

NOTICE
Decision filed 08/04/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160039-U

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).

NO. 5-16-0039

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MICKEY L. DOOLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Madison County.
)	
v.)	No. 15-MR-195
)	
JASON SIMMONS, as Chief of the City of Alton)	
Police Department,)	Honorable
)	Clarence W. Harrison II,
Defendant-Appellee,)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held*: Plaintiff failed to demonstrate that he had a clear legal right to the *mandamus* relief he requested, and therefore the order dismissing plaintiff's *mandamus* complaint is affirmed.
- ¶ 2 Plaintiff, Mickey L. Dooley, appeals *pro se* from an order of the circuit court of Madison County dismissing his complaint for *mandamus* relief against defendant Jason Simmons in his official capacity as the chief of the Alton police department. For the reasons that follow, this court affirms the dismissal order.

¶ 3

BACKGROUND

¶ 4 On August 4, 2015, plaintiff filed in the circuit court a *pro se* complaint for *mandamus* relief. Plaintiff averred that Alton police officer Michael Bazzell "and possibly others" had "manufactured false evidence" against plaintiff and had relayed the false evidence to federal authorities, who subsequently used it in a federal prosecution that resulted in plaintiff's being sentenced to 10 years in federal prison. Plaintiff further averred that he had written to Alton police chief Jason Simmons (Chief Simmons) requesting an internal affairs investigation into this alleged police misconduct, but Chief Simmons had failed to initiate such an investigation. Instead, Chief Simmons sent plaintiff a letter stating his intention to seek legal counsel on the question of whether an internal affairs investigation was "warranted" in light of the fact that officer Bazzell was no longer with the Alton police department. A copy of Chief Simmons's letter was attached to the *mandamus* complaint. In his prayer for relief, plaintiff asked the circuit court to issue an order directing Chief Simmons to initiate an internal affairs investigation into the alleged police misconduct.

¶ 5 In his complaint, plaintiff argued that Chief Simmons's initiation of an internal affairs investigation would be a ministerial act. In support of this argument, plaintiff cited to various provision of the Alton police department's "policy manual" and "rules and regulations." Copies of those provisions were attached to the complaint. The two most pertinent provisions were sections 150.04 and 499.20 of the "rules and regulations." The former section read as follows: "Reference guides specifying the rules and regulations governing the conduct of personnel and the operation of the Department are

issued by authority of the Chief of Police and carry the weight of a General Order. Compliance with the provisions of departmental manuals is required." The latter section read as follows: "Alleged acts of misconduct must be investigated, and the results of the investigation must be reduced to a written report."

¶ 6 On September 14, 2015, Chief Simmons, by counsel, responded by filing a motion to dismiss plaintiff's *mandamus* complaint. The dismissal motion stated that (1) plaintiff's allegations of police misconduct already had been investigated by Alton police officials and the Federal Bureau of Investigation, both before and during the federal prosecution of plaintiff, and (2) *mandamus* relief was not available, since the requested relief involved a discretionary act, rather than a ministerial act. The dismissal motion did not specify whether it was brought pursuant to section 2-615 or section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2014)).

¶ 7 On October 30, 2015, the circuit court entered an order granting the motion to dismiss plaintiff's *mandamus* complaint. The court stated that the complaint was a veiled attempt "to collaterally attack a federal conviction in state court." The court further stated that it dismissed the complaint due to "basic jurisdictional concerns" and the matters set forth in the motion to dismiss.

¶ 8 Plaintiff filed *pro se* a motion for rehearing, which the circuit court denied. Plaintiff timely filed a notice of appeal, thus perfecting this appeal.

¶ 9 ANALYSIS

¶ 10 This appeal is from an order granting Chief Simmons's motion to dismiss plaintiff's complaint for *mandamus* relief. As previously mentioned, the dismissal motion

did not specify whether it was brought pursuant to section 2-615 or section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2014)). However, one portion of the dismissal motion—the portion wherein the defendants asserted that the requested *mandamus* relief involved a discretionary act, rather than a ministerial act—was a clear challenge to the legal sufficiency of the complaint, and therefore constituted a section 2-615 motion to dismiss. See, e.g., *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (a section 2-615 motion to dismiss "challenges the legal sufficiency of a complaint based on defects apparent on its face"). This portion of the dismissal motion is the only portion that this court needs to consider in order to decide this appeal.

¶ 11 An order granting a section 2-615 motion to dismiss is subject to *de novo* appellate review. *Marshall*, 222 Ill. 2d at 429. See also *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004) (an order granting a section 2-615 motion to dismiss a *mandamus* complaint for failure to state a cause of action is reviewed *de novo*). The order may be affirmed on any basis that appears in the record, regardless of whether the circuit court dismissed on that basis. *Turner-El*, 349 Ill. App. 3d at 479. The reviewing court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall*, 222 Ill. 2d at 429. Dismissing a cause of action pursuant to section 2-615 is proper only when no set of facts can be proven that would entitle the plaintiff to the relief he has requested. *Marshall*, 222 Ill. 2d at 429. Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Marshall*, 222 Ill. 2d at 429-30.

¶ 12 "*Mandamus* is an extraordinary remedy used to compel a public officer to perform nondiscretionary official duties." (Internal quotation marks omitted.) *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. To state a cause of action for *mandamus* relief, a plaintiff has the burden of setting forth every material fact needed to demonstrate that (1) the plaintiff has a clear right to the relief requested, (2) the public officer has a clear duty to act, and (3) the public officer has clear authority to comply with an order granting *mandamus* relief. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34 (2007). A *mandamus* order 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." *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In other words, *mandamus* is used to "compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." (Internal quotation marks omitted.) *People ex rel. Glasgow v. Kinney*, 2012 IL 113197, ¶ 7.

¶ 13 Here, plaintiff failed to establish that he had a clear legal right to the relief requested. Ordinarily, a party seeking *mandamus* relief will rely on a statute (see, e.g., *Kinney*, 2012 IL 113197; *Hertel v. Boismenu*, 229 Ill. 474 (1907)), a local ordinance (see, e.g., *People ex rel. Marbro Corp. v. Ramsey*, 28 Ill. App. 2d 252 (1960)), or a county board resolution (see, e.g., *County of Champaign v. Adams*, 59 Ill. App. 3d 62 (1978)) in order to establish that he has a clear legal right to the relief requested. Plaintiff did not rely on any statute, local ordinance, or county board resolution in order to establish a legal right to relief. Instead, plaintiff relied solely on the Alton police department's "policy manual" and "rules and regulations." However, as section 150.04 of

the "rules and regulations" made explicit, these compilations of rules, etc., were nothing more than general orders issued by Chief Simmons himself, as a means of guiding the internal functioning of the police department he heads. As such, those rules, etc., may be interpreted or altered by Chief Simmons as he sees fit. Neither the "policy manual" nor the "rules and regulations" created in plaintiff a right to an internal affairs investigation. Without a clear right to the relief requested, plaintiff could not establish the conditions necessary for a *mandamus* remedy.

¶ 14

CONCLUSION

¶ 15 By failing to demonstrate that he had a clear right to the *mandamus* relief he requested, plaintiff failed to state a cause of action. Therefore, this court must conclude that the circuit court did not err in dismissing plaintiff's *mandamus* complaint.

¶ 16 Affirmed.