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2018 IL App (3d) 160606-U

Order filed February 22, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

MICHAEL HARPER,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	
)	Appeal No. 3-16-0606
ERIC J. MICHALEK, MICHAEL)	Circuit No. 14-MR-151
RANGE, CHARLES F. BEST,)	
CLARENCE D. WRIGHT, CLEO)	
JOHNSON, ANNA MCBEE, MICHAEL)	
LEMKE, and TERRI ANDERSON,)	The Honorable
)	Bennett J. Braun,
Defendants-Appellees.)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* In a mandamus action, the trial court properly granted defendants' motion for summary judgment on plaintiff's complaint for mandamus relief. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Plaintiff, Michael Harper, an inmate in the Department of Corrections (DOC), filed a petition for writ of mandamus (complaint) in the trial court against numerous DOC employees regarding certain disciplinary action that was taken against him after a hearing was held before

the DOC's Adjustment Committee (Committee).¹ Plaintiff sought, among other things, to reverse the Committee's finding of guilty against him on charges that were brought in a disciplinary report, to expunge the discipline from his master file, and to obtain compensation for his revoked "state pay." Defendants filed a motion for summary judgment, which the trial court granted after a hearing. Plaintiff appeals. We affirm the trial court's ruling.

¶ 3

FACTS

¶ 4

Plaintiff was an inmate in the DOC at the Stateville Correctional Center. In August 2012, External Investigator Schott conducted an administrative search of a vehicle belonging to a Stateville staff member based on evidence that the staff member was bringing contraband cell phones into Stateville and giving them to an inmate.² The staff member was present during the search of the vehicle. In the trunk of the vehicle, Schott found a padded envelope addressed to a "Mr. Wilson" with the return addressee listed as "Felicia Harper." The staff member told Schott that the envelope was used by an unknown person to mail one of four cell phones to the staff member at a post office box and that the cell phones were later given to an inmate at Stateville. Inside the padded envelope, Schott found a Western Union receipt indicating that \$200 had been sent from "Felicia Harper" and received by "Justin Wilson." During the course of the investigation, Schott determined that the staff member had used the name "Justin Wilson" to set up a post office box to receive cell phones that were to be distributed to an inmate at Stateville in exchange for money.

¹ It would appear that the petition in this case is more properly referred to as a complaint for mandamus relief. See 735 ILCS 5/2-1501 (West 2014) (abolishing writs); 735 ILCS 5/14-102 (West 2014) (referring to the filing of a complaint for mandamus); *Turner-El v. West*, 349 Ill. App. 3d 475, 477 (2004); *People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 181 n.1 (1999).

² The first name of investigator Schott has not been provided in the record.

¶ 5 About a week after the search, Schott interviewed plaintiff. Plaintiff told Schott that he had a sister named Felicia Harper and that he was the only inmate that Felicia visited or communicated with at Stateville. Plaintiff denied having any knowledge of any cell phone or of the introduction of any cell phone or any other contraband into the facility.

¶ 6 In April 2013, a disciplinary report was written about the matter by Correctional Officer Eric Michalek. In the report, Michalek charged plaintiff with the following major infractions: possession of electronic contraband, impeding or interfering with an investigation, and giving false information to a DOC employee. The report detailed the investigation that was conducted (as set forth above) and noted Michalek's conclusion that plaintiff was involved in the receipt of the contraband cell phones. The name of the staff member involved was withheld from the report for safety and security reasons.

¶ 7 The disciplinary report was later issued to plaintiff by Correctional Officer Michael Range. On the disciplinary report that plaintiff received, above the line for plaintiff's signature, was the following paragraph:

“You may ask that witnesses be interviewed and, if necessary and relevant, they may be called to testify during your hearing. You may ask that witnesses be questioned along the lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed and specify what they would testify to by filling out the appropriate space on this form, tearing it off, and returning it to the Adjustment Committee. You may have staff assistance if you are unable to prepare a defense. You may request a reasonable extension of time to prepare for your hearing.”

Near the bottom of the form was a dotted line. Below that line, the form stated, “(Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing).” Spaces were provided in the bottom area of the form for the offender to fill out his name, the name of the witness, and an explanation of to what the witness would testify.

¶ 8 When he delivered the report, Range asked plaintiff if he had a witness to be listed. Plaintiff responded affirmatively. Range handed the report to plaintiff, and plaintiff wrote on the bottom of the report in the space provided that he wanted his sister, Felicia Harper, called as a witness at the Committee hearing. Plaintiff wrote further on the report that Felicia would testify that she did not at any time send a cell phone to a “Justin Wilson” to bring to plaintiff or anyone else at Stateville. Plaintiff gave the disciplinary report with his witness information filled in back to Range. Range separated one of the carbon copies of the report and gave it back to plaintiff and took the original and the second carbon copy of the report with him.

¶ 9 At the end of April 2013, a disciplinary hearing was held on the matter before the Committee, which consisted of defendants, Charles Best, Clarence Wright, and Cleo Johnson. At the outset of the hearing, the disciplinary report was read to plaintiff. Plaintiff pled not guilty to the charges and provided a written statement in support of his position. Plaintiff asked the Committee if they had interviewed his witness, Felicia Harper, and Best responded that the Committee had not done so. Plaintiff objected and requested that his witness be interviewed but did not request a continuance. The Committee proceeded forward with the hearing over plaintiff’s objection.

¶ 10 At the conclusion of the hearing, the Committee found plaintiff guilty of the charges listed in the disciplinary report. In its written decision, the final summary report, the Committee set forth in detail the basis for its ruling and stated that it was satisfied that plaintiff had

committed the charges listed. The Committee indicated further in the report that plaintiff had not requested any witnesses. The Committee agreed with the recommended discipline of five months each of C-Grade status, segregation, and commissary restriction. A few days later, the warden, defendant Michael Lemke, approved the Committee's final summary report.

¶ 11 In May 2013, plaintiff filed a grievance with the DOC relating to the matter. Grievance officer, defendant Anna McBee, reviewed the grievance and recommended that it be denied. Lemke concurred with McBee's recommendation. Plaintiff appealed that decision to the Administrative Review Board (Board). The Board returned the appeal to plaintiff, without addressing the issues raised, because it found that the appeal had not been timely filed. The return from the Board was signed by Board chairperson, defendant Terri Anderson.

¶ 12 In January 2014, plaintiff filed a *pro se* complaint for mandamus relief in the trial court against all of the listed defendants, claiming that defendants' actions violated his procedural due process rights and constituted cruel and unusual punishment. Plaintiff sought, among other things, reversal of the Committee's guilty finding against him, expungement of the discipline from his master file, and compensation for revoked "state pay." Plaintiff attached numerous supporting documents to his complaint, including the disciplinary report, the Committee's final summary report, the grievance that plaintiff had filed, the grievance officer's report, and the Board's return of plaintiff's appeal of his grievance.

¶ 13 In June 2015, defendants filed a motion for summary judgment on the mandamus complaint, along with a statement of what defendants believed to be the uncontested facts in this case and a brief in support of defendants' motion for summary judgment. In the motion and brief, defendants alleged that summary judgment should be granted in their favor because plaintiff failed to establish a cause of action for mandamus relief and because plaintiff had no

right to the relief he was seeking. Attached to the motion were various supporting documents, including plaintiff's deposition, which was taken in February 2015. In his deposition, plaintiff testified to many of the facts set forth above. Plaintiff also stated that at the Committee hearing, the Committee had before it the original disciplinary report with the witness information on it that plaintiff had written in. Plaintiff acknowledged, however, that he did not know when the Committee had received that information.

¶ 14 Plaintiff filed a memorandum in opposition to defendants' motion for summary judgment, and defendants filed a reply. Plaintiff also filed a proffer of evidence in attempt to suggest that it was the policy and practice of the DOC investigators to interview an inmate's requested witness prior to a disciplinary hearing when the inmate listed the witness's name and probable testimony on the original disciplinary report.

¶ 15 In August 2016, a hearing was held on defendants' motion for summary judgment. After listening to the oral arguments of the parties, the trial court granted the motion in part and entered summary judgment for defendants on plaintiff's request for monetary relief, finding that plaintiff was not entitled to that relief under a mandamus action. The trial court took the remainder of defendants' motion for summary judgment under advisement.

¶ 16 The following month, the trial court entered an order granting summary judgment for defendants as to the remaining requests in plaintiff's mandamus complaint. In so doing, the trial court found that while there was no factual dispute that defendants did not interview plaintiff's requested witness, Felicia Harper, prior to the disciplinary hearing, as a matter of law, defendants had no duty to do so. Plaintiff appealed the trial court's ruling.

¶ 17 ANALYSIS

¶ 18 On appeal, plaintiff argues that the trial court erred in granting summary judgment for defendants on plaintiff's mandamus complaint. Plaintiff asserts that summary judgment should not have been granted for defendants because plaintiff established that he was denied procedural due process during the disciplinary hearing and that he was, therefore, entitled to mandamus relief. Specifically, plaintiff contends that defendants violated his procedural due process rights by: (1) refusing to call or interview his requested witness; (2) failing to state the reason for their denial of his witness request; and (3) failing to provide him with an adequate written statement of the evidence that they relied on in making their disciplinary decision and the reasons for the disciplinary action taken. Plaintiff asserts further that in making its ruling, the trial court failed to undertake the analysis set forth in the case law and the DOC regulations and that the trial court compounded that error and abused its discretion by finding as a matter of law that defendants had no duty to interview the plaintiff's witness prior to the disciplinary hearing. For all of the reasons stated, plaintiff asks that we reverse the trial court's grant of summary judgment for defendants on plaintiff's mandamus complaint and that we remand this case with directions for further proceedings.

¶ 19 Defendants argue that the trial court's ruling was proper and should be upheld. In support of that argument, defendants assert first that summary judgment was correctly granted in their favor because plaintiff failed to establish that he was deprived of a constitutionally protected liberty interest as necessary to support his claim for mandamus relief based upon a violation of procedural due process. Second, defendants contend that even if plaintiff established a constitutionally protected liberty interest was at stake, summary judgment was still rightly granted for defendants because plaintiff failed to establish that the proceedings used in this case were deficient in terms of procedural due process, since plaintiff failed to make a proper witness

request or to ask for a continuance of the disciplinary hearing and since the Committee stated in its written decision some evidence for the disciplinary action that it took. In making that contention, defendants also maintain that plaintiff suffered no prejudice from the allegedly deficient proceedings and cannot, therefore, prevail on his procedural due process claim, since the testimony of the witness that plaintiff sought to call (his sister, Felicia) would have been duplicative of plaintiff's own statements, unnecessary, and irrelevant. For all of the reasons set forth, defendants ask that we affirm the trial court's grant of summary judgment in their favor.

¶ 20 In reply to defendants' argument and contentions on appeal, plaintiff asserts in addition that: (1) he satisfied his burden to show a constitutionally protected liberty interest based upon the deplorable conditions of the prison unit where he was required to serve five months of disciplinary segregation, conditions which constituted a significant and atypical hardship; and (2) although his right to call or request a witness at a disciplinary hearing is limited based upon institutional safety, there must be some support for defendants' decision denying his request or that denial is arbitrary. For those reasons and the reasons previously stated, plaintiff again asks that we reverse the trial court's grant of summary judgment and remand this case with directions for further proceedings.

¶ 21 The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable

persons might draw different inferences from the undisputed facts. *Adams*, 211 Ill. 2d at 43. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Id.* In appeals from summary judgment rulings, the standard of review is *de novo*. *Id.* When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. A trial court's grant of summary judgment may be affirmed on any basis supported by the record. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004).

¶ 22 Mandamus relief is an extraordinary remedy that is used to compel a public officer to perform a nondiscretionary official duty. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain mandamus relief, the plaintiff must establish three elements: (1) that the plaintiff has a clear, affirmative right to the relief requested, (2) that the public officer has a clear duty to act; and (3) that the public officer has clear authority to comply with an order granting mandamus relief. *Id.*; *Dye v. Pierce*, 369 Ill. App. 3d 683, 686-87 (2006). As those elements indicate, mandamus relief may not be granted to direct the manner in which a discretionary act is performed, even if that act was performed in an erroneous manner. *Turner-El*, 349 Ill. App. 3d at 479-80. In addition and pertinent to the context of the present case, a complaint for mandamus relief is an appropriate mechanism to be used by a prison inmate to try to compel the DOC to follow its own rules or to conduct disciplinary hearings in a manner that is consistent with procedural due process. See *id.* at 479; *Ratliff-El v. Briley*, 338 Ill. App. 3d 1070, 1074 (2003).

¶ 23 In a procedural due process claim, the plaintiff challenges the constitutionality of the specific procedures that were used in denying his life, liberty, or property. *In re M.A.*, 2015 IL

118049, ¶ 35. The first step in conducting a procedural due process analysis is to determine whether the plaintiff has a constitutionally protected interest, because if no constitutionally protected interest exists, there can be no procedural due process violation. See *Hill v. Walker*, 241 Ill. 2d 479, 485 (2011). The case before us involves an alleged constitutionally protected liberty interest. Such an interest may, in certain instances, be created by state law. See *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). However, in the case of inmates, those interests will generally be limited to freedom from confinement that imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. *Id.* at 484. For example, the United States Supreme Court has held that an inmate's loss of a state statutory right to good-time credit involved a constitutionally protected liberty interest for the purposes of procedural due process. See *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

¶ 24 In the present case, however, no such interest is involved. Plaintiff was not subjected to the disciplinary loss of good-time credit toward his sentence. Rather, the discipline imposed on plaintiff in this case was a period of segregation, demotion in status, and commissary restrictions. Despite the allegedly deplorable conditions of the prison unit where plaintiff spent his time in segregation, we do not believe that the discipline measures imposed upon plaintiff created an atypical and significant hardship in relation to the ordinary incidents of prison life. See *Sandin*, 515 U.S. at 486 (the transfer of an inmate to disciplinary segregation did not constitute an atypical and significant deprivation that would involve a constitutionally protected liberty interest); *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1116-17 (2011) (same). We, therefore, reject plaintiff's claim that the discipline in this case infringed upon a constitutionally protected liberty interest as necessary for procedural due process to apply. See *Sandin*, 515 U.S. at 486; *Taylor*, 406 Ill. App. 3d at 1116-17. Thus, plaintiff could not establish that he had a clear right to the

relief requested, and his complaint for mandamus relief had to be denied. See *McFatridge*, 2013 IL 113676, ¶ 17; *Dye*, 369 Ill. App. 3d at 686-87. The trial court, therefore, properly granted summary judgment for defendants.

¶ 25 Having determined that plaintiff failed to establish that procedural due process applied and that summary judgment was properly granted for defendants on plaintiff's mandamus complaint on that basis, we need not address the parties' other assertions and contentions in support of their respective positions.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 28 Affirmed.