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2019 IL App (3d) 170696-U

Order filed May 17, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

DAMEN TOY,)	
)	
Plaintiff-Appellant,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
)	Will County, Illinois.
v.)	
)	
)	
WILL COUNTY STATE’S ATTORNEY;)	Appeal No. 3-17-0696
ILLINOIS STATE POLICE; and)	Circuit No. 16-MR-2222
RANDY PFISTER, Warden of)	
Statesville Correctional Center,)	
)	Honorable
)	Arkadiusz Z. Smigielski,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s dismissal of the plaintiff’s petition for a writ of *mandamus* was not error.
- ¶ 2 The plaintiff, Damen Toy, filed a petition for a writ of *mandamus*, seeking the trial court to order to the defendants, the Will County State’s Attorney, the Illinois State Police, and Warden Randy Pfister, to assist him in filing criminal charges against an employee of the Illinois

Department of Corrections (the Department). The court dismissed the petition for failure to state a cause of action for which relief could be granted. 735 ILCS 5/2-615, 2-619, 2-619.1 (West 2016). The plaintiff then appealed.

¶ 3

FACTS

¶ 4

A detailed description of the facts are not necessary to the resolution of this matter. We will discuss only those facts having a bearing on the disposition. The plaintiff is an inmate in the custody of the Illinois Department of Corrections serving a 30-year sentence for aggravated sexual assault with a firearm and a concurrent 30-year sentence for armed robbery. On August 9, 2016, he was incarcerated at the Statesville Correctional Center. He alleges that, on that date, he was the victim of unwanted sexual contact by a female Department employee. He filed an administrative complaint pursuant to the Department's inmate grievance procedure, but did not receive what he believed to be appropriate attention to his complaint. He then wrote a letter to the Will County State's Attorney's Office and the Chief Judge of the Will County Circuit Court seeking to file a criminal complaint against the employee. He received no response. He then filed the instant complaint for a writ of *mandamus* against the Will County State's Attorney, the Illinois State Police, and Warden Randy Pfister in which he sought the court's order to the named defendants requiring those parties to take steps necessary to file a criminal complaint against the employee.

¶ 5

The Will County State's Attorney filed a motion to dismiss, arguing that a state's attorney has exclusive discretion to decide whether to bring criminal charges against any individual, thus making an action for *mandamus* inappropriate. Warden Pfister and the Illinois State Police filed motions to dismiss the petition as it related to them, each arguing that the plaintiff failed to allege any facts that would establish that they had engaged in actions that

would establish his right to *mandamus* relief. The plaintiff responded with the general allegation that, by failing to “assist” him in filing criminal charges against the individual employee, the defendants violated his constitutional rights. The court issued an order dismissing the petition. This appeal ensued.

¶ 6

ANALYSIS

¶ 7

As an initial matter, we note that the plaintiff has abandoned his claim against the Will County State’s Attorney and the Illinois State Police. Therefore, this matter proceeds only on the appeal as it relates to Warden Pfister.

¶ 8

This court reviews *de novo* a circuit court’s dismissal of an action under sections 2-615 or 2-619 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615, 2-619 (West 2016). *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). A motion to dismiss a complaint attacks the legal sufficiency of the complaint and affords an efficient means of obtaining a summary disposition of issues of law or easily proven facts. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004); *Kedzie & 103 rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993). Moreover, Illinois is a fact-pleading jurisdiction where the plaintiff must allege legally sufficient facts to establish his entitlement to the relief requested in the complaint. *Behringer v. Page*, 204 Ill. 2d 363, 369 (2003). In determining whether a complaint is legally sufficient to survive a motion to dismiss, the reviewing court will take all well-pleaded facts as true, and will draw all reasonable inferences from those facts in favor of the plaintiff. *Young v. Bryco Arms*, 213 Ill. 2d 433, 441 (2004). Nonetheless, even liberal construction of the facts and inferences cannot cure a complaint’s failure to state a cause of action entitled to the requested relief. *Rodriguez*, 376 Ill. App. 3d at 434.

¶ 9 Turning to the sufficiency of the complaint for *mandamus* relief at issue in the instant matter, we find that the circuit court properly dismissed the complaint. It is axiomatic that *mandamus* is “an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty.” *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464 (2004). As such, it may only be successfully invoked to force “the performance of official duties by a public officer where no exercise of discretion on his part is involved.” (Internal quotation marks omitted.) *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). Likewise, *mandamus* is inappropriate where the act at issue involved the exercise of judgment or discretion, even if the judgment is subjectively erroneous, nor is it appropriate to require a public official to reach a particular decision or exercise discretion in a particular manner. *Daley v. Hett*, 113 Ill. 2d 75, 80 (1986). Thus, a party seeking a writ of *mandamus* must establish in the complaint “every material fact needed to prove” that he is entitled to the relief sought. *Mason v. Snyder*, 332 Ill. App. 3d 834, 840 (2002).

¶ 10 Here, viewing the well-pleaded facts and inferences liberally in favor of the plaintiff, we affirm the circuit judgment dismissing the complaint. The complaint stated no facts that would establish that Warden Pfister violated the plaintiff’s rights or refused to perform a non-discretionary ministerial act. We are aware that, in his brief to this court, the plaintiff for the first time raised an allegation that Warden Pfister failed to perform “any sort of investigation” into his allegation of misconduct against the Department employee. Because this specific allegation was not contained in the complaint, it must be deemed as forfeited by this court. *People ex rel Ballard v. Niekamp*, 2011 IL App (4th) 100796, ¶ 40.

¶ 11 We note, however, that even if we were to consider this factual allegation, the complaint contains a statement of fact that he was interviewed regarding his complaint by Department

