

**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).

**FILED**

September 7, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 160788-U

NO. 4-16-0788

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BRIAN NORBECK,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
v.	)	Livingston County
MARK SPENCER and RANDY PFISTER,	)	No. 16MR25
Respondents-Appellees.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding petitioner failed to demonstrate a claim for *mandamus* relief.

¶ 2 In February 2016, petitioner, Brian Norbeck, an inmate at Pontiac Correctional Center (Pontiac), filed a petition for *mandamus* relief, asserting respondents, Mark Spencer and Randy Pfister, violated his constitutional rights by depriving him of the ability to make personal copies at the prison's copying machine. In April 2016, respondents filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)), alleging petitioner failed to prove his right to *mandamus* relief and that his claim was barred by *laches*. In September 2016, the trial court granted respondents' motion to dismiss.

¶ 3 Petitioner appeals, asserting the trial court erred by dismissing his petition for *mandamus* relief. We affirm.

¶ 4

## I. BACKGROUND

¶ 5 In July 2014, petitioner filed a grievance after he was denied permission to print his "self-authored spiritual devotionals" because the library was only allowing prisoners to make copies of legal documents. Petitioner asserted this violated his religious rights and violated Department of Corrections (Department) policies regarding photocopying. The grievance officer recommended the grievance be denied because library staff followed proper policy and procedure regarding library photocopies, per a discussion with Spencer, the library's senior paralegal. Pfister, the chief administrative officer, concurred with the recommendation and denied petitioner's claim. Petitioner appealed, and in May 2015, the administrative review board denied his grievance.

¶ 6 In February 2016, petitioner filed a petition for *mandamus* relief in the circuit court of Livingston County. Petitioner alleged he was denied his right to photocopy personal materials at the Pontiac library, as provided by Department rules. Petitioner argued this violated his first amendment right to freedom of speech and the free-exercise clause. See U.S. Const., amend. I. He also attached copies of letters written to legislators as part of a letter-writing campaign requesting action in his case.

¶ 7 In April 2016, respondents filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). Pursuant to section 2-615 of the Code, respondents asserted (1) petitioner had no clear right to photocopier services for nonlegal materials, and (2) a writ of *mandamus* could not be used to compel an act of discretion. 735 ILCS 5/2-615 (West 2016). Pursuant to section 2-619 of the Code, respondents argued petitioner's claim was barred by *laches*, as he exhausted his administrative remedies on May 12, 2015, yet waited until February 9, 2016, to file his claim. 735 ILCS 5/2-619 (West 2016).

¶ 8 In September 2016, the circuit court granted respondents' motion to dismiss the petition for *mandamus* relief. In its written docket entry, the court found petitioner failed to state a claim for *mandamus* relief, as he did not establish a clear right to the relief requested or a clear duty for the Department to act.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, petitioner asserts the trial court erred by granting respondents' motion to dismiss. We review the court's dismissal of a petition for *mandamus* relief *de novo*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004).

¶ 12 A. Illinois Supreme Court Rule 341(h)

¶ 13 Initially, respondents argue we should dismiss this appeal pursuant to Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016), as petitioner failed to provide an adequate statement of facts or citations to authority. Supreme court rules such as this "are not merely suggestions, but are necessary for the proper and efficient administration of the courts." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5, 960 N.E.2d 1226.

¶ 14 As to the statement of facts, we agree petitioner failed to properly cite the record. However, the record consists of one volume that is easily reviewed, so we will excuse petitioner's failure to include citations to the record. Similarly, we will excuse petitioner's failure to properly cite legal authority in his argument. Although petitioner failed to include full citations, he does cite Department rules and provide partial case names that allow us to understand his arguments. "Striking a party's brief, in whole or in part, is a harsh sanction and is appropriate only when the violations hinder our review." *Gruby v. Department of Public Health*, 2015 IL App (2d) 140790, ¶ 12, 34 N.E.3d 1011. Because we find petitioner's Rule 341(h)

violations do not hinder our review, we decline respondents' request to dismiss petitioner's appeal.

¶ 15 B. Dismissal Under Section 2-615 of the Code

¶ 16 Petitioner asserts the trial court erred by dismissing his petition pursuant to section 2-615 of the Code for failing to state a claim. A motion to dismiss under section 2-615 of the Code asserts the face of the petition is legally insufficient to support a claim. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 19, 960 N.E.2d 1. "When reviewing a trial court's dismissal of a complaint under section 2-615 of the [Code], we accept as true all well-pleaded facts contained within the complaint along with the reasonable inferences that may be drawn therefrom in the light most favorable to the plaintiff." *Id.* Our review is *de novo*. *Id.*

¶ 17 To begin, we note that although petitioner alleged a violation of the free-exercise clause before the trial court, he has abandoned that issue on appeal. Thus, we decline to consider this argument. See Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). As for what petitioner does argue on appeal, he asserts his petition for *mandamus* relief was legally sufficient to state a claim. "*Mandamus* is an extraordinary civil remedy that will be granted to enforce, as a matter of right, the performance of official nondiscretionary duties by a public officer." (Internal quotation marks omitted.) *Dupree*, 2011 IL App (4th) 100351, ¶ 22, 960 N.E.2d 1. To survive dismissal of a *mandamus* action under section 2-615, the petitioner must show (1) a clear right to the relief requested, (2) a clear duty on the part of the respondent to act, and (3) the respondent has clear authority to comply with an order granting *mandamus* relief. *Id.* (citing *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34, 876 N.E.2d 659, 663-64 (2007)). Here, petitioner cannot meet the required showing.

¶ 18 Section 430.20 states:

"(a) Each correctional facility shall provide opportunities for access to library services and legal materials. However, general library services and/or direct access to a law library may be limited, restricted or denied if library privileges have been abused or in the event that institutional safety or security may be jeopardized. An alternate means of access to legal materials and to prepare legal documents shall be provided in these instances.

(b) The amount of books and materials a committed person may accumulate may be limited where the amount poses a fire, sanitation or security hazard." 20 Ill. Adm. Code 430.20 (1984).

Section 430.40(a) states, "Materials may be photocopied by the library. The cost for reproduction will be determined by the facility based on actual cost per copy and charged to the committed person." 20 Ill. Adm. Code 430.40(a) (1984).

¶ 19 In light of the regulatory language, petitioner cannot establish a clear duty on the part of respondents to act. Department regulation 430.40(a) provides, "Materials *may* be photocopied by the library." (Emphasis added.) *Id.* The use of the word "may" suggests permissive or discretionary action, not the enforcement of the performance of official nondiscretionary duties by a public officer. See, e.g., *People v. Reed*, 177 Ill. 2d 389, 394-95, 686 N.E.2d 584, 586 (1997) (the use of "may" indicates a permissive action). Therefore, the Department regulations cited by petitioner fail to create a clear duty on the part of respondents to act.

¶ 20 Because of petitioner's inability to establish one of the three elements required to obtain relief, the trial court properly granted respondents' motion to dismiss.

¶ 21 III. CONCLUSION

¶ 22 Based on the foregoing, we affirm the trial court's judgment.

¶ 23 Affirmed.