

**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).

**FILED**

November 20, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170004-U

NO. 4-17-0004

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DANIEL S. FRANKLIN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
WARDEN LARRY BECK and BRENDA JAMES,	)	No. 16MR389
Defendants-Appellees.	)	
	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the circuit court’s order (1) granting summary judgment when plaintiff failed to demonstrate a meritorious claim that jail personnel violated his rights to access the law library and to other materials necessary for his pending criminal and civil cases; and (2) dismissing plaintiff’s complaint with prejudice alleging a deprivation of recreational activities in jail.

¶ 2 *Pro se* plaintiff, Daniel S. Franklin, appeals the circuit court’s order granting motions to dismiss and for summary judgment filed by defendants, Larry Beck and Brenda James. Plaintiff presents six enumerated contentions of error supporting his primary claim that his complaint alleging the deprivation of his constitutional rights should have been allowed to proceed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 24, 2016, plaintiff, an inmate at Danville Correctional Center, filed a *pro se* third-amended complaint, claiming that, while he was an inmate in the Sangamon County

jail, he was denied access to the law library and other court-related necessities and to recreation time. He claimed these deprivations violated his constitutional rights. Although he does not specifically cite the statute, plaintiff's complaint seems to constitute a federal civil rights action (42 U.S.C. § 1983 (2012)). Plaintiff claimed between November 24, 2015, and February 3, 2016, while in jail, he requested legal assistance and access to the law library but was denied, (1) causing him to plead guilty "to a case which should have been dismissed" (Sangamon County case No. 14-CF-384), (2) preventing him from filing "meritorious civil complaints" (Sangamon County case Nos. 16-MR-391, 16-MR-390, and 15-L-319), and (3) resulting in his federal civil case to be dismissed for his failure to respond (No. 14-CV-3387). Plaintiff said he complained to defendant Warden Larry Beck that defendant librarian Brenda James denied him access to the courts but Beck did nothing. He also alleged he and other inmates asked for "recreation in any form," but correctional officers denied the request. Defendant sought punitive damages, compensatory damages, costs, and "such other relief th[e] court deem[ed] just and proper."

¶ 5 Defendants filed a combined motion asking the circuit court to dismiss the recreation claim with prejudice and to grant summary judgment on the access-to-courts claim. According to the docket entry, the court conducted a telephone hearing and considered arguments from each side. Thereafter, the court granted defendants' requested relief.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 In this *pro se* appeal, plaintiff presents the following claims. First, he argues the circuit court erred in denying his oral motion to continue. Second, he contends the court did not allow him to present his entire argument. Third, he claims the court erred in granting summary judgment when questions of fact remained regarding his denial of access to the law library.

Fourth, he contends the court did not consider the totality of his argument, namely regarding defendant's denial of postage and writing supplies. Fifth, he contends the court failed to consider the fact defendants denied plaintiff access to his legal mail. And finally, he claims the court erred in granting summary judgment where he was denied recreation. (We note the court did not grant summary judgment regarding the recreation claim but dismissed that claim with prejudice.) We will address each of plaintiff's contentions of error individually.

¶ 9 A. Plaintiff's Motion To Continue

¶ 10 Plaintiff contends the circuit court erred in denying his oral motion to continue. According to plaintiff, at the hearing, he explained to the court he had been hospitalized and, as a result, was unable to conduct research on defendants' arguments and had not adequately prepared for the hearing. The court's docket entry indicated the court considered plaintiff's motion and denied the same. Plaintiff contends the court's denial violated fundamental fairness.

¶ 11 Initially, we note the record before us does not include a transcript of the hearing, a bystander's report, or an agreed statement of facts. Ill. S. Ct. Rs. 323(b), (c), (d) (eff. Dec. 13, 2005). We have nothing to review pertaining to plaintiff's motion to continue or the court's basis for denying the same.

“To determine whether a claimed error occurred, a court of review must have before it a record of the proceedings below. [Citation.] The appellant bears the burden to present a sufficiently complete record, and this court will resolve any doubts that arise from an incomplete record against the appellant. [Citation.] Absent a sufficient record on appeal, ‘it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.’ ”

*Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (1999) (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)).

¶ 12 The circuit court's decision whether to grant or deny a motion to continue is a decision afforded great deference. That is, a litigant does not have an absolute right to a continuance. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007). A reviewing court will not reverse a court's denial of a request for a continuance unless it constitutes an abuse of discretion. *Hermann v. Hermann*, 219 Ill. App. 3d 195, 198 (1991). An abuse of discretion requires a finding the court "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." (Internal quotations omitted.) *Somers*, 373 Ill. App. 3d at 96. Without a record to support the contrary, we must assume the court considered the particular facts and circumstances of the request, and made its decision in accordance with the law. *People v. Henderson*, 136 Ill. App. 3d 1041, 1045 (1985).

¶ 13 B. Plaintiff's Presentation of Argument

¶ 14 Plaintiff next contends the circuit court did not allow him to fully present his argument during the hearing. He claimed the court cut him off when he paused to gather his thoughts. Plaintiff claims he tried to explain to the court he was not finished presenting his argument but, according to plaintiff, the court stated: " 'This is over, I am ruling.' "

¶ 15 Again, we are unable to review defendant's contention of error without any report of the proceedings from the hearing. Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005) authorizes an appellant to supplement the record with either a bystander's report or an agreed statement of facts if no verbatim transcript is available. Plaintiff has provided nothing for this court to review. Without an adequate record, we have no way of evaluating the propriety of the

court's actions. In such a case, we must assume the court acted properly and fairly. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005).

¶ 16 An appellant bears the burden of presenting a sufficiently complete record to support a claim of error on appeal. This court cannot review an issue related to a circuit court's factual findings or legal conclusions absent a report or record of proceedings. *Corral*, 217 Ill. 2d at 156. Without a sufficient record, we must presume the court believed it had heard enough and "had a sufficient factual basis for its holding and that its order conforms with the law." *Corral*, 217 Ill. 2d at 157.

¶ 17 C. Summary Judgment

¶ 18 We will combine analysis of plaintiff's third, fourth, and fifth claims here. In his third claim, plaintiff argues the circuit court erred in granting summary judgment when questions of fact remained. Plaintiff alleged that between November 24, 2015, and February 3, 2016, while an inmate in the Sangamon County jail, plaintiff was denied access to legal assistance and the law library. He was hoping to prepare an "effective motion to proceed *pro se* and/or motion for appointment of counsel." But, according to him, defendants convinced the circuit court that plaintiff was represented by counsel at the time, and therefore, his claim was without merit. On appeal, plaintiff insists the docket entry from the underlying criminal case demonstrated he, in fact, was not represented by counsel during the relevant time frame, raising a disputed material question of fact so as to preclude summary judgment.

¶ 19 In his fourth claim, plaintiff argues he was denied access to postage and writing supplies. He claims he sent a request to the law library, asking for paper and a stamped envelope for "very important legal mail." Defendant James responded that she was unable to "give legal advice and this includes handing out envelopes, paper, etc." In his fifth claim, plaintiff contends

he was also denied access to his legal mail and correspondence from his attorney. He claims these factual disputes precluded summary judgment.

¶ 20 In reviewing a circuit court's grant of summary judgment, the appellate court reviews the evidence *de novo*, which is construed in the light most favorable to the nonmoving party. Summary judgment is proper when the plaintiff fails to establish a genuine issue of material fact. 735 ILCS 5/2-1005(c) (West 2014). To prevail in a section 1983 claim, a plaintiff must prove that (1) the defendants' actions deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States, and (2) the defendants acted under color of state law. 42 U.S.C. § 1983 (2012); *Dennis E. v. O'Malley*, 256 Ill. App. 3d 334 (1993).

¶ 21 Plaintiff alleges defendants violated his due-process rights by denying his access to legal instruments, such as research in the law library, and paper and postage for law-related matters. "The constitutional right of access to the courts requires prison authorities to assist inmates by providing adequate law libraries \*\*\*." *People v. Banks*, 161 Ill. 2d 119, 141, (1994) (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977)). To show a violation of the right to access to the courts, a prisoner must prove (1) that prison officials failed to assist the prisoner in preparing and filing legal papers, and (2) some detriment caused by the officials' failure. *Jenkins v. Lane*, 977 F. 2d 266 (7th Cir. 1992). Evidence of such detriment must establish specific harm, such as missed court dates, inability to file in a timely manner, denial of legal assistance, or loss of a case that could have been won. *Martin v. Davies*, 917 F. 2d 336 (7th Cir. 1990).

¶ 22 According to plaintiff, his request for access to the law library and such fell on deaf ears when requested of jail personnel. However, if such is the case, plaintiff should have sought a remedy within each case affected. In other words, he should have sought relief in his

felony criminal case, his miscellaneous remedy cases, or his civil law case. The respective circuit courts could have analyzed the particular facts and circumstances and, if the court determined plaintiff had been denied access to the library or materials, it could have ordered such access or assistance. Nevertheless, defendants claimed the docket entries demonstrated plaintiff was represented by counsel in his felony criminal case during the relevant time frame, and he could prove no injury related to the denial of access to the law library in his cited civil cases.

¶ 23 Again, we are without the benefit of an adequate record and thus, we cannot discern the bases for the circuit court's decision. Therefore, we must assume the court entered the summary judgment on a sufficient basis and in accordance with the law. See *Corral*, 217 Ill. 2d at 157.

¶ 24 D. Denial of Recreation

¶ 25 Finally, plaintiff contends the circuit court erred by dismissing his recreation claim with prejudice. Plaintiff had complained defendants deprived him of his right to exercise and recreation while he was in jail.

¶ 26 A motion to dismiss under section 2-615 of the Code of Civil Procedure (Civil Code) is proper when the complaint fails to state a claim on which relief can be granted. 735 ILCS 5/2-615 (West 2014). When reviewing the grant of a motion to dismiss, we must accept as true all well-pleaded facts and reasonable inferences drawn from them and view those facts in a light most favorable to the plaintiff. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 19. This court will disregard mere conclusions of law or facts that are unsupported by the evidence. *Dupree*, 2011 IL App (4th) 100351, ¶ 19. Illinois is a fact-pleading jurisdiction and a plaintiff must allege facts sufficient to state a cause of action to survive a motion to dismiss. *Behringer v. Page*, 204

Ill. 2d 363, 369 (2003). Our review of the grant of a motion to dismiss is *de novo*. *Behringer*, 204 Ill. 2d at 369.

¶ 27 An inmate’s constitutional rights include only “adequate water, shelter, food, drinking water, clothing, sanitation, and medical care, personal safety, reasonable access to courts, and the reasonable opportunity to exercise religious freedom”. *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17. Because plaintiff is not entitled under the law to any exercise out of his cell, he cannot claim a due-process violation based on defendants’ alleged failure to provide him the same. *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1255 (2000) (“states cannot create enforceable liberty interests in freedom from the routine deprivations and discomforts of prison life”). We find plaintiff’s rights were not violated by defendants’ failure to provide him recreation time. Accordingly, we affirm the circuit court’s order dismissing this claim with prejudice.

¶ 28

### III. CONCLUSION

¶ 29

For the reasons stated, we affirm the circuit court’s judgment.

¶ 30

Affirmed.