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2014 IL App (4th) 130784-U
NO. 4-13-0784

FILED
June 18, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

ROBERT J. FORSYTH II,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
RANDY PFISTER, SHARON SIMPSON, and PATRICK)	No. 12MR95
HASTINGS,)	
Defendants-Appellees.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendants' motion to dismiss plaintiff's *mandamus* petition.

¶ 2 Plaintiff, Robert J. Forsyth II, an inmate at Pontiac Correctional Center (Pontiac), appeals the trial court's dismissal of his *mandamus* petition, arguing, *inter alia*, defendants, employees of the Department of Corrections (DOC), violated his first and fourteenth amendment rights and statutory and regulatory provisions by failing to respond to his grievances. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 24, 2012, defendant, Randy Pfister, warden of Pontiac, issued "Offender Bulletin - 12-17" announcing a pilot "Segregation Review and Restoration Program" (SRRP) for "segregation offenders who do not meet the criteria of the Long Term Segregation Incentive

Program (LTSIP)". The bulletin explained the purpose of the program is to provide "those offenders who do not meet the [LTSIP] an opportunity to receive restorations of all types based on noted, consistent, positive behavioral change." Qualifying prisoners "remain in this program until they meet the requirements for LTSIP." Prisoners can receive reductions in their time in segregation based on the number of days they go without receiving a disciplinary report. Pfister, as warden at Pontiac, "maintains discretion to review all of the above [specific criteria listed] on a case-by-case basis" and "maintains discretion to adjust any of the time frames" for reducing segregation time.

¶ 5 On May 2, 2012, plaintiff wrote to defendant, Patrick Hastings, a counselor at Pontiac, indicating he had heard about the SRRP and stated, "I would like to know what I must do to be [qualified] for this Program? If I am not qualified[,] would you please explain why I am not? As well[,] would you please put me in for another seg. cut, C-grade restoration and [good-conduct credit]." Plaintiff also requested a copy of his disciplinary reports.

¶ 6 On May 3, 2012, Hastings wrote on the bottom of plaintiff's letter, "You are not eligible as this program is only for offenders with 9 mos[.] to 2 yrs[.] of seg[.] time. You have seg[.] time until 4-1-31. I submitted you for [good-conduct credit]/grade restoration and seg[.] cut on 5-3-12." Nothing in the record indicates whether plaintiff was granted good-conduct credit, grade restoration or a cut in segregation.)

¶ 7 On May 14, 2012, plaintiff filed a grievance, claiming violation of his constitutional rights and violation of Pontiac's SRRP. Plaintiff claimed (1) he met the qualifications for SRRP because he had not received any disciplinary reports since May 2011; and (2) Hastings violated (a) Pontiac's bulletin regarding SRRP, (b) plaintiff's eighth amendment

right against cruel and unusual punishment, and (c) plaintiff's fourteenth amendment right against discrimination. (In his response to defendants' motion to dismiss, plaintiff stated he sent this grievance to Hastings through a clinical psychologist; and when plaintiff saw Hastings two weeks later, he told plaintiff he had received the grievance.)

¶ 8 On June 19, 2012, plaintiff filed an "amended" grievance, claiming violation of section 120.40(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 120.40(a), amended at 30 Ill. Reg. 6329 (eff. Apr. 1, 2006)) (employees shall obey federal, state, and local laws and applicable court decisions and orders related to performance of their duties as employees of DOC) in that Hastings had deliberately refused to respond to his May 14, 2012, grievance. Plaintiff further restated the allegations of his earlier grievance. (In his response to defendants' motion to dismiss, plaintiff stated he sent this grievance to defendant, Sharon Simpson, the grievance officer at Pontiac, through institutional mail.)

¶ 9 On July 15, 2012, plaintiff wrote to Pfister and others, wanting to know why Hastings and Simpson had not complied with section 504.830(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.830(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)) (setting forth grievance procedures). He stated Hastings and Simpson had refused to respond to his grievances in a reasonable time frame. He asked that they be forced to answer his grievances within two weeks or he would have no alternative but to "seek" an attorney.

¶ 10 On August 5, 2012, plaintiff filed an "emergency" grievance, grieving the fact Hastings and Simpson had maliciously refused to respond to his first two grievances in a reasonable time frame in violation of his constitutional rights and the Administrative Code. On August 7, 2012, Pfister denied plaintiff's emergency grievance.

¶ 11 On August 9, 2012, the "grievance officer" sent a memo to plaintiff with a subject of "Other - Filed grievances awaiting response. (Issues unknown) No grievances received." The memo further indicated, "You state you filed grievances and are awaiting response. All grievances are answered in an orderly fashion."

¶ 12 In plaintiff's amended complaint, he stated he filed Pfister's denial of his emergency grievance with the Administrative Review Board on August 10, 2012. In his response to defendants' motion to dismiss, plaintiff stated during the third week of August 2012, he saw Hastings and asked him when he was going to reply to his May 14, 2012, grievance. Plaintiff maintained Hastings told him he had given the grievance to Simpson.

¶ 13 On August 30, 2012, plaintiff filed the *mandamus* petition which is the subject of this appeal. He alleged defendants violated the Administrative Code in that they failed to perform the duties set forth in sections 504.830(a) and (d) of Title 20, stating:

"a) A [g]rievance [o]fficer shall review grievances at least weekly, provided that one or more grievances have been filed.

* * *

d) The [g]rievance [o]fficer shall consider the grievance and report his or her findings and recommendations in writing to the [c]hief [a]dministrative [o]fficer. The [c]hief [a]dministrative [o]fficer shall advise the offender of the decision in writing within [two] months after receipt of the written grievance, where reasonably feasible under the circumstances. Responses to duplicate grievances on issues that are currently being grieved may

be combined in one response." 20 Ill. Adm. Code 504.830(a), (d),
amended at 27 Ill. Reg. 6214 (eff. May 1, 2003)

Plaintiff maintained Hastings and Simpson maliciously failed to respond to his first two grievances in "a reasonable fashion" and Pfister maliciously refused to respond to plaintiff's letter or to "correct such violations," thereby violating plaintiff's fourteenth amendment right to procedural due process. Plaintiff asked for an order declaring defendants' failure to comply with DOC regulations "illegal" and an order requiring them to comply with sections 504.830(a) and (d) of Title 20 of the Administrative Code.

¶ 14 On September 12, 2012, the Administrative Review Board responded to plaintiff's August 10, 2012, filing regarding Pfister's denial of his August 5, 2012, emergency grievance. Plaintiff was directed to contact his grievance officer for the status of his grievances. He was further advised, "If you followed the grv[.] process & appropriately filed w/grv[.] officer[,] you will get a response. Please be patient. As you don't cite what grv's are about, I cannot confirm you followed process. Please make sure you have."

¶ 15 On October 2, 2012, plaintiff wrote to Simpson stating, "You stipulated you had not received my grievances I had filed[] on May 14th, 2012[,] and June 19th, 2012. Here are copies of them that I had filed and the issues are contained therein." In plaintiff's response to defendants' motion to dismiss, he stated he gave this to a correctional officer to deliver to Simpson. That officer later told plaintiff he put the envelope in Simpson's mailbox.

¶ 16 On October 4, 2012, plaintiff directed a letter to the circuit court advising he had a witness who would "stipulate verbally" plaintiff gave the May 14, 2012, grievance to Hastings. Plaintiff sought an order from the court directing this witness to give a written affidavit.

¶ 17 On October 15, 2012, plaintiff filed another grievance wherein he alleged on October 10, 2012, he sought the assistance of Hastings for a problem he was experiencing but Hastings stated, "Why should I help you when you are suing me." Plaintiff also alleged he saw Hastings on October 15, 2012, during a tour of the south mental-health unit and, when plaintiff tried to stop Hastings to talk to him, Hastings "totally ignored" plaintiff. Plaintiff maintained Hastings discriminated against him by denying him counseling services because plaintiff had sued Hastings, in violation of plaintiff's first and fourteenth amendment rights. (On December 19, 2012, Simpson reviewed and denied this grievance. Pfister concurred with the denial on December 27, 2012, and plaintiff indicated on January 3, 2013, he was appealing the decision.)

¶ 18 On December 4, 2012, plaintiff filed a motion to file an amended complaint because he forgot to include a "conclusion for damages." On January 9, 2013, plaintiff filed a "Memorandum of Law" seeking a preliminary injunction and/or restraining order, requiring defendants to respond to his grievances and ordering them to stop retaliating against him for exercising his constitutional rights.

¶ 19 On January 25, 2013, plaintiff filed an amended complaint, which the trial court granted him leave to file. The amended complaint incorporated by reference his original *mandamus* petition and further alleged the facts surrounding his emergency grievance and appeal to the Administrative Review Board, the Administrative Review Board's response, and his October 2, 2012, letter to Simpson. As of the date of the amended complaint, plaintiff alleged he had not received any response to his first two grievances. Plaintiff asked for the additional relief of (1) an order declaring defendants' actions in not responding to his grievances violated his first and fourteenth amendment rights; (2) compensatory damages of \$15,000; (3) punitive damages

of \$15,000 and "mental anguish" damages of \$10,000 against each defendant; and (4) an order requiring defendants to restore two years of plaintiff's good-time credits, restore him to A-grade status, and release him from segregation.

¶ 20 On January 25, 2013, defendants filed a response to plaintiff's motion for preliminary injunction and/or temporary restraining order. Defendants argued plaintiff failed to establish the elements necessary to obtain a preliminary injunction because he failed to show a reasonable likelihood of success on the merits or a clear right to relief in that grievance procedures within DOC do not create or grant plaintiff substantive rights.

¶ 21 On February 8, 2013, defendants filed a motion to dismiss the amended complaint for failure to show a clear right to *mandamus* relief, pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2012)). Defendants argued plaintiff failed to show a clear right to a grievance procedure, to the restoration of good-conduct credits and grade status, and to a reduction of segregation time for the following reasons: (1) neither the Unified Code of Corrections (Corrections Code) (730 ILCS 5/1-1-1 to 8-6-1 (West 2012)), nor DOC regulations create any substantive rights for prisoners; (2) prisoners have no constitutional right to a grievance procedure; (3) only the director of DOC, or his designee, have discretion to decide whether to restore good-conduct credits; and (4) the named defendants do not have authority to restore such credits.

¶ 22 On February 21, 2013, plaintiff filed a "motion for opposition to defendants[] motion to dismiss," arguing he showed a clear right to *mandamus* relief for the following reasons: (1) defendants had a ministerial duty to respond to his grievances, (2) he had a substantive right to have his grievances acknowledged and addressed, and (3) he satisfied the

exhaustion requirement because defendants were not responding to his grievances.

¶ 23 On July 30, 2013, the trial court denied plaintiff's *mandamus* petition. On August 15, 2013, plaintiff filed a motion for reconsideration restating the arguments made in his response to defendants' motion to dismiss, which the court denied on August 23, 2013.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, plaintiff argues the trial court erred in dismissing his complaint for *mandamus* relief.

¶ 27 A. Plaintiff Must First Exhaust Administrative Remedies

¶ 28 Section 504.830(a) of Title 20 suggests DOC grievances be reviewed "at least weekly, provided that one or more grievances have been filed." 20 Ill. Adm. Code 504.830(a), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). Section 504.830(d) provides:

"The [g]rievance [o]fficer shall consider the grievance and report his or her findings and recommendations in writing to the [c]hief [a]dministrative [o]fficer. The [c]hief [a]dministrative [o]fficer shall advise the offender of the decision in writing within [two] months after receipt of the written grievance, where reasonably feasible under the circumstances." 20 Ill. Adm. Code 504.830(d), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 29 In the case *sub judice*, it is arguable plaintiff failed to exhaust DOC grievance procedures before filing his *mandamus* action. "A party aggrieved by an administrative decision cannot seek judicial review unless he has first pursued all available administrative remedies."

Ford v. Walker, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 126-27 (2007). Here, plaintiff did not even give defendants the suggested two-month period to respond to his May 14, 2012, grievance (until July 14, 2012) before he filed his June 19, 2012, grievance. Nor did he give defendants the suggested two-month period to respond to his June 19, 2012, grievance (until August 19, 2012) before filing his August 5, 2012, emergency grievance. Nor did he give defendants the suggested two-month period to respond to his August 5, 2012, grievance (until October 5, 2012), before filing his August 30, 2012, *mandamus* action. Section 504.830(d) provides, "duplicate grievances on issues that are currently being grieved may be combined in one response." 20 Ill. Adm. Code 504.830(d), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 30 Because plaintiff filed his amended complaint in January 2013 and had not received a response to his first two grievances at the time of filing, we will consider the merits of his *mandamus* petition. See *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 9, 975 N.E.2d 1266 (plaintiff "has satisfied the exhaustion requirements by indicating the grievance process he pursued and the lack of response from [IDOC]"). However, we caution plaintiff to exercise patience and restraint to allow DOC the opportunity to perform its duties under DOC grievance procedures before filing premature lawsuits in the future.

¶ 31 B. Plaintiff's *Mandamus* Action Fails on the Merits

¶ 32 A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.' "

Green v. Rogers, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review a dismissal pursuant to section 2-615 *de novo* (*Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18) and may affirm on any ground supported by the record (*Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578, 948 N.E.2d 132, 145 (2011)).

¶ 33 Plaintiff argues defendants' failure to respond to his May 15, 2012, and June 19, 2012, grievances (1) violated his first amendment right to petition the government, (2) denied him his fourteenth amendment right to due process, and (3) violated section 3-2-2(1)(h) of the Corrections Code (730 ILCS 5/3-2-2(1)(h) (West 2012)) and DOC regulations regarding grievance proceedings. We disagree and affirm.

¶ 34 "An allegation of a due-process-rights violation *** states a cause of action in *mandamus*." *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). "*Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). A petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and

must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004).

¶ 35 Here, plaintiff sought to compel defendants to (1) grant his grievances; (2) find him eligible for Pontiac's wholly discretionary SRRP; (3) review whether Hastings's determination plaintiff was not eligible for SRRP violated his due-process rights; (4) grant him compensatory, punitive, and mental health damages; and (5) restore two years of good-conduct credits, A-grade status, and release from segregation. Plaintiff does not have a clear right to any of the relief sought.

¶ 36 Inmates do not have a constitutional right to a grievance process. *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (prison grievance procedures are not mandated by the first amendment); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (State-created inmate grievance procedures do not give rise to liberty interests protected by the due-process clause). Further, prison regulations, such as those found in the Administrative Code, "were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000). Instead, DOC regulations, as well as the Corrections Code, "were designed to provide guidance to prison officials in the administration of prisons. In addition, Illinois law creates no more *rights* for inmates than those which are constitutionally required." (Emphasis in original.) *Id.*

¶ 37 Where resolving grievances requires defendants to exercise judgment to determine whether plaintiff was eligible for SRRP, their decision denying his eligibility for SRRP was discretionary, not ministerial. See *Dye*, 369 Ill. App. 3d at 688, 868 N.E.2d at 297 (because the Board's decision of what evidence to consider is wholly discretionary, it cannot be

challenged through *mandamus*). As noted, *mandamus* actions may not be used to compel purely discretionary acts to be undertaken in a particular way.

¶ 38 Here, plaintiff has no enforceable right to a grievance proceeding, nor is the proceeding offered protected by the due-process clause. Further, plaintiff has no right to compel defendants to reach a particular decision on his grievances or to find him eligible for SRRP where Pfister had discretion to determine who would be accepted into the program. Plaintiff was advised by Hastings he was not eligible for SRRP because he was serving time in segregation until April 1, 2031, and SRRP was available only for inmates with nine months to two years to serve in segregation. Plaintiff's disagreement with Pontiac's discretionary criteria for SRRP does not entitle him to a positive grievance outcome. Moreover, SRRP does not make any provisions for restoration of good-time credit, only a reduction in segregation time if an offender meets certain criteria. Lastly, plaintiff is not entitled to any monetary damages. Therefore, plaintiff has failed to show a clear right to *mandamus* relief. The trial court did not err in granting defendants' motion to dismiss.

¶ 39

III. CONCLUSION

¶ 40

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

¶ 41

Affirmed.