

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 170215-U

NO. 4-17-0215

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 25, 2018

Carla Bender

4th District Appellate

Court, IL

CEDRICK T. FLAX,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
NATHAN WHEELER, ERNEST SHELTON, JOHN)	No. 16MR76
BALDWIN, STEPHEN DUNCAN, and LESLIE)	
MCCARTY,)	Honorable
Defendants-Appellees.)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court's dismissal of plaintiff's complaint for declaratory judgment, common-law writ of *certiorari*, and *mandamus* relief, concluding that (1) a declaratory judgment action was not the proper method to adjudicate the petitioner's claims, (2) the conduct of the petitioner's prison disciplinary hearing did not violate his constitutional rights, and (3) the adjustment committee's decision was based upon discretionary authority and not subject to *mandamus* relief.

¶ 2 Plaintiff, Cedrick T. Flax, appeals from the circuit court's order granting a motion to dismiss filed by defendants, Nathan Wheeler and Eldon Cooper, adjustment committee members; John Baldwin, Acting Director of the Illinois Department of Corrections (DOC); Stephen Duncan, Lawrence Correctional Center Chief Administrative Officer; Administrative Review Board member Leslie McCarty; and Lawrence Correctional Center Grievance Officer Ernest Shelton. We conclude plaintiff's complaint failed to state any proper cause of action and, accordingly, we affirm.

¶ 3

I. BACKGROUND

¶ 4 In April 2016, plaintiff, an inmate at Pontiac Correctional Center, filed a *pro se* complaint for *mandamus* claiming that, in February 2015, he was deprived of “statutory good time” and improperly subjected to “disciplinary segregation.” He sought an order compelling defendants to expunge his disciplinary records that were adjudicated during proceedings that had violated his due-process rights. According to plaintiff, three confidential informants advised correctional employees that plaintiff had been appointed and accepted the position of institutional coordinator for the Gangster Disciples gang. Associated disciplinary charges were brought against plaintiff, but the prison employees refused to reveal their sources. Because plaintiff was unable to question the sources, he insisted he was unable to prepare a defense to the charges. The Adjustment Committee conducted a hearing and found plaintiff guilty of Rule 205 “Security Threat Group Activity.” See 20 Ill. Adm. Code 504.Appendix A (eff. May 1, 2003). He received six months as C-Grade status, six months of segregation, and six months of contact visit restriction.

¶ 5 In October 2016, plaintiff filed an amended complaint, seeking a declaratory judgment, a common-law writ of *certiorari*, and *mandamus* relief. In count I, plaintiff sought declaratory relief, requesting an order declaring defendants had violated his due-process rights by failing to (1) properly state a disciplinary violation, (2) call witnesses against him, and (3) conduct an independent review of the confidential sources’ statements. In count II, plaintiff sought a writ of *certiorari*, asking the circuit court to review and vacate the adjustment committee’s decision. In count III, plaintiff sought an order of *mandamus*. Plaintiff requested the court find defendants had violated his due-process rights and grant him “any such relief as [it] deems just and necessary.”

¶ 6 In December 2016, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), asserting plaintiff had failed to state a valid cause of action for any of his claims. Specifically, defendants argued plaintiff was not entitled to a common-law writ of *certiorari* because the record of the disciplinary proceedings indicated the adjustment committee's decision was based on sufficient information and evidence, and plaintiff had received all of the procedural process he was due. Defendants also argued plaintiff was not entitled to a declaratory judgment because plaintiff failed to present the existence of an actual controversy between him and defendants. Finally, defendants argued plaintiff was not entitled to *mandamus* relief because he had failed to allege a clear affirmative right to call witnesses in the adjustment committee's hearing, and the committee's actions were discretionary.

¶ 7 In February 2017, the circuit court granted defendants' motion to dismiss. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff claims the circuit court erred by dismissing his complaint for failure to state a cause of action because (1) the disciplinary report failed to state a violation of Rule 205, (2) he was denied the right to call witnesses, and (3) no evidence was presented that he committed the alleged offense. In general, plaintiff claims the disciplinary proceedings violated his due-process rights and he sufficiently stated a cause of action for a writ of *certiorari*, a declaratory judgment, and *mandamus* relief. We review *de novo* a trial court's dismissal of a complaint for failure to state a cause of action pursuant to section 2-615. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). This court will uphold the dismissal only if it

clearly appears that no set of facts can be proved under the pleadings which will entitle the plaintiff to recover. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009).

¶ 10 Section 3-5-1(b) of the Unified Code of Corrections (730 ILCS 5/3-5-1(b) (West 2016)) provides, in pertinent part, as follows:

“If [DOC] or the [review board] makes a determination under this Code which affects the length of the period of confinement or commitment, the committed person and his counsel shall be advised of factual information relied upon by [DOC] or [the][b]oard to make the determination ***.”

¶ 11 In addition, the Supreme Court has held that under the principles of due process, prisoners are entitled to the following process in disciplinary proceedings: (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 his defense; and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974).

¶ 12 Defendants claim plaintiff failed to allege a violation of his due-process rights, thereby forfeiting review of his claims on such grounds. We disagree. In his brief, plaintiff cites to *Wolff* and to the protections afforded inmates during disciplinary proceedings. We interpret his claim as one alleging a due-process violation and we will analyze his claim in light of the requirements for each of his purported causes of action.

¶ 13 With that said, we find plaintiff failed to state a cause of action for declaratory relief. See *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253 (2001) (“The central purpose of a declaratory judgment action is to allow the court to address the controversy one step sooner than normal after a dispute has arisen, but before the plaintiff takes steps that would give rise to a

claim for damages.”). Here, plaintiff was not attempting to settle a controversy before it ripened into a legal liability. Rather, he was seeking judicial review of prison disciplinary proceedings, which is not a claim subject to declaratory judgment. *Alicea*, 321 Ill. App. 3d at 253 (trial court properly declined to review prisoner’s complaint as one seeking declaratory judgment).

¶ 14 Although a common-law writ of *certiorari* can be a proper method for reviewing prison disciplinary proceedings (*Alicea*, 321 Ill. App. 3d at 253), plaintiff here failed to demonstrate he was denied the due-process rights described in *Wolff* and afforded to prisoners. First, plaintiff does not allege he did not receive timely notice of the charges. Second, plaintiff is not entitled, as an absolute matter of right, to call witnesses on his behalf. *Wolf*, 418 U.S. at 566. Here, although plaintiff complains he was denied the right to call witnesses, there is no indication he properly requested the same. Plaintiff *did* indicate he asked for the identity of the confidential sources, however the adjustment committee may withhold the identity of confidential sources in the interest of prison security and safety. 20 Ill. Adm. Code 504.80(h)(2) (eff. May 1, 2003). Third, the adjustment committee’s written decision indicated it had relied on the evidence given by three “corroborating, credible, and confidential sources.” See *Wolff*, 418 U.S. at 563-66. Thus, we conclude the record does not support a due-process violation pursuant to *certiorari* review.

¶ 15 Plaintiff’s claim for *mandamus* relief likewise fails.

“ ‘*Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion. A court will not grant a writ of *mandamus* unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and clear authority in the official to comply with the writ. The writ

will not lie when its effect is to substitute the court's judgment or discretion for the official's judgment or discretion. *Mandamus* relief, therefore, is not appropriate to regulate a course of official conduct or to enforce the performance of official duties generally. [Citation.]’ ” *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1126-27 (2004) (quoting *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001)).

¶ 16 Because the adjustment committee has the discretion to (1) consider the evidence presented at the disciplinary hearing, (2) determine whether plaintiff is entitled to the name of a confidential source, and (3) determine whether plaintiff violated certain prison rules, a claim to review the committee’s decisions is not subject to *mandamus* relief. *Cannon*, 351 Ill. App. 3d at 1131 (because it is within the committee's discretion to deny an inmate's witness request, such a decision may not be challenged in a *mandamus* petition).

¶ 17 Plaintiff’s complaint did not sufficiently allege any cause of action sufficient to survive defendants’ motion to dismiss. As a result, we affirm the circuit court’s order of dismissal.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the circuit court’s judgment dismissing plaintiff’s complaint for failure to state any cause of action.

¶ 20 Affirmed.