

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).

2016 IL App (4th) 150289-U

NO. 4-15-0289

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 4, 2016

Carla Bender

4th District Appellate

Court, IL

KENNETH H. CEBERTOWICZ,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
JOHN R. BALDWIN, Acting Director, Illinois)	No. 14MR497
Department of Corrections,)	
Defendant-Appellee.)	Honorable
)	John M. Madonia,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.

Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendant's motion to dismiss plaintiff's *mandamus* petition.

¶ 2 In May 2014, plaintiff, Kenneth H. Cebertowicz, filed a *pro se mandamus* complaint, seeking to compel defendant, Salvatore A. Godinez, then Director of the Illinois Department of Corrections (DOC), to allow plaintiff to file grievances directly with defendant rather than follow the grievance process set forth in DOC rules. Thereafter, defendant filed a motion to dismiss the plaintiff's complaint, which the trial court granted.

¶ 3 Plaintiff, proceeding *pro se*, appeals, arguing the trial court erred in granting defendant's motion to dismiss. We note John R. Baldwin has been named Director of DOC and is substituted for Godinez by operation of law. 735 ILCS 5/2-1008(d) (2014). We affirm.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff is serving a 50-year sentence for first degree murder and a concurrent 4-year sentence for aggravated discharge of a firearm. At the time he filed his complaint, plaintiff was housed at Lawrence Correctional Center.

¶ 6 In May 2014, plaintiff, *pro se*, filed a *mandamus* complaint. Plaintiff alleged it was the statutory duty of defendant, as the Director of DOC, by virtue of the provisions of section 3-8-8(c) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/3-8-8(c) (West 2014)), to allow prisoners to "file grievances" directly with the Director. Plaintiff stated:

"On or about April 11, 2013, [p]etitioner filed a grievance stating every time he sent a grievance directly to the Director, pursuant to 730 ILCS 5/3-8-8(c), the Administrative Review Board would return the grievance to [p]etitioner unanswered[,] stating to file it at the institutional level. (Ex. A) The institutional [g]rievance [o]fficer acknowledged that 730 ILCS 5/3-8-8(c) allows [p]etitioner to file grievances directly to the Director, but Department Rules require grievances should be addressed at the institutional level and denied the grievance. (Ex. B) On April 14, 2014, the Administrative Review Board denied [p]etitioner's grievance[,] stating: 'DR is being followed and is NOT grievable.' (Ex. C) Petitioner, therefore, has satisfied his requirement of a demand and exhaustion of administrative remedies."

Plaintiff alleged he had been injured by defendant's refusal to follow the statute, which unnecessarily extended the time in which to exhaust administrative remedies. Plaintiff further maintained section 3-8-8(c) of the Corrections Code makes it clear he has a statutory right to

"file" grievances directly with the Director of DOC. Because defendant refused to comply with the statute, plaintiff maintained, he had stated a cause of action for *mandamus* relief.

¶ 7 On June 24, 2014, defendant filed a motion to dismiss and a supporting memorandum, pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2014)). Defendant maintained (1) plaintiff failed to state a cause of action for *mandamus* relief; (2) DOC regulations and the Corrections Code were designed to provide guidance to prison officials in the administration of prisons; (3) section 3-8-8(c) of the Corrections Code does not confer plaintiff with any enforceable rights to seek a writ of *mandamus* and, as such, his right must be based on a constitutional provision; (4) the constitution does not require any grievance procedures and, therefore, failure to reply to a grievance or follow a grievance procedure does not violate the constitution; and (5) plaintiff has no liberty interest in prison grievance procedures since the procedures themselves create no substantive rights. Defendant further argued plaintiff's understanding of the statutory law was incorrect.

¶ 8 On August 7, 2014, plaintiff filed a response to defendant's motion to dismiss, alleging defendant was incorrect in his arguments for dismissal. On February 10, 2015, plaintiff filed a motion to supplement his response to defendant's motion to dismiss, alleging he had recently received additional evidence DOC was violating its own rules. This additional evidence was a statement in DOC's staff development and training manual stating inmates "shall be allowed to communicate emergency grievances directly to the Director."

¶ 9 After a March 30, 2015, hearing via telephone, the trial court granted defendant's motion to dismiss.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff argues the trial court erred in dismissing his *mandamus* complaint for failure to state a cause of action. We disagree and affirm.

¶ 13 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 a dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 14 "*Mandamus* is an extraordinary remedy used to compel a public officer to perform nondiscretionary official duties." *People ex rel. Senko v. Meersman*, 2012 IL 114163, ¶ 9, 980 N.E.2d 1115 (citing *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93, 909 N.E.2d 783, 791 (2009)). For a complaint seeking *mandamus* relief to withstand a motion to dismiss, "it must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ." *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133, 688 N.E.2d 81, 86 (1997). For the reasons that follow, we find the necessary *mandamus* factors are not present in this case.

¶ 15 Inmates have no constitutional right to a grievance process. See *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (stating prison grievance procedures are not required

by the first amendment and do not create interests protected by the due-process clause); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (stating state-created inmate grievance procedures do not give rise to liberty interests protected by the due-process clause). It is well settled DOC's regulations, including those found in the Illinois Administrative Code (Administrative Code), "were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000); see also *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 20, 985 N.E.2d 1037; *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 22, 966 N.E.2d 1233. "Instead, Illinois DOC regulations, as well as the [Corrections Code], were designed to provide guidance to prison officials in the administration of prisons." *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Moreover, "Illinois law creates no more *rights* for inmates than those which are constitutionally required." (Emphasis in original.) *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902.

¶ 16 Here, plaintiff argues section 3-8-8(c) of the Corrections Code "creates a duty" for defendant, as Director of DOC, to allow inmates to "file" grievances directly with the Director. Plaintiff argues requiring him to follow the grievance process set forth in title 20, section 504.810, of the Administrative Code (20 Ill. Adm. Code 504.810, amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)), which requires him to first attempt to resolve issues at the correctional facility level is "incongruous" to section 3-8-8(c) of the Corrections Code (730 ILCS 5/3-8-8(c) (West 2014)).

¶ 17 Our analysis begins with the statutory language, which remains the best indication of the legislature's intent. *Moore v. Green*, 219 Ill. 2d 470, 479, 848 N.E.2d 1015, 1020 (2006). "When the language is unambiguous, the statute must be applied as written without resorting to other aids of construction." *Moore*, 219 Ill. 2d at 479, 848 N.E.2d at 1021.

¶ 18 The relevant portion of section 3-8-8 of the Corrections Code (730 ILCS 5/3-8-8(a), (c) (West 2014)) states as follows:

"(a) The Director shall establish procedures to review the grievances of committed persons. The Director may establish one or more administrative review boards within the Department to review grievances. A committed person's right to *file* grievances shall not be restricted. Such procedure shall provide for the review of grievances by a person or persons other than the person or persons directly responsible for the conditions or actions against which the grievance is made.

(c) Such procedures shall allow committed persons to *communicate* grievances directly to the Director or some person designated by the Director outside of the institution or facility where the person is confined." (Emphases added.)

¶ 19 When the General Assembly uses different words in the same section of a statute, the presumption is it intends different meanings and results. *Board of Education of Park Forest Heights School District No. 163, Cook County, Illinois v. State Teacher Certification Board*, 363 Ill. App. 3d 433, 444, 842 N.E.2d 1230, 1239 (2006); *Chicago SMSA Ltd. Partnership v. Illinois Department of Revenue*, 306 Ill. App. 3d 977, 983, 715 N.E.2d 719, 724 (1999). Here, contrary to plaintiff's assertion, the enabling statute contains no requirement the Director must allow direct *filing* of grievances with him. The statute only provides that grievances may be *communicated* to the Director. Further, the statute does not obligate the Director to act on the

communicated grievance or treat the communicated grievance as if it had also been *filed* with him. Therefore, the Administrative Review Board's (Board's) decision not to treat plaintiff's communicated grievances as filed without his first complying with the institutional grievance channels was not in violation of section 3-8-8 of the Corrections Code.

¶ 20 Further, a review of DOC's grievance procedures shows they are not "incongruous" with the statutory grievance provisions of section 3-8-8 of the Corrections Code.

¶ 21 DOC's procedures for the resolution of grievances are set forth in title 20, sections 504.800 through 504.870, of the Administrative Code. 20 Ill. Adm. Code 504.800 to 504.870, amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). Unless otherwise specified, the Director of DOC or the Chief Administrative Officer (Chief Officer) of a DOC facility may delegate responsibility to another person or persons to perform the duties specified in the grievance procedures. 20 Ill. Adm. Code 504.805(a), amended at 22 Ill. Reg. 1206 (eff. Jan. 1, 1998). The Chief Officer must appoint two or more employees to serve as grievance officers. 20 Ill. Adm. Code 504.820(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 22 A disgruntled prisoner must first attempt to informally resolve incidents, problems, or complaints through his counselor. If the prisoner is unable to resolve his complaint through this informal means, he may file a written grievance. 20 Ill. Adm. Code 504.810(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). The written grievance is to be addressed to the grievance officer. 20 Ill. Adm. Code 504.810(b), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). The grievance officer must consider the grievance and report his findings and recommendations, in writing, to the Chief Officer. 20 Ill. Adm. Code 504.830(d), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 23 The Chief Officer must advise the prisoner of the decision, in writing, after

receiving the grievance officer's report. 20 Ill. Adm. Code 504.830(d), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). If, after receiving the response of the Chief Officer, the prisoner still feels the grievance has not been resolved to his satisfaction, he may appeal, in writing, to the Director. 20 Ill. Adm. Code 504.850(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). The Director must review the grievance and the responses of the grievance officer and the Chief Officer and determine whether the grievance requires a hearing before the Board. If it is determined the grievance is without merit or can be resolved without a hearing, the prisoner must be informed of this disposition. 20 Ill. Adm. Code 504.850(b), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 24 An inmate may request a grievance to be handled on an emergency basis by forwarding the grievance directly to the Chief Officer. The Chief Officer determines whether there is a substantial risk of imminent personal injury or other serious or irreparable harm to the inmate requiring the grievance to be handled on an emergency basis. 20 Ill. Adm. Code 504.840(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 25 Under certain circumstances, grievances must be filed directly with the Board. These include (a) decisions regarding placement in protective custody, including continued placement in or release from protective custody; (b) decisions regarding the involuntary administration of psychotropic medication; (c) decisions regarding disciplinary proceedings made at a facility other than the facility where the offender is currently assigned; and (d) other issues except personal property issues that pertain to a facility other than the facility where the offender is currently assigned. 20 Ill. Adm. Code 504.870(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 26 Nothing in DOC's grievance procedures restricts an inmate's ability to file

grievances. They simply require an inmate follow steps for resolution of grievances at the institutional level before appealing to the Director and Board, unless the grievance is an emergency to be forwarded directly to the Chief Officer or falls within the four exceptions noted above to be filed directly with the Board. Here, plaintiff's complaint does not reveal the bases of his previously filed grievances and he has not pleaded facts to bring his case within the exceptions for direct filing with the Chief Officer or Board.

¶ 27 Plaintiff has failed to allege the required "clear right" to relief or "clear duty" on the part of defendant to act in the manner requested by plaintiff. Accordingly, the trial court did not err in dismissing plaintiff's *mandamus* complaint.

¶ 28 III. CONCLUSION

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

¶ 30 Affirmed.