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2018 IL App (3d) 160566-U

Order filed March 13, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

REGINALD LOVE,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-16-0566
)	Circuit No. 14-MR-820
CHARLES BEST, CYNTHIA HARRIS,)	
MICHAEL LEMKE, and)	
SALVADOR GODINEZ,)	Honorable
)	Bennett J. Braun,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting the prison officials' motion for summary judgment where inmate failed to state a cause of action for *mandamus* where he claimed that prison officials violated his due process rights by failing to acknowledge his request for a witness to be called at his disciplinary hearing but the request had not been properly submitted prior to the disciplinary hearing.

¶ 2 Plaintiff, Reginald Love, an inmate of Stateville Correctional Center, filed a *pro se* complaint for an order of *mandamus*, pursuant to article 14 of the Code of Civil Procedure (Code) (735 ILCS 5/14-101 *et. seq.* (West 2012)), alleging that defendants Michael Lemke

(former warden), Salvador Godinez (former director of the Illinois Department of Corrections), Charles Best (disciplinary committee chair person), and Cynthia Harris (disciplinary committee member) acted unlawfully by failing to call a witness he had requested be called at his disciplinary hearing. Defendants filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2012)), arguing no genuine issue of material fact existed because plaintiff failed to follow proper procedures for requesting a witness to be called at the disciplinary hearing. The trial court granted defendants' motion for summary judgment. Plaintiff appeals, arguing the trial court erred by granting summary judgment in favor of defendants. We affirm.

¶ 3

FACTS

¶ 4

Plaintiff was serving (and still is serving) a prison sentence for first degree murder at the Stateville Correctional Center (Stateville). At the time plaintiff filed his amended complaint for a *mandamus* order, defendant Michael Lemke was the Warden of Stateville, defendant Salvador Godinez was the Director of the Illinois Department of Corrections (IDOC), and defendants Charles Best and Cynthia Harris were chairpersons of the Stateville Adjustment Committee.

¶ 5

On July 27, 2013, defendant received a disciplinary ticket charging him with disobeying a direct order and creating a dangerous disturbance. When plaintiff was served with the disciplinary ticket, he claimed that he informed the person serving the disciplinary ticket that he wanted to request that IDOC employee Lieutenant Givens be called as a witness at the disciplinary hearing because plaintiff believed that Givens would testify plaintiff was not a participant in the protest. The person serving the disciplinary ticket wrote down Givens's name on the disciplinary ticket and gave defendant a copy of the ticket. The bottom portion of the

disciplinary ticket indicated, “Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing.”

¶ 6 At the disciplinary hearing on December 2, 2013, plaintiff pled not guilty. Givens was not called as a witness and the adjustment committee (Best and Harris) found plaintiff guilty of the charges. The final summary report from the adjustment committee indicated “no witness requested.” The final summary report also indicated that the committee was satisfied that plaintiff committed the charges based on the reporting officer’s report that he had given plaintiff several direct orders to move out of the unit and be quiet but plaintiff had refused to do and, instead, instructed 22 other inmates not to move until they were allowed a commissary visit and repeatedly told other inmates “don’t move until we get what we want.” Plaintiff was disciplined with one year of C-grade status, one year in segregation, a disciplinary transfer, one year of commissary restriction, and the revocation of one year of his statutory good time credit.

¶ 7 On March 27, 2014, plaintiff filed a complaint for an order of *mandamus*, and on April 29, 2015, filed an amended complaint for an order of *mandamus*. In his amended complaint, plaintiff contended that defendants violated his rights under the equal protection and due process clauses of the United States Constitution and Illinois Constitution by failing to call Givens as a witness at the disciplinary hearing. Plaintiff also alleged that defendants violated section 504.80 of the Illinois Administrative Code (20 Ill. Adm. Code 504.80(f)(2) (2003)), which outlines the procedure for interviewing witnesses for a disciplinary hearing. Plaintiff alleged that section 504.80 of the administrative Code stated, in part, that prior to the hearing, an alleged offender may request that witnesses be interviewed by making the request in writing on the space provided in the disciplinary report with an explanation of the witness’s anticipated statements and, if a request for a witness to be called is denied, a written reason shall be provided. Plaintiff

alleged that the adjustment committee's final summary report improperly indicated that no witness had been requested, which conflicted with the disciplinary report that indicated plaintiff requested Givens be called as a witness at the disciplinary hearing. Plaintiff requested that the trial court enter an order of *mandamus* requiring defendants to expunge all action taken against him in this matter, compensatory damages of \$500, punitive damages of \$6000, and any other relief the court deemed just, proper, and equitable.

¶ 8 In response, defendants filed a motion for summary judgment. In the motion, defendants argued, among other things, that plaintiff failed to follow the proper procedures for requesting Givens to be called as a witness because he failed to detach and return the witness request form from the disciplinary ticket prior to the hearing and the process by which IDOC allows an inmate's request for witnesses is a discretionary function that was outside the purview of a complaint for *mandamus*.

¶ 9 The trial court found plaintiff failed to state a claim pertaining to his allegations that defendants violated his rights under the due process or equal protection clause. The trial court additionally found that plaintiff's requests for monetary damages was barred by the doctrine of sovereign immunity. The trial court further found that there was no issue of material fact as to whether IDOC had been appropriately notified of plaintiff's desire to call a witness. The trial court granted defendants' motion for summary judgment.

¶ 10 Plaintiff appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff argues the trial court erred in granting defendants' motion for summary judgment, contending that defendants violated his due process rights by failing to call Givens as a witness at his disciplinary hearing and by failing to provide an adequate written

statement of the evidence relied upon and reasons for the disciplinary action. Defendants, on appeal, argue that the trial court's grant of summary judgment in their favor was proper.

¶ 13 Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, indicate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hughes v. Godinez*, 2014 IL App (4th) 130056, ¶ 15. Our review of a trial court's order granting summary judgment is *de novo*. *Id.*

¶ 14 *Mandamus* is an extraordinary civil remedy that is used to compel a public officer to perform nondiscretionary official duties. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. A plaintiff seeking *mandamus* relief must establish a clear right to the requested relief, a clear duty on the part of the public officer to act, and that a clear authority exists for the public officer to comply with an order to act. *Id.* *Mandamus* is not appropriate when the act in question involves the exercise of a public officer's discretion. *Id.*

¶ 15 Pursuant to section 504.80 of the Administrative Code, which governs the DOC's adjustment committee hearing procedures, "[p]rior to the hearing" inmates may request that a witness be interviewed by making the request "in writing on the space provided in the disciplinary report [that] shall include an explanation of what the witnesses would state." 20 Ill. Adm. Code § 504.80(f)(2) (2003). The United States Supreme Court has held that due process principles require that inmates whose disciplinary proceeding may result in the loss of good-time credits be given:

“(1) notice of the disciplinary charges at least 24 hours prior to the hearing; (2) when consistent with institutional safety and correctional goals, an opportunity to call witnesses and present documentary evidence in their defense;

and (3) a written statement by the fact finder of the evidence relied on in finding the inmate guilty of committing the offense and the reasons for the disciplinary action.” *Dye v. Pierce*, 369 Ill. App. 3d 683, 687 (2006) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974)).

¶ 16 In this case, plaintiff failed to request Givens as witness in the manner required by section 504.80 of the Administrative Code and in accordance with the instructions on the disciplinary ticket. While Givens’s name may have been written on the disciplinary ticket, there is no indication that the request was submitted prior to the disciplinary hearing or that plaintiff had provided an explanation of what Givens’s would have stated if called as a witness. Additionally, the summary report of the disciplinary hearing indicated, “[n]o witness requested,” indicating that the committee had not received a witness request. “Any deviation from Department [IDOC] rules, such as a request for witnesses at the disciplinary hearing, would have been completely subject to the committee’s discretion to accept.” *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118 (2011). Because the defendants’ act in question involved the exercise of discretion, plaintiff cannot establish a clear duty on the part of defendants to have called Givens as a witness at the disciplinary hearing and the committee’s decision may not be challenged in a *mandamus* complaint. See *id.*

¶ 17 Plaintiff claims that the committee failed to provide a sufficient reason in its summary report to support the disciplinary action against him. To find an inmate guilty of a charged offense, the adjustment committee shall decide whether the inmate committed the offense based upon all relevant information and evidence and must be reasonably satisfied there is some evidence that the offender committed the offense. 20 Ill. Adm. Code § 504.80(j) (2003). Here, the disciplinary report provided some evidence that plaintiff committed the offenses where the

report described the incident with sufficient detail. The summary report of the committee's disciplinary action sufficiently indicated that the committee relied on the report of the reporting officer, which identified plaintiff as the offender and described plaintiff's actions.

¶ 18 Consequently, the trial court did not err in granting summary judgment in favor of defendants in regard to plaintiff's *mandamus* complaint.

¶ 19 CONCLUSION

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

¶ 21 Affirmed.