



due-process rights were violated. In his petition, plaintiff alleged his hearing was untimely, his witnesses were not permitted to appear, and no probable cause was shown he violated his MSR.

¶ 5 On April 20, 2012, the trial court *sua sponte* dismissed plaintiff's petition as "frivolous and without merit."

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff argues the trial court erred in *sua sponte* dismissing his complaint. Specifically, plaintiff contends the court should have held a hearing on the merits where he alleged the existence of substantial due-process and civil-rights violations.

¶ 9 In *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶ 11-12, 2012 WL 3985891, \*2, this court recently vacated a *sua sponte* dismissal of a plaintiff's *pro se* petition for injunctive relief and damages, finding the trial court acted prematurely. In *Powell*, just 13 days separated the plaintiff's filing of his petition and its *sua sponte* dismissal by the court. Moreover, the record did not show the defendants had been served with a notice or summons. *Powell*, 2012 IL App (4th) 110168, ¶ 10, 2012 WL 3985891 at \*2. This court concluded the case was not yet ripe for adjudication where the petitioner was not afforded a reasonable time to obtain service on the defendants prior to the court's dismissal. *Powell* noted, had the plaintiff effectuated service on the defendants, the defendants would not have been afforded a reasonable time to respond.

¶ 10 *Powell* relied upon the supreme court's decision in *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), which vacated a *sua sponte* order dismissing a *pro se* prisoner's section 2-1401 petition (735 ILCS 5/2-1401 (West 2004)). *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In *Laugharn*, the ordinary 30-day period for the defendant to answer or

otherwise file a responsive pleading had not expired. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In fact, just seven days separated the filing of the section 2-1401 petition and its dismissal. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. The *Laugharn* court found the trial court's *sua sponte* dismissal was not ripe for adjudication because the State had not been afforded time to respond. As a result, the court found the trial court's dismissal was improper. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805.

¶ 11 In this case, plaintiff filed his complaint on April 13, 2012. On April 20, 2012, the trial court *sua sponte* dismissed plaintiff's complaint as "frivolous and without merit." Our review of the record does not show defendants were ever served with a notice or summons. Following the reasoning in *Powell* and *Laugharn*, the trial court's dismissal of plaintiff's complaint must be vacated because the case is not ripe for adjudication where defendants have not been served or issued a summons. However, if plaintiff wishes his claim to be heard, he must serve defendants. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 2012 WL 3985891 at \*3. In the event plaintiff does not pursue his case, the trial court may dismiss it after a reasonable period of time for want of prosecution. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 2012 WL 3985891 at \*3.

¶ 12 III. CONCLUSION

¶ 13 We vacate the trial court's judgment and remand for further proceedings consistent with this order.

¶ 14 Judgment vacated; cause remanded for further proceedings.