2019 IL App (4th) 170957-U

NO. 4-17-0957

FILED
January 2, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DAVID STARKS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
RANDY PFISTER,	)	No. 13MR109
Defendant-Appellee.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court properly granted defendant's motion for summary judgment where the undisputed facts contradicted plaintiff's claim that defendant failed to review his continued placement in administrative detention.

¶ 2 In September 2013, plaintiff, David Starks, filed a petition for *mandamus*, alleging in part that defendant, Randy Pfister, failed to comply with a Department of Corrections (DOC) regulation concerning review of an inmate's placement in administrative detention. In June 2014, the trial court granted defendant's motion to dismiss and plaintiff appealed. In March 2015, this court affirmed in part, reversed in part, and remanded for further proceedings on plaintiff's claim seeking review of his placement in administrative detention. *Starks v. Pfister*, 2015 IL App (4th) 140637-U, ¶ 37. On remand, defendant filed a motion for summary judgment, asserting defendant complied with the DOC regulation. In support of the motion,

defendant included exhibits documenting defendant's periodic review of plaintiff's continuing placement in administrative detention. In December 2017, the trial court granted defendant's motion for summary judgment.

¶ 3 Plaintiff appeals, arguing (1) the trial court erred by granting defendant's motion for summary judgment because there is a genuine issue of material fact, (2) he was denied due process because he was not allowed the opportunity to present reasons and facts directly to defendant and he was not given notice of the reasons for his continued placement in administrative detention, and (3) defendant's belief that plaintiff possibly posed a threat to prison staff was insufficient to justify plaintiff's prolonged isolation. For the following reasons, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 Before arriving at Pontiac Correctional Center (Pontiac), plaintiff was an inmate at Tamms Correctional Center (Tamms), a super-maximum security detention center. Plaintiff killed a correctional officer in 1989. As a result, prison officials placed him in administrative detention due to the safety and security threat he posed to the facility or "any person." On December 22, 2012, plaintiff transferred to Pontiac from Tamms. Plaintiff arrived at Pontiac on administrative detention status and, following a review according to section 504.690(b) of the Administrative Code, he was placed in administrative detention that same day.

¶ 6 Administrative detention at Pontiac consisted of three phases. Each phase had different privileges—phase I was the most restrictive and phase III was the least restrictive.

¶ 7 A. Initial Proceedings

¶ 8 In September 2013, plaintiff filed a petition seeking *mandamus* relief. The complaint alleged defendant was not complying with DOC regulations regarding administrative

detention and grievance procedures. The petition sought an order of *mandamus* compelling defendant to (1) remove the three-tiered administrative-detention system; (2) provide plaintiff with all privileges the general prison population had; (3) prevent prison staff from disregarding grievances; and (4) review his administrative detention status and provide written records of the same. Plaintiff also sought an injunction, $5000 in damages for "due process violations on grievances, reviews," and $1,000,000 in damages for administrative-detention violations.

¶ 9 In January 2014, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)), arguing plaintiff did not have a clear right to the relief he sought. In June 2014, the trial court granted defendant's motion to dismiss and plaintiff appealed.

¶ 10 B. Plaintiff's First Appeal

¶ 11 In March 2015, this court affirmed in part, reversed in part, and remanded for further proceedings. *Starks*, 2015 IL App (4th) 140637-U, ¶ 1. In pertinent part, this court considered plaintiff's claim that the trial court erred when it dismissed his complaint because he sought defendant's compliance with a regulation that states the warden "shall review the record of each offender in administrative detention every 90 days to determine whether continued placement is appropriate." 20 Ill. Adm. Code 504.690(c), amended at 41 Ill. Reg. 3869 (eff. Apr. 1, 2017). (At the time plaintiff filed his original complaint, the regulation governing administrative detention was section 504.660(c) of Title 20 of the Administrative Code. It has since been renumbered as section 504.690(c), amended at 41 Ill. Reg. 3869 (eff. Apr. 1, 2017), of Title 20 of the Administrative Code. We cite to the renumbered section in this disposition.) This court first noted section 504.690(c)(2) required the warden to document, in writing, decisions about continued placement in administrative detention but did not require the warden to provide

the inmate with written documentation. *Starks*, 2015 IL App (4th) 140637-U, ¶ 33. This court went on to discuss plaintiff's claim as follows:

> "It is well settled DOC's regulations, including those found in the Administrative Code, 'were *never* intended to confer rights on inmates or serve as a basis for constitutional claims.' (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000); see also *Montes*, 2013 IL App (4th) 120082, ¶ 20, 985 N.E.2d 1037; *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 22, 966 N.E.2d 1233. 'Instead, Illinois DOC regulations, as well as the Unified Code [of Corrections], were designed to provide guidance to prison officials in the administration of prisons.' *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902. Moreover, 'Illinois law creates no more *rights* for inmates than those which are constitutionally required.' (Emphasis in original.) *Id.* However, states may under certain circumstances, through their statutes and regulations, create liberty interests which are protected by the due-process clause. *Sandin v. Conner*, 515 U.S. 472, 483 (1995). These state-created interests, however, are 'limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the [d]ue [p]rocess [c]lause of its own force [citations], nonetheless imposes *atypical and significant hardship* on the

inmate in relation to the ordinary incidents of prison life.' (Emphasis added.) *Id.* at 484.

Inmates have no liberty interest in avoiding transfer to discretionary segregation, such as the administrative detention used in Illinois prisons. *Townsend v. Fuchs*, 522 F.3d 765, 771 (2008). '[T]here is nothing "atypical" about discretionary segregation[.]' *Id.* Instead, it is 'an "ordinary incident of prison life" that inmates should expect to experience during their time in prison.' *Id.*; see also *Meriwether v. Faulkner*, 821 F.2d 408, 414 (1987).

Plaintiff raises no issue with his initial transfer to administrative detention. Rather, he takes issue with his *continued* placement in administrative detention, which results in a loss of certain privileges available to the general prison population, without any review or opportunity to demonstrate his placement in such segregation is no longer appropriate. An inmate may not be held indefinitely in administrative segregation unless a valid and subsisting reason for his placement in segregation exists. *Kelly v. Brewer*, 525 F.2d 394, 400 (1975). '[W]here an inmate is held in segregation for a prolonged or indefinite period of time[,] due process requires that his situation be reviewed periodically in a meaningful way and by relevant standards to determine whether he should be retained in segregation or returned to population.' *Id.*; see also *Hewitt v. Helms*, 459 U.S. 460, 477 n. 9 (1983) (*abrogated*

on other grounds, *Sandin*, 515 U.S. at 484. ('Prison officials must engage in some sort of periodic review of the confinement of such inmates [in administrative segregation].'

Accordingly, plaintiff had a clear right to defendant's compliance with section 504.6[9]0(c) of Title 20 of the Administrative Code, as that regulation provides an inmate with a periodic and meaningful review of his placement in administrative detention. In his complaint, plaintiff alleged, since his arrival at Pontiac in December 2013, he has been placed in administrative detention. Further, he alleged defendant failed to review his placement in administrative detention as is required by section 504.6[9]0. Accordingly, we conclude the trial court erred in granting defendant's motion to dismiss plaintiff's claim seeking review of his placement in administrative detention and remand for further proceedings. In doing so, however, we make no evaluation of plaintiff's claim on its merits." *Starks*, 2015 IL App (4th) 140637-U, ¶¶ 34-37.

¶ 12 C. Proceedings on Remand

¶ 13 On remand, plaintiff filed a motion entitled "leave to amend *mandamus*." However, the record does not include an amended petition for *mandamus* relief, and defendant filed an answer adopting the paragraph numbering of plaintiff's original complaint. In January 2016, defendant filed a motion for summary judgment, alleging there was no genuine issue of material fact and he was entitled to a judgment as a matter of law. Specifically, the motion

alleged the undisputed facts showed he complied with section 504.690(c)'s requirement that he "review the record of each offender in administrative detention every 90 days to determine whether continued placement is appropriate." 20 Ill. Adm. Code 504.690(c), amended at 41 Ill. Reg. 3869 (eff. Apr. 1, 2017). In support of the motion for summary judgment, defendant attached a number of exhibits.

¶ 14 The exhibits showed plaintiff transferred from Tamms on December 22, 2012, under administrative detention. On that date, the Security Supervisor Review, Clinical Services Review, Mental Health Services Review, Record Office Review, Intel/Internal Affairs Review, and Administrative Detention Review committees all recommended plaintiff remain in administrative detention. Defendant approved the recommendation.

¶ 15 On February 20, 2013, the same review committees reviewed plaintiff's file and again recommended he remain in administrative detention. Defendant again approved the recommendation. Plaintiff's continued placement in administrative detention was reviewed on July 15, 2013, October 15, 2013, January 15, 2014, and April 15, 2014. The reports noted plaintiff was in phase II status and defendant approved the recommendation to continue plaintiff's placement in administrative detention.

¶ 16 In July 2014, the Administrative Detention Review Committee (Committee) sent plaintiff notice of a file review set for July 24, 2014. The notice stated plaintiff's continued placement in administrative detention was based on the following: "[plaintiff's] violent behavior towards staff, Administrative Detention has proved effective in controlling his ability to assault staff. His association with the L[atin] K[ing] [security threat group] enhances his threat, as he has proven he will commit horrific acts of violence when instructed to, including murdering IDOC personnel."

¶ 17 In October 2014, plaintiff received notice of a Committee review set for October 23, 2014, at which he could appear. The notice included the same reasons for his continued placement in administrative detention as the July notice. In January 2015, the Committee provided plaintiff with notice of a file review set for January 22, 2015. The notice included the same reasons for his continued placement in administrative detention as the July and October notices.

¶ 18 In April 2015, plaintiff received notice of a Committee review set for April 22, 2015, at which he could appear. The notice included the same reasons for his continued placement in administrative detention. The record shows plaintiff attended the review hearing. The Committee recommended promoting plaintiff to phase III based on an improvement in his conduct, and defendant concurred with the recommendation.

¶ 19 On July 7, 2015, plaintiff was placed in segregation for six months. The Committee reviewed plaintiff's file later that month and recommended he be placed in administrative detention after his time in segregation because observation was needed. Defendant approved that recommendation. In December 2015, the Committee again conducted an in-person review of plaintiff's file and recommended he be placed in administrative detention after his release from segregation in January. Defendant again approved the Committee's recommendation.

¶ 20 The trial court considered defendant's motion for summary judgment, the written arguments of the parties, and the relevant portions of the court file. The court granted defendant's motion for summary judgment, concluding plaintiff's claim that he did not receive administrative reviews regarding his continued placement in administrative detention was belied by the undisputed facts set forth in defendant's motion and exhibits. The court stated "it is clear

that plaintiff received his due process in connection with his continued administrative detention, [and] he is not entitled to any further relief."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, plaintiff argues the trial court erred by granting defendant's motion for summary judgment because there is a genuine issue of material fact. We note plaintiff no longer contends defendant failed to review plaintiff's continued placement in administrative detention. Instead, plaintiff argues there is an issue of fact as to whether he was denied due process because he was not given notice of the periodic review of his continued placement in administrative detention until July 2014, the Committee was biased against him, and he was not allowed the opportunity to present reasons and facts directly to defendant.

¶ 24 A. Standard of Review

¶ 25 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). The court considers the evidence in the light most favorable to the nonmoving party. *Welton v. Ambrose*, 351 Ill. App. 3d 627, 633, 814 N.E.2d 970, 976 (2004). "When considering a motion for summary judgment, the court's role is to ascertain whether a genuine issue of material facts exists and not to resolve factual questions." *Beaman v. Freesmeyer*, 2017 IL App (4th) 160527, ¶ 47, 82 N.E.3d 241. Although not required to prove his case at this stage, the nonmoving party must present a factual basis that arguably entitles him to a judgment. *Village of Glenview v. Northfield Woods Water & Utility Co., Inc.*, 216 Ill. App. 3d 40, 46-47, 576 N.E.2d 238, 243 (1991). In other words, the nonmoving party cannot rely on

general conclusions of law, but must present a *bona fide* factual issue. *Libolt v. Wiener Circle, Inc.*, 2016 IL App (1st) 150118, ¶ 24, 54 N.E.3d 251. Summary judgment is a drastic means to resolve a case and a trial court should grant summary judgment only if the moving party's right to a judgment is free from doubt. *Beaman*, 2017 IL App (4th) 160527, ¶ 47. We review a ruling on summary judgment *de novo*. *Id.*

¶ 26 *Mandamus* is an extraordinary remedy to enforce the performance of ministerial official duties by a public official. *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 15, 985 N.E.2d 1037. When seeking *mandamus* relief, a petitioner must show a clear right to the relief requested, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ of *mandamus*. *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233. " '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.' " *Dye v. Pierce*, 369 Ill. App. 3d 683, 686-87, 868 N.E.2d 293, 296 (2006) (quoting *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001)).

¶ 27 B. Defendant's Interrogatory Response

¶ 28 Plaintiff first asserts the trial court erred by granting defendant's motion for summary judgment because there is a genuine issue of material fact raised in defendant's response to an interrogatory. Specifically, plaintiff contends an interrogatory asked defendant to identify anyone he sought approval from before placing plaintiff on administrative detention. Defendant responded as follows: "Defendant did not place plaintiff in administrative detention—plaintiff arrived from Tamms under that status." We conclude this fails to establish a genuine issue of material fact. Plaintiff does not dispute that he arrived from Tamms under

administrative detention but appears to argue that his continued placement in administrative detention after the first 90 days at Pontiac contradicts defendant's statement that he did not place plaintiff in administrative detention. We disagree. Defendant's interrogatory response merely indicated defendant did not make the *initial* decision to place plaintiff in administrative detention under section 504.690(a), which requires the approval of the director or deputy director. See 20 Ill. Adm. Code 504.690(a), amended at 41 Ill. Reg. 3869 (eff. Apr. 1, 2017). Neither defendant nor plaintiff dispute that plaintiff arrived at Pontiac while under administrative detention. The fact that defendant undisputedly later continued plaintiff's placement in administrative detention does not create a genuine issue of material fact.

¶ 29 C. Due Process

¶ 30 Plaintiff next contends there is a genuine issue of material fact regarding whether the periodic reviews of his placement in administrative detention were sufficient to satisfy his right to due process. Specifically, plaintiff argues he did not receive notice of a hearing on his continued placement in administrative detention until July 2014, the periodic reviews were not meaningful, the Committee was biased, and defendant improperly relied on the Committee recommendations in making the decision to continue plaintiff's placement in administrative detention. We note at the outset that plaintiff does not dispute that the periodic reviews documented in defendant's exhibits attached to the motion for summary judgment occurred. Rather, plaintiff challenges the adequacy of those periodic reviews.

¶ 31 1. *Notice and Meaningful Review*

¶ 32 Plaintiff asserts he did not receive notice regarding his placement in administrative detention following his transfer to Pontiac until July 2014, 19 months later. Defendant contends this was an unreasonable delay.

¶ 33 As discussed in this court's resolution of plaintiff's first appeal, states may, through statutes and regulations, create liberty interests that are protected by due process. *Sandin*, 515 U.S. at 483. These state-created liberty interests are "limited to freedom from restraint which *** imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484. Inmates have no liberty interest in avoiding transfer to discretionary segregation, such as the administrative detention used in Illinois prisons, because "there is nothing 'atypical' about discretionary segregation." *Townsend,* 522 F.3d at 771. However, "administrative segregation may not be used as a pretext for indefinite confinement of an inmate." *Hewitt*, 459 U.S. at 477 n. 9. "[W]here an inmate is held in segregation for a prolonged or indefinite period of time[,] due process requires that his situation be reviewed periodically in a meaningful way and by relevant standards to determine whether he should be retained in segregation or returned to population." *Kelly*, 525 F.2d at 400. Prison officials must provide some kind of periodic review of the continued confinement in administrative segregation. *Hewitt*, 459 U.S. at 477 n. 9. "This review will not necessarily require that prison officials permit the submission of any additional evidence or statements." *Id.*

¶ 34 As an initial matter, we note that plaintiff did not challenge his initial transfer to administrative detention before the trial court or before this court in his prior appeal. Plaintiff nonetheless relies on *Hewitt* for the proposition that the 19-month delay in receiving notice of a hearing regarding his continued placement in administrative detention was unreasonable. However, in requiring notice and an informal, nonadversarial review within a reasonable time after being confined to administrative segregation, *Hewitt* addressed the process due for a prisoner's initial placement in administrative segregation. *Id.* at 472. *Hewitt* imposed no such requirement on the periodic review necessary for an inmate's continued placement in

administrative segregation. Additionally, we note that plaintiff does not assert that the periodic review required by *Hewitt* did not occur and the exhibits attached to defendant's motion for summary judgment establish precisely the opposite.

¶ 35 Here, the record shows defendant periodically reviewed plaintiff's *continued* placement in administrative detention on December 22, 2013, February 20, 2013, July 15, 2013, October 15, 2013, January 15, 2014, April 15, 2014, July 24, 2014, October 23, 2014, January 22, 2015, April 22, 2015, July 30, 2015, and December 3, 2015. Defendant was provided notice of the hearings that took place starting in July 2014. Defendant was also afforded the opportunity to present documentary evidence and to appear in person at alternating review hearings.

¶ 36 Although some of the documents contain the same reason for plaintiff's continued placement in administrative detention—specifically, his prior assault and murder of a prison guard and his gang affiliation—our review of the record shows plaintiff received meaningful review. In April 2015, plaintiff's phase level was promoted due to his improved conduct. However, in July 2015 plaintiff was placed in segregation and it was recommended that he remain in administrative detention following his release from segregation. This shows the Committee relied on more than just plaintiff's prior conduct as reasons for his continued placement in administrative detention. See *Proctor v. LeClaire*, 846 F.3d 597, 611 (2017) ("[P]rison officials must look to the inmate's present and future behavior and consider new events to some degree to ensure that prison officials do not use past events alone to justify indefinite confinement."); *Isby v. Brown*, 856 F.3d 508, 527 (2017) ("Even one or two edits or additions along these lines could assuage our concerns and provide helpful notice to [the inmate] as to the reasons for his placement and how he could get out.").

¶ 37 We find the trial court properly granted defendant's motion for summary judgment where the record clearly shows plaintiff received meaningful periodic review hearings on his continued placement in administrative detention.

¶ 38 2. *Committee Recommendations*

¶ 39 Plaintiff asserts the Committee was biased against him. "Due process requires that an administrative proceeding be conducted by a fair and impartial tribunal." *Jackson v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 293 Ill. App. 3d 694, 699, 688 N.E.2d 782, 785 (1997). However, there is a presumption that a tribunal is fair and honest and the challenger must overcome that presumption. *Id.* To establish bias, it is not sufficient to show "the mere possibility of bias or that the decision maker is familiar with the facts of the case." *Danko v. Board of Trustees of the City of Harvey Pension Board*, 240 Ill. App. 3d 633, 641, 608 N.E.2d 333, 339 (1992).

¶ 40 Although plaintiff claims the Committee was biased against him, he fails to cite any evidence to support this claim. Plaintiff merely asserts the Committee was biased against him because of his previous murder of a correctional officer and because the rationale for his continued placement in administrative detention did not change. As discussed above, there is some evidence in the record that the rationale for plaintiff's continued placement in administrative detention was not based solely on past events. Moreover, the Committee is not barred from considering the historical facts of plaintiff's case. See *Kelly*, 525 F.2d at 402. We conclude plaintiff's otherwise unsupported, conclusory statements are insufficient to create an issue of fact to defeat a motion for summary judgment. *Village of Montgomery v. Aurora Township*, 387 Ill. App. 3d 353, 365, 899 N.E.2d 567, 577 (2008).

¶ 41 Finally, plaintiff asserts the Committee reviews were unfair because the administrative regulations do not provide for the formation of such a committee. Plaintiff argues he was entitled to present his objections to defendant personally, rather than appear before the Committee. Although the administrative regulations do not specifically allow for a committee, they also do not bar the creation of such a committee. Moreover, the provisions of section 504.690(b) specifically allow for the warden to consider "[r]eports and recommendations concerning the offender." 20 Ill. Adm. Code § 504.690(b), amended at 41 Ill. Reg. 3869 (eff. Apr. 1, 2017). Although that provision governs what the warden may consider in determining whether to make an initial placement in administrative detention, we conclude the regulations clearly contemplate that a warden may rely on recommendations concerning an inmate's placement.

¶ 42 Plaintiff relies on *Hatch v. District of Columbia*, 184 F.3d 846 (1999) in support of his argument that he was entitled to present his objections to defendant personally, rather than appear before the Committee. However, *Hatch* involved an inmate who claimed he received no notice or opportunity to be heard before the Housing Board shortly after he was first placed in administrative segregation. *Id.* at 852. *Hatch* did not involve any challenge to the adequacy of a periodic review of the inmate's continued placement in administrative detention. Nor did the inmate argue he was denied due process because he appeared before the Housing Board that recommended administrative segregation rather than before the ultimate decision maker. Indeed, *Hatch* involved the inmate claim that he was not given notice or the opportunity to appear before the Housing Board *at all*. *Id.* Accordingly, we conclude *Hatch* does not support plaintiff's claim that he was denied due process by having the opportunity to appear before the Committee but not

directly before the warden. We further conclude this argument fails to raise a genuine issue of material fact so as to defeat defendant's motion for summary judgment.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment.

¶ 45 Affirmed.