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Carla Bender
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Court, IL

2016 IL App (4th) 150517-U

NO. 4-15-0517

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RONNIE CARROLL, Plaintiff-Appellant, v. S.A. GODINEZ, Director of Illinois Department of Corrections, and ADAM P. MONREAL, Defendants-Appellees.	))))))))	Appeal from Circuit Court of Sangamon County No. 14MR495 Honorable Brian T. Otwell, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court (1) properly dismissed plaintiff's petition for writ of *certiorari* under the doctrine of *laches*; and (2) did not abuse its discretion in denying plaintiff's motions for vacatur, discovery, court reporter, or substitution of judge.

¶ 2 In May 2014, plaintiff, Ronnie Carroll, filed a petition for writ of *certiorari*, seeking review of two disciplinary sanctions from November 1998 and March 1999. In July 2014, defendants, S.A. Godinez and Adam P. Monreal, filed a motion to dismiss, alleging, in part, plaintiff's petition was barred by *laches*. The trial court granted the motion to dismiss, finding plaintiff's petition was not filed within the six-month limit for petitions for *certiorari*.

¶ 3 Plaintiff appeals, arguing (1) the trial court abused its discretion in making various rulings; (2) the Illinois Department of Corrections (DOC) erroneously revoked two years of good-conduct credit; (3) his petition for a writ of *certiorari* was not barred by a statute of

limitations; and (4) this court should provide plaintiff with guidance as to what legal remedy to pursue if a writ of *certiorari* is inappropriate. We affirm.

¶ 4 I. BACKGROUND

¶ 5 From 1998 to 2004, plaintiff was an inmate at Tamms Correctional Center (Tamms). In October 1998, plaintiff was found to be in possession of matches and tobacco. Following a November 1998 disciplinary proceeding, the Adjustment Committee found plaintiff guilty of possessing dangerous contraband in violation of section 505.110 of the Illinois Administrative Code (20 Ill. Admin. Code 505.110 (1998)). As a result, the Adjustment Committee revoked one year of plaintiff's good-conduct credit. In February 1999, plaintiff was again found in possession of matches. Following a March 1999 disciplinary hearing, the Adjustment Committee found plaintiff guilty of possessing dangerous contraband and revoked one year of plaintiff's good-conduct credit.

¶ 6 On May 20, 2014, plaintiff filed a petition for a writ of *certiorari*, seeking review of the 1998 and 1999 disciplinary decisions and the revocation of two years' good-conduct credit. In his petition, plaintiff contended he exhausted his administrative remedies by filing grievances. The record does not contain these grievances; however, there is a letter from DOC denying plaintiff's Freedom of Information Act request for copies of the grievances. The record also contains a grievance filed in August 2003, which challenged the revocation of two years' good-conduct credit. That grievance was denied as untimely because it was not filed within 60 days of the incident. In September 2003, the Administrative Review Board affirmed the denial.

¶ 7 On June 4, 2014, defendants were served with summons, which required the filing of an answer or appearance within 30 days of service. On July 7, 2014, defendants filed a motion to dismiss, alleging, in part, plaintiff's petition was untimely. In his brief, plaintiff asserts

he mailed a motion for default judgment and a motion for summary judgment on July 6, 2014. Those motions were file stamped July 10, 2014. On July 28, 2014, plaintiff requested a hearing on his motions for default and summary judgment.

¶ 8 On December 31, 2014, the trial court granted defendants' motion to dismiss. The court found (1) defendants had timely filed their motion to dismiss; (2) plaintiff's petition for writ of *certiorari* was untimely, as it was not filed within the six-month "statute of limitations"; (3) even if the six-month limitations period did not apply, the petition would be barred by the related doctrine of *laches*; and (4) plaintiff's petition was legally insufficient under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)).

¶ 9 On January 9, 2015, after the trial court granted the motion to dismiss, plaintiff filed a response to defendants' motion to dismiss. On January 23, 2015, plaintiff filed a motion to vacate the court's order granting the motion to dismiss. The motion argued (1) the court should have held a hearing on plaintiff's motions for default and summary judgment, and (2) the circuit court judge should not have ruled on defendants' motion to dismiss in light of plaintiff's complaints filed against the judge with the chief judge and the judicial inquiry board. Plaintiff also alleged the court was repeatedly notified of his defense to the motion to dismiss. The court treated this motion as a request to reconsider the dismissal order.

¶ 10 In May 2015, plaintiff filed a motion for production of documents and a request for a hearing on that motion. The motion requested copies of forms from January 1, 2012, to present regarding recommendations for restoration of good-conduct credit and security reclassification. Plaintiff requested these forms from DOC numerous times but was informed "copies of documents related to time restoration and reclassification are not to be provided to offenders." A May 22, 2015, docket entry indicates the court would hear the motion for

production of documents, if necessary, on June 8, 2015, the date of the hearing on plaintiff's motion to vacate the dismissal order.

¶ 11 On June 8, 2015, plaintiff filed a motion for substitution of judge. That same day, the trial court held a hearing on plaintiff's various motions. The record contains neither transcripts of that hearing nor a bystander's report. However, the docket entry notes plaintiff's notice of appeal regarding (1) the December 2014 dismissal order; (2) the denial of plaintiff's motion for production of documents; and (3) the denial of plaintiff's motion to vacate.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff argues (1) the trial court abused its discretion in making various rulings; (2) DOC erroneously revoked two years of good-conduct credit; (3) his petition for a writ of *certiorari* was not barred by a statute of limitations; and (4) this court should provide plaintiff with guidance as to what legal remedy to pursue if a writ of *certiorari* is inappropriate.

¶ 15 As an initial matter, we note defendants do not dispute that a petition for a writ of *certiorari* is the appropriate legal action to pursue. We agree and, accordingly, decline to address plaintiff's last claim requesting guidance regarding legal remedies. See *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001) (the common-law writ of *certiorari* is the appropriate means of seeking review of prison disciplinary procedures). We turn now to plaintiff's remaining claims.

¶ 16 A. Motion To Dismiss

¶ 17 Plaintiff first argues the trial court abused its discretion in ruling on the motion to dismiss before ruling on his motions for default and summary judgment. Plaintiff contends the

trial court should not have considered the motion to dismiss because he filed his motions for default and summary judgment before defendants' filed their motion to dismiss.

¶ 18 This claim essentially raises two questions: (1) whether defendants' motion to dismiss was timely filed, and (2) whether the trial court properly granted the motion to dismiss. If the motion to dismiss was timely filed, plaintiff's motion for default judgment did not require consideration. If the motion to dismiss was properly granted, plaintiff's motion for summary judgment is moot.

¶ 19 1. *Timeliness of the Motion To Dismiss*

¶ 20 Plaintiff filed his petition for writ of *certiorari* on May 20, 2014, and defendants were served with summons on June 4, 2014, which required appearance within 30 days of service. "When the summons requires appearance within 30 days after service, exclusive of the day of service (see Rule 101(d)), the 30-day period shall be computed from the day the copy of the summons is left with the person designated by law and not from the day a copy is mailed ***." Ill. S. Ct. R. 181(a) (eff. Jan. 4, 2013). Illinois Supreme Court Rule 2(a) (eff. Jan. 4, 2013) provides for the use of the Statute on Statutes in construing the Rules, including the computation of time under Rule 181(a). The Statute on Statutes, in turn, provides for the computation of the time period:

> "by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday[,] or holiday is also a holiday or a Saturday or Sunday then such

succeeding day shall also be excluded." 5 ILCS 70/1.11 (West 2014).

Thirty days from the June 4, 2014, service date fell on July 4, 2014. In 2014, Independence Day fell on a Friday and was observed as a holiday by the Illinois courts. Accordingly, Friday, July 4, 2014, through Sunday, July 6, 2014, must be excluded from the computation of the 30 days defendants had to file their answer or appearance. Thus, defendants timely filed the motion to dismiss on Monday, July 7, 2014, the last day of the 30-day time period to file an answer or appearance.

¶ 21 Because the defendants timely filed their motion to dismiss, default judgment as requested by plaintiff was no longer an available remedy. Default judgment "may be entered for a want of an appearance, or for failure to plead." 735 ILCS 5/2-1301(d) (West 2014). Here, there was no want of an appearance or a failure to plead. In such circumstances, it was proper for the court to consider the timely filed motion to dismiss before the motion for default judgment.

¶ 22 2. *Propriety of Granting the Motion To Dismiss*

¶ 23 Plaintiff contends the trial court abused its discretion by granting the motion to dismiss before considering his motion for summary judgment. Because the dismissal of the case rendered the summary-judgment motion moot, we must first consider plaintiff's third claim—whether his petition for writ of *certiorari* was properly dismissed as untimely filed. If the petition was properly dismissed, the motion for summary judgment was moot and the court did not abuse its discretion in denying the motion. See *Wheatley v. Board of Education of Township High School District 205*, 99 Ill. 2d 481, 484, 459 N.E.2d 1364, 1366 (1984) (noting the trial

court did not address motions for summary judgment because it granted a subsequently filed motion to dismiss).

¶ 24 Defendants' motion to dismiss sought to dismiss the petition for *certiorari* under sections 2-615 and 2-619(a)(9) of the Code (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)). "When a dismissal under either section is appealed, we review the dismissal *de novo*." *Washington v. Walker*, 391 Ill. App. 3d 459, 463, 908 N.E.2d 1066, 1070 (2009).

¶ 25 Plaintiff contends the trial court erred in granting the motion to dismiss on the basis that the petition for *certiorari* was untimely filed. Specifically, plaintiff argues the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)) applies and does not specify a statute of limitations for petitions for *certiorari*. We disagree.

¶ 26 The Administrative Review Law does not apply to plaintiff's petition for *certiorari*. "A common law writ of *certiorari* is a general method for obtaining circuit court review of administrative actions when the act conferring power on the agency does not expressly adopt the Administrative Review Law and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). The statutory scheme governing prison disciplinary procedures does not adopt the Administrative Review Law or provide for another form of judicial review. See 730 ILCS 5/3-8-7 to 3-8-10 (West 2014). Where a plaintiff files a common-law petition for *certiorari*, the claims may be barred by *laches*. *City of Chicago v. Condell*, 224 Ill. 595, 598-99, 79 N.E. 954, 956 (1906). Accordingly, we turn now to whether the doctrine of *laches* precludes plaintiff's claim.

¶ 27 In *Condell*, 224 Ill. at 598-99, 79 N.E. at 956, the supreme court held the doctrine of *laches* applied to petitions for *certiorari*. In that case, a police officer sought review of his discharge from the police force 18 months after the fact. *Id.* The supreme court noted the lapse

of time alone would not bar a petition for *certiorari*. *Id.* However, the court held that an unreasonable delay resulting in a detriment or inconvenience to the public would bar a petition for *certiorari* and denied the officer's petition. *Id.*

¶ 28 Thus, the party seeking application of *laches* "must generally prove two elements: (1) the petitioner lacked due diligence in bringing his or her claim; and (2) the party asserting *laches* was thereby prejudiced." *Washington*, 391 Ill. App. 3d at 463, 908 N.E.2d at 1070. This court has held a six-month delay between the accrual of the cause of action and the filing of a petition establishes a lack of due diligence, unless the petitioner provides a reasonable excuse. *Alicea*, 321 Ill. App. 3d at 254, 748 N.E.2d at 290.

¶ 29 In the instant case, the prison disciplinary proceedings occurred in November 1998 and February 1999. Plaintiff did not file his petition for writ of *certiorari* until May 2014. Clearly, the cause of action accrued long before plaintiff filed his petition. Plaintiff argues the six-month limitations period should not apply because that limit was established by this court in 2001, more than six months after his disciplinary proceedings concluded. See *id*. However, even if the six-month limitations period were not applicable, plaintiff offers no reasonable excuse under the doctrine of *laches* to justify the 14-year delay between the accrual of the claims and the filing of his petition.

¶ 30 Plaintiff argues the limitations period should be tolled because he was incarcerated at Tamms and the harsh conditions rendered him mentally incapable of pursuing review of his disciplinary sanctions. Following his transfer from Tamms in July 2004, plaintiff decided to attempt to earn his good-conduct credit back with good behavior instead of filing a petition for writ of *certiorari*. Even if his incarceration in Tamms were a reasonable excuse for

the delay, we do not find his 10-year attempt to earn back his good-time credit to be a reasonable excuse for his delay.

¶ 31 As to the second element, we find the defendants have shown prejudice. This court has held prejudice is inherent following an unreasonable delay in seeking review of a DOC disciplinary proceeding. *Washington*, 391 Ill. App. 3d at 464, 908 N.E.2d at 1071. See also *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739, 791 N.E.2d 666, 672 (2003) (detriment and inconvenience, such that prejudice is inherent, "exists in cases where inmates file petitions *** more than six months after the completion of the original DOC disciplinary proceedings and no reasonable excuse exists for the delay"). Accordingly, defendants have adequately established the elements of *laches*. Therefore, we conclude the trial court did not err in granting the motion to dismiss where plaintiff's petition for *certiorari* was barred by *laches*. The proper dismissal of plaintiff's petition renders his claim regarding the court's failure to consider his summary-judgment motion moot.

¶ 32 B. Plaintiff's Remaining Claims

¶ 33 Plaintiff further contends the trial court abused its direction in denying his motions for (1) vacatur of the dismissal order, (2) production of documents, (3) court reporter, and (4) substitution of judge.

¶ 34 1. *Motion To Vacate*

¶ 35 Plaintiff contends the trial court abused its discretion in denying his motion to vacate the order dismissing the petition.

¶ 36 "The court may in its discretion *** on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2014). The burden lies with the moving party to

establish sufficient grounds for vacating the judgment. *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377, 753 N.E.2d 452, 460 (2001). The primary concern in considering a motion to vacate is whether substantial justice is being done between the parties. *Id.* Other relevant factors to consider in determining whether the judgment should be vacated include the presence of a meritorious defense, due diligence, the penalty as a result of the judgment, and the hardship to the nonmoving party. *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941-42, 719 N.E.2d 117, 121 (1999). The decision to grant or deny a motion to vacate will only be reversed if the trial court abused its discretion. *Mann*, 324 Ill. App. 3d at 377, 753 N.E.2d at 461. A trial court abuses its discretion where no reasonable person would take the position adopted by the court or where the court acts arbitrarily or ignores recognized principles of law. *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548-49, 893 N.E.2d 280, 283 (2008).

¶ 37 As discussed above, plaintiff does not have a meritorious defense to defendants' argument his claims are barred by *laches*. Moreover, plaintiff did not exercise due diligence in responding to the motion to dismiss. The trial court did not rule on the July 7, 2014, motion to dismiss until December 31, 2014, which gave plaintiff ample time to prepare and file his response. Plaintiff instead waited until January 9, 2015, to file his response. See *Hall v. DeFalco*, 178 Ill. App. 3d 408, 411, 533 N.E.2d 448, 451 (1988) (court did not abuse its discretion in refusing to consider documents filed after the case was dismissed where the plaintiff had ample opportunity to prepare and file documents to support his opposition to the motion to dismiss). The court did not abuse its discretion in denying the motion to vacate where plaintiff lacked a meritorious defense and failed to exercise due diligence.

¶ 38 2. *Motion for Production of Documents*

¶ 39 Plaintiff argues the trial court abused its discretion in denying his discovery request for copies of forms from January 1, 2012, to present regarding recommendations for restoration of good-conduct credit and security reclassification. Plaintiff has failed to demonstrate how copies of forms from 2012 to the present date have any relevance whatsoever to disciplinary actions taken in 1998 and 1999. "A trial court does not have discretion to order discovery of information that does not meet the threshold requirement of relevance to matters actually at issue in the case." *Manns v. Briell*, 349 Ill. App. 3d 358, 361, 811 N.E.2d 349, 352 (2004). Nor do these documents appear to have any relevance to the motion to vacate. See, *e.g.*, *Shapo v. Tires 'N Tracks, Inc.*, 336 Ill. App. 3d 387, 395-96, 782 N.E.2d 813, 820-21 (2002) (discussing posttrial discovery in Illinois); *People v. B.R. MacKay & Sons, Inc.*, 141 Ill. App. 3d 137, 140-41, 490 N.E.2d 74, 76-77 (1986) (allowing limited postdismissal discovery where the State made a *prima facie* showing the judgment was obtained by fraud). Therefore, we conclude the trial court did not abuse its discretion in denying plaintiff's postdismissal discovery request.

¶ 40 3. *Motion for Court Reporter*

¶ 41 Plaintiff asserts he made an oral motion for a court reporter at the June 2015 hearing. Nothing in the record indicates plaintiff actually requested a court reporter, nor does the docket contain an entry denying the request. In the absence of a verbatim transcript, Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) allows for a certified report of proceedings to be included on the record for appellate review. The record contains neither a transcript of the hearing nor a certified report of proceedings. "In the absence of such record on appeal, we must presume that the circuit court followed the law." *In re Marriage of Manhoff*, 377 Ill. App. 3d 671, 677, 880 N.E.2d 627, 632 (2007). Accordingly, we presume the court did not abuse its discretion in denying plaintiff's request for a court reporter.

¶ 42 4. *Motion for Substitution of Judge*

¶ 43 On June 8, 2015, plaintiff filed a motion for substitution of judge. The motion did not specify whether plaintiff sought substitution as a matter of right or for cause. See 735 ILCS 5/2-1001(a)(2), (3) (West 2014). However, we conclude plaintiff was not entitled to a substitution of judge under either statutory provision.

¶ 44 Section 2-1001 of the Code provides for substitution of judge as a matter of right "if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case." 735 ILCS 5/2-1001(a)(2)(ii) (West 2014). This court reviews a ruling on a motion to substitute judge as of right *de novo*. *Curtis v. Lofy*, 394 Ill. App. 3d 170, 176, 914 N.E.2d 248, 253 (2009). Here, the circuit court judge granted defendants' motion to dismiss in December 2014, approximately 5 ½ months before plaintiff filed his motion to substitute, which constituted a ruling on a substantial issue in the case. *Id.* at 176, 914 N.E.2d at 254. Therefore, we conclude the court properly denied the motion for substitution of judge as a matter of right.

¶ 45 Section 2-1001 of the Code also provides for the substitution of judge for cause. "Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant." 735 ILCS 5/2-1001(a)(3)(ii) (West 2014). The right to have another judge hear the petition for substitution for cause is not automatic. *In re Estate of Wilson*, 238 Ill. 2d 519, 553, 939 N.E.2d 426, 446 (2010). "In order to trigger the right to a hearing before another judge on the question of whether substitution for cause is warranted in a civil case pursuant to section 2-1001(a)(3), the request must be made by petition, the petition must set forth

the specific cause for substitution, and the petition must be verified by affidavit." *Id.* at 553, 939 N.E.2d at 447.

¶ 46 Plaintiff's filing was deficient in a number of aspects. Most importantly, plaintiff failed to set forth the specific cause for substitution. The petition merely stated plaintiff had submitted complaints regarding the circuit judge. Plaintiff further complained that the circuit judge dismissed his petition for *certiorari*. These vague allegations are insufficient to meet the statute's threshold requirements. *Id.* at 554, 939 N.E.2d at 447. "A judge's previous rulings can only constitute a valid basis for a claim of judicial bias if 'they reveal an opinion that derives from an extrajudicial source' or 'such a high degree of favoritism or antagonism as to make fair judgment impossible.' " *Deutsche Bank National Trust Co. v. Nichols*, 2013 IL App (1st) 120350, ¶ 17, 997 N.E.2d 223. Accordingly, we conclude the trial court did not err in dismissing plaintiff's request for a substitution of judge for cause.

¶ 47 III. CONCLUSION

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

¶ 49 Affirmed.