

2018 IL App (2d) 170336-U
No. 2-17-0336
Order filed March 15, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ANTONIO KENDRICK,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 16-MR-110
)	
THE DEPARTMENT OF)	
FINANCIAL AND PROFESSIONAL)	
REGULATION,)	Honorable
)	Paul M. Fullerton,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed plaintiff's complaint for mandamus and a declaratory judgment: although defendant might have given plaintiff constitutionally insufficient notice of the revocation of his barber's certificate, plaintiff suffered no prejudice, as in light of plaintiff's life imprisonment the revocation was unavoidable.

¶ 2 Plaintiff, Antonio Kendrick, appeals the trial court's dismissal of his complaint seeking *mandamus* and a declaratory judgment in connection with the revocation of his barber's certificate after he was convicted of a Class X felony. He contends that he was denied due process and equal protection when defendant, the Department of Financial and Professional

Regulation (Department), served him with notice of the complaint to revoke his certificate at the address it had on file instead of serving him at the prison where he is incarcerated. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In April 2006, plaintiff was convicted of a Class X felony and sentenced to life imprisonment. At the time of his conviction, plaintiff held a certificate of registration to practice as a barber. When he applied for the certificate, he listed an address on Illinois Avenue in Aurora. The form stated that the applicant must inform the Department in writing of any address changes in order to receive further information. Plaintiff twice changed his address with the Department, with the most recent address being on Trask Street in Aurora. Plaintiff did not inform the Department of his change of address after his conviction. The record is silent as to whether the Trask Street address was a business address. Plaintiff contends that it was his former residence.

¶ 5 In December 2007, the Department filed an administrative complaint seeking disciplinary action against plaintiff's certificate, based on his conviction and sentence of life imprisonment. Plaintiff's certificate had also been in "refuse to renew" status since May 3, 2007. Notice of the complaint and hearing was sent by certified mail to the Trask Street address. Additional documents relating to the action were also sent by certified mail to the Trask Street address.

¶ 6 Plaintiff's certificate was revoked, and he learned of the revocation in May 2013 after receiving documents from the Department as the result of a Freedom of Information Act request. Also included in the documents was a letter from the Department stating that it did not issue certificates to inmates for activities and programs under the authority of the Department of Corrections. In January 2016, defendant filed a complaint seeking *mandamus* and a declaratory judgment, alleging that he was denied due process and equal protection because the Department

failed to properly serve him with notice under section 4-10 of the Barber, Cosmetology, Esthetics, and Nail Technology Act of 1985 (the Act) (225 ILCS 410/4-10 (West 2008)). At that time, the Act required the Department to serve a written notice either in person or by certified mail at the place of business specified by the accused in his last notification to the Department. 225 ILCS 410/4-10 (West 2008).

¶ 7 The Department filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)), arguing that it served plaintiff by certified mail at his last known address. The Department noted that, under the Illinois Administrative Code, applicants renewing certificates were required to notify the Department of any change of address. 68 Ill. Adm. Code 1175.225(c) (2006). Plaintiff responded that the Department knew that he was incarcerated and thus knew that it was serving him at the wrong address.

¶ 8 The trial court granted the motion to dismiss plaintiff's complaint. The court applied the current version of the Act, as amended by Public Act 99-427 (eff. Aug. 21, 2015), which now provides that the Department must notify the certificate holder in writing by registered or certified mail at the address of record. See 225 ILCS 410/1-4, 4-10 (West 2016). The court found that the Department did so and that plaintiff failed to inform the Department of his change of address. Thus, the court found no due process violation. As to equal protection, the court found that plaintiff had as much opportunity as anyone else to inform the Department of his address change. Plaintiff's motion to reconsider was denied, and he appeals.

¶ 9

II. ANALYSIS

¶ 10 Plaintiff contends that he was denied due process when the Department failed to serve him at the prison when it knew that he was incarcerated. Thus, he asks for a writ of *mandamus* requiring the Department to provide him with proper notice and a proper disciplinary proceeding.

The Department contends that it properly served plaintiff at his address of record, thus satisfying due process.

¶ 11 Section 2-619 motions to dismiss provide a means for disposing of issues of law or easily proved issues of fact. *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 94 (2001). The trial court should grant the motion and dismiss the complaint if, after construing the allegations in the light most favorable to the plaintiff, no set of facts can be proved that would entitle the plaintiff to recover. We review *de novo* the trial court's grant of a defendant's section 2-619 motion. *Towne Realty, Inc. v. Shaffer*, 331 Ill. App. 3d 531, 535 (2002). We may affirm a proper dismissal for any reason appearing in the record. *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (2003).

¶ 12 *Mandamus* is an extraordinary remedy that requires a public officer to perform official duties that involve no exercise of discretion. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). A court will award a writ of *mandamus* only if a plaintiff establishes (1) a clear, affirmative right to relief, (2) a clear duty of the public official to act, and (3) a clear authority in the public official to comply with the writ. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555 (2002). A plaintiff must set forth every material fact necessary to show that he is entitled to *mandamus* relief, and the plaintiff bears the burden to establish a clear, legal right to it. *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185 (1981).

¶ 13 Plaintiff's contention that he was denied due process has support. In cases involving administrative forfeiture, we have held that, when the State knew or should have known that a person was incarcerated, service at an address where he would be unlikely to retrieve it was a denial of due process. See, e.g., *People v. Pena*, 2017 IL App (2d) 151203, ¶¶ 15-22. Further, the individual's failure to notify the agency of an address change did not relieve the agency of its

obligation to provide due process. *Id.* ¶ 22 (citing *In re Forfeiture of \$2,354.00 United States Currency*, 326 Ill. App. 3d 9, 16 (2001)). However, we need not decide the matter, because, as the Department points out, plaintiff cannot show prejudice.

¶ 14 “[A] claim of a due process violation will be sustained only upon a showing of prejudice in the proceeding.” *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 825 (2009). Further, “[m]andamus will not issue to compel an act which is of no practical benefit to the petitioner.” *Flynn v. Kucharski*, 53 Ill. 2d 88, 91 (1972); see also *In re Karen E.*, 407 Ill. App. 3d 800, 804 (2011) (citing *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009)) (“Generally, Illinois courts do not decide moot issues, render advisory opinions or consider issues where the outcome will not be affected by how the issues are decided.”).

¶ 15 Here, an order compelling the Department to provide a new disciplinary proceeding would serve no useful purpose. Plaintiff’s certificate was already in “refuse to renew” status at the time of the revocation, and nothing shows that he attempted to restore it. Meanwhile, he remains incarcerated, and the record shows that the Department does not provide certificates to incarcerated individuals. Thus, it is clear that a new disciplinary proceeding would not result in the restoration of plaintiff’s certificate. Indeed, plaintiff did not allege, and did not make any attempt in the trial court to show, that he would be able to retain his certificate or that he had any need for it.

¶ 16 Plaintiff also contends that the trial court should have entered a declaratory judgment holding that the Act was unconstitutional as applied to him because it required service at his last business address, when he, as an incarcerated person, clearly could not receive service there. However, that matter is moot. As noted, *supra* ¶ 8, the Act has been amended to require service at the address of record. Thus, incarcerated individuals are treated no differently under the Act,

as they have the ability to provide notice of a change of address to a non-business address. Moreover, here, plaintiff challenged the version of the Act that was in effect at the time his complaint was filed, but the Act was amended while plaintiff's case was pending, which rendered his challenge to the prior version moot. See *Forest Preserve District of Kane County v. City of Aurora*, 151 Ill. 2d 90, 94 (1992) (“[W]here a challenged statute is amended while the cause is pending, the question of the statute’s validity becomes moot, thus rendering unnecessary its review by the court”) (internal quotation marks omitted). Finally, as previously discussed, in the absence of a showing of prejudice, any determination of the issue would be purely advisory.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 19 Affirmed.