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2012 IL App (3d) 100969-U

Order filed March 26, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

GLENN VERSER,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0969
)	Circuit No. 08-MR-623
)	
ROGER E. WALKER, JR., TERRI)	Honorable
ANDERSON, and MICHAEL CHEEK,)	Marzell Richardson,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied the plaintiff's petition for mandamus where the plaintiff failed to establish a clear right to mandamus either by failing to establish that his constitutional right to due process had been violated or by failing to establish that he had exhausted all administrative remedies before seeking mandamus.

¶ 2 The plaintiff, Glenn Verser, a prisoner in the custody of the Illinois Department of Corrections (Department), filed a mandamus complaint against the director and certain employees of the Department seeking an order of the circuit court compelling the defendants to

dismiss a disciplinary report that resulted in, among other discipline, the revocation of three months of good conduct credit. The circuit court granted the defendants' motion to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (the Code). 735 ILCS 5/2-615 (West 2008). The circuit court held that the plaintiff had failed to state a claim for mandamus relief. On appeal, the appellant contends that the trial court erred in dismissing his complaint. We affirm.

¶ 3

FACTS

¶ 4 Glenn Verser is an inmate in the custody of the Department. On July 8, 2007, a disciplinary report was filed on Verser. Pursuant to Department disciplinary policies, on July 17, 2007, Verser filed a grievance challenging the disciplinary report. On July 19, 2007, the grievance was received and reviewed by the designated grievance officer. On July 24, 2007, the grievance officer recommended that the grievance be denied. That same day, in accordance with Department procedure, the chief administrative officer (CAO) of the facility where Verser was incarcerated reviewed the grievance officer's recommendation and concurred.

¶ 5 The denial of the grievance was communicated to Verser on July 27, 2007. Rather than follow the Department procedure which required the inmate to appeal the CAO's decision to the Department director, Verser filed a second grievance in which he wrote:

"It is my understanding that [the grievance officer] is clearly not in the position to pass judgment on anyone. How can someone with an extended history of poor judgment be relied upon to render sound decisions. For instance, she is an individual with a history

of frequenting bars, getting drunk, meeting strangers, and later discovering that she is pregnant by the unknown."

¶ 6 In the second grievance, Verser requested that the July 8 disciplinary report be expunged and the grievance officer be relieved of her duties.

¶ 7 On August 8, 2007, a different grievance officer received and reviewed the second grievance. The grievance was denied and Verser was instructed that the proper channel of appeal from the denial of the July 8 grievance was an appeal to the director.

¶ 8 On August 28, 2007, the grievance officer who reviewed the second grievance filed a disciplinary report against Verser, charging that the statements in the second grievance violated department policies against insolence and intimidation.

¶ 9 On August 28, 2007, Verser appeared before an adjustment committee and maintained that he had a constitutional right to make the statements contained in his grievance. The committee found that Verser had violated department policies and recommended that Verser serve three months in segregation, have three months good-time credit revoked, and be transferred to another institution. The CAO concurred in the committee recommendation. The matter was referred to the director of the Department, who deleted the intimidation charge and reduced the segregation time to one month. Verser then filed a grievance over the final disciplinary determination. The grievance was then referred to the adjustment review board, which conducted an interview of Verser on December 20, 2007. Verser maintained: (1) he had a constitutional right to make the statements he made in the second grievance; (2) Department policy prohibited punishing him for filing a grievance; and (3) there had been an impermissible delay from August 8, 2007, to August 28, 2007, in writing the disciplinary report. The

adjustment review board determined that: (1) Verser's statements regarding the sexual activities of the grievance officer constituted a violation of department policy; (2) Verser was not subjected to discipline for utilization of the departmental grievance policy, but was subjected to discipline for the comments contained in the grievance; and (3) the disciplinary report was issued immediately upon discovery of the violation of departmental disciplinary policy. On May 5, 2008, the director of the Department concurred in the review board's final recommendation.

¶ 10 On June 16, 2008, Verser filed his petition for mandamus in the circuit court alleging: (1) his constitutional right to free speech, and departmental rules against reprisal, were violated when he was disciplined for filing the July 27, 2007, grievance; (2) the Department failed to inform him of its rule against reprisal for filing a grievance; (3) he was served with the August 24, 2007, disciplinary report more than eight days after the alleged offense in violation of departmental rules; and (4) he was not informed of the factual basis for the revocation of his good-time credit. Verser sought an order mandating the defendants to: (1) dismiss the August 23, 2007, disciplinary report; (2) make the departmental rule against retaliation for filing a grievance available to all prisoners; and (3) grant him a hearing "to further litigate his claim for mandamus relief."

¶ 11 On August 23, 2010, the defendants filed a motion to dismiss the petition pursuant to section 2-615 of the Code on the grounds that Verser had failed to establish a clear right to mandamus relief. On November 29, 2010, the circuit court entered judgment granting the defendants' motion to dismiss the complaint based upon a failure to state a claim that would demonstrate a clear right to mandamus relief. Verser appealed from the trial court's granting of the defendants' motion to dismiss his petition for mandamus relief.

¶ 12

ANALYSIS

¶ 13 A trial court's dismissal of a complaint pursuant to section 2-615 of the Code is subject to *de novo* review. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124 (2007). A section 2-615 motion to dismiss a complaint admits all well-pled facts and attacks the legal sufficiency of the complaint. *Id.* Dismissal is appropriate only where, viewing the factual allegations in the complaint in the light most favorable to the plaintiff, it is clear that no set of facts can be proved under the pleadings that would entitle the plaintiff to relief. *Gilchrist v. Snyder*, 351 Ill. App. 3d 639, 642 (2004).

¶ 14 Mandamus is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public officer where no exercise of discretion by the public officer is involved. *Holly v. Montes*, 231 Ill. 2d 153, 159 (2008). To obtain relief, a plaintiff must establish a clear right to mandamus, and relief is improper where it requires the court to substitute its judgment for that of the public officer in a matter within the officer's discretionary judgment. *Id.*

¶ 15 Allegations of due process violations, or that a public officer or department failed to follow its own rules, state a cause of action for mandamus. *Ford*, 377 Ill. App. 3d at 1124; *Turner-El v. West*, 349 Ill. App. 3d 475, 479 (2004). However, departmental rules and policies "create[] no more rights for inmates than those which are constitutionally required." *Bilski v. Walker*, 392 Ill. App. 3d 153, 157 (2009). Departmental rules or policies do not create any private cause of action for prisoners. *McNiel v. Carter*, 318 Ill. App. 3d 939, 943 (2001). Moreover, there is no constitutional right to utilize a prison grievance process. *Turner-El*, 394 Ill. App. 3d at 484. Thus in order for Verser to state a cause of action for mandamus relief, he

must establish a due process violation or a failure to follow rules or policies that facilitate an existing constitutional right.

¶ 16 Verser argues that he was denied due process because his constitutional right to free speech was violated when he was disciplined for the statements he made in the July 27, 2007, grievance regarding the off-duty sexual activities of the grievance officer. We disagree. Verser's statements regarding the grievance officer who investigated his original grievance were not constitutionally protected. See *Hale v. Scott*, 371 F.3d 917, 919 (7th Cir. 2004) (an Illinois prisoner's statement in a grievance alleging sexual misconduct by a corrections officer unrelated to the grievance was not constitutionally protected). Moreover, while a prison inmate does retain his constitutional rights, he retains only those rights "that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Turner v. Safley*, 482 U.S. 78, 95 (1987); *Ustrak v. Fairman*, 781 F.2d 573, 580 (1986) (while inmates have some first amendment rights, they have only those rights that are consistent with prison discipline, and not permitting inmates to verbally abuse correctional officers is a quintessential tenant of prison discipline). In addition, the statements made by Verser were potentially libelous. Defamatory statements do not enjoy constitutional protection. *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 713 (2010). Given that Verser's statements were not constitutionally protected, the discipline he received for making those statements did not deny him due process.

¶ 17 Verser next maintains that his mandamus petition should have been granted because the Department violated due process by failing to inform him of the departmental rule against discipline as retaliation for filing a grievance (20 Ill. Adm. Code 504.810(e) (2010)) and allegedly failed to inform him of the discipline in a timely manner (20 Ill. Adm. Code 504.30(f)

(2010)). We reject his argument. As stated previously, the Department rules do not create a private right of action (*McNeil*, 318 Ill. App. 3d at 943), nor do the Department rules provide any substantive due process rights for prisoners. *Bilski*, 392 Ill. App. 3d at 157; *Durbin v. Gilmore*, 307 Ill. App. 3d 337, 343 (1999). Moreover, the record established that Verser did receive timely notification of the proposed disciplinary action.

¶ 18 In addition, even if the Department violated its rules, Verser would not be entitled to any relief in mandamus unless he had exhausted all available administrative remedies. *Ford*, 377 Ill. App. 3d at 1125 (affirming dismissal of mandamus claim where prisoner had failed to show the exhaustion of administrative remedies). Here, Verser failed to establish that he exhausted all administrative remedies prior to seeking mandamus relief in the circuit court.

¶ 19 Verser next maintains that the Department violated his due process rights when it imposed discipline in retaliation for his filing a grievance. The record clearly supports a contrary conclusion. The factual basis for the discipline imposed was the immaterial and defamatory statements made in the July 27, 2007, grievance, not Verser's act of filing the grievance. Moreover, such statements are subject to discipline as a violation of the Department's rule against insolence. *Hale*, 371 F.3d at 919. Nothing in the record supports a conclusion that the discipline was imposed for any reason other than the statements contained in the July 27, 2007, grievance.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.