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2012 IL App (3d) 120215-U

Order filed December 18, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

WILLIAM EVANS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois
)	
v.)	Appeal No. 3-12-0215
)	Circuit No. 10-CH-7271
NRC-STATEVILLE CORRECTIONAL)	
CENTER and CHAPLAIN CHARLES)	
PETERSON,)	Honorable
)	Marzell L. Richardson, Jr.
Defendants-Appellees.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly granted summary judgment to prison and prison official based on inmate's breach of contract and section 1983 civil rights actions since breach of contract action was barred by sovereign immunity and section 1983 action could not be brought against prison or prison official.
- ¶ 2 Plaintiff William Evans, a temporary inmate at Stateville Correctional Center, filed a complaint alleging a section 1983 civil rights violation and a breach of contract action against

Stateville and its chaplain, Charles Peterson, for failing to provide him a vegan diet. Defendants filed a motion for summary judgment. The trial court granted defendants' motion, in part, because plaintiff's complaint was barred by sovereign immunity. Plaintiff appeals, arguing that sovereign immunity does not bar his complaint.

¶ 3

FACTS

¶ 4 In April 2007, plaintiff became an inmate in the custody of the Illinois Department of Corrections. He was first incarcerated at Pinckneyville Correctional Center. At Pickneyville, he requested that he be provided a vegan diet for religious reasons. His request was granted. On May 9, 2007, plaintiff was transferred temporarily to Stateville Correctional Center for a writ hearing. At that time, he filed a request at Stateville to be placed on a vegan diet. On May 20, 2007 and May 26, 2007, plaintiff and Chaplain Peterson entered into religious diet agreements that placed plaintiff on a vegan diet.

¶ 5 On October 31, 2007, plaintiff was again temporarily transferred to Stateville for a writ hearing. The next day, plaintiff filed a grievance with Stateville because he was not receiving vegan meals. On January 10, 2008, plaintiff and Chaplain Peterson entered into another religious diet agreement so that plaintiff would receive vegan meals. Plaintiff continued to be temporarily transferred to Stateville throughout 2008 and 2009 for writ hearings.

¶ 6 In April 2010, plaintiff became an inmate at Logan Correctional Center. Soon after he arrived, he requested to receive vegan meals. On May 20, 2010, that request was approved. On October 7, 2010, and November 17, 2010, plaintiff was again temporarily transferred to Stateville for writ hearings. On both of those occasions, he was not provided vegan meals and filed grievances with his counselor.

¶ 7 On November 29, 2010, while at Stateville Correctional Center, plaintiff filed a complaint against Stateville and its chaplain, Charles Peterson, alleging a breach of contract and section 1983 civil rights action. The complaint alleged that plaintiff's religion requires him to eat a vegan diet, which defendants refused to provide for him. The complaint sought monetary damages and injunctive relief, seeking to compel defendants to provide him a vegan diet.

¶ 8 Defendants filed a motion for summary judgment, arguing that (1) plaintiff failed to exhaust his administrative remedies before filing his complaint, (2) Stateville is not an entity that can be sued under section 1983, and (3) the doctrine of sovereign immunity bars plaintiff's breach of contract claim.

¶ 9 Plaintiff filed his own motion for summary judgment, as well as a response to defendants' motion for summary judgment. Attached thereto were various documents establishing that plaintiff had requested a vegan diet many times throughout his years of imprisonment.

¶ 10 The trial court granted defendants' motion for summary judgment and denied plaintiff's motion for summary judgment, finding that "Plaintiff did not give proper notice to the Defendants of his dietary needs and adequate procedures were not followed by the Plaintiff to obtain a vegan diet at the times alleged in the Complaint." The court further found that the doctrine of sovereign immunity applied and prohibited plaintiff from pursuing a breach of contract action against defendants.

¶ 11 ANALYSIS

¶ 12 Summary judgment is proper where the pleadings, depositions and admissions on file, when viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS

5/2-1005(c) (West 2010); *Jenkins v. Lee*, 209 Ill. 2d 320, 329 (2004). We review the grant of summary judgment *de novo*. *Jenkins*, 209 Ill. 2d at 329.

¶ 13

I. Breach of Contract Claim

¶ 14 Sovereign immunity exists in Illinois pursuant to statute and mandates that the State or a department thereof cannot be sued in any court without its consent. *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 350 (2001). The legislature enacted the State Lawsuit Immunity Act, which provides that the State shall not be made a defendant or party in any court except as provided by the Court of Claims Act. 745 ILCS 5/1 (West 2010). The Court of Claims is the exclusive forum for resolving lawsuits against the State, including contract actions. 705 ILCS 505/8(b) (West 2010).

¶ 15 The doctrine of sovereign immunity is not confined to actions that name the State as a defendant. *Welch*, 322 Ill. App. 3d at 350-51. A suit against a State official in his or her official capacity is a suit against the official's office and is likewise impermissible. *Magna Trust Co. v. Department of Transportation, Division of Water Resources*, 234 Ill. App. 3d 1068, 1070 (1992). "Where the charged act *** arose out of the State employee's breach of a duty that is imposed on him *solely* by virtue of his State employment, sovereign immunity will bar maintenance of the action in circuit court." *Currie v. Lao*, 148 Ill. 2d 151, 159. When a complaint alleges that a State official breached a contract while performing his or her official duties, the state official is protected by sovereign immunity. See *Smith v. Jones*, 113 Ill. 2d 126, 132-33 (1986); *Magna Trust Co.*, 234 Ill. App. 3d at 1071.

¶ 16 Here, plaintiff's complaint alleges that Peterson and Stateville breached a contract with plaintiff to provide him vegan meals. Because Stateville is a prison owned by the Illinois Department of Corrections, sovereign immunity applies to plaintiff's contract claim against

Stateville. See *Lucas v. Department of Corrections*, 2012 IL App (4th) 110004, ¶ 16. Additionally, because plaintiff's complaint alleges that Peterson breached a contract with plaintiff while Peterson was performing his official duties as Stateville chaplain, sovereign immunity bars plaintiff's claim against Peterson. See *Smith*, 113 Ill. 2d at 132-33; *Magna Trust Co.*, 234 Ill. App. 3d at 1071.

¶ 17 Nevertheless, plaintiff argues that sovereign immunity should not bar his claim because he seeks injunctive relief in addition to monetary damages. We disagree.

¶ 18 While claims for injunctive relief are generally not barred by sovereign immunity, when a claim against the State is essentially a breach of contract action that also seeks injunctive relief, it is barred by sovereign immunity. *Jones v. Department of Public Aid*, 373 Ill. App. 3d 184, 198 (2007). When a plaintiff seeks injunctive relief, but the basic nature of the complaint is an action founded on a contract that could subject the State to monetary liability, all of the plaintiff's claims must be brought in the Court of Claims. See *Ellis v. Board of Governors of State Colleges and Universities*, 102 Ill. 2d 387, 393 (1984); *Liebman v. Board of Governors of State Colleges and Universities*, 79 Ill. App. 3d 89, 93 (1979).

¶ 19 Here, plaintiff alleges a breach of contract action and seeks both monetary damages and injunctive relief. Because the basis of plaintiff's complaint is a breach of contract, all of plaintiff's claims, including his request for injunctive relief, must be brought in the Court of Claims. See *Ellis*, 102 Ill. 2d at 393; *Liebman*, 79 Ill. App. 3d at 93. Since plaintiff filed his breach of contract claim against defendants in circuit court, the trial court properly granted summary judgment in favor of defendants.

¶ 20 II. Section 1983 Action

¶ 21 Congress enacted section 1983 to provide a federal forum for civil rights claims. See *Will*

v. Michigan Department of State Police, 491 U.S. 58, 66 (1989). Section 1983 provides as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State *** subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." 42 U.S.C. § 1983.

Neither a State nor its officials acting in their official capacities are "persons" who can be sued under section 1983. *Will*, 491 U.S. at 71.

¶ 22 Because plaintiff's section 1983 action is against Stateville, an arm of the State, and Peterson, a State official acting in his official capacity, it is improper. See *Will*, 491 U.S. at 71. Thus, the trial court properly granted defendants' motion for summary judgment.

¶ 23

CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the trial court of Will County is affirmed.

¶ 25 Affirmed.