

**NOTICE**

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2015 IL App (4th) 140825-U

NO. 4-14-0825

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 17, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

JOHN COLASURDO,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
KELLY DAVIDSON, PATRICK HASTINGS,	)	No. 14SC133
ANGELICA JOYNER, and LANCE E.	)	
WHITECOTTON,	)	Honorable
Defendants-Appellees.	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the circuit court did not err in dismissing plaintiff's small-claims action where the plaintiff failed to state a due-process violation arising from prison disciplinary proceedings sufficient to create a cause of action.

¶ 2 I. BACKGROUND

¶ 3 In April 2014, plaintiff, John Colasurdo, filed a small-claims action against defendants, Kelly Davidson, Patrick Hastings, Angelica Joyner, and Lance E. Whitecotton, all officers at Pontiac Correctional Center (Pontiac) where plaintiff was incarcerated. Davidson is an internal-affairs officer, Hastings is a grievance officer, and Joyner and Whitecotton are members of the adjustment committee. Plaintiff's complaint alleged defendants violated his constitutional rights during the course of prison disciplinary proceedings. In August 2014, defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil

Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2012)). In September 2014, the circuit court dismissed plaintiff's complaint.

¶ 4 Plaintiff appeals, asserting the circuit court erred in granting defendants' motion to dismiss. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In July 2012, while plaintiff was incarcerated at Stateville Correctional Center (Stateville), Officer Marcus Morton filed an offender disciplinary report against plaintiff. The report alleged Morton was securing plaintiff in his cell when plaintiff grabbed and pulled on his arm. Morton radioed for the tower to release plaintiff's cell, at which time he pulled free and secured plaintiff in handcuffs. Plaintiff thereafter signed the disciplinary report related to the incident, leaving blank the portion of the form that allowed him to name any witnesses he would have testify on his behalf.

¶ 7 In August 2012, the adjustment committee held a hearing on plaintiff's disciplinary report. By that time, plaintiff had transferred from Stateville to Pontiac. The committee considered (1) the disciplinary report, (2) plaintiff's plea of not guilty, and (3) plaintiff's request for a polygraph test. The committee noted plaintiff acknowledged an incident occurred between him and Morton, though he maintained Morton was the aggressor. However, the committee believed Morton's version of events over plaintiff's version. The committee thereafter determined the violation occurred as reported. As a result, the committee recommended (1) one year of C-grade status, (2) one year in segregation, (3) revocation of one year of meritorious good-conduct credit, (4) one year of audio/visual restriction, and (5) six months of restricted visits. The revocation of one year of meritorious good-conduct credit was later reduced to three months.

¶ 8 Later that month, plaintiff filed a grievance, asserting his innocence and contending Morton assaulted him in retaliation for an unrelated incident. He also maintained his willingness to submit to a polygraph examination. In May 2013, the director of the Department of Corrections (Department) denied plaintiff's grievance, stating plaintiff's allegations of excessive force against Morton could not be substantiated.

¶ 9 In April 2014, plaintiff filed a small-claims complaint against defendants, asking for \$2,500 from each defendant for (1) "deliberate indifference," (2) illegal detention, (3) violations of his eighth-amendment rights, (4) violations of his fourteenth-amendment rights, (5) "being found guilty when innocent," (6) violating prison procedures by withholding his investigatory report, and (7) ignoring his pleas of innocence.

¶ 10 In August 2014, defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Civil Code (735 ILCS 5/2-619.1 (West 2012)). Under section 2-615, defendants claimed plaintiff failed to state a claim demonstrating a violation of his constitutional rights. Under section 2-619, defendants argued plaintiff's claims were barred by sovereign immunity.

¶ 11 The following month, the circuit court entered a docket entry dismissing plaintiff's claim, finding his request for money damages was barred by the doctrine of sovereign immunity and should have been brought instead before the Court of Claims.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff argues the circuit court erred by dismissing his small-claims complaint. Plaintiff addresses his arguments in the context of the alleged violations of his due-process rights under the fourteenth amendment. U.S. Const., amend. XIV.

¶ 15 A. Motion To Dismiss Pursuant to Section 2-619

¶ 16 Defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Civil Code (735 ILCS 5/2-619.1 (West 2012)). The trial court ultimately dismissed plaintiff's petition pursuant to section 2-619(a)(9), finding defendants had sovereign immunity. 735 ILCS 5/2-619(a)(9) (West 2012). Under section 2-619(a)(9), the defendant "admits the legal sufficiency of the complaint, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts an affirmative matter outside the complaint bars or defeats the cause of action." *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. The pleadings are construed in the light most favorable to the nonmoving party. *Id.* Our review is *de novo*. *Id.*

¶ 17 Plaintiff first contends the circuit court erred in dismissing his complaint pursuant to section 2-619 based on the defense of sovereign immunity. Defendants concede the constitutional issues raised by plaintiff are not barred by sovereign immunity and we accept defendants' concession. See *Michaelis v. Ill. Dept. of Mental Health*, 61 Ill. Ct. Cl. 270, 272 (2008) (state constitutional issues are outside the jurisdiction of the Court of Claims). Regardless, defendants assert sufficient grounds existed to dismiss plaintiff's complaint under section 2-615 of the Civil Code.

¶ 18 B. Motion To Dismiss Pursuant to Section 2-615

¶ 19 Though the circuit court dismissed plaintiff's petition under section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)), we may affirm on any basis in the record. See *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737, 791 N.E.2d 666, 670 (2003). Therefore, we may also consider the section 2-615 portion of defendants' motion to dismiss.

¶ 20 Defendants' motion to dismiss pursuant to section 2-615 alleged plaintiff failed to state a cause of action. The purpose of a section 2-615(a) motion to dismiss is to challenge the legal sufficiency of the complaint where defects are apparent on its face. *Reynolds*, 2013 IL App (4th) 120139, ¶ 25, 988 N.E.2d 984. The question is "whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted." *Id.* In doing so, we accept all well-pleaded facts as true. *Id.* ¶ 26, 988 N.E.2d 984. "The complaint must be construed liberally and should only be dismissed when it appears that the plaintiff cannot recover under any set of facts." *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 14, 13 N.E.3d 350. Our review of the trial court's order granting a motion to dismiss is *de novo*. *Reynolds*, 2013 IL App (4th) 120139, ¶ 25, 988 N.E.2d 984.

¶ 21 Plaintiff asserts he alleged sufficient facts to state a cause of action based on defendants' violation of his due-process rights under the fourteenth amendment. U.S. Const., amend. XIV. We disagree.

¶ 22 In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court outlined the due-process rights afforded to inmates. Inmates are entitled to (1) notice of disciplinary charges at least 24 hours prior to disciplinary proceedings; (2) the opportunity to call witnesses and present evidence in their defense, when consistent with institutional safety and correctional goals; and (3) a written statement by the disciplinary committee outlining the evidence relied upon in reaching its decision. *Id.* at 563-66. Additionally, the findings of the disciplinary committee must be supported by the record. *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233.

¶ 23 Following the test set forth in *Wolff*, we conclude plaintiff failed to demonstrate a due-process violation. First, the record reflects plaintiff received notice of his disciplinary charges within 24 hours of the disciplinary hearing, as reflected by his signature on the disciplinary report accepting receipt of the report more than 24 hours before the hearing.

¶ 24 Second, the record reflects plaintiff had an opportunity to call witnesses to testify on his behalf. However, he left blank the portion of the report where he could submit witness names and made no request to call any witnesses. Though plaintiff requested a polygraph test to prove his innocence, "due process does not require the use of polygraph testing in disciplinary proceedings." *Torres v. Walker*, 364 Ill. App. 3d 666, 671, 848 N.E.2d 156, 159 (2006).

¶ 25 Third, plaintiff received a written statement outlining the evidence considered by the adjustment committee in reaching its decision. Specifically, the committee relied on Officer Morton's detailed report regarding the offense, the officer's positive identification of plaintiff, and plaintiff's acknowledgement that an altercation occurred between himself and Morton. This also demonstrates the adjustment committee's findings were supported by some evidence in the record.

¶ 26 Regardless, plaintiff asserts his due-process rights were violated when defendants failed to follow their own departmental rules. Specifically, plaintiff asserts the following acts violated his due-process rights: (1) his disciplinary ticket lacked a supervisor's signature, (2) the committee failed to consider the investigatory report, (3) defendant Davidson failed to see him within three days of plaintiff entering investigative detention, (4) the committee ignored exonerating evidence, and (5) defendants failed to provide a counselor at the disciplinary proceedings.

¶ 27            However, the Department's rules create no more rights for prisoners than the constitution requires. *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000). Plaintiff's remaining allegations fail to constitute an infringement of his constitutional rights under *Wolff*.

¶ 28            As to plaintiff's first argument, that his disciplinary report lacked a shift supervisor's signature, that assertion is contradicted by the record, which contains a signature of both a supervisor and a hearing officer. Moreover, a signed disciplinary charge is not a due-process requirement under *Wolff*.

¶ 29            For his second argument, plaintiff asserts defendant Davidson failed to interview him within three days of plaintiff entering investigative detention. See 20 Ill. Adm. Code 504.50(b), (c) (2003). However, the fact that plaintiff was not interviewed for an investigative report does not violate due process. See *Durbin v. Gilmore*, 307 Ill. App. 3d 337, 343, 718 N.E.2d 292, 296-97 (1999).

¶ 30            Third, plaintiff asserts his due-process rights were violated when defendants failed to provide a counselor during the disciplinary proceedings. See 20 Ill. Adm. Code 504.70(a)(1)(A) (2003). We note that provision only directs prison facilities to provide a counselor "[t]o the extent possible"; it is not a mandatory requirement. *Id.* Regardless, the failure to provide a counselor does not constitute a due-process violation under *Wolff*. See *Wolff*, 418 U.S. at 563-66; see also *Knox*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233.

¶ 31            Plaintiff's fourth argument is that the adjustment committee failed to consider the investigatory report, which violated his due-process rights because, according to plaintiff, the report would have exonerated him. However, as defendants point out, in his own pleadings, plaintiff states, "[i]f there was an investigatory report[,] it was withheld," demonstrating he does

not know whether such a report even exists. Regardless, the Department's rules do not require an investigative report where the disciplinary report is based on an officer's direct observation of an offense. See 20 Ill. Adm. Code 504.30(b) (2003).

¶ 32 Fifth, plaintiff asserts his due-process rights were violated because the adjustment committee failed to state the evidence it relied upon for imposing disciplinary action. As noted above, plaintiff's assertion is contradicted by the record. The adjustment committee's final report contains a statement expounding the basis for its decision. Thus, this argument is meritless.

¶ 33 Accordingly, we conclude the circuit court properly dismissed plaintiff's complaint, as he failed to state a cause of action.

¶ 34 **III. CONCLUSION**

¶ 35 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 36 Affirmed.