursuant to section 2-619(a)(3) (735 ILCS 5/2-619(a)(3) (West 2014)). Because we find the court's dismissal pursuant to section 2-619(a)(3) dispositive, we begin there.

¶ 20 Section 2-619(a)(3) allows for the dismissal of an action when "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West

2014). "[S]ection 2-619(a)(3)'s purpose is to preserve judicial economy and to avoid a multiplicity of actions." *Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill. App. 3d 780, 789, 699 N.E.2d 1095, 1102 (1998). Even if the action involves the "same parties" and the "same cause," dismissal under section 2-619(a)(3) is not mandatory. *Id.* at 785, 699 N.E.2d at 1099. We review a trial court's dismissal of an action pursuant to section 2-619(a)(3) for an abuse of discretion. *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447, 493 N.E.2d 1045, 1053 (1986).

¶ 21 Plaintiff contends the trial court abused its discretion where (1) the parties in the state action and the federal action are not the same because Simpson is not named in the federal action, and (2) the causes in the state and federal actions are not the same because he seeks *mandamus* relief, which he does not seek in the federal action. We disagree.

¶ 22 In determining whether another action is pending regarding the same parties and cause, "[n]either the parties nor the cause need be identical to the prior pending suit." *Forsberg v. The City of Chicago*, 151 Ill. App. 3d 354, 372, 502 N.E.2d 283, 297 (1987). Where the parties' interests are sufficiently similar, the "same parties" element is satisfied even if the parties differ in name and number. *Continental Casualty Co. v. Radio Materials Corp.*, 366 Ill. App. 3d 345, 348, 851 N.E.2d 857, 861 (2006). In determining whether the two actions are for the same cause, " 'the crucial inquiry is whether both arise from the same transaction or occurrence, not whether the legal theory, issues, burden of proof, or relief sought materially differs between the two actions.' " *In re Estate of Hoch*, 382 Ill. App. 3d 866, 869, 892 N.E.2d 30, 34 (2008) (quoting *Jackson v. Callahan Publishing, Inc.*, 356 Ill. App. 3d 326, 337, 826 N.E.2d 413, 425 (2005)).

¶ 23 While the federal and state lawsuits name different defendants, DOC personnel in each case are defending plaintiff's claims that his mail has been improperly interfered with; thus their interests are sufficiently similar. *Continental*, 366 Ill. App. 3d at 348, 851 N.E.2d at 861. Plaintiff also contends the state cause and the federal cause are not the same. However, plaintiff's claims all arise from the same occurrences—namely, Hansen's alleged interference with his mail. Plaintiff asserts he has only requested damages in his federal suit, unlike his request for *mandamus* in the state suit. The type of relief requested is not relevant to the "same cause" requirement. *Hoch*, 382 Ill. App. 3d at 869, 892 N.E.2d at 34. At the end of the day, all plaintiff's claims arise from Hansen's alleged interference with his mail and plaintiff ultimately seeks the same result, regardless of the type of relief he requests. Plaintiff, in both state and federal lawsuits, seeks to continue to send his personal mail while forcing the State to shoulder the postage expenses for his legal mail, something the State is *not* required to do. See 20 Ill. Adm. Code 525.130(a) (2014).

¶ 24 Finally, plaintiff contends the trial court failed to consider the *Kellerman* factors, thus abusing its discretion. See *Kellerman*, 112 Ill. 2d at 447, 493 N.E.2d at 1053. We disagree.

¶ 25 Under *Kellerman*, in determining whether to grant relief under section 2-619(a)(3), "[t]he factors that a court should consider *** include: comity; the prevention of multiplicity, vexation, and harassment; the likelihood of obtaining complete relief in the foreign jurisdiction; and the *res judicata* effect of a foreign judgment in the local forum." *Id.* at 447-48, 493 N.E.2d at 1053. Courts are not required to apply these factors and, in some cases, not all of the factors apply. *Van Der Hoening v. Board of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶ 25, 972 N.E.2d 175; *Combined Insurance Co. of America v. Certain*

Underwriters at Lloyd's, London, 356 Ill. App. 3d 749, 754, 826 N.E.2d 1089, 1095 (2005); *Kapoor*, 298 Ill. App. 3d at 789, 699 N.E.2d at 1102.

¶ 26 While the trial court's order does not mention the *Kellerman* factors, nothing in the record suggests the court ignored recognized principles of Illinois law. *Combined Insurance Co. of America*, 356 Ill. App. 3d at 757, 826 N.E.2d at 1097. Moreover, as stated above, courts are not *required* to apply the *Kellerman* factors. "*Kellerman* and its progeny state that courts should, not must, consider them. In addition, several Illinois appellate cases have affirmed section 2-619(a)(3) dismissals with no citation to the *Kellerman* factors or analysis of fewer than all of them." *Kapoor*, 298 Ill. App. 3d at 789, 699 N.E.2d at 1102.

¶ 27 Plaintiff addresses only one of the *Kellerman* factors in his brief. Specifically, plaintiff argues the trial court abused its discretion in failing to consider plaintiff's ability to obtain complete relief in the federal action. According to plaintiff, he will be unable to obtain complete relief because he cannot obtain injunctive relief based on state laws or the DOC regulations. Plaintiff ignores the fact his federal suit requested (1) a declaration that the mail policy violated his rights and (2) an injunction ordering the cessation of the mail policy. Although plaintiff contends the regulations give him a right to *mandamus* relief under state law, "[p]rison regulations *** were *never* intended to confer rights on inmate[s.]" (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000). Insofar as any of plaintiff's state law claims involve his right of reasonable access to the courts via the mail system, we find these claims have clearly been raised in his federal suit, and thus may be dismissed.

¶ 28 Where, as here, the parties in the federal and state lawsuits are substantially similar and the causes arise from the same set of facts, we conclude the trial court did not abuse

its discretion in dismissing plaintiff's petition for *mandamus* under section 2-619(a)(3).

Accordingly, we affirm the court's dismissal of plaintiff's suit under section 2-619(a)(3).

¶ 29 Moreover, we find the trial court's dismissal pursuant to section 2-615 of the Code proper. Where a complaint fails to state a claim on which relief can be granted, dismissal under section 2-615 is appropriate. *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 10, 975 N.E.2d 1266. We accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff. *Id.* "We review *de novo* an order granting a section 2-615 motion." *Bell v. Hutsell*, 2011 IL 110724, ¶ 9, 955 N.E.2d 1099.

¶ 30 *Mandamus* is an extraordinary remedy and is only appropriate if a plaintiff can demonstrate a clear right to the relief he requests. *Duane*, 2012 IL App (3d) 110845, ¶ 11, 975 N.E.2d 1266; *Lee v. Findley*, 359 Ill. App. 3d 1130, 1133, 835 N.E.2d 985, 987 (2005). As noted above, prison regulations confer no rights on prisoners. *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Inmates have the right to (1) adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety; (2) reasonable access to the courts; and (3) a reasonable opportunity to exercise religious freedom. *Id.* at 1258-59, 739 N.E.2d at 903. "Beyond these, prisoners possess no other rights, only privileges." *Id.* Plaintiff has failed to set forth sufficient facts to show any clear right to relief based on the DOC regulations regarding the handling of mail, grievance procedures, or disciplinary procedures. Accordingly, we affirm the trial court's grant of defendants' section 2-615 motion to dismiss.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.