

IN THE COURT OF APPEALS OF IOWA

No. 3-896 / 12-2148
Filed October 23, 2013

BRADLEY AUKES,
Plaintiff-Appellant,

vs.

**SCOTT VERSTEEG, LARRY LIPSCOMB,
JILL DURSKY, and NCF TREATMENT COMMITTEE,**
Defendant-Appellees.

Appeal from the Iowa District Court for Jasper County, Terry R. Rickers,
Judge.

Bradley Aukes appeals the district court's grant of a motion to dismiss.

AFFIRMED.

Bradley Aukes, Dubuque, appellant pro se.

Thomas J. Miller, Attorney General, and H. Loraine Wallace, Assistant
Attorney General Special Litigation Division, for appellees.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

VOGEL, P.J.

Bradley Aukes appeals the district court's grant of a motion to dismiss, claiming the court committed procedural error when it granted his motion to amend the complaint but at the same time granted the defendants' pre-answer motion to dismiss. He further asserts the district court erred when it relied on facts outside of the pleadings when dismissing his petition, and when it failed to retain jurisdiction under Iowa Code section 17A.19 (2011). Because we find no error occurred, we affirm.

Aukes is an inmate at the Newton Correctional Facility. On August 27, 2012, he filed a petition naming three staff members of the prison as defendants. The petition alleged that, because he is a marijuana-rights activist, he was expelled from his drug treatment class. Consequently, his eligibility for parole was delayed. The petition asserted various violations of statutory and constitutional rights based on these facts.

On September 28, 2012, the defendants filed a motion to dismiss, arguing there is no statutory or constitutional right to a prison treatment class, and therefore Aukes's petition failed as a matter of law. Aukes filed a resistance as well as a motion for leave to amend, attached to which was a copy of the proposed amended complaint. The defendants filed a resistance to Aukes's motion for leave to amend, arguing Aukes's amended petition still did not state a viable cause of action. A hearing was held on November 2. The district court granted Aukes's motion to amend, but after considering each of Aukes's issues, dismissed the case because Aukes's petition, as amended, failed to state a viable cause of action. In the ruling, the district court noted:

Plaintiff's petition is a hodgepodge. While keeping in mind that Aukes is representing himself and that he has no formal legal training, his theories of recovery are convoluted. Aukes . . . mixes together claims in law and equity and also amalgamates statutory and constitutional claims. Consequently, it takes some effort to sort out and analyze Aukes' claims The Court will attempt to address every claim or cause of action asserted by Aukes.

Following the court's dismissal of the petition, Aukes filed a motion to amend or enlarge and a motion to vacate judgment, which asserted the claims he now argues on appeal. The district court denied both motions.

Aukes now appeals, claiming the district court violated Iowa Rules of Civil Procedure 1.431 and 1.402 when it granted Aukes's motion to amend but then dismissed the complaint. He further argues the district court erred when it relied on facts outside of the pleadings when dismissing his petition, and when it failed to retain jurisdiction under Iowa Code section 17A.19.

We review a ruling on a motion to dismiss for correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). A motion to dismiss may be granted when the allegations in the petition, taken as true, fail to state a claim upon which relief may be granted. *Id.*

Upon review of the district court's order, we find no error, procedural or otherwise. The court employed the correct legal standards and procedural rules when it dismissed Aukes's petition, and properly concluded Aukes's claims under chapter 17A were not subject to judicial review under *Wycoff v. Iowa District Court*, 580 N.W.2d 786, 788 (Iowa 1998). Therefore, we affirm the district court pursuant to Iowa Rule of Court 21.26(1)(a), (d), and (e).

AFFIRMED.