

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).

2011 IL App (4th) 100530-U

Filed 8/24/11

NO. 4-10-0530

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GREGORY A. WHITE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Schuyler County
RYAN NELSON, KELLY R. CHOATE, and THE)	No. 10MR09
OFFICE OF THE ATTORNEY GENERAL,)	
Defendants-Appellees.)	Honorable
)	Alesia A. McMillen,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the trial court's dismissal of plaintiff's *mandamus* complaint where plaintiff failed to appeal the trial court's dismissal on the ground plaintiff lacked standing to enforce the provisions of the State Employee Indemnification Act.
- ¶ 2 In April 2010, plaintiff, Gregory A. White, filed a *pro se mandamus* complaint against defendants, the Office of the Attorney General (OAG) and assistant attorneys general Ryan Nelson and Kelly R. Choate, requesting defendants be compelled to withdraw from representing certain state employees in an unrelated action plaintiff brought against them in federal court. In June 2010, the trial court granted defendants' motion to dismiss plaintiff's *mandamus* complaint.
- ¶ 3 Plaintiff appeals the trial court's dismissal of his *mandamus* complaint, and we affirm.

¶ 4

I. BACKGROUND

¶ 5

Plaintiff is a resident of the Rushville Treatment and Detention Center (Center). On a date unspecified in the record, plaintiff sent a letter to the OAG asking for assistance regarding the conditions at the Center. On November 29, 2006, the OAG informed plaintiff it had no control over the Illinois Department of Human Services (DHS) and recommended he address his issues to the Center. On a date unspecified in the record, plaintiff filed a lawsuit against three Center employees (plaintiff identifies the lawsuit as No. 07–CV–3026).

¶ 6

On April 12, 2010, plaintiff filed a *mandamus* action against defendants, requesting defendants be compelled to withdraw from representing the state employees plaintiff had sued. Plaintiff argued the OAG should not represent the employees because (1) a conflict of interest exists where the OAG was required to represent Illinois' most vulnerable residents, *i.e.*, plaintiff, and (2) the employees' actions were intentional, willful, and wanton and thus outside the scope of their employment. Plaintiff based his claim on section 2(b) of the State Employee Indemnification Act (Act) (5 ILCS 350/2(b) (2008)). Section 2(b) provides the following:

"In the event that the Attorney General determines that so appearing and defending [a State] employee [in a civil proceeding] either (1) involves an actual or potential conflict of interest, or (2) that the act or omission which gave rise to the claim was not within the scope of the employee's State employment or was intentional, wilful or wanton misconduct, the Attorney General shall decline in writing to appear or defend or shall promptly take appropriate action to withdraw as attorney for such employee." 5 ILCS

350/2(b) (2008).

¶ 7 On May 20, 2010, defendants filed a combined section 2–615 and 2–619 motion to dismiss (735 ILCS 5/2–619.1 (West 2008)), arguing (1) plaintiff lacked standing to bring his complaint because he had no legally cognizable interest in enforcing the provisions of the Act, and (2) plaintiff's *mandamus* complaint could not be used to control the OAG's discretion in determining whether withdrawal was required under the Act.

¶ 8 Following a June 29, 2010, hearing, the trial court dismissed plaintiff's *mandamus* complaint. Specifically, the court found (1) plaintiff lacked standing to enforce the provisions of the Act, and (2) the relief plaintiff requested was not available under *mandamus*.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff, proceeding *pro se*, argues the trial court erred in granting defendants' motion to dismiss his *mandamus* action.

¶ 12 Defendants argue (1) plaintiff has forfeited any argument regarding the trial court's dismissal of his complaint for lack of standing, (2) plaintiff lacked standing to bring the *mandamus* action, and (3) plaintiff failed to state a cause of action for *mandamus*.

¶ 13 A. Forfeiture

¶ 14 We initially note one of the trial court's bases for dismissal was plaintiff lacked standing to bring the complaint. However, plaintiff has failed to appeal the court's finding regarding standing. Thus, plaintiff has forfeited review of this issue. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) ("Points not argued are [forfeited] and shall not be raised in the reply brief[.]"). While we recognize plaintiff has proceeded *pro se*, such litigants are held to the same rules as

litigants represented by counsel. See *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 534, 834 N.E.2d 43, 48 (2005) (a party's *pro se* status does not require application of a "more lenient standard"); *Boeger v. Boeger*, 147 Ill. App. 3d 629, 631, 498 N.E.2d 814, 815 (1986) ("A reviewing court will not apply a more lenient procedural standard to *pro se* litigants than is generally allowed attorneys.").

¶ 15

B. Standing

¶ 16 Even assuming, *arguendo*, plaintiff did not forfeit the issue of standing, the trial court did not err in dismissing plaintiff's *mandamus* complaint for lack of standing. "In Illinois, standing is shown by demonstrating some injury to a legally cognizable interest." *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 419, 837 N.E.2d 29, 39 (2005). Similarly, a petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004) (citing *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 427 N.E.2d 153, 156 (1981)).

¶ 17

In this case, plaintiff has not demonstrated injury to any legally cognizable right. Specifically, plaintiff does not possess a right to compel the OAG to withdraw from representation of state employees. While plaintiff maintains the OAG's representation of the

state employees in this matter is a conflict of interest because the OAG must represent the citizens of Illinois, *i.e.*, plaintiff, this court has previously considered and rejected such an argument.

¶ 18 In *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303, 803 N.E.2d 48, 54 (2003), the plaintiff filed a *mandamus* complaint against the OAG seeking to disqualify its representation of prison officials in a lawsuit brought by the plaintiff. The plaintiff argued the representation created a conflict of interest because the OAG should represent the interest of " 'all of the people of the State of Illinois,' " including prisoners. *Hadley*, 345 Ill. App. 3d at 303, 803 N.E.2d at 54. This court disagreed with the plaintiff's argument and found, *inter alia*, no conflict of interest existed because the OAG represents the interests of the people of the State of Illinois and not private individuals. *Hadley*, 345 Ill. App. 3d at 303, 803 N.E.2d at 54. Specifically, this court found the following:

"A state employee sued as a result of an act or omission occurring within the scope of employment shall be represented by the Attorney General. 5 ILCS 350/2(a) (West 2002). The Attorney General is limited in his representation of the people of the State of Illinois. 15 ILCS 205/4 (West 2002). The Attorney General does not represent private individuals." *Hadley*, 345 Ill. App. 3d at 303, 803 N.E.2d at 54.

¶ 19 In this case, as in *Hadley*, no conflict of interest exists because the OAG does not represent private individuals. *Hadley*, 345 Ill. App. 3d at 303, 803 N.E.2d at 54; *Arnett v. Markel*, 363 Ill. App. 3d 1136, 1143, 845 N.E.2d 752, 758 (2006). Thus, plaintiff has failed to

