

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2752

September Term, 2013

CHRISTOPHER McCANN

v.

BOBBY P. SHEARIN, WARDEN

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 30, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 26, 2013, the Circuit Court for Allegheny County granted the appellee, Bobby Shearin’s, motion to dismiss the 42 U.S.C. § 1983 complaint filed by the appellant, Christopher McCann. The appellant then filed an untimely appeal from the circuit court’s decision. Therefore, pursuant to Md. Rule 8-602(a)(3), we shall dismiss the present appeal. However, we will not do so without briefly addressing the merits of the appellant’s contentions.

The appellant, who proceeds *pro se*, is incarcerated at North Branch Correctional Institution (“NBCI”). He claims that the appellee, by restricting or interfering with his outgoing and incoming mail, is infringing upon his: (1) First Amendment right to petition the government for redress of grievances; (2) access to the courts; and (3) due process guarantees.

In his brief, the appellee indicates the reasons why he believes the circuit court’s Order of dismissal should be upheld. Specifically, he argues that the appellant failed to state a claim upon which relief can be granted, and that this Court lacks subject matter jurisdiction due to the appellant’s failure to exhaust all administrative remedies.

The appellant responds that both the appellee’s actions and his orders to his subordinates frustrated his attempts to exhaust the required administrative remedies. The appellant presents the following question for our review, which we rephrased¹:

¹ The appellant presents the following questions in his brief:

1. Did judge abuse his discretion by granting motion to dismiss?
2. Did judge err by failing to state reason for granting motion?

1. Did the circuit court err in granting the appellee’s motion to dismiss?
2. Did the circuit court err in failing to provide the reasons for its decision in its Order?

If the appellant had noted a timely appeal—which he did not—then we would have answered both questions in the negative and affirmed the judgment of the circuit court. We explain.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant filed his 42 U.S.C. §1983 complaint *pro se* on November 9, 2012, alleging that the appellee interfered with his incoming and outgoing mail. The appellant contends that letters he sent to administrative agencies, government offices, and family members failed to reach their intended destinations. The complaint requested both injunctive relief and monetary damages.

In response, the appellee filed a motion to dismiss the appellant’s complaint, arguing that the appellant failed to state a claim upon which relief could be granted and that the circuit court lacked jurisdiction over the subject matter of the complaint. In addition, the appellee filed a memorandum in support of his motion to dismiss, fully explaining the reasons behind his motion.

On September 16, 2013, the Circuit Court for Allegheny County filed its Order dismissing the appellant’s complaint without providing the specific basis for its decision.

On December 11, 2013, 75 days after the circuit court’s Order was filed,² the appellant filed a notice of appeal.

DISCUSSION

I. Timeliness of Appeal

The Maryland Rules specifically indicate when a notice of appeal must be filed. “Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal was taken.” Md. Rule 8-202(a). Appellant filed his notice of appeal with the Circuit Court for Allegheny County on December 11, 2013, 75 days after the circuit court entered its Order dismissing the complaint.

The Maryland Rules also state that

[o]n motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons: . . . (c) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202;

Md. Rule 8-602(a)(3). Accordingly, we dismiss this appeal as untimely filed.

² The circuit court’s order was filed on September 27, 2013, per the clerk’s stamp, located on the back of the order. There is an additional notation indicating that the order was received on October 8, 2013. Even if tolling were to begin on October 8, 2013, 64 days would have passed by the time this Court received the appellant’s notice of appeal on December 11, 2013.

II. Appropriateness of Dismissal by Circuit Court

A. Failure to state a claim upon which relief can be granted

1. Parties' Contentions

The appellant contends that the circuit court erred in granting the appellee's motion to dismiss. The appellant argues that the appellee's personal inaction concerning the delivery of his outgoing and incoming mail, failure to discipline his employees for interfering with inmate mail, and installation of policy changes constitute sufficient claims under 42 U.S.C. § 1983.

The appellee responds that the appellant's complaint does not describe any wrongful actions or omissions by the appellee. The appellee argues that the appellant failed to provide sufficient facts to substantiate his allegations that the appellee individually interfered with his First Amendment rights, Due Process rights, or access to the courts.

2. Standard of Review

The Court of Appeals has outlined the applicable standard of review to dismissals for failure to state a claim upon which relief can be granted as follows:

In considering a motion to dismiss for failure to state a cause of action pursuant to Maryland Rule 2-322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material facts in the complaint, as well as all inferences that reasonably can be drawn therefrom. *Stone v. Chicago Title Ins. Co.*, 330 Md. 329, 333, 624 A.2d 496, 498 (1993); *Odyniec v. Schneider*, 322 Md. 520, 525, 588 A.2d 786, 788 (1991). To this end, the facts comprising the cause of action must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice. *Continental Masonry Co. v. Verdel Constr. Co.*, 279 Md. 476, 481, 369 A.2d 566, 569 (1977). Further, while the

words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency. *Hixon v. Buchberger*, 306 Md. 72, 75, 507 A.2d 607, 608 (1986); *Read Drug & Chem. Co. v. Colwill Constr. Co.*, 250 Md. 406, 416, 243 A.2d 548, 555 (1968). Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff. *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531, 667 A.2d 624, 630 (1995). On appeal, a reviewing court must determine whether the trial court was legally correct, examining solely the sufficiency of the pleading.

Bobo v. State, 346 Md. 706, 708-09 (1997).

3. Analysis

The appellant filed suit against the appellee in the latter’s individual capacity as the Warden of NBCI. However, when the Court removes the appellant’s conclusory statements from the complaint, the appellant fails to provide an adequate cause of action against the appellee, relying instead on his own supposition of the appellee’s actions, responsibilities, and motivations. *See id.*

“A pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought.” Md. Rule 2-305. To this end, although

[the] trial court must assume the truth of all well-pleaded relevant and material facts in the complaint, as well as all inferences that reasonably can be drawn therefrom[,] . . . the facts comprising the cause of action must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice.

Bobo, 346 Md. at 708-09 (citations omitted).

In order to establish supervisory liability under 42 U.S.C. §1983, plaintiffs are faced with the difficult task of showing:

(1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a ‘pervasive and unreasonable risk’ of constitutional injury to citizens like plaintiff; (2) that the supervisor’s response to that knowledge was so inadequate as to show ‘deliberate indifference to or tacit authorization of the alleged offensive practices,’; and (3) that there was an ‘affirmative causal link’ between the supervisor’s inaction and the particular constitutional injury suffered by the plaintiff.

Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994).

The appellant argues that the appellee has interfered with his First Amendment right to petition the government for redress of grievances, impeded his access to the courts, and infringed upon his due process rights. However, the appellant has failed to describe, with any degree of specificity, any actions taken by the appellee to accomplish these ends. Instead, he set forth the following allegations in his complaint:

In October[,] Mr. Shearin got rid of every available method Indigent Inmates have to prove they were mailing complaints. Some methods include forbidding officers to sign request form[s] that the mail went out. Also refusing to let [the] mail room date stamp requests attached to the mail that they received it.

The above passage, which contains the only allegations against the appellee in the entire complaint, consists of nothing more than the kind of “[b]ald assertions and conclusory statements,” *Bobo*, 346 Md. at 708-09, that the Court of Appeals has found to be insufficient to survive a motion to dismiss for failure to state a claim upon which relief can be granted. *See id.* at 713. Accordingly, we see no legal error in the circuit court’s decision.

B. Failure to Exhaust Administrative Remedies

1. Parties' Contentions

The appellant admits that he has failed to meet the exhaustion of administrative remedies requirement. However, he contends that exhaustion was prevented by the appellee's alleged misconduct. The appellee, on the other hand, directs the Court's attention to the fact that the appellant completed a portion of the required administrative process, yet failed to follow the proper subsequent protocols. Therefore, the appellee argues that the circuit court was statutorily required to grant the motion to dismiss for lack of subject matter jurisdiction.

2. Standard of Review

As the Court of Appeals has explained, “[w]hether a plaintiff must exhaust administrative remedies prior to bringing suit . . . is a legal issue on which no deference is due to the lower court and which an appellate court may address even if a lower court did not.” *Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cty.*, 437 Md. 115, 134 (2014) (citing *Forster v. Office of the Public Defender*, 426 Md. 565, 580 (2012)). Furthermore, as indicated *supra*, we review motions to dismiss under the legally correct standard. See *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71-72 (1998).

3. Analysis

Simply put, the record of the instant case contradicts the appellant’s contentions regarding his failure to exhaust administrative remedies. Thus, Maryland statutory law required dismissal of his complaint.

The Maryland Prisoner Litigation Act (“PLA”) requires inmates to exhaust any and all administrative remedies in order to maintain a civil action. *See* Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 5-1003(a)(1). The PLA also requires courts to dismiss civil actions by prisoners who have failed in this regard. CJP § 5-1003(c).

The fact that the appellant completed the first step of the administrative review process not once, but twice, indicates that such relief was indeed available to him. He had the use of mail and on at least two occasions it was not interfered with by agents of the appellee. Additionally, the appellee has provided an affidavit from Scott S. Oakley, Executive Director of the Inmate Grievance Office (“IGO”) of the Maryland Department of Public Safety and Correctional Services, which states the IGO had received fourteen grievances from the appellant between January 1, 2012, and September 10, 2013. The appellant filed an administrative appeal from only one of those fourteen grievances, and that appeal was “dismissed by the IGO on December 13, 2012, on the basis of [procedural inadequacies].”

Despite the appellant’s dissatisfaction with the results of his filings, the record contradicts his contentions that administrative remedies are unavailable to him. Therefore, we see no legal error in the circuit court’s decision to grant the appellee’s motion to dismiss,

even if it did so for lack of subject matter jurisdiction rather than for failure to state a claim upon which relief can be granted.

III. Failure by Court to Specify Reasons for Dismissal

A. Parties' Contentions

The appellant argues that the circuit court erred by failing to include, in its Order dated September 26, 2013, its reasoning for granting the appellee's motion to dismiss. The appellant asserts that fairness and judicial economy require courts to provide the reasoning behind their rulings.

The appellee counters that the standard of review governing appeals from motions to dismiss eliminates the necessity of the circuit court to provide its reasoning in orders like the one at issue in this case. The appellee states that while it may be preferable for the circuit court to explain its rationale in orders granting motions for dismissal, it is under no obligation to do so.

B. Standard of Review

Because “[t]he proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct,” *Fioretti*, 351 Md. at 71-72, this Court is permitted to “affirm the dismissal on any ground adequately shown by the record, whether or not relied upon by the trial court.” *City of Frederick v. Pickett*, 392 Md. 411, 424 (2006) (citations omitted).

C. Analysis

The appellee’s contention correctly addresses this question. This Court routinely reviews motions to dismiss absent the provision of the rationale of the motions court. *See Briscoe v. Mayor & City Council of Balt.*, 100 Md. App. 124, 128 (1994) (declaring that “[t]he court did not state its reasons for granting the motion to dismiss. Thus, we should affirm the judgment if our review of the record discloses that the court was legally correct.”). We have already determined the circuit court’s decisions to be legally correct based upon the record. *Id.* Therefore, notwithstanding the untimeliness of the present appeal, we find no error on the part of the circuit court for failing to include its rationale in its Order dismissing the complaint.

CONCLUSION

For the reasons set forth in Section I of this opinion, *supra*, this appeal is hereby dismissed pursuant to Md. Rule 8-602(a)(3).

**APPEAL DISMISSED. COSTS TO BE
PAID BY APPELLANT.**