2018 IL App (3d) 170687-U

Order filed June 15, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

CHARLES BOCOCK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
	)	Appeal Nos. 3-17-0687, 3-17-0689,
v.	)	3-17-0693 and 3-17-0694
	)	Circuit Nos. 17-MR-308, 17-CH-561,
	)	17-MR-612 and 17-SC-1208
	)	
WILL COUNTY SHERIFF,	)	Honorable
	)	Arkadiusz Z. Smigielski,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The circuit court did not err when it dismissed plaintiff's complaint alleging an equal protection violation; (2) the circuit court did not err in dismissing plaintiff's two complaints alleging violations of plaintiff's requests seeking barber and meal schedules; and (3) the circuit court erred in dismissing plaintiff's complaint alleging a violation of plaintiff's request seeking mail records.

¶ 2 Plaintiff, Charles Bocock, appeals the dismissal of four separate civil complaints he filed against defendant, the Will County sheriff. The four causes have now been consolidated on appeal. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3 FACTS

¶ 4 Plaintiff is a pretrial detainee at the Will County Adult Detention Facility (WCADF). Plaintiff filed a complaint alleging defendant violated his equal protection rights. Plaintiff also requested several records from WCADF through the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2016)), which were denied. Those denials were the basis of three separate lawsuits filed by plaintiff against defendant. For clarity, we discuss the complaint alleging an equal protection violation and the complaints alleging FOIA violations separately.

¶ 5 I. Due Process Complaint

¶ 6 Plaintiff's complaint (Will County case No. 17-CH-561) alleged defendant violated his equal protection rights. The complaint alleged that the break schedules of the prison guards cause plaintiff to receive less time out of his cell as inmates located in a different pod of the WCADF. According to plaintiff, his reduced time out of his cell (about 10 minutes per day) was a violation of plaintiff's equal protection guarantees under the United States and Illinois Constitutions.

¶ 7 Defendant filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)) on the basis that plaintiff failed to allege a guaranteed right to time out of his cell. Defendant also argued that a legitimate governmental interest existed in the security of the facility which was rationally related to the timing of employee breaks. The circuit court dismissed plaintiff's complaint.

¶ 8 II. FOIA Requests

¶ 9 On February 1, 2017, plaintiff filed a complaint in Will County case No. 17-MR-308. The complaint alleged defendant improperly denied plaintiff's FOIA request. Plaintiff alleged that he filed a FOIA request on January 17, 2017, seeking "a copy of his recent mail log." According to the complaint, plaintiff received the following response from defendant: "Our mail log is not maintained in the inmate file." Plaintiff sought both an injunction compelling defendant to produce the requested documents and civil penalties for the alleged willful and intentional failure to comply with FOIA.

¶ 10 Defendant filed a motion to dismiss pursuant to section 2-615 of the Code. Defendant asserted plaintiff's request was not a proper FOIA request. Specifically, defendant contended the request was deficient in that it failed to indicate the request was made pursuant to FOIA and the request did not explicitly state that it sought public records. Plaintiff did not respond to defendant's motion and the circuit court ultimately entered a written order dismissing plaintiff's complaint.

¶ 11 Plaintiff also filed two separate complaints in Will County case Nos. 17-MR-612 and 17-SC-1208. Although both complaints were filed as separate lawsuits we consider the dismissal orders together because both complaints raise the same legal issue. In both cases, plaintiff alleged defendant improperly denied his FOIA request. In case No.17-MR-612, plaintiff alleged that he sought "Rules, procedures, fee schedule, appointment schedule for facility barber." In case No. 17-SC-1208, plaintiff alleged that he sought "All current menu cycles." Defendant denied both requests by informing plaintiff that the records were available via the kiosk system within plaintiff's housing system. Plaintiff alleged that the records he requested were not available through the kiosk system.

¶ 12 In both of the above cases, defendant moved to dismiss plaintiff's complaint pursuant to section 2-615 of the Code. Defendant contended that under section 8.5(a) of FOIA it was not required to provide plaintiff with a copy of the meal menu cycle or the barber records because the information plaintiff sought was available to plaintiff via the kiosk system in the WCADF. Defendant further argued that section 8.5(a) required plaintiff to make a second request and inform defendant of his inability to access the record. Because plaintiff failed to allege that he made a second request, defendant contended plaintiff's complaint should be dismissed. Plaintiff did not respond to defendant's motions and the circuit court ultimately entered a written order dismissing both of plaintiff's complaints.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff contends the circuit court erred by dismissing his four complaints. In ruling on a motion to dismiss brought under section 2-615 of the Code, "[a]ll well-pleaded facts alleged in the complaint and all reasonable inferences from them are to be taken as true [citation], and the allegations are to be viewed in the light most favorable to the plaintiff." *Oldendorf v. General Motors Corp.*, 322 Ill. App. 3d 825, 828 (2001). "[A] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). For clarity, we discuss the dismissal of each complaint in turn.

¶ 15 I. Equal Protection

¶ 16 First, plaintiff contends the circuit court erred when it granted defendant's motion to dismiss his complaint in case No. 17-CH-561, which alleged a violation of plaintiff's equal protection rights. Specifically, plaintiff asserted that defendant violated his equal protection rights in that plaintiff received less scheduled "time out of *** cells" than inmates housed in

other sections of the prison due to the prison guard's break schedules. Upon review, we find plaintiff's complaint fails on its face in light of the fact that he failed to allege the absence of any rational basis for defendant's actions.

¶ 17 Initially, we note that plaintiff is not alleging an equal protection claim based on his membership in a particular class or vulnerable group. See *e.g.*, *New Burnham Prairie Homes, Inc. v. Village of Burnham*, 910 F.2d 1474, 1481-82 (7th Cir. 1990). Plaintiff also did not allege any fundamental right that he is seeking to protect. Accordingly, where, as here, there is no suspect classification or fundamental right asserted, the governmental action that has been challenged is not subject to strict scrutiny. Instead, the action of defendant need only bear a rational relationship to a legitimate governmental purpose. *Turner v. Glickman*, 207 F.3d 419, 424 (7th Cir. 2000).

¶ 18 When applying the described rational basis standard, courts presume that the challenged governmental action is constitutional. *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). Review under the rational basis test "is not a license for courts to judge the wisdom, fairness, or logic" of the government action. *Federal Communications Comm'n v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). For a plaintiff to overcome the presumption of rationality, he must meet a heavy burden of showing that the challenged governmental action was "completely, ludicrously arbitrary." *Pontarelli Limousine, Inc. v. City of Chicago*, 929 F.2d 339, 342 (7th Cir. 1991).

¶ 19 Here, plaintiff's argument ignores an essential element of his equal protection claim. That is, plaintiff must allege that there is no rational basis for defendant's acts. Plaintiff here simply argues that defendant's acts were "totally arbitrary." Plaintiff's failure to allege the absence of any rational basis renders his equal protection claim defective on its face. However, even if we

were to ignore this failure, we note that plaintiff's complaint acknowledges that any alleged differential treatment between he and other inmates was due to the specific schedules of WCADF employees. In other words, defendant's alleged acts are not "totally arbitrary," but instead are rationally related to preventing the security concerns created by the WCADF staff members taking mandatory breaks during their shifts. Accordingly, plaintiff's equal protection claim fails on both a pleading and substantive basis.

¶ 20 II. FOIA Requests

¶ 21 Next, plaintiff contends the circuit court erred when it granted defendant's motions to dismiss his complaints in case Nos. 17-MR-612 and 17-SC-1208, seeking the production of records relating to WCADF's barber and meal schedules. Defendant responds by reiterating its argument that plaintiff failed to allege a violation of section 8.5 of FOIA. Specifically, defendant contends that it was not required to provide copies of the requested records because those records were available via the website on the WCADF's kiosk system. Additionally, defendant contends that although plaintiff alleged that the requested records were not available on the kiosk system, plaintiff's complaint is still deficient because he failed to allege that he complied with the procedural requirements of section 8.5 before filing his two suits against defendant. We address each question in turn.

¶ 22 Pursuant to section 8.5(a) of FOIA, a public body is not required to copy a public record where: (1) the record is published on the public body's website; (2) the requestor is notified of that fact and is directed to the proper website, and (3) the record can be reasonably accessed on the website. 5 ILCS 140/8.5(a) (West 2016). At issue here is the first element, whether the WCADF's kiosk system constitutes a public body's website such that defendant was not required to provide a copy of the requested records.

¶ 23 Upon review, we conclude that the kiosk system falls under the language of section 8.5. Although the kiosk system does not provide inmates with access to websites on the internet, the system serves the same purpose by providing users with digital access to information related to the WCADF's operations. Stated differently, like a website, the kiosk system digitizes information and allows electronic access to documents that would have otherwise been only available in paper form. As such, the kiosk system provides access to information that is the functional equivalent of a website for purposes of section 8.5. Therefore, we hold that defendant was not required to provide plaintiff with copies of the requested records.

¶ 24 In reaching this conclusion, we acknowledge that the information available via the kiosk system may not be accessible to members of the general public that are not currently incarcerated in the WCADF. Plaintiff, however, is currently incarcerated in the WCADF and has access to defendant's internal network. Therefore, whether the general public has access to the information in question is irrelevant to our inquiry.

¶ 25 Having found that the WCADF kiosk system falls within the purview of section 8.5, we must now consider whether the facts in plaintiff's complaints nonetheless properly pled a violation of section 8.5 of FOIA. In other words, we must consider whether plaintiff's allegation that the information he sought was not available via the kiosk system is sufficient to state a claim that defendant violated section 8.5. Even assuming plaintiff's allegation is true, we find his complaints are deficient because he failed to allege that he complied with the procedural requirements of section 8.5(b) before filing his complaints.

¶ 26 Section 8.5(b) provides:

> "If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this

> Section, the requester may re-submit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying as provided in Section 3 of this Act." *Id.* § 8.5(b).

¶ 27 Here, the plain language of section 8.5(b) establishes that defendant was not required to provide plaintiff with copies of the requested materials unless plaintiff resubmitted his requests stating his inability to access the requested records. Plaintiff's complaints failed to allege that he resubmitted his requests for the records stating that he was unable to reasonably access the records through the kiosk system. To the contrary, plaintiff acknowledged in both complaints that he immediately filed his two lawsuits after defendant denied his initial requests. Plaintiff's failure to allege that he complied with the procedural requirements of section 8.5(b) is, therefore, fatal to his claims.

¶ 28 Finally, plaintiff contends the circuit court erred when it dismissed his complaint in case No. 17-MR-308 seeking the production of records relating to plaintiff's mail log. Specifically, plaintiff contends the circuit court erred because his complaint sufficiently alleged that his FOIA request was specific enough for defendant to produce the records he sought.

¶ 29 Recently, this court resolved the same argument made by plaintiff in the instant case. See *Bocock v. Will County Sheriff*, 2018 IL App (3d) 170330. In *Bocock*, plaintiff filed a complaint seeking the production of records relating to WCADF's sale of stamps. *Id.* ¶ 20. Defendant argued that plaintiff's request was not proper because it did not reasonably describe the records sought. *Id.* ¶ 22. The circuit court dismissed plaintiff's complaint. *Id.* ¶ 26. On appeal, this court reversed finding plaintiff's request was proper in that he specifically identified the documents sought based upon a description of their contents. *Id.* ¶ 50.

¶ 30 In the instant case, defendant concedes that the decision in *Bocock* controls the issue here and makes no additional argument. In light of our prior decision in *Bocock*, we find the circuit court erred in dismissing plaintiff's complaint. Plaintiff's complaint alleged that he specifically identified the records sought in that plaintiff requested a log of his mail from January 6, 2017, "to present inclusive." Construing the pleadings and supporting documents in the light most favorable to plaintiff, his FOIA request was not fatally unclear.

¶ 31 In sum, we affirm the dismissal of plaintiff's complaints in case Nos. 17-CH-561, 17-MR-612 and 17-SC-1208. However, we reverse the circuit court's dismissal of plaintiff's complaint in case No. 17-MR-308, and remand for further proceedings. See *id*. ¶ 57.

¶ 32 CONCLUSION

¶ 33 The judgment of the circuit court of Will County is affirmed in part, reversed in part, and remanded for further proceedings.

¶ 34 Affirmed in part and reversed in part.

¶ 35 Cause remanded.