

NOTICE
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2012 IL App (4th) 110813-U

Filed 3/12/12

NO. 4-11-0813

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

RICHARD NEVILLE,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
GLADYSE C. TAYLOR, RANDY GROUNDS,)	No. 10L303
DEE DEE BROOKHART, FORREST D. HARVEY,)	
A. JONES, and T. CLAUSING,)	Honorable
Defendants-Appellees.)	Leo J. Zappa,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's request for a declaratory judgment that the Illinois Department of Corrections (DOC) committed criminal misconduct by refusing to release him from prison at the commencement of his term of mandatory supervised release (MSR) is moot, considering that DOC has since released him from prison. Sovereign immunity bars his claim for damages.

¶ 2 Plaintiff, Richard Neville, brought this action against several employees of the DOC, seeking declaratory relief and damages. The trial court granted defendants' motion to dismiss the complaint, with prejudice, pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). Plaintiff appeals.

¶ 3 We affirm the trial court's judgment for two reasons: (1) the request for declaratory relief is moot, and (2) the trial court lacked subject-matter jurisdiction over the claim for damages.

¶ 4

I. BACKGROUND

¶ 5 On November 22, 2010, plaintiff filed a complaint against six defendants: the acting director of DOC, Gladyse C. Taylor; the warden of Robinson Correctional Center (Robinson), Randy Grounds; the field services supervisor at Robinson, Dee Dee Brookhart; a field services counselor at Robinson, Forrest D. Harvey; a parole agent, A. Jones (first name unknown), and a parole supervisor, T. Clausing (first name likewise unknown).

¶ 6 The complaint alleged as follows. As of the date he filed the complaint, plaintiff was an inmate at Robinson. On November 1, 2010, he finished serving a two-year prison term for the offense of failing to register as a sex offender. The prison term was supposed to be followed by one year of MSR. DOC, however, had not yet released him from prison. The reason, according to a parole-violation report, was that electronic monitoring was one of the conditions of MSR and DOC had been unable to find a "host site" for electronic monitoring.

¶ 7 According to the complaint, it was untrue that DOC could find no host site, "[c]onsidering the fact that plaintiff has had no contact with *any* family member, and his polling of various friends reveals that *no one* has contacted *any* of them concerning accepting [him] on electronic monitoring; and considering that there are literally tens of thousands of shelters and transient hotel and motels throughout Illinois." (Emphases in original.)

¶ 8 The complaint requested three forms of relief. First, it requested a declaratory judgment that refusing to release plaintiff on MSR was official misconduct (720 ILCS 5/33-3(a) (West 2010)) and a conspiracy against his civil rights (720 ILCS 5/8-2.1 (West 2010)) and that putting the alleged falsehood in the parole violation report, *i.e.*, that a host site for electronic monitoring was unavailable, amounted to tampering with a public record (720 ILCS 5/32-8 (West

2010)). Second, the complaint requested compensatory damages in the amount of \$175 per day for each day plaintiff was kept in prison after November 1, 2010. Third, the complaint requested punitive damages of \$1,000 per day for each day plaintiff was kept in prison past November 1, 2010.

¶ 9 On March 9, 2011, defendants filed a motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). (On its face, the motion for dismissal is by Gladyse Taylor alone; however, it appears from the appellate briefs and the trial court's dismissal order that the parties regarded the motion as being one by all the defendants.) A supporting memorandum argued that plaintiff lacked standing to enforce the Unified Code of Corrections, including section 3-3-3(c) (730 ILCS 5/3-3-3(c) (West 2010)), under which he claimed a right to be released. Also, the memorandum argued that the complaint failed to state a cause of action, because under *Neville v. Walker*, 376 Ill. App. 3d 1115, 1119 (2007), DOC could condition MSR on an inmate's finding an acceptable host site for electronic monitoring.

¶ 10 On September 1, 2011, the trial court dismissed the complaint, with prejudice, for three reasons: (1) the Unified Code of Corrections and the Criminal Code of 1961 created no private right of action; (2) DOC had a right to condition an inmate's release upon finding an acceptable host site; and (3) plaintiff had been released from DOC, and hence any claim for injunctive relief was moot.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. The Mootness of the Request for Declaratory Relief

¶ 14 Plaintiff does not dispute the trial court's finding that, as of September 1, 2011, he was released from prison. The cover of his appellate brief bears a private address in Springfield instead

of the address of a DOC facility. Consequently, his request for declaratory relief is moot. At this point in time, we would render a merely advisory opinion by deciding whether keeping him in prison after the commencement of his MSR was official misconduct and a conspiracy against his civil rights and whether DOC's representation, in the parole-violation report, that a host site was unavailable constituted tampering with public records. A court should refrain from issuing advisory opinions or deciding purely academic questions. *Barth v. Reagan*, 139 Ill. 2d 399, 419 (1990).

¶ 15 B. Lack of Subject-Matter Jurisdiction To Decide the Claim for Damages

¶ 16 The doctrine of sovereign immunity "protects the State from interference in its performance of the functions of government and preserves its control over State coffers." (Internal quotation marks omitted.) *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 159 (2010). The Illinois Constitution of 1970 abolished sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. The General Assembly in turn reinstated sovereign immunity by enacting the State Lawsuit Immunity Act, which provides that "the State of Illinois shall not be named a defendant or party in any court" except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2010)) and in several other statutes, none of which applies to this case. 745 ILCS 5/1 (West 2010). The Court of Claims Act established the Court of Claims as the exclusive forum for litigants to make claims against the State (705 ILCS 505/8 (West 2010)), including "[a]ll claims against the State for damages in cases sounding in tort" (705 ILCS 505/8(d) (West 2010)).

¶ 17 It appears that, in trial court, the State never raised sovereign immunity. Nevertheless, the State does so on appeal, and because only the legislature can waive sovereign immunity, the assistant Attorney General could not do so by failing to raise it in trial court. See *Township of*

Jubilee v. State, 2011 IL 111447, ¶ 25. Plaintiff's claim for compensatory and punitive damages was a tort claim against the State, a claim over which the trial court lacked subject-matter jurisdiction. See *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 249 (1998). Such a claim must be brought in the Court of Claims. See 705 ILCS 505/8(d) (West 2010).

¶ 18

III. CONCLUSION

¶ 19

For the foregoing reasons, we affirm the trial court's judgment.

¶ 20

Affirmed.