

NOTICE
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2014 IL App (5th) 120523-U

NO. 5-12-0523

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

JAMAL SHEHADEH,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Christian County.
)	
v.)	No. 12-MR-26
)	
THE ILLINOIS DEPARTMENT OF)	
CORRECTIONS,)	Honorable
)	James L. Roberts,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court. Justices Spomer and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The plaintiff's complaint failed to set forth a cause of action upon which relief could be granted, and the circuit court correctly dismissed the complaint. This court must presume that the circuit court acted properly when it denied the plaintiff leave to file amended complaints, given the lack of a report of proceedings or a bystander's report in the record on appeal.

¶ 2 The plaintiff, Jamal Shehadeh, appeals from the circuit court's order dismissing his complaint against the Illinois Department of Corrections (IDOC) and denying his motions to amend the complaint. All counts in the complaint and in the proposed amended complaints involved alleged violations of the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 to 11.5 (West 2012)). This court affirms the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 **The Complaint**

¶ 5 Shehadeh was an IDOC inmate housed at Logan Correctional Center (Logan). On

March 13, 2012, in the circuit court of Christian County, he filed a *pro se* "FOIA Complaint" wherein he claimed that the IDOC had violated sections 3(d) and 6(b) of the FOIA (5 ILCS 140/3(d), 6(b) (West 2010)). "Sometime in March, April, or May of 2012," Shehadeh alleged, he submitted to the IDOC a FOIA request for public records. The IDOC responded with a letter stating that the cost of reproducing the requested records would be 15 cents per page, for a total of \$44.25. Shehadeh remitted payment in that amount, and the IDOC sent him copies of the requested records. Shehadeh further alleged that on or about February 20, 2012, he submitted to the IDOC a FOIA request for "records that indicate how much the IDOC pays for paper and toner for the copy machine used to fill FOIA requests." On March 5, 2012, Shehadeh received from the IDOC a response letter dated February 24, 2012. In the response, according to the complaint, the IDOC stated that its "actual cost per page for reproducing records in response to FOIA requests is less than seven-tenths of one cent or < \$0.007 for paper, toner, and machine costs." According to the complaint, the IDOC's response was sent via the typical means that the IDOC employs to send communications to inmates, rather than the United States mail, and as a result the response "took longer than five days to reach [Shehadeh]."

¶ 6 For relief, Shehadeh asked that the circuit court: (1) find that the IDOC's "failure to furnish a response to [Shehadeh's] February 20th FOIA request within 5 days is a violation of § 3(d) of the FOIA"; (2) find that the IDOC violated section 6(b) of the FOIA by charging 15 cents per page for black-and-white copies "when the actual cost is less than seven-tenths of one cent"; (3) direct the IDOC to charge only seven-tenths of a cent per page for future FOIA responses; (4) order the IDOC to refund \$41.30 to Shehadeh; and (5) award costs, fees, statutory interest, civil penalties, and any other "fair and proper" relief.

¶ 7 Attached to the complaint were (1) two letters from the IDOC's FOIA officer, (2) a piece of paper indicating that the "cost per case" of 8½ x 11 recycled paper was \$33.40; (3)

a copy of an "order for release" from the State of Illinois Department of Central Management Services, which seems to indicate that in May 2009 the State arranged for the IDOC to rent from a private vendor a Konica Minolta printer for a three-year term at a cost of \$9,314.28.

¶ 8 The Proposed First Amended Complaint

¶ 9 On May 3, 2012, Shehadeh filed a motion for leave to amend the complaint. The motion was accompanied by an "Amended FOIA Complaint" and appended exhibits. In the amended complaint, Shehadeh stated that he was incorporating by reference "all of the facts stated and relief requested in the original FOIA Complaint." He sought to amend the original complaint so as to change the phrase "Sometime in March, April, or May of 2012" to "On April 20, 2010." He also sought to add seven additional counts to his complaint, numbered II through VIII. In count II, Shehadeh alleged that he had submitted to the IDOC a FOIA request for "a copy of the most recent transfer packet generated by the Logan Correctional Center in response to an amendment to [Shehadeh's] sentencing order that recommended [Shehadeh] for a work release transfer," but the IDOC responded that the requested record was part of Shehadeh's master file and therefore exempt from disclosure under the FOIA. In count III, Shehadeh alleged, "On February 28th, March 1st, and April 18, 2012, in response to three separate FOIA requests from [Shehadeh], [the IDOC] demanded payment of copy fees in the amount of \$0.15 per page when the [IDOC's] actual cost per page for copies is less than \$0.01, in violation of FOIA § 6(b)." In count IV, Shehadeh alleged that in February 2012, he submitted to the IDOC a FOIA request for records pertaining to the proposed closure of the Adult Transition Centers, but the IDOC responded that such records were exempt from disclosure under section 7(1)(f) of the FOIA (5 ILCS 140/7/(1)(f) (West 2012)). Also in count IV, Shehadeh alleged that in February 2012, he submitted to the Office of the Illinois Governor a FOIA request for

copies of all records from the Governor's office pertaining to the closure of IDOC facilities that was formally announced on February 22, 2012. The Governor's office provided Shehadeh with copies of several reports prepared by the IDOC and sent to the Governor. The Governor's office also forwarded to the IDOC Shehadeh's FOIA request, and the IDOC responded to Shehadeh that it did not have any responsive records. In count V, Shehadeh alleged that on March 27, 2012, he submitted to the IDOC a FOIA request for all records pertaining to how the IDOC will determine which inmates are low-level-threat inmates qualifying for electronic home detention, but the IDOC responded that such records were exempt from disclosure under the FOIA. In count VI, Shehadeh alleged that on March 19, 2012, he submitted to the IDOC a FOIA request for copies of the IDOC's determinations on his grievances, but the IDOC responded by claiming, *inter alia*, that it provided him with copies of the grievance determinations at the time they were made. In count VII, Shehadeh alleged that in January and February of 2012, he submitted to the IDOC two FOIA requests—one for records stating the names of the Consolidated Communications employees who repaired telephones at Logan on January 10, 2012, and one for records stating the names and titles of the people who visited Logan on February 27, 2012—but the IDOC responded that it had no such documents. In count VIII, Shehadeh alleged that in August 2011, he submitted to the IDOC a FOIA request for all records pertaining to a computer outage that prevented Logan inmates from accessing their commissary accounts, but the IDOC responded that no responsive records existed.

¶ 10 The Proposed Second Amended Complaint

¶ 11 On June 5, 2012, Shehadeh filed a motion for leave to file a second amended complaint, wherein he stated that the IDOC had committed several additional FOIA violations, which would serve as the bases for additional causes of action. The motion was accompanied by a "Second Amended FOIA Complaint" and appended exhibits. In

the second amended complaint, Shehadeh stated that he was incorporating by reference "all of the facts stated and relief requested in the original FOIA Complaint." He also presented four new counts, numbered IX through XII. In count IX, Shehadeh alleged that on May 7, 2012, he submitted a FOIA request to the IDOC, and the IDOC received the request on May 11, 2012. On May 29, 2012, he received in response a letter dated May 21, 2012; the response letter arrived "in an envelope with no postal markings." Shehadeh claimed that the IDOC violated the FOIA by failing to respond to his request within five days and by using "unconventional means for transmittal of its response." In count X, Shehadeh alleged that on May 7, 2012, he submitted to the IDOC a FOIA request for "copies of all communications to or from IDOC legal counsel concerning [Shehadeh] or his pending litigation against the State," but the IDOC responded that all such records were exempt from disclosure under section 7(1)(m) of the FOIA (5 ILCS 140/7(1)(m) (West 2012)). In count XI, Shehadeh alleged that on May 7, 2012, he submitted to the IDOC a FOIA request for "a complete copy of Plaintiff's substance abuse file," but the IDOC responded that it did not have any responsive documents. In count XII, Shehadeh alleged that on May 7, 2012, he submitted to the IDOC a FOIA request for "copies of all communications to or from [Logan's] engineer, Jeff Short, regarding the proposed transition from [Logan] to a female prison," but the IDOC responded that such records were exempt from disclosure under section 7(1)(f) of the FOIA (5 ILCS 140/7(1)(f) (West 2012)).

¶ 12 The Proposed Third Amended Complaint

¶ 13 On October 5, 2012, Shehadeh filed a motion for leave to file a third amended complaint. The motion was accompanied by a "third amended complaint" and appended exhibits. The third amended complaint contained two additional counts, numbered counts XIII and XIV. Count XIII concerned a FOIA request that Shehadeh allegedly submitted to the IDOC on March 9, 2012, to which the IDOC responded three weeks later. Count

XIV concerned a FOIA request that Shehadeh allegedly submitted to the IDOC on May 7, 2012, to which the IDOC allegedly responded in an untimely manner.

¶ 14 The DOC's Motions and Responses

¶ 15 On June 14, 2012, the IDOC filed a motion to dismiss Shehadeh's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). In an accompanying memorandum, the IDOC argued that Shehadeh's complaint failed to state a claim upon which relief could be granted.

¶ 16 On June 20, 2012, the IDOC filed a response to Shehadeh's motion for leave to amend complaint and motion for leave to file second amended complaint. The IDOC asked the court to deny both motions. In an accompanying memorandum, the IDOC argued that the proposed additional counts, with the exception of proposed count XI, failed to state a claim.

¶ 17 On October 18, 2012, the IDOC filed a response to Shehadeh's motion to file a third amended complaint. The IDOC urged the circuit court to deny the motion because the proposed third amended complaint was untimely and did not cure the defects present in the complaint.

¶ 18 The Circuit Court's Rulings

¶ 19 On September 27, 2012, the court scheduled a hearing for October 18, 2012. On that later date, the circuit court heard arguments from the parties, dismissed Shehadeh's original complaint, denied all three of Shehadeh's motions to amend the complaint, and denied two motions for summary judgment that the parties also had filed. From this judgment of the circuit court, Shehadeh now appeals.

¶ 20 ANALYSIS

¶ 21 Shehadeh appeals from the circuit court's order dismissing his complaint and denying his three motions to amend the complaint. The circuit court granted the IDOC's

motion to dismiss the complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). A section 2-615 motion challenges the legal sufficiency of a complaint, based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In ruling on such a motion, the court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts and construes the allegations in the light most favorable to the plaintiff. *Marshall*, 222 Ill. 2d at 429. A cause of action should not be dismissed under section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Marshall*, 222 Ill. 2d at 429-30. On appeal, the dismissal of a complaint under section 2-615 is reviewed *de novo*. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13.

¶ 22 Shehadeh's complaint was legally insufficient, based on defects apparent on its face, and the circuit court properly dismissed it. Essentially, Shehadeh claimed that the IDOC violated the FOIA by charging him an impermissibly high per-page fee for copies of documents and by responding to his FOIA request in an untimely manner. Neither allegation sufficiently states a claim.

¶ 23 In general, a public body may charge a FOIA request "fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records"; these fees "shall not exceed 15 cents per page" for reproducing records and "shall not exceed \$1" for certifying records. 5 ILCS 140/6(b) (West 2012). Here, the IDOC charged Shehadeh a fee of 15 cents per page. Shehadeh argues that the IDOC's actual cost for reproducing records is much less than 15 cents, given the price the IDOC pays for paper, and that he therefore was overcharged. However, 15 cents per page is plainly reasonable and permissible under the plain language of section 6(b) of the FOIA.

¶ 24 As for the timing of the IDOC's response, in general a public body must respond to a FOIA request within five business days after receiving the request. 5 ILCS 140/3(d)

(West 2012). Here, Shehadeh alleged in his complaint that he "submitted" a FOIA request to the IDOC "on or about February 20, 2012," and that on March 5, 2012, he received the IDOC's response to his request. He further alleged that the IDOC sent the response to him (an inmate) through the means by which the IDOC typically sends communications to inmates, resulting in an untimely response. He argues that the IDOC violated the FOIA by sending its response through these typical means instead of the United States mail. From the complaint, it cannot be determined when the IDOC received the request, but the response letter that Shehadeh received on March 5, 2012, was dated February 24, 2012, only four days after he allegedly submitted his request. Thus, there is no sufficient claim that the IDOC responded outside the five-business-days time frame. There is no requirement that a person making a FOIA request actually receive the response within the five-business-days time frame. Furthermore, nothing in the FOIA requires the IDOC to use the United States mail when responding to an inmate's FOIA request. The IDOC may reasonably respond to an inmate's FOIA request via the mode of delivery that it typically employs when communicating with inmates.

¶ 25 This court's *de novo* review of the complaint reveals apparent defects that made the complaint legally insufficient. Because the complaint failed to set forth a cause of action upon which relief could be granted, its dismissal was proper.

¶ 26 The circuit court also denied Shehadeh's three motions to amend the complaint. A plaintiff has no absolute right to amend his complaint; the decision on whether to grant leave to amend rests within the sound discretion of the circuit court. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992). The circuit court should consider several factors in determining whether to allow an amendment, including whether the amendment would cure a defect in the pleadings; whether the other party would be prejudiced or surprised by the proposed amendment; the timeliness of the proposed amendment; and

whether there were previous opportunities to amend the pleadings. *Id.* at 467-68. "The primary consideration is whether amendment would further the ends of justice. [Citation.] Where it is apparent even after amendment that no cause of action can be stated, leave to amend should be denied. [Citation.]" *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7 (2004). On review, the circuit court's decision to deny amendment will not be disturbed absent an abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69.

¶ 27 The record here consists of a single volume of common law record. The circuit court held a hearing on the IDOC's motion to dismiss Shehadeh's complaint and Shehadeh's motions to amend his complaint, but no report of proceedings or bystander's report is included in the record. The appellant has the burden of providing a record sufficient to support a claim of error, and where he fails to meet that burden, the reviewing court must presume that the circuit court's order conformed with legal principles and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 53 (where record did not contain a report of proceedings or a bystander's report, appellate court presumed that circuit court acted properly when it refused to allow plaintiffs to file an amended complaint). Furthermore, nothing in the proposed amended complaints did anything to cure the deficiencies in the original complaint.

¶ 28 CONCLUSION

¶ 29 After conducting a *de novo* review, this court concludes that the circuit court correctly dismissed the complaint. Given the state of the record on appeal, this court must conclude that the circuit court did not abuse its discretion in denying Shehadeh leave to file amended complaints. The judgment of the circuit court is hereby affirmed.

¶ 30 Affirmed.