2016 IL App (4th) 160268-U

NO. 4-16-0268

FILED
December 16, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RAYMOND SERIO, Plaintiff-Appellant, v. THE DEPARTMENT OF CORRECTIONS; JOHN BALDWIN; KIMBERLY BUTLER; MONICA NIPPE; and LORI OAKLEY, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 15MR828 Honorable Rudolph M. Braud, Jr., Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in granting defendants' motion to dismiss plaintiff's amended complaint.

¶ 2 In February 2016, plaintiff, Raymond Serio, filed a first amended complaint against defendants, the Illinois Department of Corrections (DOC), John Baldwin, Kimberly Butler, Monica Nippe, and Lori Oakley. In March 2016, defendants filed a motion to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting defendants' motion to dismiss. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2015, plaintiff, an inmate at Menard Correctional Center (Menard), filed a complaint against DOC; Gladyse Taylor, its acting director; and Kimberly Butler, the

warden at Menard. Defendant John Baldwin later took over as DOC director. In the complaint, plaintiff alleged he filed "multiple grievances" regarding the refusal of prison staff to respond to his request for accommodations due to his disability so he could walk up the stairs to a court of claims hearing on the fourth floor at Menard. He filed additional grievances, claiming the staff were "deliberately indifferent" to his disability, an injured left knee and right shoulder, and housed him in the highest gallery, when he should have been in the lowest gallery due to his disability. He alleged a correctional officer warned him he would lose personal property if he continued to file grievances and write letters to the warden.

¶ 6 In an April 2015 grievance, plaintiff visited the prison doctor and complained about pain in his knee and shoulder. Plaintiff stated the pain medication he had been given was ineffective. He asked about getting a magnetic resonance imaging (MRI) on his knee but was told it was unlikely to be approved. Plaintiff filed another grievance in July 2015, after a follow-up appointment where the doctor informed him his request for an MRI had been denied.

¶ 7 In a May 2015 grievance, plaintiff complained of an incident involving a nurse who was to take a blood draw to complete lab work for his prescription. Plaintiff refused to have his blood work done in the "med tec[h] room," citing his mental illness and what he considered the filthiness of that room. He asked that the lab work be conducted in the health care unit. Plaintiff stated the nurse became irate and told him he could have his blood drawn in the "med tech" room, sign a refusal and be taken off medication, or go to segregation. On the same day, plaintiff stated he had an appointment with a mental-health therapist but was denied a private meeting.

¶ 8 Plaintiff received a disciplinary ticket for the incident with the nurse. He signed the disciplinary report and requested two witnesses on the return form. To attend the adjustment

committee hearing, plaintiff claimed he was forced to scoot up "one stair at a time" because of his knee pain and officers' refusal to assist him. At the hearing, plaintiff provided a written statement, but a committeeperson read the disciplinary report. Plaintiff stated he received "30 days for the insolence" but was found not guilty on the other charges in the report.

¶ 9 In another May 2015 grievance, plaintiff alleged he was not properly accommodated for a court of claims hearing in March 2015 because the elevator was broken and he could not walk up the stairs.

¶ 10 In a June 2015 grievance, plaintiff grieved about the conditions of his cell when housed in segregation. He complained there was only hot water, no ventilation, a filthy mattress and pillow, and a dirty window in the door. Plaintiff claimed he was having trouble eating and sleeping.

¶ 11 In another June 2015 grievance, plaintiff claimed officers searched his cell and strip-searched him. When he returned to his cell, plaintiff found his property "was everywhere." He stated paperwork was "tore up and in the toilet" and health-related e-mails were missing. Plaintiff believed this occurred in retaliation for the other grievances he had filed.

¶ 12 In a July 2015 grievance, plaintiff claimed the adjustment committee did not consider his mental illness when resolving a disciplinary report. He claimed the committee failed to follow regulations by reciting the contents of the disciplinary report as reasons for finding him guilty instead of an "independent statement" from the committee. Plaintiff also disputed the charges against him, claiming he "committed no crime."

¶ 13 In his complaint, plaintiff alleged defendants failed to follow grievance procedures, ignored serious issues outlined in his grievances, and violated the applicable provisions of the Illinois Administrative Code and the Unified Code of Corrections in failing to

investigate and answer those grievances. Citing sections 2-701 and 11-102 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-701, 11-102 (West 2014)), plaintiff asked the trial court to declare defendants had willfully and intentionally violated Illinois law and to issue an order directing defendants to investigate and answer his grievances. Plaintiff attached copies of his grievances to the complaint.

¶ 14 Plaintiff later filed two additional grievances. In an August 2015 grievance, plaintiff claimed he was being denied access to mental-health treatment because he was not allowed to use the elevator and could not walk up the stairs to the mental-health office. In a September 2015 grievance, plaintiff claimed he received a disciplinary report for assaulting a staff member. Plaintiff stated he was never given the chance to sign the disciplinary ticket or write down his witnesses. He asked that the cellhouse video footage be preserved for future litigation.

¶ 15 In December 2015, defendants DOC, Taylor, and Butler filed a motion to dismiss pursuant to section 2-615(a) of the Procedure Code (735 ILCS 5/2-615(a) (West 2014)). Defendants argued that although plaintiff styled his complaint as an action for declaratory and injunctive relief, the specific relief requested was the performance of certain ministerial duties more appropriate in a *mandamus* action. Defendants argued plaintiff's complaint should be dismissed, as he did not have a clear, affirmative right to a grievance procedure.

¶ 16 In February 2016, plaintiff filed a *pro se* first amended complaint, naming DOC, Lori Oakley, Monica Nippe, John Baldwin, and Kimberly Butler as defendants. Plaintiff stated Nippe is a counselor at Menard and Oakley is a grievance officer at Menard. Plaintiff incorporated his initial complaint into the amended complaint and stated some grievances by other prisoners had been addressed quickly, but his were not. Plaintiff alleged defendants

violated the eighth amendment to the United States Constitution (U.S. Const., amend. VIII) by forcing him to endure the stated conditions without taking corrective action. Plaintiff asked the trial court to declare his right to have his grievances answered and issue an order for defendants to immediately investigate and answer his grievances.

¶ 17 In March 2016, defendants filed a motion to dismiss, again arguing plaintiff's complaint should be dismissed as he did not have a clear, affirmative right to a grievance procedure. Plaintiff filed a response to the motion to dismiss. In April 2016, the trial court granted defendants' motion to dismiss. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Standard of Review

¶ 20 In the case *sub judice*, the trial court granted defendants' motion to dismiss under section 2-615. A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Schloss v. Jumper*, 2014 IL App (4th) 121086, ¶ 20, 11 N.E.3d 57. In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.' " *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review a dismissal pursuant to section 2-615 *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008).

¶ 21 B. *Mandamus*

¶ 22 Plaintiff filed his complaint seeking injunctive and declaratory relief. Defendants moved to dismiss the complaint, arguing the trial court should classify the action as a *mandamus* action and dismiss it because plaintiff did not have a clear, ascertainable right to the grievance procedure. On appeal, plaintiff argues he filed an action for declaratory relief and thus was not required to adhere to the requirements for *mandamus* relief. This court has noted "[t]he central purpose of a declaratory judgment action is to allow the court to address the controversy one step sooner than normal after a dispute has arisen, but before the plaintiff takes steps that would give rise to a claim for damages." *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 289 (2001). Like the plaintiff in *Alicea*, plaintiff is not trying to terminate litigation but argues on appeal that the underlying facts and issues in his case are involved in current and future causes of action in both state and federal courts. Thus, we find the trial court properly accepted defendants' argument that plaintiff's complaint should be considered an action for *mandamus*.

¶ 23 "*Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 38, 944 N.E.2d 337, 341 (2011). A petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705-06 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). "The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*." *Gillick v. Saddler*, 2012 IL App (4th) 111117, ¶ 21, 984 N.E.2d 1146.

¶ 24 Inmates do not have a constitutional right to a grievance process. See *Owens v.*

Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) (stating "[p]rison grievance procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause"); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (stating state-created inmate grievance procedures do not give rise to liberty interests protected by the due-process clause). Moreover, prison regulations, such as those found in the Illinois Administrative Code and inmate orientation manuals, "were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000). Instead, prison regulations "were designed to provide guidance to prison officials in the administration of prisons." *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Accordingly, plaintiff does not have a right enforceable through *mandamus* to any grievance procedures.

¶ 25 We note an inmate's claim of constitutional violations may still state a cause of action for *mandamus*. *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233. In his amended complaint, plaintiff alleged his grievances demonstrated defendants violated the eighth amendment to the United States Constitution (U.S. Const., amend. VIII). "It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the eighth amendment's proscription against cruel and unusual punishment." *Jackson v. County of Kane*, 399 Ill. App. 3d 451, 455, 926 N.E.2d 994, 998 (2010). Although "[t]he Constitution does not require that prisons be comfortable," prisoners "have a constitutional right to adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety." *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 903. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk

to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

¶ 26 In his complaint, plaintiff alleged he did not receive authorization to receive an MRI, his painkillers were not strong enough, his therapy session should have been private, he was forced to walk up stairs to attend treatment and court of claims proceedings despite his knee pain, his cell conditions were deficient because he did not have cold water in segregation, his segregation cell was dirty and too hot, and prison staff were not responsive when he felt he had trouble breathing and fell in his cell.

¶ 27 Although plaintiff alleged the prison doctor said he could not get authorization for an MRI test on plaintiff's knee and could not prescribe stronger pain medication, the doctor did request an MRI and X-rays and prescribed pain medication allowed by the prison. Plaintiff was not denied medical treatment. Instead, he disagrees with the course of treatment, and such disagreement does not constitute an eighth-amendment claim against unrelated defendants. See *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (stating "the Constitution is not a medical code that mandates specific medical treatment").

¶ 28 Plaintiff's other claims relate to uncomfortable conditions in his prison cell. However, "the routine discomfort inherent in the prison setting is inadequate to satisfy" an eighth-amendment claim. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Plaintiff's complaint failed to show he lacked food, water, or other necessities. Moreover, he failed to allege facts to establish any of the named defendants knew of any excessive risk to his health or safety and acted with disregard to that risk.

¶ 29 Plaintiff also failed to sufficiently allege claims involving a denial of equal protection and due process. An inmate does not surrender his constitutional rights when he is imprisoned. *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). "[A]n equal protection claim

requires a showing that the individual raising it is similarly situated to the comparison group." *People v. Masterson*, 2011 IL 110072, ¶ 25, 958 N.E.2d 686. Plaintiff claimed other prisoner's grievances were answered, while his multiple grievances were left unanswered. However, plaintiff failed to plead sufficient facts to establish he is similarly situated to the comparison group. He did not set forth any information about other inmates who filed grievances that were answered as to whether the inmates were classified the same, housed in the same area, or subjected to the same restrictions as plaintiff.

¶ 30 To successfully claim a due-process violation, a plaintiff must show a deprivation of life, liberty, or a property interest. See *Webb v. Lane*, 222 Ill. App. 3d 322, 326, 583 N.E.2d 677, 681 (1991). As to inmates, due-process interests are generally limited to sanctions which impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Plaintiff claimed his rights were violated by defendants' arbitrary and capricious exercise of their power and violation of his right to present evidence and call witnesses before the adjustment committee. However, plaintiff failed to show the disciplinary proceedings deprived him of a constitutionally protected liberty interest or that defendants failed to satisfy the requirements of due process. Plaintiff was subject to segregation, but this restraint does not support a due-process claim. See *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005) (finding demotion to C-grade status, segregation, and transfer did not implicate due-process concerns). Without the loss of a protected liberty interest, plaintiff has failed to demonstrate a viable due-process claim that would entitle him to *mandamus* relief. See *Williams v. Ramos*, 71 F.3d 1246, 1250 (7th Cir. 1995) ("Where there is no liberty interest, there can be no due process violation.").

¶ 31 In his final argument, plaintiff contends defendants had a duty to respond to his

requests to preserve evidence for future litigation. However, plaintiff fails to support his argument with citation to legal authority. Thus, we find he has forfeited his argument on this issue. See *International Union of Operating Engineers Local 965 v. Illinois Labor Relations Board, State Panel*, 2015 IL App (4th) 140352, ¶ 20, 30 N.E.3d 1191 (stating "a party forfeits review of an issue on appeal by failing to support its argument with citation to authorities").

¶ 32 In this case, plaintiff has failed to show a clear right to relief. Accordingly, we find the trial court did not err in granting defendants' motion to dismiss.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.