



The State moved to dismiss on several grounds in January 2021. The court granted the motion in part, dismissing plaintiff's claims against the defendants other than the State for lack of service and dismissing plaintiff's challenge to the merits of the case staffing decision on the ground that it was a programming decision unreviewable under Rule 75. As to the claim that the DOC could not make a case staffing decision while his administrative appeal was pending, the court concluded that this was a matter of procedure that was appropriate for Rule 75 review. The court indicated that if the procedure was invalid, the remedy would be a remand to the DOC to conduct a new case staffing, not a release from confinement.

Plaintiff filed a motion to reconsider. While that motion was pending, in March 2021, the DOC conducted a new case staffing. The court granted the State's motion to dismiss the case as moot, concluding that because a new case staffing had been completed there was no further relief it could grant. The court also determined that plaintiff's motion to reconsider was moot. Plaintiff appealed.

On appeal, plaintiff is self-represented and has submitted lengthy handwritten filings with this Court. We recite his arguments as best as we can discern them. He first contends that the trial court improperly dismissed the defendants other than the State, asserting that they were properly served or were joined. The trial court did not err in dismissing the defendants other than the State for lack of service. Under Vermont Rule of Civil Procedure 41(b)(1)(ii), the court may dismiss claims against defendants if those defendants have not been served within ninety days of filing suit. When the court dismissed the claims against these defendants, the case had been pending for more than seven months without service. Although plaintiff alleges that they were properly served, plaintiff did not file proof of service for those defendants within ninety days and therefore the court did not abuse its discretion in dismissing the claims against them.

Plaintiff next argues that neither case-staffing decision was supported by sufficient evidence and challenges the resulting case-staffing decisions. The trial court dismissed these claims for lack of subject-matter jurisdiction, concluding that these administrative decisions were not subject to Rule 75 review. We review the dismissal de novo. Clark v. Menard, 2018 VT 68, ¶ 5, 208 Vt. 11. This Court has held that DOC programming decisions are within the broad discretion of the DOC and do not fall within the scope of Rule 75 review. Rheaume v. Pallito, 2011 VT 72, ¶ 11, 190 Vt. 245. The DOC's decisions relating to furlough are one such programming decision that is within the discretion of the DOC and for which there is no statutory right to review. See, e.g., 28 V.S.A. § 808(a) (providing DOC Commissioner with discretion to furlough inmate). Consequently, we conclude that these decisions were not subject to review under Rule 75 and these claims were properly dismissed.

Plaintiff's final argument is that his due process rights were violated by the failure of various officials to follow DOC procedures throughout the furlough revocation and grievance processes, and specifically that the DOC should not have conducted a case staffing while his administrative appeal was pending. For this Court to exercise its jurisdiction, there must be a live controversy between the parties. Chase v. State, 2008 VT 107, ¶ 11, 184 Vt. 430. An issue becomes moot "if the reviewing court can no longer grant effective relief." Id. We review de novo the legal question of whether the case is moot. See Paige v. State, 2017 VT 54, ¶ 6, 205 Vt. 287 (explaining that court's dismissal for lack of jurisdiction is reviewed de novo). In this case, plaintiff's claims are moot because there is no further relief that we can provide to plaintiff. Even if we were to conclude that the DOC failed to comply with its own procedures by conducting a case staffing while plaintiff's administrative appeal was pending, the sole avenue for relief would be to direct the DOC to conduct a new case staffing. Insofar as the DOC has

already conducted a new case staffing, there is no additional relief we can provide to plaintiff and the matter is moot.

On a final note, we address several motions that plaintiff filed during the pendency of this appeal seeking discovery. In response to one motion for discovery, in October 2021, this Court issued an order denying plaintiff's request and explaining that the record on appeal is limited to "the documents, data, and exhibits" filed in the superior court. V.R.A.P. 10(a). Plaintiff subsequently filed additional motions asking this Court to reconsider the denial of discovery and seeking to compel discovery. Because this Court's review is limited to the record established in the trial court, there is no right to discovery on appeal and plaintiff's motions are denied.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice