

2019 IL App (4th) 180072-U

NO. 4-18-0072

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED
May 20, 2019
Carla Bender
4th District Appellate
Court, IL

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).

HERMAN TOWNSEND,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
S.A. GODINEZ, RANDY PFISTER,)	No. 15MR20
JEFFREY EILTS, STEPHANIE DAVIS and)	
STEVEN TUTOKY,)	Honorable
Defendant-Appellant.)	Jennifer Hartmann Bauknecht,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendants’ motion to dismiss plaintiff’s complaint.

¶ 2 In March 2015, plaintiff, Herman Townsend, *pro se* filed a complaint under section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2014)), alleging defendants violated his constitutional rights under the first, eighth, and fourteenth amendments as well as provisions of the Illinois Criminal Code and the Code of Civil Procedure. Defendants filed a motion to dismiss, which the trial court granted. On appeal, plaintiff challenges the dismissal of his complaint. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was an inmate at the Tamms Correctional Center until it closed in

December 2012. At that time, plaintiff was transferred to Pontiac Correctional Center. Subsequently, in 2015, plaintiff was transferred to Vandalia Correctional Center. The allegations in his complaint are generally based on violations that occurred at the Pontiac Correctional Center following the Administrative Review Board's denial of his grievances.

¶ 5 In March 2015, plaintiff filed a six-count complaint under section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2014)) against defendants, S.A. Godinez, the Director of the Illinois Department of Corrections; Randy Pfister, the warden at the Pontiac Correctional Center; Jeffrey Eilts, a counselor at the Pontiac Correctional Center; Stephanie Davis, a trust fund supervisor at the Pontiac Correctional Center; and Steven Tutoky, a correctional officer at the Pontiac Correctional Center.

¶ 6 Plaintiff's six-count complaint alleged as follows: (1) defendants violated plaintiff's first, eighth, and fourteenth amendment due process rights by retaliating against him for filing grievances, litigating his claims, and writing letters to the FBI about alleged "torture" occurring at the Pontiac Correctional Center; (2) defendants Davis and Pfister committed theft by deducting \$337.02 from plaintiff's prisoner trust fund account in retaliation for plaintiff's grievances and letters written to various government entities; (3) defendants Davis, Pfister, and Tutoky committed "official misconduct" in violation of Illinois law by deducting funds from plaintiff's trust fund account; (4) defendants Godinez, Pfister, and Davis violated plaintiff's substantive and procedural due process rights by deducting \$337.02 from plaintiff's prisoner trust fund account without notice or a hearing; (5) defendants violated the eighth amendment's prohibition against cruel and unusual punishment as well as the equal protection clause of the fourteenth amendment by denying plaintiff's request for a payment plan and restricting his

ability to purchase “necessary” items such as cosmetics, shower shoes, a fan for his prison cell, and envelopes to “write the F.B.I.” more letters; and (6) defendants Godinez, Davis, and Pfister violated 12-1001(b) of the Code of Civil Procedure (735 ILCS 5/12-1001(b) (West 2016)), which exempts a debtor’s equity interest from judgment.

¶ 7 In October 2015, defendants 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 2016)). Plaintiff filed a response and a motion for summary judgment in December 2015. In a docket entry dated December 13, 2017, the trial court dismissed plaintiff’s complaint, stating that “plaintiff failed to set forth a cause of action as required by case law for civil rights violations.” The court further stated “that it lack[ed] jurisdiction to hear this matter.” The record reflects that plaintiff’s motion for summary judgment was stricken. In January 2018, plaintiff filed a motion for reconsideration, and the court denied his motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff challenges the dismissal of his complaint. In the complaint, defendant alleged various statutory and constitutional violations pursuant to section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2014)).

¶ 11 A. Section 2-615

¶ 12 A motion to dismiss brought pursuant to section 2-615 challenges “the legal sufficiency of a complaint.” *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 8, 21 N.E.3d 437. “A court deciding a section 2-615 motion must accept all well-pleaded facts in the complaint as true ***.” *Id.* The allegations in the complaint are construed in

the light most favorable to the plaintiff. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 1053 (2006). “Thus, 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.” *Id.* “While the plaintiff is not required to set forth evidence in the complaint [citation], the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions [citation].” *Id.* at 429-30. Our review is *de novo*. *Pooh-Bah Enterprises, Inc., v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009).

¶ 13 B. Section 1983 of the Civil Rights Act

¶ 14 Plaintiff filed his complaint pursuant to section 1983 of the Civil Rights Act. 42 U.S.C. § 1983 (2014). “Section 1983 of the Civil Rights Act is a vehicle for vindicating the deprivation of federal constitutional or statutory rights under the color of law.” *Murray v. Poani*, 2012 IL App (4th) 120059, ¶ 16, 980 N.E.2d 1275. “[A] section 1983 claim requires a showing of (1) a deprivation, (2) a property interest, and (3) state action.” *Id.* Here, plaintiff contends defendants violated various statutory and constitutional rights under the first, eighth, and fourteenth amendments. Specifically, he argues that defendants retaliated against him for filing grievances and writing letters to government entities by deducting funds from his prisoner trust fund account. We disagree with plaintiff’s contentions and find that he failed to plead sufficient facts showing a deprivation of his statutory or constitutional rights in this case.

¶ 15 C. Cruel and Unusual Punishment

¶ 16 Plaintiff argues that he was “tortured” and subjected to cruel and unusual punishment in violation of the eighth amendment to the United States Constitution because he

was unable to access or purchase “necessary” items such as cosmetics, shower shoes, a fan for his prison cell, and extra envelopes.

¶ 17 Generally, an inmate’s constitutional rights include “adequate water, shelter, food, drinking water, clothing, sanitation, and medical care, personal safety, reasonable access to courts, and the reasonable opportunity to exercise religious freedom.” *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17, 957 N.E.2d 572. “Inmates cannot expect the amenities, conveniences and services *** [found in] a *** hotel[,]” and insufficient amenities do not amount to cruel and unusual punishment under the eighth amendment. *Harris v. Fleming*, 839 F.2d 1232, 1235 (7th Cir. 1988). In this case, we cannot agree with plaintiff’s assertion that his inability to access or purchase items such as cosmetics, shower shoes, a fan, or additional envelopes implicates a right of constitutional magnitude. Because plaintiff failed to allege facts that would support a claim for an eighth amendment constitutional violation, he has also failed to state a claim upon which relief may be granted.

¶ 18 D. Plaintiff’s Remaining Constitutional and Statutory Allegations

¶ 19 Plaintiff’s remaining allegations of various constitutional and statutory violations all relate to a \$337.02 deduction from his prisoner trust fund account. Defendants contend that no violation can be claimed because the funds were used to repay plaintiff’s debt for postage and library resources.

¶ 20 It is well established that advances for postage and library resources can be recouped from inmates in order to repay their debts. See 20 Ill. Adm. Code 525.130(a) (“The offender’s trust fund account shall be restricted for the cost of such postage until paid or the offender is released or discharged, whichever is soonest.”); see also *Bounds v. Smith*, 430 U.S.

817, 824-25, 828 (1977) (explaining that inmates must be provided “at state expense” with access to law libraries, materials to draft legal documents, and stamps to mail those documents; however, it is not an unlimited right and economic factors may be considered in providing access to the courts). Although inmates are allowed to mail a reasonable number of legal documents at the state’s expense, inmates with “ample time on their hands” to “abuse” the judicial system by filing lawsuits that “harass their accusers, the guards, and others who manage their captivity” have “no constitutional entitlement to subsidy of [their] litigious enterprises.” (Internal quotation marks omitted.) *Turner-El v. West*, 349 Ill. App. 3d 475, 483, 811 N.E.2d 728, 736 (2004) (quoting *Lewis v. Sullivan*, 279 F.3d 526, 528-29 (7th Cir. 2002)).

¶ 21 Here, plaintiff alleges in his complaint that he wrote numerous letters to government entities including the U.S. Department of Justice and the FBI. The record reveals that, in doing so, plaintiff accumulated a debt of \$4263.88 for legal postage, library items, and purchases from the commissary between August 2013 and January 2015. To partially offset that debt, prison officials deducted \$337.02 from plaintiff’s prisoner trust fund account. Plaintiff failed to plead any facts showing that he did not in fact owe this debt. Further, he failed to plead sufficient facts showing that the \$337.02 deduction occurred because of alleged retaliation as opposed to the recoupment of funds to pay plaintiff’s debt. Accordingly, we agree with the trial court that the complaint failed to state a claim upon which relief may be granted.

¶ 22 Finally, we note that defendants make the argument that they are not “persons” subject to suit under section 1983 of the Civil Rights Act. See 42 U.S.C. § 1983 (2014) (“Every person who, under color of any statute *** causes *** the deprivation of any rights *** secured by the Constitution and laws, shall be liable to the party ***.”). In light of our determination that

plaintiff failed to plead sufficient facts showing a deprivation of any constitutional or statutory right with respect to all named defendants, we need not address this final contention.

¶ 23

III. CONCLUSION

¶ 24

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

¶ 25

Affirmed.