

**NOTICE**  
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2017 IL App (4th) 150698-U

NO. 4-15-0698

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 9, 2017

Carla Bender

4<sup>th</sup> District Appellate Court, IL

MARK BYRD,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
KRISTINA SKEENS; JACON ALLEN; JON	)	No. 13MR110
WILSON; RICHARD KLING; FRANK TURNER;	)	
JERRY DRONENBERG; and RANDY PFISTER,	)	Honorable
Defendants-Appellees.	)	Jennifer Bauknecht,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court’s judgment dismissing plaintiff’s claims against certain Department of Corrections officials and employees and remanded for reconsideration given the record presented and arguments made.

¶ 2 Plaintiff, Mark Byrd, an inmate at Pontiac Correctional Center (Pontiac), appeals from the trial court’s order dismissing his retaliation, harassment, and deliberate indifference to retaliation claims against various Illinois Department of Corrections officials and employees.

Given the record presented and arguments made, we reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 A. Amended Complaint

¶ 5 In September 2013, plaintiff, *pro se*, filed a complaint against Lieutenant Kristina

Skeens and correctional officer Jacob Allen, alleging his equal protection rights were violated by Allen's use of smokeless tobacco in Pontiac and Skeens' failure to discipline Allen for such use.

¶ 6 In January 2014, plaintiff filed a motion for leave to file an amended complaint, which the trial court later granted. Plaintiff realleged his claims against Skeens and Allen, as well as additional claims against correctional officers Jon Wilson, Richard Kling, and Frank Turner. In relevant part, plaintiff alleged, because he reported officer misconduct relating to bringing tobacco into Pontiac, (1) Wilson harassed and retaliated against him by kneeing him in the thigh and allowing other officers to keep him locked in his cell; and (2) Kling harassed and retaliated against him by not letting him out of his cell to complete his work assignment on some days, and on other days, he was let out only in the mornings but not in the afternoons. Plaintiff further alleged, because he filed a grievance regarding Wilson kneeing him in the thigh, Turner retaliated against him by keeping him locked in his cell, not allowing him to work, and removing him from his work assignment. Plaintiff sought monetary damages for the acts of retaliation and harassment.

¶ 7 B. Partial Motion To Dismiss

¶ 8 In July 2014, defendants filed a "partial" combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2012)). Skeens, Allen, Kling, and Turner requested dismissal under section 2-615(a) of the Civil Code (735 ILCS 5/2-615(a) (West 2012)) as plaintiff failed to state a claim for (1) a violation of his equal protection rights against Skeens or Allen, and (2) retaliation against Kling or Turner. With respect to the retaliation claims, Kling and Turner asserted plaintiff's allegations were insufficient to demonstrate he suffered a deprivation likely to deter a person of ordinary fitness

from complaining about prison conditions in the future. Skeens and Allen also requested dismissal under section 2-619(a)(9) of the Civil Code (735 ILCS 5/2-619(a)(9) (West 2012)) as (1) plaintiff lacked standing to bring his equal protection claims, and (2) the equal protection claims were barred by sovereign immunity. Plaintiff later filed a response to the partial motion to dismiss, maintaining, in relevant part, he sufficiently alleged retaliation claims against Kling and Turner.

¶ 9 C. Motion To Stay

¶ 10 That same month, Wilson filed a motion to stay the filing of an answer to plaintiff's retaliation claim against him until the trial court entered an order on the partial motion to dismiss. The record does not disclose a ruling on Wilson's motion to stay.

¶ 11 D. Supplemental Complaint

¶ 12 In August 2014, plaintiff filed a motion for leave to file a supplemental complaint, which the trial court later granted. Plaintiff's supplemental complaint alleged claims against correctional officer Jerry Dronenberg and Warden Randy Pfister. In relevant part, plaintiff alleged, because he filed a complaint against Skeens, Dronenberg retaliated against him by refusing to grant him an extension on his work assignment. Plaintiff further alleged, after he notified Pfister by emergency grievance of Dronenberg's retaliatory conduct, Pfister acted deliberately indifferent to his constitutional right not to be retaliated against by taking no action to stop Dronenberg from carrying out his retaliatory actions. Plaintiff sought monetary damages for Dronenberg's retaliation and Pfister's deliberate indifference to that retaliation.

¶ 13 E. Motion To Dismiss

¶ 14 In November 2014, Pfister filed a combined motion to dismiss plaintiff's

deliberate indifference to retaliation claim under section 2-619.1 of the Civil Code (735 ILCS 5/2-619.1 (West 2012)). Pfister requested dismissal under section 2-615(a) of the Civil Code (735 ILCS 5/2-615(a) (West 2012)) as (1) plaintiff had no right to a grievance procedure, and (2) he was not personally involved in the alleged underlying constitutional violation. Pfister also requested dismissal under section 2-619(a)(9) of the Civil Code (735 ILCS 5/2-619(a)(9) (West 2012)) as plaintiff's claim was barred by sovereign immunity. Plaintiff later filed a response to the motion to dismiss, maintaining, in relevant part, Pfister was personally responsible for a deprivation of his constitutional rights as Dronenberg's retaliatory conduct occurred with Pfister's knowledge, which Pfister condoned by turning a blind eye. Plaintiff further asserted his claim was not barred by sovereign immunity as he was suing Pfister in his personal capacity for his acts taken under color of state law.

¶ 15 F. Motion To Stay

¶ 16 That same month, Dronenberg filed a motion to stay the filing of an answer until the trial court entered an order on the pending motions to dismiss. In March 2015, the trial court granted Dronenberg's motion.

¶ 17 G. Trial Court's Ruling

¶ 18 In July 2015, the trial court granted the pending motions to dismiss and ordered the case dismissed as to *all* defendants. A docket entry provides, in relevant part, as follows:

“IN HIS UNDERLYING AMENDED COMPLAINT, PLAINTIFF  
APPARENTLY SEEKS MONETARY DAMAGES BASED  
UPON OFFICER ALLEN ALLEDLY BRINGING TOBACCO IN  
TO THE INSITIUTION, OFFICER SKEENS NOT WRITING UP

OFFICER ALLEN FOR THAT, AND DEFENDANTS TURNER, KLING AND WILSON FOR ALLEGEDLY RETALIATING AGAINST PLAINTIFF FOR TELLING ABOUT THE TOBACCO IN THE PONTIAC CORRECTIONAL CENTER. PLAINTIFF HAS FAILED TO ESTABLISH IN HIS AMENDED COMPLAINT AND/OR SUPPLEMENTAL COMPLAINT THAT HE HAS STANDING TO PURSUE THESE CLAIMS. IN ADDITION, HE HAS FAILED TO SET FORTH A PROPER CLAIM FOR VIOLATION OF THE EQUAL PROTECTION CLAUSE AND RETALIATION. FINALLY, THE CASE SEEMS BARRED BY THE DOCTRINE OF SOVERIGN IMMUNITY. FOR THESE REASONS, DEFENDANTS' MOTIONS TO DISMISS ARE GRANTED. THE CASE IS DISMISSED AS TO ALL DEFENDANTS."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, plaintiff argues the trial court erred in dismissing his retaliation, harassment, and deliberate indifference to retaliation claims against Wilson, Kling, Turner, Dronenberg, and Pfister. Plaintiff argues the court dismissed his (1) retaliation claim against Dronenberg even though Dronenberg previously sought and received a stay from the court; (2) retaliation claim against Wilson even though Wilson had filed a motion to stay; (3) harassment claims against Wilson and Kling without any indication it actually considered those claims; and

(4) deliberate indifference to retaliation claim against Pfister without any indication it actually considered any claim against Pfister.

¶ 22 In response, defendants dedicate a substantial portion of their brief to presenting argument (1) in support of the trial court's judgment dismissing plaintiff's equal protection claims against Skeens and Allen, and (2) addressing and rejecting any argument plaintiff's allegations could sufficiently raise a claim for a violation of his eighth amendment rights. U.S. Const., amend. VIII. Defendants spend approximately four pages of their brief presenting argument in support of the court's dismissal of plaintiff's retaliation claims. Defendants argue the court's judgment can be sustained as plaintiff failed to allege sufficient facts to establish (1) he suffered a deprivation likely to deter first amendment activity in the future, or (2) his protected activity was a motivating factor in any of the defendants' actions. Defendants do not address Wilson's and Dronenberg's requests to stay their answers to plaintiff's claims or present any argument, suggesting the court's judgment can be sustained on standing or sovereign immunity grounds. Defendants further do not (1) address plaintiff's suggestion he sufficiently alleged independent harassment claims against Wilson and Kling, or (2) present any argument as to whether plaintiff's claim against Pfister was properly dismissed in the face of the court's decision to grant Dronenberg's motion to stay.

¶ 23 Given the record presented and the arguments made, we find the trial court's judgment dismissing plaintiff's claims against Wilson, Kling, Turner, Dronenberg, and Pfister must be reversed and the matter be remanded for further proceedings. As plaintiff points out, the trial court dismissed his retaliation claim against (1) Dronenberg even though Dronenberg previously sought and received a stay from the court, and (2) Wilson even though Wilson had

filed a motion to stay. Again, defendants do not address the court's actions. It is unclear whether the court's dismissal of these claims was intentional or inadvertent. While trial courts have the authority under the principles of civil practice and procedure to *sua sponte* dismiss a frivolous claim, invoking such authority is an extraordinary action. *Bilski v. Walker*, 392 Ill. App. 3d 153, 156, 158, 924 N.E.2d 1034, 1038-39 (2009). In fact, we have advised, where a trial court finds it appropriate to invoke such authority, it should provide a detailed explanation for its conclusion that such action is warranted. *Id.* at 158, 924 N.E.2d at 1039. The trial court has not provided an explanation. In addition, we find it significant Dronenberg and Wilson explicitly requested to stay the filing of an answer rather than join the other defendants in seeking dismissal of the claims against them. Given the motions to stay, the lack of clarity in the trial court's order, the similarity of the claims, and the arguments made on appeal, we find the only prudent course of action is to remand the matter for further proceedings, at which the parties can clarify their respective positions and create an adequate record for review.

¶ 24 We further need not address defendants' argument (1) in support of the trial court's judgment dismissing plaintiff's equal protection claims against Skeens and Allen, or (2) addressing and rejecting any argument plaintiff's allegations could sufficiently raise a claim for a violation of his eighth amendment rights. Plaintiff does not challenge the court's dismissal of his equal protection claims or raise any eighth amendment claim. In fact, in his reply brief, plaintiff makes clear he has not raised such a contention of error, nor did he intend to raise an eighth amendment claim. As these issues are not before this court, the trial court's dismissal of plaintiff's equal protection claims against Skeens and Allen stands, and plaintiff has forfeited any equal protection or eighth amendment challenge for purposes of remand. See *Reynolds v. Jimmy*

*John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 55, 988 N.E.2d 984.

¶ 25 We understand the difficulty inherent in dealing with *pro se* prisoner claims, especially when a plaintiff files multiple claims and assorted defendants engage in motion practice. It would have assisted the trial court for defendants' counsel to have carefully reviewed the file and provided the trial court with a road map as to what needed to be ruled on and the proper order for such rulings.

¶ 26 As a final matter, we direct the parties and the trial court on remand to consider *Fillmore v. Walker*, 2013 IL App (4th) 120533, 991 N.E.2d 340, a case the parties have failed to cite before either court.

¶ 27 III. CONCLUSION

¶ 28 We reverse and remand for further proceedings on plaintiff's claims against Wilson, Kling, Turner, Dronenberg, and Pfister. We voice no opinion on the ultimate merits of any such claims.

¶ 29 Reversed; cause remanded.