2018 IL App (4th) 170211-U

NO. 4-17-0211

FILED
February 8, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ROBERT ANDERSON, Plaintiff-Appellant, v. JOHN R. BALDWIN, GUY D. PIERCE, CHAD M. BROWN, and ABERRADO A. SALINAS, Defendants-Appellees.	)	Appeal from Circuit Court of Livingston County No. 16MR143 Honorable Jennifer Bauknecht, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The administrative record reveals no violation of law. The judgment in favor of the defendants in this action for a common-law writ of *certiorari* is affirmed.

¶ 2 Plaintiff, Robert Anderson, appeals the dismissal of a complaint, in which he sought a common-law writ of *certiorari*. The dismissal was with prejudice, pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). In our *de novo* review (see *Sandler v. Sweet*, 2017 IL App (1st) 163313, ¶ 9), we conclude section 2-619 afforded no authority for dismissing the complaint. Nevertheless, we may affirm a judgment for any reason the record supports, and we affirm because the administrative record, which is attached to the complaint, reveals no violation of law.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is an inmate at Pontiac Correctional Center, Pontiac, Illinois. In August 2016, he filed a complaint in the Livingston County circuit court, which requested a common-law writ of *certiorari*. He named, as defendants, four officers of the Illinois Department of Corrections (Department): John R. Baldwin, the Department's acting director; Guy D. Pierce, the warden of Pontiac Correctional Center; Chad M. Brown, the chairman of the adjustment committee at Pontiac Correctional Center; and Aberrado A. Salinas, the other member of the adjustment committee.

¶ 5 Essentially, plaintiff alleged as follows in his complaint.

¶ 6 On January 4, 2016, the Department served him an offender disciplinary report, which charged him with committing two offenses: assaulting another inmate (20 Ill. Adm. Code 504.Appendix A (2003) (No. 102c)) and impending or interfering with an investigation (20 Ill. Adm. Code 504.Appendix A (2003) (No. 110)). The offender disciplinary report, which is attached to the complaint as exhibit B, alleges plaintiff committed those two offenses on December 6, 2015, by hitting another inmate, Demond Carter, with a "closed fist" and afterward falsely denying to an investigator he hit Carter.

¶ 7 The offender disciplinary report was a preprinted fill-in-the-blank form. The form indicated the charged offender could request the adjustment committee to interview witnesses. Under the Department's regulations, there are two kinds of requests for witnesses: a request for the prehearing interview of witnesses (20 Ill. Adm. Code 504.80(f)(2) (2003)) and a request for the in-person testimony of witnesses in the disciplinary hearing (20 Ill. Adm. Code 504.80(h)(3) (2003)). A request for the prehearing interview of witnesses is made in the space provided for that purpose in the disciplinary report. In addition, the offender was supposed to write what each of the requested witnesses could "testify to." According to his complaint, plaintiff completed and

submitted this portion of the form, requesting the adjustment committee interview two witnesses, Ivan Perez and Robert Ford, both inmates, who purportedly would have testified that all plaintiff did on December 6, 2015, was try to break up a fight between Carter and Ford and, in doing so, he never hit Carter. A copy of this request is not attached to the complaint; nor does it appear anywhere in the record.

¶ 8 The complaint further alleged, prior to the administrative hearing, plaintiff made additional written requests to the adjustment committee. He requested the adjustment committee to (1) call, as witnesses, "numerous" other inmates the Department had interviewed and who supposedly had insisted, in the interviews, plaintiff never hit Carter; and (2) allow him to view surveillance footage of the incident, that is, his intervention in the fight between Carter and Ford, and to use the footage as exculpatory evidence in the hearing. Allegedly, the adjustment committee denied those two requests, which likewise do not appear to be in the record, and also refused to call Perez and Ford as witnesses.

¶ 9 The adjustment committee hearing occurred on January 8, 2016. According to the adjustment committee's final summary report, which is attached to the complaint as exhibit D, plaintiff pleaded not guilty and stated: " 'All the eyewitnesses will say I was breaking up the fight.' " He also submitted a written statement to the adjustment committee, in which he insisted all he had done was try to distance Carter and Ford from one another and to break up their fight.

¶ 10 The two members of the adjustment committee, Brown and Salinas, were unconvinced. They found plaintiff guilty of both of the charged offenses: assault and impeding an investigation. Under the heading of "Basis for Decision," Brown and Salinas wrote:

> "The report is based on an investigation conducted by Pontiac Correctional Center's intelligence unit. As a result of the investigation, Offender

> Anderson was viewed on institutional camera striking Offender Carter *** once with a closed fist on [December 6, 2015]. On [that date], Carter was involved in a physical altercation with another offender on 5 gallery in south protective custody. While the altercation was taking place, Anderson is viewed going near the fight and striking Carter one time with a closed fist.
>
> Offender Anderson was interviewed[,] and Anderson denied striking Carter and stated that all Anderson attempted to do was break up the fight between Carter and the other offender.
>
> The positive identification of the offender by face, name[,] and identification card;
>
> The committee reviewed the institutional camera and observed Anderson punching the offender with his right hand;
>
> The committee is satisfied the violations occurred as reported."

¶ 11 The adjustment committee recommended the following disciplinary actions against plaintiff: one year in C grade, one year of segregation, three months of yard restriction, nine months of audio/visual restriction, and the revocation of one year of good-conduct credits.

¶ 12 On January 19, 2016, Pierce, the warden, approved the findings of guilt and the recommended disciplinary actions.

¶ 13 Plaintiff administratively appealed by filing a grievance, exhibit E of the complaint. Because defendants do not claim a failure by him to exhaust administrative remedies, it is unnecessary to recount the claims he made in his grievance. On February 8, 2016, the grievance officer, "J. James," wrote a report, in which he stated, among other things, that "[n]o

witnesses were requested." He recommended denying the grievance. On February 11, 2016, Pierce concurred with that recommendation.

¶ 14 Plaintiff then appealed to the acting director, Baldwin, who, on April 12, 2016, denied the grievance but reduced the revocation of good-conduct credits from one year to three months. His decision is attached to the complaint as exhibit F.

¶ 15 Plaintiff filed his civil complaint on August 17, 2016. In his complaint, plaintiff alleged the disciplinary proceedings violated due process and section 504.80 of the Department's regulations (20 Ill. Adm. Code 504.80 (2003)). First, he alleged the Department had found him guilty without any supporting evidence, considering that (according to him) the surveillance footage really did not show him hitting Carter. Second, plaintiff alleged the Department failed to produce material exculpatory evidence, *i.e.*, the surveillance footage, for him to use in the adjustment committee hearing. Third, he alleged the adjustment committee refused to call any of the witnesses he requested.

¶ 16 Pursuant to section 2-619, defendants moved to dismiss the complaint with prejudice. They made three arguments in support of the proposed dismissal. First, they argued:

> "The Committee exercised its discretion and decided not to call the requested witnesses. Due process allows for such an exercise of discretion, and does not require the Committee to state its reasons for denying the request (although it is easy to imagine that they were concerned about the safety risk created by bringing together inmates who had been fighting, or that they simply viewed testimony as duplicative or irrelevant in light of the video camera footage)."

¶ 17 Second, defendants argued due process did not require the adjustment committee to view the surveillance footage in plaintiff's presence. They noted the adjustment committee had viewed the surveillance footage, albeit outside the hearing, and taken it into consideration.

¶ 18 Third, defendants argued the findings of guilt had an evidentiary basis in that, according to the final summary report, the surveillance footage clearly showed plaintiff punching Carter.

¶ 19 On February 28, 2017, the trial court granted defendants' motion for dismissal pursuant to section 2-619. The court concluded "the record as attached to the plaintiff's motion [*sic*] reveal[ed] that the plaintiff did receive all of his due process rights in accordance with [*Wolff v. McDonnell*, 418 U.S. 539 (1974)]." The court further concluded "there [was] evidence to support the adjustment committee's decision."

¶ 20 On March 16, 2017, plaintiff filed his notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 A. The Inapplicability of Section 2-619

¶ 23 A true motion pursuant to section 2-619 is a " 'yes but' motion": it admits (for purposes of the motion) the factual allegations in the complaint are true, and it also admits the complaint states a cause of action. *Doe v. University of Chicago Medical Center*, 2015 IL App (1st) 133735, ¶ 40. It maintains, however, despite the factual truth and legal sufficiency of the complaint, some other defense—an affirmative matter—defeats the claim. *Id.* As noted earlier, defendants did not assert plaintiff failed to exhaust his administrative remedies. Had they done so, a section 2-619 motion would have been appropriate because such failure would be an affirmative matter.

¶ 24 Because the motion for dismissal that defendants filed in this case does not argue "yes, but," it is not a true motion for dismissal pursuant to section 2-619. For one thing, the motion disputes, rather than admits, plaintiff's allegation the findings of guilt are devoid of evidentiary support. For another thing, instead of admitting the legal sufficiency of the complaint, the motion disputes the refusal to call plaintiff's requested witnesses and the refusal to produce to him the surveillance footage legally justifies the issuance of a writ of *certiorari*. Therefore, section 2-619 did not authorize the dismissal of the complaint.

¶ 25 B. Affirming the Judgment for Other Reasons

¶ 26 Even though we disagree section 2-619 was the relevant authority for dismissing the complaint, we may affirm the judgment for any reason that has a basis in the record. See *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1124 (2005). Taking plaintiff's claims one by one, we will explain why the record justifies a judgment in defendants' favor.

¶ 27 1. *The Refusal To Call Requested Witnesses*

¶ 28 Plaintiff criticizes the Department for failing to arrange for the attendance of his requested witnesses in the adjustment committee hearing. The trouble is, the administrative record indicates plaintiff requested no witnesses. The grievance officer, James, wrote in his report (exhibit E of the complaint) that "[n]o witnesses were requested." Even though plaintiff would dispute that statement by James, we are stuck with that statement, given the nature of an action for *certiorari*.

¶ 29 "The purpose of *certiorari* review is to have the entire record of the inferior tribunal brought before the court to determine, *from the record alone*, whether the tribunal proceeded according to applicable law." (Emphasis added.) *Reichert v. Court of Claims*, 203 Ill. 2d 257, 260 (2003). In a *certiorari* proceeding, case law forbids a court to hear evidence on any

issue of fact. *Funkhouser v. Coffin*, 301 Ill. 257, 260 (1921). Proving the inaccuracy of the administrative record is beyond the scope of a *certiorari* proceeding. *Id.* Rather, courts must limit themselves to reviewing the administrative record on its own terms, to see if it reveals any violation of law. *Fillmore v. Taylor*, 2017 IL App (4th) 160309, ¶ 75. In this case, the administrative record does not reveal a failure to call requested witnesses.

¶ 30 2. *Refusing To Produce the Surveillance Footage for Use as Exculpatory Evidence*

¶ 31 Plaintiff also criticizes the Department for failing to produce to him the surveillance footage so that he could use it as exculpatory evidence in the adjustment committee hearing. See *Wolff*, 418 U.S. at 566 ("We are also of the opinion that the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals."). That criticism, however, presupposes the surveillance footage was indeed exculpatory evidence. The administrative record—which, again, may not be contradicted (see *Funkhouser*, 301 Ill. at 260)—says the opposite. According to the adjustment committee's final summary report (exhibit D of the complaint), the surveillance footage is inculpatory, rather than exculpatory, evidence: it shows plaintiff punching Carter with his right hand, and it makes this showing with great clarity, right down to the "face, name[,] and identification card" of plaintiff.

¶ 32 Granted, plaintiff had a constitutional right to "present documentary evidence in his defense," provided that doing so would "not be unduly hazardous to institutional safety." *Wolff*, 418 U.S. at 566. Surveillance footage is comparable to documentary evidence, and defendants never have claimed that producing the surveillance footage to plaintiff, or allowing him to view it in the hearing, would threaten institutional safety. As defendants point out, the

adjustment committee viewed the surveillance footage outside the hearing. But to "present" evidence means to "lay [it] before the [tribunal] as an object of inquiry" and, by implication, to make arguments on it in the hearing, if the presenter sees fit to do so. Merriam-Webster's Collegiate Dictionary 919 (10th ed. 2000). Surely, the right to present relevant documentary evidence would not depend on the actual favorability of the documentary evidence to the defense, any more than the right to call relevant witnesses would depend on the actual favorability of the witnesses to the defense. The purpose of the hearing is to determine whether the evidence, if any, that the offender adduces is favorable or unfavorable to the defense.

¶ 33 Assuming, under *Wolff*, the Department should have allowed plaintiff to view the surveillance footage in the hearing and to use it in his own defense (see *Howard v. United States Bureau of Prisons*, 487 F.3d 808, 814 (10th Cir. 2007); *Kounelis v. Sherrer*, No. 04-4714 (DRD), 2005 WL 217442, *10 (D.N.J. Sept. 6, 2005)), "[e]ven errors of a constitutional dimension may be harmless" (*In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004)). Plaintiff suffered no harm from the Department's failure to produce the surveillance footage in the hearing, because, as the administrative record reveals, the surveillance footage clearly showed him punching Carter. See *id.* at 518. The limited scope of a *certiorari* proceeding will not allow us to entertain a contradiction of the administrative record. See *Funkhouser*, 301 Ill. at 260.

¶ 34 3. *Evidence To Support the Findings of Guilt*

¶ 35 "[R]evocation of good time does not comport with the minimum requirements of procedural due process [citation] unless the findings of the prison disciplinary board are supported by some evidence in the record." (Internal quotation marks omitted.) *Superintendent, Massachusetts Correctional Institute, Walpole v. Hill*, 472 U.S. 445, 454 (1985). Plaintiff argues the Department had no evidence to justify finding him guilty of assault. We disagree. The

administrative record contains "some evidence" plaintiff assaulted Carter, namely, the surveillance video, which, to quote the final summary report, showed plaintiff "striking Offender Carter *** once with a closed fist on [December 6, 2015]." *Id.*

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's judgment.

¶ 38 Affirmed.