

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).

2014 IL App (4th) 140076-U

NO. 4-14-0076

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2014
Carla Bender
4th District Appellate
Court, IL

MILTON SMITH,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
RANDY PFISTER, Warden,)	No. 13MR51
Defendant-Appellee.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendant's motion to dismiss plaintiff's *mandamus* petition.

¶ 2 In April 2013, plaintiff, Milton Smith, an inmate at Pontiac Correctional Center (Pontiac), filed a *pro se* petition for *mandamus* relief against defendant, Randy Pfister, the warden at Pontiac. In July 2013, defendant filed a motion to dismiss. In January 2014, the trial court granted the motion.

¶ 3 On appeal, plaintiff argues the trial court erred in dismissing his petition for *mandamus* relief. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2013, plaintiff filed a *pro se* petition for *mandamus* relief, alleging he had been denied meaningful access to the courts because defendant failed to follow Department of

Corrections (DOC) rules and regulations by failing to process his grievances. He claimed this failure prejudiced him because the courts require exhaustion of all administrative remedies before issues can be litigated in court. Attached to his petition were three grievances, dated October 21, 2012, December 22, 2012, and January 8, 2013, when he was incarcerated at Tamms Correctional Center.

¶ 6 In his grievances, plaintiff alleged defendant and DOC personnel had wrongfully deprived him of certain documents related to lawsuits, books, and other property, and DOC personnel failed to provide him with dental care and his winter coat and hat. Plaintiff sought an order of *mandamus* to compel defendant to (1) adhere to DOC rules and regulations concerning inmate grievances and (2) declare that plaintiff had exhausted all administrative remedies in regard to the attached grievances.

¶ 7 In July 2013, defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2012)), arguing plaintiff did not have a clear, affirmative right to a grievance procedure. Plaintiff filed a response, arguing an order of *mandamus* was necessary because he had to exhaust his administrative remedies before he could file a lawsuit protesting prison conditions. Plaintiff also submitted seven additional grievances "for exhaustion of remedies as a prelude requirement to filing a verified complaint at law."

¶ 8 Defendant filed a response, acknowledging plaintiff had to exhaust his administrative remedies but claiming dismissal was proper because plaintiff did not have an affirmative and clear right to have his grievances reviewed. Defendant also opposed any attempt by plaintiff to amend his complaint by adding additional grievances, as those grievances were not related to the original complaint and could not cure the defects in plaintiff's original

complaint.

¶ 9 In January 2014, the trial court found plaintiff failed to establish a clear right to the relief requested and granted defendant's motion to dismiss. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Plaintiff argues the trial court erred in dismissing his petition for *mandamus*. We disagree.

¶ 12 A. Standard of Review

¶ 13 In the case *sub judice*, the trial court granted defendant's 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 a 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).

¶ 14 B. *Mandamus*

¶ 15 "*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 (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.

¶ 16 Inmates do not have a constitutional right to a grievance process. See *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (stating prison grievance procedures are not mandated by the first amendment and do not 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.

¶ 17 Here, plaintiff does not have a right enforceable through *mandamus* to any grievance procedures. Plaintiff does not allege any specific constitutional violations, and thus he has not alleged any facts that would entitle him to have his grievances processed in accordance with DOC regulations. We note plaintiff claims in his brief on appeal that he is not requesting that defendant hear his grievances or rule a particular way. Instead, he is seeking to have his grievances be processed to ensure he has satisfied the requirement that he exhaust administrative

remedies.

¶ 18 "The doctrine of exhaustion of administrative remedies holds that a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies." *Canel v. Topinka*, 212 Ill. 2d 311, 320, 818 N.E.2d 311, 319 (2004). "This requirement allows the administrative agency the opportunity to consider the facts of the case before it, use its expertise, and allow the aggrieved party to obtain relief without the need for judicial review." *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006). The doctrine applies to grievances lodged by prisoners, "including those grievances alleging a constitutional violation." *Johnson*, 368 Ill. App. 3d at 150, 857 N.E.2d at 285. Thus, plaintiff must comply with the grievance procedures set forth in DOC regulations to exhaust his administrative remedies. See *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 126-27 (2007).

¶ 19 With this doctrine in mind, plaintiff's need to exhaust his administrative remedies prior to seeking judicial review does not entitle him to an order of *mandamus* because he does not need a decision on his grievances to exhaust his administrative remedies. See *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 9, 975 N.E.2d 1266 (finding the prisoner had satisfied the exhaustion requirement by indicating the grievance procedure he pursued and the lack of response from DOC). Instead, plaintiff need only prove he attempted to seek relief by taking the necessary steps outlined in DOC grievance procedures and any lack of response from DOC will not constitute a failure to exhaust administrative remedies. Thus, the trial court did not err in dismissing plaintiff's complaint for *mandamus* relief.

¶ 20 III. CONCLUSION

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

¶ 22

Affirmed.