

NOTICE
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2012 IL App (4th) 120410-U

NO. 4-12-0410

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 21, 2012

Carla Bender
4th District Appellate
Court, IL

RAYMOND L. WASHINGTON,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
GLADYSE TAYLOR and SHERRY BENTON,	)	No. 11MR44
Defendants-Appellees,	)	
and	)	
RANDY DAVIS, BRETT A. KLINDWORTH, CAROL	)	Honorable
A. McBRIDE, CYNTHIA M. JORDAN, and K. DEEN,	)	John Schmidt,
Defendants.	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff failed to show he was entitled to *mandamus* relief, the trial court did not err in granting defendants' motion to dismiss.

¶ 2 In February 2011, plaintiff, Raymond L. Washington, an inmate in the Illinois Department of Corrections (DOC), filed a *pro se* complaint for *mandamus*, naming defendants, Gladys Taylor and Sherry Benton, and five other individuals. In July 2011, defendants filed a motion to dismiss, which the trial court granted.

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

¶ 4 I. BACKGROUND

¶ 5 In September 2010, plaintiff, while an inmate at Pinckneyville Correctional

Center, was charged in a disciplinary report with the offenses of fighting and disobeying a direct order. The report stated plaintiff and Inmate Flagg were on the ground in the yard "throwing punches at each other." The reporting officer, Lt. Jordan, gave three direct orders to the two inmates, but they both refused all orders. Jordan sprayed them with mace, handcuffed them, and placed them in segregation.

¶ 6 Plaintiff indicates he requested five witnesses to be called at his adjustment committee hearing, including inmates Jayson Murray, Cornell Cunningham, and M. Cannon, and Department employees Paul Johnson and Randall Redding. At the hearing, plaintiff pleaded not guilty, saying Flagg came up and hit him. He stated he fell to the ground, Flagg jumped on him, and plaintiff "never got a chance to throw a punch."

¶ 7 Paul Johnson was called as a witness and reported he did not see the fight at all. Randall Redding stated he "didn't see the fight start, but [he] saw [plaintiff] on the bottom." Plaintiff flipped Flagg over. When ordered to stop, plaintiff did so. Lt. Jordan maced the inmates because Flagg "kept swinging."

¶ 8 The adjustment committee found plaintiff guilty of fighting but not guilty of disobeying a direct order. As a basis for its decision, the adjustment committee relied on (1) plaintiff's own admission of guilt when he stated he was in the yard at the time of the incident and in a physical altercation with Flagg, (2) Jordan's report, which indicated plaintiff and Flagg were on the ground throwing punches with closed fists and making contact to each other's body and face, and (3) Redding's statement that plaintiff did stop fighting when ordered to do so.

¶ 9 The adjustment committee recommended, and the warden imposed, discipline of one month C-grade status, one month in segregation, and revocation of one month of good-

conduct credit. The adjustment committee report was signed by one of the two members.

¶ 10 Plaintiff filed a grievance, claiming his witnesses were not called, the chairperson of the adjustment committee did not sign the report, and the chemical agent used on him caused him to lose most of his sense of taste and caused his eyes to burn. The grievance officer found the disciplinary report was written and processed within prison rules. Based on sufficient evidence at the hearing and the absence of a due-process violation, the grievance officer recommended the grievance be denied, and the chief administrative officer concurred. Plaintiff appealed, and the DOC Director denied the request for relief.

¶ 11 In February 2011, plaintiff filed a *pro se* complaint of *mandamus* pursuant to the Code of Civil Procedure (Procedure Code) (735 ILCS 5/14-101 to 14-109 (West 2010)). Plaintiff alleged the adjustment committee called staff witnesses but not his inmate witnesses. Plaintiff requested an order mandating defendants expunge his disciplinary report and restore his good-conduct credits.

¶ 12 In July 2011, defendants filed a motion to dismiss pursuant to section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2010)), claiming plaintiff's allegations related to discretionary decisions and *mandamus* relief would be inappropriate. In April 2012, the trial court granted defendants' motion to dismiss for the reasons stated in the motion. This appeal followed.

¶ 13 II. ANALYSIS

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

¶ 15 A. Standard of Review

¶ 16 In this case, defendants filed a motion to dismiss plaintiff's *mandamus* complaint pursuant to section 2-619, which applies to claims "barred by other affirmative matter[s] avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). As defendants now note on appeal, the motion to dismiss was more appropriate under section 2-615 of the Procedure Code (735 ILCS 5/2-615(a) (West 2010)), which allows for dismissal because the complaint is "substantially insufficient in law." Because plaintiff cannot show any prejudice in the mislabeling of the motion, we will treat defendants' motion to dismiss as if it was filed under section 2-615. *Stafford-Smith, Inc. v. Intercontinental River East, LLC*, 378 Ill. App. 3d 236, 240, 881 N.E.2d 534, 538-39 (2007) (citing *Gouge v. Central Illinois Public Service Co.*, 144 Ill. 2d 535, 541-42, 582 N.E.2d 108, 111 (1991)).

¶ 17 A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). 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 the 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 the dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18, 21.

¶ 18 B. *Mandamus*

¶ 19 "An allegation of a due-process-rights violation *** states a cause of action in *mandamus*." *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). "*Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). 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*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004).

¶ 20 1. *Witnesses at the Adjustment Committee Hearing*

¶ 21 Plaintiff argued he was entitled to *mandamus* relief because his due-process rights were violated when his witnesses were not called at the adjustment committee hearing.

¶ 22 An inmate is entitled to due process at his disciplinary proceedings. See *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974).

"Principles of due process require an inmate receive (1) notice of disciplinary charges at least 24 hours prior to a hearing, (2) the opportunity to call witnesses and present documentary evidence when consistent with institutional safety and correctional goals, and (3) a written statement by the fact finder of the evidence relied upon to support a finding of guilt." *Ford v. Walker*, 377 Ill. App.

3d 1120, 1125, 888 N.E.2d 123, 127 (2007).

¶ 23 Although two of plaintiff's requested staff witnesses were called, plaintiff argues he was wrongfully denied his requested inmate witnesses at the hearing. "Department rules specify that inmates may request that a witness be interviewed, by making a request in writing on the space at the bottom of the disciplinary report before the disciplinary hearing." *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118, 942 N.E.2d 758, 764 (2011); see also 20 Ill. Adm. Code 504.80(f)(2) (2003). "The adjustment committee may deny an inmate's witness request 'if the witness's testimony would be irrelevant, cumulative, or would jeopardize the safety or disrupt the security of the facility, among other reasons.' " *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128 (quoting *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131, 815 N.E.2d 443, 452 (2004)). " 'Since it is within the committee's discretion to deny an inmate's witness request, such a decision may not be challenged in a *mandamus* petition.' " *Taylor*, 406 Ill. App. 3d at 1118, 942 N.E.2d at 764 (quoting *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128).

¶ 24 In the case *sub judice*, the adjustment committee called two of plaintiff's five requested witnesses. Because the adjustment committee has discretion to deny an inmate's witness request, plaintiff cannot show a due-process violation entitling him to *mandamus* relief.

¶ 25 *2. Signatures on the Adjustment Committee Report*

¶ 26 Plaintiff argues he is entitled to an order of *mandamus* expunging his disciplinary violation because not all of the members of the adjustment committee signed the report. As authority for his claim, plaintiff relies on section 3-8-7(e)(5) of the Unified Code of Corrections (730 ILCS 5/3-8-7(e)(5) (West 2010)) and section 504.80(l) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504.80(l) (2003)).

¶ 27 According to the procedures for disciplinary proceedings under section 3-8-7(e)(5), if the charge against the inmate is sustained, the inmate "is entitled to a written statement of the decision by the persons determining the disposition of the charge which shall include the basis for the decision and the disciplinary action, if any, to be imposed." 730 ILCS 5/3-8-7(e)(5) (West 2010). Here, plaintiff received the adjustment committee's written report. Contrary to plaintiff's claim, section 3-8-7(e)(5) does not require the report be signed by anyone, only that it be written and the basis for the decision and any discipline imposed be included therein.

¶ 28 In regard to adjustment committee hearing procedures, section 504.80(l) states "[a] written record shall be prepared and signed by all members of the Committee." 20 Ill. Adm. Code 504.80(l) (2003). However, this court has noted "prison regulations, such as the Administrative Code, 'were designed to provide guidance to prison officials in the administration of prisons' and 'were *never* intended to confer rights on inmates or serve as a basis for constitutional claims.' (Emphasis in original.)" *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25, 960 N.E.2d 1, 7 (quoting *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000)).

¶ 29 Here, the administrative review board contacted the adjustment committee at Pinckneyville and was advised the lack of a chairman's signature was simply an oversight. The fact that one of the two adjustment committee members failed to sign the report did not violate any enforceable legal right that would entitle plaintiff to *mandamus* relief. Thus, the trial court did not err in dismissing plaintiff's *mandamus* complaint.

¶ 30 III. CONCLUSION

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

¶ 32 Affirmed.