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2016 IL App (3d) 160116-U

Order filed December 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

NICHOLAS GEORGE,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellant,	)	Kankakee County, Illinois,
	)	
v.	)	
	)	Appeal No. 3-16-0116
KANKAKEE COMMUNITY COLLEGE, a	)	Circuit No. 14-L-46
Body Politic and Corporate; PRESENCE	)	
HOSPITALS PRV., an Illinois Not for Profit	)	
Corporation,	)	Honorable
	)	Adrienne W. Albrecht,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly dismissed plaintiff's complaint.

¶ 2 Plaintiff, Nicholas George, appeals from the trial court's dismissal of his complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). He argues that his complaint sufficiently stated causes of action for violations of his

constitutional rights to religious freedom, equal protection, and due process, as well as numerous statutory causes of action. We affirm.

¶ 3 FACTS

¶ 4 On October 6, 2014, plaintiff filed a complaint against defendants, Kankakee Community College (KCC) and Presence Hospitals PRV (Presence). In the complaint, plaintiff alleged that he was enrolled in a course of study at KCC designed to allow him to receive an applied sciences degree as a paramedic. Plaintiff alleged KCC required students seeking a degree in applied sciences as a paramedic to participate in a paramedic class at St. Mary's hospital, operated by Presence.

¶ 5 According to the complaint, agents of St. Mary's informed plaintiff that the hospital's policy prohibited his participation in "the clinical portion of the paramedics course" unless he received an influenza vaccination and additional vaccinations against hepatitis B; measles, mumps, and rubella (MMR) as required by the hospital's policy.

¶ 6 Plaintiff notified the hospital that he objected to receiving those vaccinations on religious grounds. Consequently, on December 11, 2013, the medical director of the hospital informed plaintiff that he would not be allowed to continue in his course of study without the vaccinations.

¶ 7 Plaintiff further alleged that on December 20, 2013, KCC informed plaintiff that he had been placed on "academic warning." According to the complaint, "Plaintiff's attempts to discuss the matter with his advisor were unavailing; his advisor refused to provide him with any information about his grades at the school." According to plaintiff's complaint, KCC then refused to allow plaintiff to enroll in any further classes, and refused to certify that plaintiff successfully completed any first semester courses pertaining to the 2013-2014 school year.

¶ 8 On January 29, 2014, counsel for plaintiff sent correspondence to KCC, demanding an exemption to the hospital policy requiring him to receive vaccinations before taking part in the clinical portion of the paramedic course. KCC declined plaintiff's request for an exemption. In support of this decision, counsel for KCC wrote: "While KCC could exempt [plaintiff] from vaccinations, the clinical training centers will not. There is nothing in KCC's authority or power to change these rules."

¶ 9 Plaintiff attached to his complaint the letter from KCC's counsel and a copy of Presence's "Student Guidelines and Prerequisites for Acceptance into Hospital Clinical Rotation" (guidelines). The guidelines recited the requirement for an MMR vaccine and a "recommended" hepatitis B vaccination. Regarding influenza, the guidelines read: "If student/clinical instructor refuses flu vaccination, during flu season *** a mask must be worn at all times while in the hospital."

¶ 10 In addition, plaintiff attached a letter addressed to him from Dr. Joseph Danna, medical director at the hospital, to the complaint. This letter denied plaintiff's request for a religious exemption to the vaccinations. In the letter, the medical director explained: "[Y]ou are allowed to practice your religious beliefs as long as you do not endanger others. Your position on vaccinations does indeed place others at risk."

¶ 11 On July 3, 2014, Presence removed the case against it and KCC from the state trial court to the United States District Court for the Central District of Illinois. At the federal level both defendants moved to dismiss plaintiff's complaint for failure to state a federal claim. On December 10, 2014, the district court dismissed each of plaintiff's federal claims. As to plaintiff's state law claims, the district court wrote:

> "Plaintiff raises several claims based on Illinois law. First, he raises analogous claims to those discussed above under the Illinois Constitution. He also alleges that Defendants have violated the Illinois School Code, the Illinois College Immunization Code, and the Illinois School Student Records Act. Because this Court has found that Plaintiff's federal law claims previously addressed fail to state a claim for relief, they fail to confer jurisdiction on this Court. The Court therefore has no primary jurisdiction to be extended into supplemental jurisdiction over Plaintiff's state law claims and, therefore, these also must be dismissed."

The district court's order directed plaintiff's state claims would be remanded back to state court.

¶ 12 On January 28, 2015, Presence filed a motion to dismiss in the state trial court. KCC filed a similar motion two days later. Plaintiff filed a response to these motions to dismiss and argued, *inter alia*, the federal court's dismissal of those claims was "clearly wrong." On April 14, 2015, the trial court dismissed plaintiff's claims, but allowed plaintiff to file an amended complaint.

¶ 13 On July 20, 2015, plaintiff filed an amended complaint. The amended complaint was substantially similar to the original complaint, alleging defendants violated his rights to religious freedom and substantive due process, as well as numerous Illinois statutes. The amended complaint also added claims for a violation of his right to equal protection of the laws and procedural due process.

¶ 14 In support of the added equal protection claim, plaintiff supplemented the factual allegations of the complaint to state that Presence previously allowed plaintiff "to participate in [emergency medical technician (EMT)] basic training at its facilities" without receiving the vaccinations and allowed "[o]ther individuals" to participate "in training at the facilities of

[Presence] for continuing education for both EMT and paramedic courses without being subjected to the policy regarding vaccinations."

¶ 15 Defendants filed separate motions to dismiss the amended complaint with prejudice. On January 29, 2016, the trial court dismissed plaintiff's amended complaint with prejudice pursuant to section 2-615 of the Code.

¶ 16 ANALYSIS

¶ 17 On appeal, plaintiff argues the trial court erred by dismissing the amended complaint with prejudice. Plaintiff first contends the trial court was not bound by the federal district court's dismissal. Plaintiff further argues that his amended complaint sufficiently pled violations of the following rights under the Illinois Constitution: (1) the right to religious liberty, (2) the right to equal protection of the laws, and (3) the right to due process. Finally, plaintiff contends that his amended complaint sufficiently pled violations of the School Code (105 ILCS 5/1-1 *et seq.* (West 2014)) and the College Immunization Code (77 Ill. Adm. Code 694 *et seq.*).

¶ 18 A motion to dismiss brought under section 2-615 of the Code challenges the legal sufficiency of a complaint. 735 ILCS 5/2-615 (West 2014); *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). A complaint should not be dismissed under section 2-615 unless it is apparent on the face of the complaint and the attached exhibits that no set of facts could be proven that would entitle plaintiff to recovery. *Green*, 234 Ill. 2d at 491. We review a dismissal under section 2-615 *de novo*, accepting as true all well-pleaded facts and inferences to be drawn therefrom. *Becker v. Zellner*, 292 Ill. App. 3d 116, 121-22 (1997).

¶ 19 I. Federal Constitutional Claims

¶ 20 Plaintiff first contends that this court, like the trial court, should not be bound by the rationale adopted by the district court in dismissing his federal constitutional claims. He claims

the federal court's order dismissing the federal claims and remanding on the state claims was interlocutory in nature and suggests, based on Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), the federal court's interlocutory ruling could be reconsidered by another State court judge before final judgment on all issue. Plaintiff argues the State trial court had the "full power and authority to amend or change" that federal ruling and should not have dismissed those counts of his amended complaint seeking recovery on federal constitutional grounds.

¶ 21 In support of this view, plaintiff quotes from *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113 (1978), in which our supreme court stated: "We believe that the power of the trial judge in this case to reconsider the motion judge's order derived from the traditional power of a court to amend and revise interlocutory orders." *Id.* at 119. *Towns*, of course, concerned separate orders entered by two different state court judges before final judgment in the state court proceeding.

¶ 22 Plaintiff's description of the federal court's dismissal as an "interlocutory order" is not well taken since the federal court's dismissal was final and appealable at the federal level. See, *e.g.*, *Benson v. SI Handling Systems, Inc.*, 188 F.3d 780, 782 (7th Cir. 1999). Plaintiff's contention that a state court judge may properly review or overturn the district court's decision in this case *in lieu* of a federal appeal is simply incorrect and does not merit further discussion.

¶ 23 II. Illinois Constitutional Claims

¶ 24 Plaintiff maintains on appeal that he sufficiently pled causes of action for violation of his rights to religious liberty, equal protection of the laws, and procedural due process as protected by the Illinois Constitution.[1] The Illinois Constitution protects individuals from unlawful governmental action, but does not address the conduct of private entities. Plaintiff agrees that

[1]Plaintiff has abandoned the claim raised in his amended complaint that he was deprived of his right to privacy. Plaintiff has thus waived that issue. Ill. S. Ct. R. 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.").

Presence is a nongovernmental entity. However, he asserts the hospital's functions were sufficiently intertwined with those of KCC, such that Presence should be viewed as a state actor for constitutional purposes. Without deciding the merits of this argument, we first examine whether plaintiff's amended complaint showed any violation of our state's constitutional principles. If this court determines the amended complaint properly alleges a state constitutional claim, then we will resolve whether Presence should be viewed as a state actor for constitutional purposes.

¶ 25 A. Religious Freedom

¶ 26 Plaintiff's first argument based on the constitution of this state complains that defendants violated his right to religious freedom, as established by article I, section 3 of the Illinois Constitution. Specifically, plaintiff claims that KCC's refusal to grant him an exemption to the immunization policy inhibited his ability to exercise his religious beliefs without discrimination. We note Presence requires clinical workers to receive MMR vaccines,[2] and KCC requires students seeking a degree as a paramedic to perform clinical work at the hospital. Since plaintiff claims his religious beliefs forbid the MMR vaccine required by the hospital—and, in turn, the school—we consider whether this policy violates plaintiff's state constitutional protection regarding freedom of religion.

¶ 27 Article I, section 3 of the Illinois Constitution provides as follows:

> "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege[,] or capacity, on account of his religious

[2]Presence's policies, attached by plaintiff to his amended complaint, only "recommend" a hepatitis B vaccine, and allow that an individual may choose to wear a mask in lieu of receiving an influenza vaccine.

> opinions; but the liberty of conscience hereby secured shall not be construed to *** justify practices inconsistent with the peace or safety of the State." Ill. Const. 1970, art. I, § 3.

Under the lockstep doctrine, provisions of the Illinois Constitution will be construed in the same manner as similar provisions in the United States Constitution. *Mefford v. White*, 331 Ill. App. 3d 167, 178 (2002). The first amendment to the United States Constitution is slightly shorter than our state constitution. The federal constitution simply provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ***." U.S. Const., amend. I. Illinois courts have thus construed article I, section 3 of the Illinois Constitution in lockstep with the first amendment to the United States Constitution. *Mefford*, 331 Ill. App. 3d at 178-79 (citing *People v. Falbe*, 189 Ill. 2d 635, 645 (2000)).

¶ 28 When construing the United States Constitution, the Supreme Court has recognized that the court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872, 878-79 (1990).

¶ 29 The Court has further found that its precedents establish "the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Applying this standard, the Second Circuit court recently held that a New York statute requiring vaccinations for public school students did not violate the free exercise clause of the first amendment. *Phillips v. City of New York*, 775 F.3d 538, 543 (2015).

¶ 30 Here, Presence's policy requires that individuals interacting with patients receive the MMR vaccination that plaintiff refuses to obtain. On its face, that policy is neutral. The hospital requires *all* persons participating in clinical rotations at the hospital for the purposes of protecting vulnerable patients from the transmission of communicable diseases. Plaintiff does not allege otherwise. The ancillary impact of the policy is to burden plaintiff's religious practice of refusing all vaccinations, such an effect does not equate with a constitutional violation as applied to all people. See *City of Hialeah*, 508 U.S. at 531.

¶ 31 Furthermore, the Illinois Constitution allows for a state actor to impose requirements that may restrict religious freedom in order to promote the safety of the citizens of this state. See Ill. Const. 1970, art. I, § 3. Since plaintiff may come in direct contact with patients suffering from measles, mumps, or rubella and could unknowingly become a carrier of those conditions, we conclude the vaccination policy is consistent with the health and safety interests of this state.

¶ 32 B. Equal Protection

¶ 33 Plaintiff next argues defendants violated the equal protection clause of the Illinois Constitution because other persons are allowed to work or take classes in the hospital without being immunized.

¶ 34 Article I, section 2 of the Illinois Constitution provides: "No person shall *** be denied the equal protection of the laws." Ill. Const. 1970, art. I, § 2. Similarly, the fourteenth amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. The equal protection clause of the Illinois Constitution is construed in lockstep with that of the United States Constitution. *E.g.*, *People v. Richardson*, 2015 IL 118255, ¶ 9.

¶ 35 The equal protection clause "guarantees that similarly situated individuals will be treated in a similar manner, unless the government can demonstrate an appropriate reason to treat them differently." *Id.* Accordingly, the threshold question in addressing an equal protection claim is whether the claimant is similarly situated to the comparison group. *In re M.A.*, 2015 IL 118049, ¶ 25. As the United States Supreme Court has explained, "The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently person who are in all relevant aspects alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); see also *In re Derrico G.*, 2014 IL 114463, ¶ 92 ("Evidence of different treatment of unlike groups does not support an equal protection claim.").

¶ 36 In his complaint, plaintiff failed to plead—or even allude to—any facts indicating that he was treated differently than any other similarly situated group. Plaintiff merely alleged that he had been allowed to participate in a basic training class at the hospital without being subjected to the vaccination requirement and that other students were allowed to take other classes at the hospital without being subjected to the vaccination requirement.

¶ 37 The amended complaint does not allege that other students were allowed to participate in the clinical rotation portion of the paramedic course in question without first receiving the same vaccinations plaintiff was required to obtain. Presence's policy, which plaintiff attached to his complaint, explicitly applied to all persons seeking to enter the "Hospital Clinical Rotation." Since plaintiff's amended complaint does not contain allegations showing any sort of disparate treatment with respect to this paramedic course, the trial court properly dismissed his equal protection claim. See *M.A.*, 2015 IL 118049, ¶ 26 ("When a party bringing an equal protection claim fails to show that he is similarly situated to the comparison group, his equal protection challenge fails.").

¶ 38 Even if, for the sake of argument, plaintiff and other students seeking to enter clinical rotation at the hospital were considered "similarly situated" with any students participating in *any* course at the hospital, plaintiff's equal protection claim would still be legally insufficient. Further, students seeking entry into clinical rotation are not members of a suspect class, the dissimilar treatment between that the clinical rotation group of students and students taking other courses at the hospital generally would be analyzed under the rational basis test. *People v. Kimbrough*, 163 Ill. 2d 231, 237 (1994) ("Where a statutory classification neither impinges on a fundamental constitutional right nor is based on a 'suspect' class, such as race, a court will use the 'rational basis' test to review the statute's validity."). Under this test, the classification is deemed constitutional if it bears a rational relationship to a legitimate state interest. *Id.*

¶ 39 We conclude the hospital policy requires *all* students engaged in a clinical rotation program first must be protected by vaccinations against communicable diseases before having contact with patients. This policy passes the rational relationship test because there exists a legitimate state interest to reduce the risk that student clinicians might unknowingly become carriers of communicable diseases when they leave the clinical setting and engage in public activities. Therefore, we conclude the policy is constitutional since it preserves and protects public health.

¶ 40 C. Due Process

¶ 41 Finally, plaintiff contends that defendants violated his right to procedural due process of law. Specifically, plaintiff maintains that by failing to provide notice and a hearing before disqualifying him from the paramedic course, defendants denied him procedural due process.

¶ 42 Article I, section 2 of the Illinois Constitution provides: "No person shall be deprived of life, liberty or property without due process of law ***." Ill. Const. 1970, art. I, § 2. Similarly,

the fourteenth amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1. Because those provisions are identical to one another, and because there is otherwise no indication that the provisions should be construed differently, the due process clause of the Illinois Constitution is construed in lockstep with that of the United States Constitution. *E.g.*, *People v. Caballes*, 221 Ill. 2d 282, 313 (2006).

¶ 43 In his appellate briefs, plaintiff has abandoned his substantive due process claim, instead focusing solely on his claim that defendants' actions violated his right to procedural due process. He argues that the Illinois and United States Constitutions mandate that he be given notice and a hearing before being disqualified from participation in the paramedic course. He continues: "Plaintiff has been given no opportunity to demonstrate that the policy should not be applied to him, or that the policy itself is invalid." Plaintiff contends procedural due process requires that defendants conduct a hearing before his religious rights are abridged.

¶ 44 Claims that one's procedural due process right has been violated question the constitutionality of the procedures used to deny a person's life, liberty, or property. *Lyon v Department of Children and Family Services*, 209 Ill. 2d 264, 272 (2004). "Generally, the State must act reasonably before depriving a person of an interest protected by the due process clause." *Id.* Thus, as a threshold matter in any procedural due process claim, the claimant must show that he or she has been deprived of an interest protected by the due process clause. *E.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). If such a deprivation is shown, the court must next determine what process was due to the claimant prior to that deprivation. *Id.*

¶ 45 Plaintiff claims that the deprivation he has suffered is an abridgment of his "religious rights." See *supra* ¶ 42. As the district court pointed out: "[B]y the logic of Plaintiff's own

argument, a finding that his procedural due process rights were violated is contingent upon a finding that the Hospital's policy infringed upon his First Amendment free exercise rights." *George,* No. 14-CV-2160, 2014 WL 6434152, at *4. As we have already concluded that plaintiff's free exercise rights under article I, section 3 of the Illinois Constitution were not violated, his procedural due process necessarily fails as well. *Supra* ¶¶ 25-31.

¶ 46 Because we find that plaintiff's amended complaint does not properly allege any violation of the state constitution, we need not address whether Presence qualifies as a state actor.

¶ 47 III. Statutory Claims

¶ 48 Finally, plaintiff briefly argues on appeal that he adequately pled that defendants violated applicable Illinois statutes. The statutes which plaintiff alleges have been violated are section 27-8.1 of the School Code (105 ILCS 5/27-8.1 (West 2014)) and section 694.210 of the College Immunization Code (77 Ill. Adm. Code 694.210 (2002)). He has abandoned the claim raised in his amended complaint that KCC violated the Illinois School Student Records Act (105 ILCS 10/5 (West 2014)). Plaintiff has thus waived that issue. Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016).

¶ 49 A. School Code

¶ 50 Section 27-8.1 of the School Code is entitled "Health examinations and immunizations." 105 ILCS 5/27-8.1 (West 2014). Subsection (1) mandates:

> "[A]ll children in Illinois shall have a health examination as follows: within one year prior to entering kindergarten or the first grade of any public, private, or parochial elementary school; upon entering the sixth and ninth grades of any public, private, or parochial school; prior to entrance into any public, private, or parochial nursery school; and, irrespective of grade, immediately prior to or upon

> entrance into any public, private, or parochial school or nursery school, each child shall present proof of having been examined in accordance with this Section and the rules and regulations promulgated hereunder." 105 ILCS 5/27-8.1(1) (West 2014)

Further, subsection (3) provides:

> "Every child shall, at or about the same time as he or she receives a health examination required by subsection (1) of this Section, present to the local school proof of having received such immunizations against preventable communicable diseases as the Department of Public Health shall require by rules and regulations promulgated pursuant to this Section and the Communicable Disease Prevention Act." 105 ILCS 5/27-8.1(3) (West 2014).

Finally, subsection (8) provides that children will not be subject to immunization requirements if their parents object on religious grounds and provide the proper documentation thereof. 105 ILCS 5/27-8.1(8) (West 2014).

¶ 51 Section 27-8.1 of the School Code is inapplicable to community colleges. That section's repeated references to children and their parents make clear that it does not contemplate college students. Indeed, the School Code in general is inapplicable to community colleges. *Frame v. Board of Trustees of Spoon River Community College*, 212 Ill. App. 3d 617, 620 (1991) ("the School Code has been found to be inapplicable to community college districts which operate under the authority of the Public Community College Act [(110 ILCS 805/1-1 *et seq.* (West 2014))]."). Thus, even if section 27-8.1(8) of the School Code were construed as creating a private cause of action, such a cause of action could not be directed at KCC. It follows, *a fortiori*,

that the cause of action could not be brought against Presence. Accordingly, this claim was properly dismissed by the trial court.

¶ 52 B. College Immunization Code

¶ 53 Section 694.100 of the College Immunization Code mandates that "students who enroll at a post-secondary educational institution shall present to the designated recordkeeping office proof of immunity evidencing" a number of immunizations, including those against MMR. 77 Ill. Adm. Code 694.100 (2016). Section 694.210 allows a student to be exempted from the immunization requirements on religious grounds. 77 Ill. Adm. Code 694.210 (2002).

¶ 54 The "Definitions" section of the College Immunization Code defines "post-secondary educational institution." (Emphasis omitted.) 77 Ill. Adm. Code 694.20 (2016). That section provides: "[A] post-secondary educational institution does not mean or include any public college or university that does not provide on-campus housing for its students in dormitories or equivalent facilities." (Emphasis omitted.) *Id*. More explicitly, it states: "The term shall not include any public or private junior or community college ***." (Emphasis omitted.) *Id*.

¶ 55 On appeal, plaintiff concedes that the College Immunization Code does not apply to KCC. However, he argues that this inapplicability operates to his advantage. Plaintiff explains:

> "If indeed, [KCC] is excluded from the institutions covered by the [College Immunization] Code, there is no governmental requirement that students attending it receive vaccination. Thus, in the absence of any statutory authorization, neither [KCC] nor Presence *** have any basis upon which to impose such a requirement. They do not have legislative powers, and are barred from imposing a requirement that students submit to immunization as a pre-requisite for participation in either the paramedic, or any other course of study."

¶ 56 Plaintiff has failed to cite any authority that would support his position that KCC and Presence may only craft policies if given explicit permission from the Illinois legislature. Plaintiff has not concisely identified exactly how the College Immunization Code creates a cause of action in this case. Accordingly, we conclude that the trial court properly dismissed this claim.

¶ 57 CONCLUSION

¶ 58 The judgment of the circuit court of Kankakee County is affirmed.

¶ 59 Affirmed.