

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 250166-U

NO. 4-25-0166

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 1, 2026
Carla Bender
4th District Appellate
Court, IL

PAUL SMITH,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
MINDI NURSE,	)	No. 22MR27
Defendant-Appellee.	)	
	)	Honorable
	)	Randy A. Yedinak,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Zenoff and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in granting summary judgment on plaintiff's complaint asserting a cause of action under the Illinois Constitution for retaliation and discrimination.

¶ 2 Plaintiff, Paul Smith, an inmate in the Illinois Department of Corrections (DOC), filed a civil complaint against the assistant warden of operations and acting warden at Pontiac Correctional Center, Mindi Nurse, claiming Nurse violated his rights under the Illinois Constitution. The circuit court granted summary judgment in Nurse's favor and denied Smith's motion for reconsideration. On appeal, Smith contends the court erred in granting summary judgment. We disagree.

¶ 3 I. BACKGROUND

¶ 4 Smith has filed over 478 grievances since entering DOC custody in 2008, 2 of which are the subjects of this litigation. In Grievance No. 096949 (Grievance 1), dated April 2,

2022, Smith asserted he was denied sick call, medical treatment, and a routine checkup, he claimed he received inferior food served under unsanitary conditions, and he alleged the chief administrative officer allowed staff to conduct “inaccurate investigations.” Grievance No. 097464 (Grievance 2), submitted on May 10, 2022, claimed Nurse denied him certain medical permits in “retaliation” after he filed Grievance 1. Specifically, Smith alleged that, on March 29, 2022, he received medical permits for showering and an accommodation for alternate cuffing because he was an “overweight prisoner,” but on April 7, 2022, his medical permits were revoked.

¶ 5 In October 2022, Smith filed a two-count complaint, alleging violations of his constitutional rights and seeking declaratory, injunctive, and monetary relief. Count I alleged Nurse, being aware of his recently filed grievances, violated his freedom of speech under article I, section 4 of the Illinois Constitution (Ill. Const. 1970, art. I, § 4) and retaliated against him by denying his previously approved medical permits. Count II alleged an equal protection violation under article I, section 2 of the Illinois Constitution (Ill. Const. 1970, art. I, § 2), based on Nurse’s denial of his alternate cuffing and shower permits when other similarly situated inmates had been granted the same permits. In her response, Nurse denied the relevant allegations, argued Smith failed to state a valid constitutional claim, and raised the affirmative defenses of qualified immunity, failure to exhaust administrative remedies, and sovereign immunity under Illinois law.

¶ 6 Nurse subsequently filed a motion for summary judgment, arguing Smith could not show that (1) Grievance 1 was a “motivating factor” for the denial of his medical permits, (2) Nurse knew of Grievance 1 when the permits were denied, as Grievance 1 did not reach her in the normal course of internal grievance review until September 9, 2022, or (3) Smith

experienced adverse actions likely to deter future first amendment (U.S. Const., amend. I) activity. The motion noted Smith filed 35 grievances in 2022, 28 of which were filed after Grievance 2. Nurse also cited the affirmative defenses of sovereign immunity and qualified immunity as bases for entry of summary judgment.

¶ 7 Regarding Smith’s equal protection claim, Nurse argued Smith was required to allege and prove he “ ‘has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment’ ” (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). Nurse argued Smith claimed other inmates with similar medical concerns received alternative cuffing permits, but he suggested the only basis for denial of his permits was the filing of a grievance. Nurse asserted she was not a medical professional and did not provide medical treatment to inmates, and she was unaware of Grievance 1 when she rejected the permits in question. According to the record, Nurse did not receive Grievance 1 until September 2022. The record shows Grievance 2 was received by the correction center’s grievance counsel on June 12, 2022, and it was denied on June 30, 2022. Nurse learned of Grievance 2 when she signed off on the denial on July 9, 2022.

¶ 8 The circuit court granted Nurse’s motion for summary judgment. Smith filed a motion to reconsider, followed by a response to Nurse’s original summary judgment motion, both of which were denied.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Standard of Review

¶ 12 “The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact.” *Thompson v. Gordon*, 241 Ill. 2d 428, 438

(2011). Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits in the record, viewed in the light most favorable to the nonmoving party, reveal no genuine issue of material fact exists and that the moving party is clearly entitled to a judgment as a matter of law. *Shehadeh v. Sangamon County Sheriff*, 2023 IL App (4th) 220455-U, ¶ 15. “[U]nsupported conclusions, opinions, or speculation are insufficient to raise a genuine issue of material fact.” *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 132 (1992). We review *de novo* the circuit court’s order granting summary judgment. *Shehadeh*, 2023 IL App (4th) 220455-U, ¶ 15. We may affirm the circuit court’s judgment on any basis in the record, regardless of whether it relied upon that basis or whether its reasoning was correct. *City of Urbana v. Platinum Group Properties, LLC*, 2020 IL App (4th) 190356, ¶ 21.

¶ 13 B. Private Actions for Damages Under the Illinois Constitution

¶ 14 Smith’s complaint sought “declaratory, injunctive, and monetary relief” for acts of retaliation and discrimination by Nurse as the “Chief Administrative Officer” of Pontiac Correctional Center, arguing her actions violated both his rights to freedom of speech and equal protection under the Illinois Constitution. See Ill. Const. 1970, art. I, §§ 2, 4. However, the Illinois Constitution cannot be the basis of a lawsuit without self-executing language indicating a private action exists. See *Teverbaugh ex rel. Duncan v. Moore*, 311 Ill. App. 3d 1, 4-5 (2000). In *Teverbaugh*, the appellate court concluded, “[I]n our review of case law, we have not identified any instance where a private action for damages was maintained directly under *** article 1, section 2, of the Illinois Constitution.” *Teverbaugh*, 311 Ill. App. 3d at 6. The same is true of Article 1, section 4 of the Illinois Constitution, which also lacks self-executing language. See Ill. Const. 1970, art. I, § 4; *Teverbaugh*, 311 Ill. App. 3d at 4-6. Notably, on appeal, Smith abandons his claims under the Illinois Constitution, suggesting instead his allegations against Nurse are

actionable under section 1983 of the United States Code Annotated (42 U.S.C.A. § 1983 (1996)) and the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV). Our evaluation remains the same. See *People v. McCormick*, 332 Ill. App. 3d 491, 495 (2002) (“When assessing a claim that someone has been denied the equal protection of the laws, we perform the same analysis, regardless of whether the claim arises under the state or federal constitution.”).

¶ 15 Smith’s eleventh-hour efforts to recast his state constitutional claims as federal claims cannot rescue his arguments from forfeiture. See *In re J.B.*, 312 Ill. App. 3d 1140, 1143 (1999) (“[I]t is well settled that a party may not succeed on a theory that is not contained in the party’s complaint.”). Because Smith did not include his federal claims in his complaint, they have been forfeited. See *In re Marriage of Kasprzyk*, 2019 IL App (4th) 170838, ¶ 40 (“Issues not raised in the trial court are forfeited and may not be raised on appeal.”). However, a reviewing court is not bound by the forfeiture rule. *Tully v. McLean*, 409 Ill. App. 3d 659, 664 (2011). For the reasons below, Smith’s arguments fail on their merits, as the circuit court did not err in granting summary judgment. See *Thompson*, 241 Ill. 2d at 438.

¶ 16 C. Retaliation Claim

¶ 17 To establish a *prima facie* case of retaliation for exercising his first amendment right, Smith had to show (1) he engaged in activity protected by the first amendment, (2) he experienced an adverse action that would likely deter protected activity in the future, and (3) the protected activity was “a motivating factor” in Nurse’s decision to take retaliatory action. *Fillmore v. Walker*, 2013 IL App (4th) 120533, ¶ 37. Nurse concedes the first element, acknowledging Smith has a constitutional right to seek redress for his complaints through the grievance process. However, the record clearly demonstrates that any purported deprivation

Smith might have suffered was not likely to deter the future exercise of his first amendment right; 28 of the 35 grievances Smith filed in 2022 were submitted after Grievance 2, which alleged retaliation for the filing of Grievance 1.

¶ 18 Further, the record contains no evidence that the denial of Smith’s medical shower and alternate cuffing permits was motivated by the filing of Grievance 1. The undisputed evidence reveals Nurse did not learn of Grievance 1 until September 9, 2022, long after his medical permits had been denied. Records accompanying the motion for summary judgment show Grievance 2 was received by the facility grievance counsel on June 12, 2022, and denied after review on June 30, 2022. Nurse first learned of Grievance 2 when she signed off on the denial on July 9, 2022. Therefore, Nurse knew about the grievance claiming retaliation before she knew about the grievance that supposedly precipitated the retaliatory conduct. Smith identifies no evidence that Nurse knew of Grievance 1 when his medical permits were denied. Instead, he repeats the allegations contained in his complaint, which were speculative, unsupported by any evidence, and refuted by the facts in the record. “Mere speculation, conjecture, or guess *** is insufficient to withstand summary judgment.” *Labell v. City of Chicago*, 2019 IL App (1st) 181379, ¶ 18.

¶ 19 D. Equal Protection Claim

¶ 20 “The threshold question in an equal protection analysis is whether the claimant is ‘similarly situated’ to the comparison group.” *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 47. Because the foundation of an equal protection claim is that some governmental action is treating similarly situated people differently without a demonstrable reason to do so, an equal protection claim requires a showing that the individual raising it is “similarly situated” to the comparison group. *In re M.A.*, 2015 IL 118049, ¶ 25. If he does not do so, the equal protection challenge

fails. *M.A.*, 2015 IL 118049, ¶ 26. The United States Supreme Court has also recognized the prospect of a “class of one” equal protection claim. *Village of Willowbrook*, 528 U.S. at 564. In a “class of one” claim, the plaintiff alleges he has intentionally been treated differently from other similarly situated individuals, with no rational basis for the disparate treatment. *Village of Willowbrook*, 528 U.S. at 564. Such is defendant’s claim here.

¶ 21 On appeal, Smith restates his complaint’s conclusory allegations. He insists there are other inmates who have been given the same type of medical permits for alternate cuffing methods or showers, and that he was “singled out” for denial based on Grievance 1. However, he points to nothing in the record to support this conclusory allegation other than the timing of the denials in relation to Grievance 1, which we have already addressed. He does not claim the facts of any other inmate’s medical permit are similar to his, or that they have retained permits despite filing grievances, or that they have or have not been denied permits for similar reasons. The record reveals Nurse deferred to medical staff on shower permits, and Smith’s medical records indicated the shower permit was deemed “medically unnecessary” on April 8, 2022. Nurse also denied the alternate cuffing permit due to inadequate medical justification and asked for it to be resubmitted. Nurse noted there were other options available and that cuffing decisions involved matters of safety and security, for which she was responsible as the correctional center’s acting warden. Absent any evidence that Nurse treated Smith differently from other inmates seeking the same medical permits, Smith’s equal protection claim cannot succeed. Smith’s claim that Nurse violated his right to equal protection “amounts to no more than an unsupported legal conclusion, which is insufficient to establish a cause of action.” *Walters v. Department of Corrections*, 2025 IL App (4th) 241550-U, ¶ 43.

¶ 22 As a movant seeking summary judgment, Nurse bore the burden of affirmatively demonstrating “that some element of the case must be resolved in [her] favor or by establishing that there is an absence of evidence to support the nonmoving party’s case.” (Internal quotation marks omitted.) *Illinois Coin Machine Operators Ass’n v. County of Cook*, 2015 IL App (1st) 150547, ¶ 31. In this case, she has done both. “The purpose of summary judgment is not to try an issue of fact but *** to determine whether a triable issue of fact exists.” (Internal quotation marks omitted.) *Illinois Coin Machine Operators Ass’n*, 2015 IL App (1st) 150547, ¶ 31. Here, there is no triable issue of fact. Smith’s claims for monetary damages are not viable under either amendment to the Illinois Constitution cited as the basis for his suit. Further, the record is clear that he cannot sustain claims for retaliation or the denial of equal protection because he cannot satisfy the necessary elements of either claim. In light of our ruling, Smith’s motion seeking a temporary restraining order or preliminary injunction, which was taken with the case, is now moot.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.