

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).

2012 IL App (4th) 110497-U

Filed 6/5/12

NO. 4-11-0497

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

DENNIS P. GLICK,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
MICHAEL P. RANDLE, SARAH JOHNSON,)	No. 10MR778
MARCUS HARDY, and PARTHASARATHI GHOSH,)	
Defendants-Appellees.)	Honorable
)	John Schmidt,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in dismissing plaintiff's complaint due to duplicative claims pending in other courts under section 2-619(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(3) (West 2010)).

¶ 2 In October 2010, plaintiff, Dennis P. Glick, an inmate at Stateville Correctional Center, filed a petition for writ of *mandamus*, alleging defendants, prison officials and a medical doctor who attended to Glick in prison, denied Glick necessary medical treatment related to his hepatitis C diagnosis. In June 2011, the trial court dismissed Glick's petition pursuant to section 2-619(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(3) (West 2010)), finding duplicative claims were pending in two other courts. Glick appeals, arguing dismissal was not warranted. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4

Glick, an Arkansas convict, is incarcerated in the Illinois Department of Corrections (DOC) prison in Stateville pursuant to an interstate compact. Defendant Michael Randle is Director of DOC; defendant Sarah Johnson is on DOC's administrative review board; defendant Marcus Hardy is Warden of Stateville Correctional Center; and defendant Parthasarathi Ghosh is a doctor who, through his employer, provides medical services at Stateville by contract.

¶ 5

In October 2010, Glick filed his petition for writ of *mandamus* in this case, alleging he was denied medical treatment for hepatitis C. Specifically, Glick alleged the prison employees' and officials' failure to treat his hepatitis C resulted in a 2007 blood transfusion, after which his condition continued to worsen. In July 2010, Glick alleged, Ghosh refused Glick's request for additional medical testing that Glick believed was necessary to monitor the status of his condition. Glick submitted an emergency grievance to Warden Hardy, claiming appropriate medical services were withheld. The grievance was denied, as was a subsequent administrative appeal to Director Randle. In his petition for writ of *mandamus*, Glick sought an order compelling DOC to provide "life sustaining medical treatment for hepatitis-C *** and related symptoms"; "a declaratory judgment for the violation of his rights"; and "injunctive relief" reducing his escape-risk classification by two levels and transferring him to Dixon Correctional Center "for on-going medical treatment."

¶ 6

Glick's petition noted "other pending related litigation." Specifically, Glick was a plaintiff in two other actions regarding his alleged denial of treatment for hepatitis C. In an April 2010 complaint in the United States District Court for the Central District of Illinois, Glick and

251 other prisoners alleged the deliberate denial of hepatitis medication by DOC employees. *Collins v. Elyea*, No. 10-2095 (C.D. Ill.). According to Glick, none of the defendants named in the instant petition were named as defendants in the district court complaint. In a July 2010 petition for writ of *mandamus* in the Circuit Court of Will County, Glick alleged Warden Hardy and Ghosh denied Glick "prescribed life sustaining medication." According to Glick, "the facts of violation" in that case and the present case were different.

¶ 7 Director Randle, in March 2011, and Warden Hardy, in April 2011, filed motions to dismiss pursuant to section 2-619(a)(3). They asserted dismissal was appropriate because Glick had duplicative actions pending in other courts. In June 2011, following a telephone conference, the trial court granted defendants' motions to dismiss. The court's docket entry notes, "Plaintiff has filed same suit in Federal Court and Will County Circuit Court."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Glick argues the trial court erred by dismissing his petition for writ of *mandamus* because his claims in this case and his other pending cases were sufficiently distinct. We disagree.

¶ 11 Initially, we note a jurisdictional question raised by the parties. We find we have jurisdiction even though only two of the four named defendants appeared in the proceedings below and filed a joint appellees' brief on appeal. An order dismissing a complaint on motion of some, but not all, of the defendants is final and appealable where the grounds for dismissal apply to all the defendants alike. See *Merritt v. Randall Painting Co.*, 314 Ill. App. 3d 556, 559, 732 N.E.2d 116, 117-18 (2000). Here, the trial court granted Director Randle and Warden Hardy's

motions to dismiss because it found this proceeding was duplicative of Glick's claims in other jurisdictions. The court's finding justified the dismissal of the complaint in its entirety, even with respect to Johnson and Ghosh. Accordingly, as Glick's notice of appeal was timely, we obtained jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See *Merritt*, 314 Ill. App. 3d at 559, 732 N.E.2d at 118.

¶ 12 The trial court dismissed Glick's petition pursuant to section 2-619(a)(3) of the Code of Civil Procedure. The purpose of that section is "to avoid duplicative litigation." *In re Estate of Hoch*, 382 Ill. App. 3d 866, 869, 892 N.E.2d 30, 33 (2008). It allows dismissal of a complaint if "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 2010). "The 'same parties' requirement of section 2-619(a)(3) is satisfied where the litigants' interests are sufficiently similar, even though the litigants differ in name or number." (Internal quotation marks omitted.) *Hoch*, 382 Ill. App. 3d at 869, 892 N.E.2d at 34. The "same causes" requirement is satisfied where "the relief requested is based on substantially the same set of facts." (Internal quotation marks omitted.) *Id.* Thus, "the crucial inquiry is whether both [actions] arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof, or relief sought materially differs between the two actions." (Internal quotation marks omitted.) *Id.*

¶ 13 The decision whether to dismiss pursuant to section 2-619(a)(3) is left to the sound discretion of the trial court. See *A. E. Staley Manufacturing Co. v. Swift & Co.*, 84 Ill. 2d 245, 253, 419 N.E.2d 23, 27 (1980) (noting that "multiple actions in different jurisdictions, but arising out of the same operative facts, may be maintained where the circuit court, in a sound exercise of discretion determines that both actions should proceed"). We therefore review the

trial court's decision to dismiss Glick's petition under section 2-619(a)(3) for an abuse of discretion. *Hoch*, 382 Ill. App. 3d at 869, 892 N.E.2d at 33-34. That is, we will reverse only if the court's ruling is "arbitrary, fanciful, or unreasonable, or [if] no reasonable person would take the same view." (Internal quotation marks omitted.) *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶ 27, 2012 WL 555899, at *4.

¶ 14 In this case, the trial court did not abuse its discretion in dismissing Glick's petition for writ of *mandamus*. This case and Glick's other pending actions satisfied section 2-619(a)(3)'s requirements that they involve "the same parties" and "the same causes." Glick's three cases allege that DOC and its directors, employees, and agents withheld reasonable medical treatment for his hepatitis C and seek injunctive and *mandamus* relief to address his perceived lack of care while imprisoned. While the lawsuits name different defendants (none of the defendants in this case are named in Glick's federal suit; two of the four defendants in the instant case is also named as defendants in his Will County suit), DOC personnel in each case are defending Glick's claims that they failed to meet his medical needs. Similarly, while Glick relies on different legal theories and cites different instances when he was allegedly denied reasonable medical care in each lawsuit, the pattern of his alleged mistreatment amounts to a common course of action and a single remedy would correct any injury Glick may be able to show.

¶ 15 For these reasons, the court would not have erred in concluding that a favorable disposition for Glick in any of his lawsuits would sufficiently address his claims in the other two, and that the causes of action were thus duplicative. Accordingly, the court did not abuse its discretion by dismissing Glick's petition pursuant to section 2-619(a)(3).

III. CONCLUSION

¶ 16

¶ 17

For the foregoing reasons, we affirm the trial court's judgment.

¶ 18

Affirmed.