

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).

FILED

September 26, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180090-U

NO. 4-18-0090

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DAMEN TOY,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
KWAME RAOUL, in His Official Capacity as)	No. 17MR82
Attorney General of the State of Illinois,)	
Defendant-Appellee.)	Honorable
)	Jennifer Hartmann Bauknecht,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err in granting defendant’s motion to dismiss plaintiff’s petition for a writ of *mandamus* pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)).

¶ 2 Plaintiff, Damen Toy, filed a *pro se* petition for a writ of *mandamus* against defendant, the Illinois Attorney General. The petition named Lisa Madigan, the then-Attorney General. Kwame Raoul, the current Attorney General, has been substituted as the party defendant. Plaintiff demanded defendant issue an opinion on the legality of a certain disciplinary practice that plaintiff claims will be imposed upon him by the Illinois Department of Corrections (DOC). He questions the constitutionality of the intended program, as he believes such a program constitutes further punishment for a disciplinary violation for which he would have had already been punished. Defendant filed a motion to dismiss plaintiff’s petition for failing to state a claim upon which relief could be granted. The circuit court granted defendant’s motion to

dismiss and, thereafter, denied plaintiff's motion for reconsideration. Plaintiff appeals. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In April 2017, plaintiff, a DOC inmate, filed his petition for *mandamus* relief, asking defendant to review and issue an opinion on the legality of a program that he anticipated DOC was going to require of him after he served his imposed disciplinary actions. Plaintiff is currently housed at Pontiac Correctional Center, where he was transferred in September 2016 after he received disciplinary action for assaulting a staff member at Stateville Correctional Center. Plaintiff does not challenge the charges filed against him or the associated disciplinary action. He stated in his petition that he was expecting to have served his disciplinary action in full by August 2017, at which time, he claimed DOC would require him to participate in a “staff assault program”—a program he claims will constitute “additional and excessive punishment” in violation of his due-process rights and the double jeopardy clause. Plaintiff sought an order compelling defendant to perform “the ministerial duty as required by [15 ILCS 205/4 (West 2016)]: duty #6” to consult with the director of DOC to analyze the legality and constitutionality of the “staff assault program.”

¶ 5

In July 2017, defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), claiming plaintiff failed to state a cause of action for *mandamus* relief. Defendant claims that even if we accept the allegations in the petition as true, plaintiff has failed to demonstrate he is entitled to relief.

¶ 6

In December 2017, the circuit court made the following docket entry:

“In his *mandamus* petition, plaintiff contends that he will be subject to excessive punishment in regards to a disciplinary ticket unless the defendant, Attorney

General Lisa Madigan, meets with [DOC] officials—he is also seeking from Ms. Madigan a legal opinion on the constitutionality of the anticipated punishment—here, plaintiff has failed to establish that the writing of a brief on a particular subject by the Attorney General is a clear ministerial duty, he has failed to establish that he is entitled to the relief requested, and he has failed to establish that the act is not discretionary—for all of these reasons, defendant’s motion to dismiss is granted.”

¶ 7 Plaintiff filed a motion to reconsider, which the circuit court denied. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff challenges the circuit court’s grant of defendant’s motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). A section 2-615 motion to dismiss 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). A cause of action should not be dismissed pursuant to a section 2-615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004). We accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall*, 222 Ill. 2d at 429. Dismissal under section 2-615 is subject to *de novo* review. *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003).

¶ 10 *Mandamus* is a civil proceeding governed by sections 14-101 through 14-109 of the Code of Civil Procedure (735 ILCS 5/14-101 *et seq.* (West 2016)). *Mandamus* relief is an extraordinary remedy used to direct a public official to perform a ministerial duty that does not involve the exercise of judgment or discretion. *Romero v. O’Sullivan*, 302 Ill. App. 3d 1031,

1034 (1999). *Mandamus* is appropriate relief only where a plaintiff can demonstrate a clear right to the requested relief, the defendant’s clear duty to act, and the defendant’s clear authority to comply with the terms of the writ. *Id.* at 1034.

¶ 11 In his request for *mandamus* relief, plaintiff relies on section 4 of the Attorney General Act (15 ILCS 205/4 (West 2016)), which states, in pertinent part, that the “duties of the Attorney General shall be *** [t]o consult with and advise the governor and other State officers, and give, when requested, written opinions upon all legal and constitutional questions relating to the duties of such officers respectively.” Plaintiff misinterprets this statutory section to mean the Attorney General shall give written opinions when requested *by anyone*. However, the language of the statute can be interpreted only to mean that the opinions must be requested by “the governor and other State officers” to whom the Attorney General is empowered and required to advise. See *Illinois Education Ass’n v. Illinois State Board of Education*, 204 Ill. 2d 456, 467 (2003). The Attorney General represents the State of Illinois, not private individuals. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303 (2003). As such, plaintiff has no legal or affirmative right to request or receive an opinion from the Attorney General. Without a clear right to the requested relief or a demonstration of defendant’s clear duty to act, plaintiff cannot state an action entitling him to *mandamus* relief. *Id.* at 301. Accordingly, the circuit court did not err in dismissing plaintiff’s petition.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated, we affirm the circuit court’s judgment.

¶ 14 Affirmed.