

NOTICE
Decision filed 08/17/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160120-U

NO. 5-16-0120

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

JASON HOOTS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Randolph County.
)	
v.)	No. 15-MR-87
)	
JOHN BALDWIN, Director of Illinois)	
Department of Corrections;)	
THE ADMINISTRATIVE REVIEW BOARD;)	
TERRI ANDERSON, Administrative Review)	
Board Member; and DEBBIE KNAUER,)	
Administrative Review Board Employee,)	Honorable
)	Eugene E. Gross,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed the plaintiff's complaint for *mandamus*.

¶ 2 The plaintiff, Jason Hoots, appeals *pro se* the dismissal of his first amended complaint for *mandamus* relief wherein he alleged that the defendants failed to further investigate the appeal of his denied grievance. The judgment of the circuit court is affirmed.

¶ 3

BACKGROUND

¶ 4 On or about February 5, 2014, the plaintiff was involved in an altercation with a guard while an inmate at Menard Correctional Facility and was issued an internal disciplinary report charging him with "Assaulting any Person" and "Intimidation or Threats." A hearing was held on February 10, 2014. On February 26, 2014, the plaintiff received a final summary report which found him guilty of "Assaulting any Person" and not guilty of "Intimidation or Threats." On March 14, 2014, the plaintiff signed an offender grievance alleging that (1) his disciplinary report was not properly submitted to the hearing investigator for review; (2) the witness identified on the disciplinary report was not actually a witness to the incident; (3) he was never given an opportunity to sign the disciplinary report when it was served; (4) the witnesses that he identified were not called to testify on his behalf; (5) he was not allowed to finish his oral statement at the hearing; and (6) the final summary report did not discuss the statement that he made during the hearing. Although the plaintiff dated his grievance "3/14/14," it is file-stamped by the grievance office as having been received on June 17, 2014. Grievance officer Linda Carter reviewed the report on June 18, 2014, stating, "Although this grievance is out of time frame, Warden requests this grievance be addressed." After detailing her review and findings, Carter recommended denial of the plaintiff's grievance.

¶ 5 On June 19, 2014, the chief administrative officer, "K. Butler," concurred and denied the plaintiff's grievance. On June 29, 2014, the plaintiff signed the offender's appeal to the Director of Corrections. This document was promptly filed on July 3, 2014. On or about January 26, 2015, Debbie Knauer responded to the appeal with the

Administrative Review Board's return of grievance or correspondence checking the box that stated, "Not submitted in the timeframe outlined in Department Rule 504; therefore, this issue will not be addressed further," and handwrote, "This office notes offender received IDR 2/6/14 NOT 2/5/14 as indicated on grievance."

¶ 6 On July 10, 2015, the plaintiff filed a motion for leave to file complaint for *mandamus* relief and complaint for *mandamus* relief in Randolph County circuit court, alleging that (1) defendant Knauer refused to forward the plaintiff's appeal of his facility grievance to the Administrative Review Board for review and (2) defendants Administrative Review Board and Director of Corrections Donald Stolworthy (now replaced by new Director of Corrections, John Baldwin) failed to investigate and review the appeal of his facility grievance; therefore, he was requesting "that the defendants perform specific ministerial duties."

¶ 7 On September 8, 2015, the defendants filed a motion to dismiss and memorandum of law arguing that the plaintiff failed to state a claim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). Noting that the "procedural background of this claim is unclear," the court granted the plaintiff leave to amend his complaint.

¶ 8 On or about October 20, 2015, the plaintiff filed his amended complaint for *mandamus* relief, again "seeking an [o]rder of [m]andamus to compel the above named [d]efendants to investigate and review his facility grievance #54-6-14 in accordance with 730 ILCS 5/3-2-2 [Powers and Duties of the Department], 730 ILCS 5/3-8-8 [Grievances], and 20 Ill. Admin. Code, Departmental Rule 504.850 [Appeals]."

¶ 9 On or about December 7, 2015, the defendants filed a motion to dismiss amended complaint, again pursuant to section 2-615, alleging the plaintiff failed to state a claim, asserting that the plaintiff had no enforceable right to the investigation of his appeal of the denial of his grievance, as his grievance was untimely. On December 23, 2015, the plaintiff filed an affidavit in opposition to the defendants' motion to dismiss, a motion for leave to file an amended complaint for *mandamus* relief, and an amended complaint for *mandamus* relief (second amended complaint), again claiming he has a clear right to relief—specifically the right to an inquiry into his allegations of staff misconduct pursuant to section 3-2-2 of the Unified Code of Corrections (Code) (730 ILCS 5/3-2-2 (West 2014)); the right to file grievances and have them investigated and reviewed by the Director of Corrections or designee pursuant to sections 3-8-8 and/or 3-2-2 of the Code (730 ILCS 5/3-8-8, 3-2-2 (West 2014)); and the right to have appeal of his facility grievance reviewed by the Director or designee pursuant to Title 20 of the Illinois Administrative Code, Department Rule 504.850.

¶ 10 The court granted leave to file the amended complaint and granted the defendants 45 days to file a responsive pleading. On February 8, 2016, the defendants filed a memorandum of law and a motion to dismiss second amended complaint, again on the basis that he failed to state a claim. The plaintiff again filed a memorandum of law in opposition to the defendants' motion to dismiss.

¶ 11 On March 7, 2016, the circuit court granted the defendants' motion to dismiss and dismissed the plaintiff's matter with prejudice. The plaintiff now brings this timely appeal.

¶ 13 On appeal, the plaintiff argues the circuit court erred in dismissing his complaint for *mandamus* and that the defendants should be compelled "to investigate and review a timely filed appeal of [the denial of the] plaintiff's facility grievance." We do not agree.

¶ 14 We begin by noting our standard of review. "The grant of a motion to dismiss for a failure to state a cause of action filed pursuant to section 2-615 or a motion for an involuntary dismissal based on defects or defenses in the pleadings pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2004)) is subject to *de novo* review." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007) (citing *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282, 856 N.E.2d 542, 546 (2006)). "Where the dismissal was proper as a matter of law, we may affirm the circuit court's decision on any basis appearing in the record." *Id.* (citing *MKL Pre-Press Electronics/MKL Computer Media Supplies, Inc. v. La Crosse Litho Supply, LLC*, 361 Ill. App. 3d 872, 877, 840 N.E.2d 687, 691 (2005)).

¶ 15 Additionally, "[*m*]andamus is an extraordinary civil remedy that will be granted to enforce, as a matter of right, the performance of official nondiscretionary duties by a public officer." *Id.* (citing *Lee v. Findley*, 359 Ill. App. 3d 1130, 1133, 835 N.E.2d 985, 987 (2005)). "A *mandamus* action is not an appropriate means for seeking judicial review of an administrative proceeding." *Id.* (citing *Newsome v. Prison Review Board*, 333 Ill. App. 3d 917, 920, 776 N.E.2d 325, 327 (2002)). "*Mandamus* will issue only where the plaintiff has fulfilled his burden (see *Mason v. Snyder*, 332 Ill. App. 3d 834, 840, 774 N.E.2d 457, 461 (2002)) to set forth *every* material fact needed to demonstrate

that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting *mandamus* relief." (Emphasis in original.) *Id.* at 433-34, 876 N.E.2d at 663-64 (citing *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109, 682 N.E.2d 182, 186 (1997)). "Because Illinois is a fact-pleading jurisdiction, a plaintiff is required to set forth a legally recognized claim and plead facts in support of each element that bring the claim within the cause of action alleged." *Id.* at 434, 876 N.E.2d at 664 (citing *Behringer v. Page*, 204 Ill. 2d 363, 369, 789 N.E.2d 1216, 1221 (2003)). "To survive a motion to dismiss for the failure to state a cause of action, a complaint must be both legally and factually sufficient." *Id.* "A writ of *mandamus* is appropriate when used to compel compliance with mandatory legal standards but not when the act in question involves the exercise of a public officer's discretion." *McFatrige v. Madigan*, 2013 IL 113676, ¶ 17, 989 N.E.2d 165.

¶ 16 The plaintiff argues that section 3-8-8(a) of the Code and Department Rule 504.850(a) and (b) gave him the clear right to have the Administrative Review Board review his appeal of the denial of his grievance; that the defendants had a duty under Rule 504.850(a) and (b) to hear his timely filed administrative appeal; and that the defendants had the authority to comply with an order directing them to hear his administrative appeal. Section 3-8-8(a) of the Code requires the Director of Corrections to establish procedures to review the grievances of committed persons and provides that the right of committed persons to file grievances shall not be restricted. 730 ILCS 5/3-8-8(a) (West 2014). Rule 504.850(a) provides that an offender who is not satisfied with the

resolution of his grievance may appeal to the Director of Corrections (20 Ill. Admn. Code 504.850(a)), and Rule 504.850(b) provides that the Director shall determine whether the grievance requires a hearing before the Administrative Review Board, and to advise the offender in writing if the grievance is meritless or can be resolved without a hearing (20 Ill. Admn. Code 504.850(b)). The gist of the plaintiff's claim is that he filed his grievance within 60 days of the issuance of the disciplinary report, as required by Rule 504.810(a) (20 Ill. Admn. Code 504.810(a)), and that the defendants had no authority to decline to review his appeal on the basis that his grievance was not timely filed.

¶ 17 Prison regulations such as those in the Administrative Code and the Code are intended to guide prison officials in the administration of prisons and do not confer rights on inmates. *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 15, 975 N.E.2d 1266; *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25, 960 N.E.2d 1. Under the United States Constitution, prisoners have the right to (1) adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety; (2) reasonable access to the courts; and (3) the reasonable opportunity to exercise religious freedom. *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258-59, 739 N.E.2d 897, 903 (2000). Beyond this, prisoners possess only privileges. *Id.* at 1259, 739 N.E.2d at 903.

¶ 18 The plaintiff argues that the defendants' refusal to review his administrative appeal impaired his right of access to the courts. Specifically, he contends that he cannot pursue a civil rights claim because he cannot show that he exhausted his administrative remedies where the Administrative Review Board did not hear his appeal. Generally, a party seeking judicial review of an administrative decision must first exhaust all available

administrative remedies. *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006). Here, that requirement was met when the defendants declined to further review the plaintiff's grievance. Their refusal to further review the matter does not preclude the plaintiff from filing a civil rights complaint.

¶ 19 Based on the foregoing, we conclude that the circuit court did not err in finding that the plaintiff failed to demonstrate that he had a clear right to the requested relief. As this failure was fatal to his complaint for *mandamus*, we need not consider whether the defendants had a clear duty to act or the authority to comply with an order granting relief.

¶ 20 Lastly, the plaintiff asserts that the circuit court improperly reached a decision on the merits of his case. He contends that the circuit court's determination that "plaintiff was afforded his fundamental right to a hearing and the relief requested exceeds his due process guarantees" constituted an improper ruling on the merits of his grievance. We disagree. The court's statement was merely an explanation of its ruling that the statute and regulations upon which the plaintiff relied did not give him a constitutional right to have the denial of his grievance reviewed.

¶ 21 **CONCLUSION**

¶ 22 For the foregoing reasons, the judgment of the circuit court of Randolph County is affirmed.

¶ 23 Affirmed.