

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).

2012 IL App (4th) 110138-U

Filed 6/22/12

NO. 4-11-0138

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| CHRISTOPHER KNOX, |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | Sangamon County |
| MICHAEL RANDLE and THE DEPARTMENT OF |) | No. 10MR272 |
| CORRECTIONS, |) | |
| Defendants-Appellees. |) | Honorable |
| |) | Leslie J. Graves, |
| |) | Judge Presiding. |

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* Regulation providing what a prison may charge for photocopying services did not confer a tangible legal interest on inmate sufficient to sustain his claim.
- ¶ 2 Plaintiff, Christopher Knox, is an inmate in the Illinois Department of Corrections (DOC) serving a 23-year term of imprisonment for attempted murder. See *People v. Williams*, 328 Ill. App. 3d 879, 887, 767 N.E.2d 511, 519 (2002) (we may take judicial notice of the official public records of DOC). On May 5, 2010, plaintiff filed a complaint against defendants, DOC and Michael Randle, alleging a DOC regulation charging inmates for photocopying services was promulgated in violation of sections 3-7-1 and 3-7-2(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-7-1, 3-7-2(a) (West 2008)). On February 14, 2011, the trial court granted defendants' motion to dismiss plaintiff's complaint.
- ¶ 3 Plaintiff appeals, arguing the trial court erred by dismissing his complaint. We

disagree and affirm.

¶ 4 On May 5, 2010, plaintiff filed a complaint against defendants alleging DOC exceeded its authority in promulgating section 430.40 of title 20 of the Illinois Administrative Code (Administrative Code) (20 Ill. Adm. Code § 430.40 (2010)), a regulation directing prisons to charge inmates for photocopying services. Plaintiff alleged the regulation was in violation of sections 3-7-1 and 3-7-2(a) of the Unified Code (730 ILCS 5/3-7-1, 3-7-2(a) (West 2008)). Plaintiff sought (1) declaratory relief, (2) injunctive relief, (3) compensatory damages, (4) attorney fees, and (5) litigation costs.

¶ 5 On September 16, 2010, pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2008)), defendants filed a motion to dismiss plaintiff's complaint. In the part of the motion corresponding to section 2-615 (735 ILCS 5/2-615 (West 2008)), defendants argued section 430.40 of title 20 of the Administrative Code (20 Ill. Adm. Code § 430.40 (2010)) directs prisons to charge inmates for photocopying services and was not in violation of sections 3-7-1 and 3-7-2(a) of the Unified Code. Therefore, plaintiff failed to state a cause of action for declaratory relief. In the part of the motion corresponding to section 2-619(a)(1) (735 ILCS 5/2-619(a)(1) (West 2008)), defendants asserted plaintiff's claim for money damages was barred by sovereign immunity. In a docket entry dated February 14, 2011, the trial court granted defendants' motion to dismiss plaintiff's complaint.

¶ 6 This appeal followed.

¶ 7 Plaintiff argues the trial court erred by dismissing his complaint. Defendants contend the court did not err by dismissing plaintiff's complaint because (1) plaintiff failed to state a claim for relief and (2) the court lacked subject-matter jurisdiction. We agree with

defendants that plaintiff failed to state a claim for relief.

¶ 8 A motion under section 2-619.1 of the Procedure Code allows a party to "combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses." *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, 788 N.E.2d 740, 747 (2003). A motion to dismiss under section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2008)) "challenges the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 1053 (2006). When reviewing a trial court's dismissal of a complaint under section 2-615 of the Procedure 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. *Napleton v. Village of Hinsdale*, 374 Ill. App. 3d 1098, 1101, 872 N.E.2d 23, 27 (2007). However, this court will disregard mere conclusions of law or facts not supported by specific factual allegations. *White v. Daimler Chrysler Corp.*, 368 Ill. App. 3d 278, 282, 856 N.E.2d 542, 546 (2006). We review *de novo* a trial court's ruling under section 2-615 of the Procedure Code. *Poruba v. Poruba*, 396 Ill. App. 3d 214, 215, 919 N.E.2d 1066, 1067 (2009).

¶ 9 Section 3-7-1 of the Unified Code requires DOC to promulgate rules in compliance with the Unified Code. 730 ILCS 5/3-7-1 (West 2008). Section 3-7-2(a) states:

"All institutions and facilities of the Department shall provide every committed person with access to toilet facilities, barber facilities, bathing facilities at least once each week, a library of legal materials and published materials including newspapers and

magazines approved by the Director. A committed person may not receive any materials that the Director deems pornographic." 730 ILCS 5/3-7-2(a) (West 2008)

¶ 10 DOC regulations provide for photocopying services. Section 430.40 of Title 20 of the Administrative Code states as follows:

"(a) 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.

(b) Committed persons who are without funds shall be provided and charged for copying services for legal materials which may not be reasonably duplicated by other means. Legal documents shall be deemed to mean pleadings, complaints or petitions, briefs, exhibits, affidavits, notices of filing or other documents to be filed in a court of law or other forum in which a suit may be filed or which are required to be served upon opposing counsel or parties." 20 Ill. Adm. Code § 430.40 (2012).

¶ 11 In his complaint, plaintiff requested injunctive and declaratory relief based on the same allegations. As to injunctive relief, the complaint " 'must contain on its face a clear right to relief and state facts which establish the right to such relief in a positive certain and precise manner.' " *Sadat v. American Motors Corp.*, 104 Ill. 2d 105, 116, 470 N.E.2d 997, 1002 (1984) (quoting *Parkway Bank & Trust Co. v. City of Darien*, 43 Ill. App. 3d 400, 406, 357 N.E.2d 211, 217 (1976)). The "factual allegations must specifically establish the inadequacy of legal remedy

and the irreparable injury the plaintiff will suffer without the injunction." *Sadat*, 104 Ill. 2d at 116, 470 N.E.2d at 1002. To state a cause of action for declaratory judgment, the plaintiff must assert the following: " '(1) that he has a tangible legal interest with regard to the claim, (2) that the defendant's conduct is opposed to that interest, and (3) that there is an ongoing controversy between the parties that is likely to be prevented or resolved if the court decides the case.' "

Catom Trucking, Inc. v. City of Chicago, 2011 IL App (1st) 101146, ¶ 21, 952 N.E.2d 170, 178 (quoting *Young v. Mory*, 294 Ill. App. 3d 839, 845, 690 N.E.2d 1040, 1044 (1998)).

¶ 12 Plaintiff's complaint is based on the allegation that DOC exceeded its authority in promulgating section 430.40 of title 20 of the Administrative Code (20 Ill. Adm. Code § 430.40 (2010)), directing prisons to charge inmates for photocopying services. Plaintiff alleges the regulation is in violation of sections 3-7-1 and 3-7-2(a) of the Unified Code (730 ILCS 5/3-7-1, 3-7-2(a) (West 2010)). Plaintiff does not have a legal interest in the provisions of section 3-7-1 or 3-7-2(a) in this regard. This court has emphasized that the provisions in the Unified Code are designed to provide guidance to prison officials in the administration of prisons and create no more rights for inmates than those which are constitutionally required. *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000); see also *McNeil v. Carter*, 318 Ill. App. 3d 939, 943, 742 N.E.2d 1277, 1281 (2001) (Unified Code did not imply a private right of action for inmate who allegedly received inadequate medical attention). Plaintiff does not have a constitutionally protected "right" to free photocopying services and sections 3-7-1 and 3-7-2(a) do not create one. See *Turner-El v. West*, 349 Ill. App. 3d 475, 483, 811 N.E.2d 728, 736 (2004) ("there exists no constitutional right to have one's adversary or the public treasury defray all or part of the cost of litigation"). Plaintiff did not allege in his complaint that his efforts to pursue

any legal claim had been hindered because he was charged for photocopying services. Plaintiff alleged only that section 430.40 of title 20 of the Administrative Code, directing prisons to charge inmates for photocopying services, is in violation of sections 3-7-1 and 3-7-2(a) of the Unified Code (730 ILCS 5/3-7-1, 3-7-2(a) (West 2008)). Since plaintiff lacked a legal interest in sections 3-7-1 and 3-7-2(a), plaintiff cannot state any cause of action for relief for DOC's application of sections 3-7-1 and 3-7-2(a). Accordingly, the trial court properly dismissed plaintiff's complaint under section 2-615 of the Procedure Code for failure to state a cause of action. Because we have affirmed the trial court's dismissal under section 2-615, we do not address any issues related to a dismissal under section 2-619.

¶ 13 For the reasons stated, we affirm the Sangamon County circuit court's dismissal of plaintiff's complaint.

¶ 14 Affirmed.