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2013 IL App (3d) 120508-U

Order filed June 18, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

DENNIS P. GLICK,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0508
)	Circuit No. 10-MR-655
)	
MARCUS HARDY and)	
PARTHASARATHI GHOSH,)	Honorable
)	Marzell L. Richardson, Jr.,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court properly dismissed inmate's complaint seeking mandamus and damages against the warden of Stateville Correctional Center for alleged unlawful denial of single cell housing request, reduction in escape risk classification, and denial of medical treatment and against the prison medical director for delay in providing medical treatment. The plaintiff failed to establish entitlement clear right to relief or deprivation of a constitutional right.

¶ 2 Plaintiff, Dennis P. Glick, an inmate at the Stateville Correctional Center serving a life sentence for murder, filed a *pro se mandamus* petition against Marcus Hardy, in his capacity as warden, and Dr. Parthasarathi Gosh, in his capacity as medical director. The petition alleged that Hardy had violated Glick's rights under the United States and Illinois constitutions as well as various federal and state statutes. Similarly, the petition alleged that Dr. Gosh violated Glick's right by allegedly refusing to provide certain medical treatment to Glick. The petition sought an order in *mandamus* to require certain actions on the part of the defendants, as well as monetary damages against each defendant. Hardy and Dr. Gosh each moved separately to dismiss Glick's complaint for failure to state a claim. 735 ILCS 5/2-615 (West 2010). The trial court found that Glick had not established that he was entitled to the relief sought in his petition and granted the defendants' motions to dismiss. Glick filed this appeal. We affirm.

¶ 3 BACKGROUND

¶ 4 Glick is serving a life sentence for convictions in Arkansas but is currently in the custody of the Illinois Department of Corrections (IDOC) pursuant to an agreement between Illinois and Arkansas under the Interstate Corrections Compact (Interstate Compact). 730 ILCS 5/3-4-4 (West 2010). He was transferred to Illinois in 2005 and, because of a prior conviction for escape, he was given an inmate status designation (level E), indicating that he posed an extreme risk of escape. As a result of his level E status, the IDOC applied an existing policy of transferring Glick to a different correctional facility on an annual basis. In accordance with that policy, Glick was transferred to Stateville in April 2010. Shortly after arriving in Stateville, Glick filed the instant petition.

¶ 5 The petition alleged five separate claims against Warden Hardy and one claim against Dr. Ghosh. The petition alleged that Hardy improperly: (1) denied Glick's request for special commissary and dietary accommodations; (2) ordered an institutional lockdown specifically to cause Glick to miss three health care unit appointments related to his hypertension; (3) caused Glick to go three days without prescribed medication; (4) assessed Glick's escape threat level; and (5) placed Glick on investigative status resulting in confiscation of certain personal property. The petition alleged that Dr. Ghosh was negligent or exhibited deliberate indifference to his need for a prescription to Inderal to treat his hepatitis C. Specifically, the complaint alleged that Glick was denied access to the drug from his arrival at Stateville on April 27, 2010, until June 29, 2010, the date he filed his petition.

¶ 6 Glick's petition for *mandamus* sought the following relief: (1) a declaratory judgment that his rights had been violated; (2) reassignment to protective custody and single cell housing; (3) reduction of his security classification; (4) compensatory damages of \$1 million for each of the five claims against Hardy; (5) punitive damages of \$1 million for each of the five claims against Hardy; and (6) unspecified monetary damages against Dr. Ghosh for failing to authorize his prescription Inderal from April 27, 2010, until June 29, 2010.

¶ 7 Hardy and Dr. Ghosh each filed motions to dismiss, accompanied with documentary evidence and sworn affidavits. The trial court granted the motions to dismiss, finding that Glick had failed to establish a clear right to any of the relief he sought in his petition.

¶ 8 ANALYSIS

¶ 9 This court reviews *de novo* dismissals of complaints for failure to state a claim pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/20615 (West 2010); *Young v.*

Bryco Arms, 213 Ill. 2d 433, 440 (2004). In reviewing the sufficiency of a complaint, we accept as true all well pled facts and all reasonable inferences that may be drawn from those facts.

Jarvis v. South Oak Dodge, Inc., 201 Ill. 2d 81, 86 (2002). We will construe the factual allegations in the complaint in the light most favorable to the plaintiff. *Young*, 213 Ill. 2d at 441.

¶ 10 *Mandamus* is an extraordinary remedy that is granted to enforce the performance of a public officer's nondiscretionary duties as a matter of right. *Duane v. Hardy*, 2012 IL App (3d) 11085 ¶ 11. For *mandamus* to issue, a plaintiff must establish material facts that demonstrate: (1) his clear right to the requested relief; (2) a clear duty on the part of the official to act; and (3) clear authority on the part of the official to comply with an order granting *mandamus* relief. *Id.* *Mandamus* may be invoked only to enforce the performance of official duties where no exercise of discretion on the part of the public official is involved. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). Likewise, *mandamus* cannot be used to correct an act involving the exercise of judgment or discretion by a public official, even if the action taken was erroneous. *Daley v. Hett*, 113 Ill. 2d 75m 80 (1986), We review *de novo* the dismissal of a petition for *mandamus* relief. *Id.*

¶ 11 We first address Glick's request that Hardy be ordered by *mandamus* to reduce his security classification, assign him to single cell housing, and comply with his special dietary commissary request. Glick claims that Hardy was required by the terms of the Interstate Compact and the Department's Administrative Directive 05.05.110. We find nothing in either the Interstate Compact or any administrative directives which required Hardy to act in the manner requested by Glick on any of these issues. To the contrary, the compact and the department directives grant broad powers to the warden to assign inmates in any particular

setting within a facility, provide commissary services, and determine an inmate's security classification. In addition, it is well settled that department administrative directives do not create specific rights for inmates or impose specific duties on the warden and, thus, cannot support a claim for *mandamus* relief. *Romero v. O'Sullivan*, 302 Ill. App. 3d 1031, 1038 (1999).

¶ 12 With regard to Glick's claim that Hardy imposed a prison-wide lockdown in order to prevent him from seeking medical treatment, we find the record completely devoid of any facts supporting this claim. To the contrary, the record established that Glick was escorted to an appointment with a physician two days after one of his scheduled appointments was missed due to the lockdown.

¶ 13 With regard to the claim that Hardy was deliberately indifferent to Glick's medical needs, we again note that the record is devoid of any facts supporting this claim. To establish a violation of the right to adequate medical care, an inmate must allege the existence of an objectively serious medical condition and deliberate indifference by prison officials to that need. *Johnson v. Snyder*, 444 F. 3d 579, 584 (7th Cir. 2006). The facts herein establish that Hardy relied entirely upon medical staff opinions regarding Glick's course of treatment. *Johnson v. Doughty*, 433 F. 3d 1001, 1010-12 (7th Cir. 2006) (warden is entitled to rely upon the judgment and diagnosis of medical personnel in providing treatment to inmates). Likewise, Glick's disagreement with the course of treatment provided to him does not support a claim of medical indifference. *Snipes v. DeTella*, 95 F. 3d 586, 591 (7th Cir. 1996).

¶ 14 With regard to the claims for compensatory and punitive damages, it is well settled that damages are not cognizable in a *mandamus* action unless the plaintiff successfully obtains a writ of *mandamus*. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 741 (2001). Because we are affirming

the trial court's denial of his petition for a writ of *mandamus*, Glick's claims for monetary damages are moot.

¶ 15 We next address the single claim seeking *mandamus* and other relief against Dr. Ghosh. While it is unclear whether Glick sought a writ of *mandamus* or some other relief, the sole allegation against Dr. Ghosh in the complaint is that Dr. Ghosh would not renew the prescription for Inderal on April 27, 2010. The record established that Dr. Ghosh filled the prescription on June 29, 2010, after his initial examination of Glick. Given these facts, it is clear that Dr. Ghosh's decision not to refill a prescription until after examining the patient was a discretionary act requiring professional judgment and cannot be characterized as a ministerial act. Therefore, an order of *mandamus* would be unavailable. *People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613 (2006). In addition, *mandamus* is clearly inappropriate as it relates to Dr. Ghosh for two reasons: (1) the medication was, in fact, prescribed and delivered on June 29, 2010; and (2) the record established that Dr. Ghosh is no longer the medical director at Stateville. Thus, there is no ministerial act that would be required for a *mandamus* action, and Dr. Ghosh is no longer the proper party to be ordered to perform the act sought by Glick's complaint.

¶ 16 Since the plaintiff did not establish a clear right to the relief he sought in his *mandamus* complaint, his action was properly dismissed with prejudice by the trial court.

¶ 17 CONCLUSION

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

¶ 19 Affirmed.