

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) 130740-U

NO. 4-13-0740

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 10, 2014

Carla Bender
4th District Appellate
Court, IL

DANIEL RODRIGUEZ,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
JASON BROCKETT, MICHAEL MELVIN, and)	No. 13MR12
GUY PIERCE,)	
Defendants-Appellees.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court's dismissal of plaintiff's complaint where plaintiff's allegations he properly exhausted his administrative remedies, if taken as true, toll the statute of limitations such that his complaint was timely filed.

¶ 2 In February 2013, plaintiff, Daniel Rodriguez, an inmate in the Illinois Department of Corrections (Department), *pro se* filed a complaint under section 1983 of the Civil Rights Act of 1871 (42 U.S.C.A. § 1983 (2012)) against defendants, Jason Brockett (Pontiac Correctional Center officer), Michael Melvin (Pontiac Correctional Center superintendent), and Guy Pierce (Pontiac Correctional Center warden). In March 2013, defendants filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2012)). In July 2013, the trial court granted defendants' motion and dismissed Rodriguez's complaint.

¶ 3 Rodriguez appeals, asserting the trial court erred by granting defendants' motion to dismiss. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 The following factual information is taken from Rodriguez's complaint and the attached exhibits.

¶ 6 On December 25, 2009, while an inmate at the Pontiac Correctional Center (Pontiac), Rodriguez filed a grievance alleging that Brockett threatened him that day with physical violence. Rodriguez filed a second grievance on January 4, 2010, alleging that Brockett physically assaulted him that day. Rodriguez further alleged that the other defendants were aware of the "problem" between him and Brockett prior to the assault, but no one attempted to address the situation. On January 14, 2010, Rodriguez was transferred to Tamms Correctional Center (Tamms).

¶ 7 After being transferred to Tamms, Rodriguez received responses from the Pontiac grievance counselor regarding his December 25, 2009, and January 4, 2010, grievances. Both responses were dated January 22, 2010, and indicated Brockett had denied Rodriguez's allegations. On January 26, 2010, Rodriguez filed a third grievance, asserting he was denied due process at the January 2010 disciplinary hearing that resulted in his transfer to Tamms. According to his complaint, Rodriguez mailed all three grievances to the Administrative Review Board on January 26, 2010. All three grievances were stamped "received" by the office of Inmate Issues on June 10, 2011, more than 17 months after the date Rodriguez alleged they were mailed.

¶ 8 On June 16, 2011, the Administrative Review Board returned Rodriguez's grievances to him, noting on the "Return of Grievance" forms that the grievances were

"received" on June 10, 2011. In a section of the form titled, "No further redress," the Administrative Review Board marked the box that states, "Not submitted in the timeframe [*sic*] outlined in Department Rule 504; therefore, this issue will not be addressed further."

¶ 9 On February 11, 2013, Rodriguez filed a complaint in the Livingston County circuit court, alleging defendants violated his first- and eighth-amendment rights in regard to the conduct described in his first two grievances. In his complaint, Rodriguez asserted he exhausted his administrative remedies by "us[ing] the grievance procedure available at the Illinois State prison to try and solve the problems of December 25, and January 4." Specifically, Rodriguez asserted he filed grievances on December 25, 2009, and January 4, 2010. After his first two grievances were denied by the Pontiac grievance counselor, Rodriguez alleged that he sent his grievances to the Administrative Review Board as required by Department rules. In support of his allegations, he attached to his complaint copies of the three grievances and five "Offender Authorization for Payment" forms that "authorize payment of postage for the attached mail" addressed to the Administrative Review Board on the following dates: January 26, 2010; January 31, 2010; February 3, 2010; February 8, 2010; and February 9, 2010.

¶ 10 In March 2013, defendants filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2012)), asserting that Rodriguez's claims were barred by the statute of limitations. In a July 2013 docket entry, the trial court granted defendants' motion and dismissed Rodriguez's complaint, noting Rodriguez "is well beyond the statute of limitations."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Rodriguez asserts the trial court erred in granting defendants' motion to dismiss. Specifically, Rodriguez contends that he (1) filed his complaint within the two-year

statute of limitations; (2) exhausted his administrative remedies; and (3) should not be penalized for the prison officials' delay in responding to his grievances.

¶ 14 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367, 799 N.E.2d 273, 278 (2003). A section 2-619(a) motion admits, for purposes of the motion only, the legal sufficiency of the complaint, but asserts a defect or defense that affirmatively defeats the claim. *Pleasant Hill Cemetery Ass'n v. Morefield*, 2013 IL App (4th) 120645, ¶ 20, 986 N.E.2d 791. "Unless the affirmative matter is already apparent on the face of the complaint, the defendant must support the affirmative matter with an affidavit or with some other material that could be used to support a motion for summary judgment." *Id.*, ¶ 21, 986 N.E.2d 791. In our *de novo* review, we interpret the pleadings and supporting documents in the light most favorable to the non moving party. *Van Meter*, 207 Ill. 2d at 367-68, 799 N.E.2d at 278. In doing so, we rely on the well-pleaded facts and on any reasonable inferences drawn from the record. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772, 919 N.E.2d 76, 85 (2009).

¶ 15 In section 1983 cases, the statute of limitations for bringing a claim is determined by the personal injury laws of the state where the injury allegedly occurred. *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993). In Illinois, the statute of limitations for a personal injury claim is two years from the date of the occurrence causing the injury. *Id.* A section 1983 cause of action accrues when the injured party knows or should know that his constitutional rights have been violated. *Id.* However, the statute of limitations is tolled where a statutory prohibition prevents a claimant's cause of action. 735 ILCS 5/13-216 (West 2012). The Prison Litigation Reform Act of 1995 (42 U.S.C.A. § 1997e(a) (2008)), provides, "No action shall be

brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Thus, an inmate is prohibited from bringing a section 1983 action unless and until all available administrative remedies have been properly exhausted.

¶ 16 Section 504 of the Illinois Administrative Code establishes the administrative procedure that inmates must follow regarding their grievances. Where an issue cannot be resolved informally, an inmate in the Department must file a written grievance within 60 days of the incident that gave rise to the grievance. 20 Ill. Adm. Code 504.810 (2003). Once an inmate files a grievance, the grievance officer shall review the grievance and report his or her findings and recommendations to the chief administrative officer, who must advise the inmate of the decision in writing within two months of receipt of the grievance. 20 Ill. Adm. Code 504.830 (2003). Upon receiving the chief administrative officer's response, an inmate has 30 days to appeal the decision to the director, who, where reasonably feasible, shall make a final determination within six months after receiving the appealed grievance. 20 Ill. Adm. Code 504.850 (2003). However, when the grievance pertains to an issue that occurred at a facility other than the facility where an inmate is currently assigned, the inmate shall submit the grievance directly to the Administrative Review Board, which must review and process the grievance in accordance with section 504.850 of the Illinois Administrative Code. 20 Ill. Adm. Code 504.870 (2003).

¶ 17 In this case, Rodriguez sufficiently pleaded compliance with the grievance procedure required by the Department. Rodriguez asserted he filed his grievances on December 25, 2009, and January 4, 2010, the dates of the alleged incidents. Rodriguez also asserted he

filed a third grievance regarding a due-process claim on January 26, 2010. We note only the January 4, 2010, grievance addresses the claims raised in Rodriguez's complaint. Rodriguez alleged that after receiving a response from the grievance counselor that his grievances had been denied, he sent the grievances directly to the Administrative Review Board on January 26, 2010—as required by section 504.870 of the Illinois Administrative Code (20 Ill. Adm. Code 504.870 (2003)) due to his transfer to Tamms. Those grievances were denied by the Administrative Review Board on June 16, 2011, well beyond the six-month time frame contemplated by section 504.850 of the Illinois Administrative Code (20 Ill. Adm. Code 504.850 (2003)). The exhibits attached to the complaint support Rodriguez's well-pleaded fact that he exhausted his administrative remedies. Further, defendants have filed nothing from an evidentiary standpoint in opposition to this well-pleaded fact.

¶ 18 Based on Rodriguez's well-pleaded facts, he filed his grievances in the manner and time frame required by Department rules. If Rodriguez's grievances were timely filed, the two-year statute of limitations was tolled during the period he exhausted his administrative remedies. According to Rodriguez's complaint, his administrative remedies were exhausted on June 16, 2011—the date the Administrative Review Board returned his grievances. Assuming the truthfulness of Rodriguez's well-pleaded facts, as we must, the two-year statute of limitations did not begin to run until June 16, 2011. Accordingly, Rodriguez's February 11, 2013, complaint was timely filed and the trial court erred in granting defendants' motion to dismiss.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 21 Reversed and remanded.