

NOTICE
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2012 IL App (5th) 110335-U
NO. 5-11-0335
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

DENNIS SPEROW,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Perry County.
)	
v.)	No. 10-L-5
)	
RANDY DAVIS, Warden,)	
PAT RANSING, Job Supervisor, and)	
WEXFORD HEALTH SOURCE, INC.,)	Honorable
)	Eugene E. Gross,
Defendants-Appellees.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Wexsten concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the plaintiff failed to allege facts that would entitle him to relief, the judgment of the circuit court dismissing his complaint is affirmed.
- ¶ 2 The plaintiff, Dennis Sperow, is an inmate in the custody of the Illinois Department of Corrections (IDOC). He filed an amended complaint pursuant to 42 U.S.C. § 1983 (1996) against a number of defendants, which included Wexford Health Source, Inc.; Randy Davis, who was the warden at Pinckneyville Correctional Center in February 2011; Gregory Schwartz, the prior warden of Pinckneyville Correctional Center; and Pat Ransing, the job supervisor at Pinckneyville Correctional Center. In his amended complaint, Sperow alleged that his eighth amendment rights were violated when he was subjected to cruel and unusual punishment due to insufficient medical care. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4

During the time period giving rise to his allegations, Sperow was incarcerated at Pinckneyville Correctional Center. He submitted a number of grievances. The grievances relevant to this appeal are detailed below.

¶ 5

On February 16, 2009, Sperow submitted a grievance requesting an operation to correct his hernia. In his grievance, he said that he met with a nurse from the healthcare unit on February 10, 2009, and that she referred him to the physician, Dr. Obadina. Dr. Obadina informed Sperow that as long as Sperow did not experience any pain while lying down, he could not do anything about the hernia and that the hernia presented no danger to Sperow's health.

¶ 6

On May 11, 2009, the grievance officer recommended that Sperow's grievance for a hernia operation be denied. On June 8, 2009, the administrative review board denied Sperow's grievance because it found that Sperow's medical needs were being adequately addressed. The Director of the IDOC agreed with the administrative review board's decision on July 7, 2009.

¶ 7

Sperow filed another grievance on July 20, 2009. In this grievance, he claimed that he was unable to walk to the dining hall three times a day due to his hernia. He requested that arrangements be made so that he could receive three meals a day without having to walk to the dining hall.

¶ 8

On October 5, 2009, the grievance officer recommended that Sperow's grievance be denied. The grievance report indicated that Dr. Obadina indicated that Sperow's hernia was "uncomplicated" and "easily reducible." Further, Sperow had been seen four different times from February 2009 to October 2009 and was scheduled for another visit in a matter of days.

¶ 9 Sperow filed another grievance on September 5, 2009, claiming that he had been moved from a handicap-accessible cell, which required him to walk further. He requested that he be moved back to a handicap-accessible cell. The grievance officer recommended that the grievance be denied because the decision was to be made by the healthcare unit and the healthcare unit indicated that Sperow did not need a handicap-accessible cell.

¶ 10 The administrative review board denied both the grievances from July 20, 2009, and September 5, 2009, finding that Sperow's medical needs were being addressed. The Director concurred on December 23, 2009.

¶ 11 Sperow filed another grievance on March 24, 2010, wherein he alleged that he was not allowed to use the elevator when he exited the law library. He claimed that he should have been able to use the elevator because he had a "low bunk/low gallery" permit. The grievance officer recommended that this grievance be denied. In the report, the grievance officer noted that Sperow did indeed have a "low bunk/low gallery" permit but, according to medical staff, did not have an elevator permit and that Sperow's use of stairs would not affect his medical issues. The administrative review board denied the grievance on June 25, 2010, and the Director concurred.

¶ 12 On November 8, 2010, Sperow submitted another grievance complaining that his "physically challenged slow walk" permit had been discontinued. He requested to know why it had been discontinued and further requested that it be reinstated. The grievance officer recommended that the grievance be denied. In the grievance report, the grievance officer stated Sperow did not need the permit as the lines moving in and through the facility moved quite slowly. The report further stated that Sperow's needs were being addressed by the healthcare unit staff. The chief administrative

officer concurred, but the record does not include any decision by the administrative review board or the Director with respect to this grievance.

¶ 13 Sperow filed a complaint pursuant to 42 U.S.C. § 1983 (1996) on March 29, 2010. The basis for his complaint was that he received inadequate medical care for his hernia, though the complaint was not limited solely to issues regarding his hernia. In his initial complaint, Sperow listed as defendants Dr. Obadina, the physician who treated him for his hernia; Gary Gerst, a physician's assistant working in the healthcare unit; Crisey Fenton, the health care unit administrator; and Michael Randle, the Director of the IDOC. Sperow then filed an amended complaint and switched out defendants. The defendants listed in his amended complaint were Wexford Health Source, Inc. (Wexford), Davis, Schwartz, and Ransing. Sperow did not serve Schwartz and, thus, Schwartz is not included in this order. In his amended complaint, Sperow alleged that he was subjected to cruel and unusual punishment because he was denied adequate medical care when he did not receive surgery for his hernia.

¶ 14 On May 23, 2011, Ransing and Davis filed a motion to dismiss Sperow's complaint, arguing that Sperow failed to allege facts showing that either of them was personally involved in any alleged constitutional violation and that Sperow failed to exhaust his administrative remedies for his claims. Sperow did not complain about any conduct by Ransing or Davis in any of his grievances. The circuit court granted their motions to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)).

¶ 15 On June 2, 2011, Wexford filed a motion to dismiss Sperow's complaint. In its motion to dismiss, Wexford argued that Sperow's complaint against it was barred by the statute of limitations for personal injury and that Sperow failed to make any

factual allegation as to how Wexford violated his rights. On June 22, 2011, Sperow filed a motion to reconsider the order granting Ransing and Davis's motion to dismiss. On July 13, 2011, the circuit court denied Sperow's motion to reconsider and granted Wexford's motion to dismiss. Sperow filed a notice of appeal on August 11, 2011.

¶ 16

ANALYSIS

¶ 17

Sperow argues that the defendants subjected him to cruel and unusual punishment in violation of his eighth amendment rights. He fails to present sufficient facts against Wexford to support a cause of action, and he fails to allege that Ransing and Davis were personally involved in the alleged violation of his eighth amendment rights.

¶ 18

Wexford

¶ 19

The circuit court granted Wexford's motion to dismiss pursuant to section 2-619(a) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a) (West 2010)). A dismissal under section 2-619 of the Code is granted when there is some other affirmative matter outside of the complaint which defeats the cause of action. 735 ILCS 5/2-619(a) (West 2010); *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). However, we may affirm the circuit court's ruling for any reason on the record. *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 55. We affirm the circuit court's judgment but do so pursuant to section 2-615 of the Code because Sperow failed to state a claim against Wexford upon which relief could be granted.

¶ 20

Illinois is a fact-pleading state, meaning that a plaintiff must allege facts that are sufficient to bring a claim within the scope of the asserted cause of action. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439 (2004). "All pleadings shall contain

a plain and concise statement of the pleader's cause of action ***." 735 ILCS 5/2-603(a) (West 2010). Though complaints are to be liberally construed as per section 2-603(c) of the Code, a complaint must allege facts necessary to state a cause of action. *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1059 (2002).

¶ 21 Sperow only listed Wexford in the caption of his amended complaint, in a brief entry in paragraph 4 of his complaint, and on pages 10, 11, and 12 of his amended complaint. Sperow did not plead any facts that would put Wexford on notice of the nature of the allegations. There is no fact given to indicate why Wexford was even included in the amended complaint. Nor did Sperow set out the elements of his cause of action and provide necessary facts to support his claim. For those reasons, the dismissal of his claim against Wexford is affirmed.

¶ 22 Ransing and Davis

¶ 23 The circuit court dismissed the complaint against Ransing and Davis because Sperow failed to show that Ransing or Davis were personally involved in Sperow's allegation that his eighth amendment rights were violated. The dismissal was based on the failure to state a cause of action pursuant to section 2-615 of the Code. We review a dismissal under section 2-615 *de novo*. *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1114-15 (2011).

¶ 24 In order to succeed under 42 U.S.C. § 1983, two elements must be present: (1) the conduct complained of was committed by a person acting under color of state law, and (2) the alleged conduct deprived a person of rights, privileges, or immunities secured by the Constitution or other laws of the United States. *Webb v. Lane*, 222 Ill. App. 3d 322, 326-27 (1991). The plaintiff must show that the defendant was personally responsible for the alleged violation. *Johnson v. Snyder*, 444 F.3d 579, 583 (7th Cir. 2006). The theory of *respondeat superior* is not applicable in a section

1983 action. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). At a minimum, an official must fail to act "despite his knowledge of a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994). When claiming that an official violated his rights, a plaintiff must show that the deprivation of the right was done so at the direction of the official or with his knowledge and consent. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). In *Gentry*, the official was at least apprised of the plaintiff's claims and turned "a blind eye" to those claims. *Id.*

¶ 25 Here, Sperow does not meet the first element of a section 1983 claim, namely, that the conduct complained of was committed by someone acting under color of state law. Sperow fails to show that Ransing or Davis took part in any of the decisions regarding his medical attention. In several responses to Sperow's grievances, in fact, the information indicates that the healthcare units medical staff made decisions regarding activities in which Sperow could participate as well as whether Sperow should have a low bunk. Indeed, such decisions were left up to the healthcare staff. At no point does Sperow show that Ransing, the job supervisor, or Davis, the warden, was directly involved in deciding when, where, or how he would receive medical care. Nor is there any information to indicate that Davis or Ransing prevented Sperow from obtaining medical assistance. Sperow's claims that his medical needs were not addressed are belied by the record. He saw various members of the medical staff more than eight times from the time he first alleged that he had a serious issue to the time his complaint was filed. Even if Ransing or Davis were somehow causally connected to Sperow's injury, neither of them kept him from obtaining medical help, as is evident by his multiple visits to the healthcare unit.

¶ 26 The circuit court properly dismissed Sperow's claim against Wexford, Ransing, and Davis because Sperow did not allege sufficient facts that indicated that

they were involved in his alleged injury.

¶ 27

CONCLUSION

¶ 28

For the foregoing reasons, the judgment of the circuit court of Perry County is affirmed.

¶ 29

Affirmed.