

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).

2012 IL App (4th) 120666-U
NO. 4-12-0666
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 24, 2012
Carla Bender
4th District Appellate
Court, IL

DOUGLAS WHITE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
SALVADOR A. GODINEZ and GINA ALLEN,)	No. 12MR450
Defendants-Appellees.)	
)	Honorable
)	John Schmidt,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held:* The appellate court vacated and remanded the trial court's *sua sponte* dismissal of prisoner's *pro se* petition for *mandamus* and injunctive relief prior to service of summons and complaint on defendants, concluding the ruling was premature within the meaning of *Powell v. Lewellyn*, 2012 IL App (4th) 110168, 976 N.E.2d 1106.

¶ 2 On May 21, 2012, plaintiff, Douglas White, filed a *pro se* petition for *mandamus* and injunctive relief under articles 14 and 11 of the Code of Civil Procedure (Code) (735 ILCS 5/14-101 to 14-109, 11-101 to 11-304 (West 2010)). On June 14, 2010, the Sangamon County trial court entered a docket entry noting it reviewed the prisoner's petition and found it to be frivolous and without merit, dismissing the case. Defendant appeals, *pro se*, first arguing the trial court erred in dismissing his complaint as frivolous prior to service of the summons and complaint. Because we agree, we vacate the judgment and remand for further proceedings

without reaching plaintiff's other arguments.

¶ 3

I. BACKGROUND

¶ 4

Plaintiff's petition alleges in February 2012, he grieved that section 3-8-8(a) of the Unified Code of Corrections requires the Director to establish procedures to review grievances of inmates, and subsection (c) provides that such procedures allow committed persons to communicate the grievances to the Director or a designee outside the facility where the person is confined. 730 ILCS 5/3-8-8(a), (c) (West 2010). He argues this policy must be revised as the Department of Corrections (DOC) rules permit only a small percentage of grievances to be filed outside the facility of the incarcerated. His counselor purportedly responded to his grievance "outside my scope of duties," and the grievance officer returned it as "untimely." He tried to challenge the "illegal grievance time limit," to no avail. In May 2012, plaintiff initiated the instant case in the trial court. Attached to plaintiff's complaint and its appendices is a September 15, 2012, notarized notice of filing and certificate of service listing the Sangamon County Clerk of the Court and the Illinois Attorney General and providing addresses for same, swearing he mailed the original and four copies for filing and sent two summons and requested service of summons and complaint on defendants. The record before us fails to show defendant provided defendants' addresses. The record does not contain the summonses or show summonses issued. The trial court dismissed the petition as frivolous and without merit. This appeal followed.

¶ 5

II. ANALYSIS

¶ 6

Section 14-102 of the Code provides "[u]pon the filing of a complaint for mandamus the clerk of the court *shall issue* a summons ***." (Emphasis added.) 735 ILCS 5/14-102 (West 2010). In *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009),

our supreme court held the trial court could not *sua sponte* dismiss a prisoner's section 2-1401 petition (735 ILCS 5/2-1401 (West 2004)) unless it is " 'ripe for adjudication.' [Citation.]" The dismissal there occurred seven days after the petition's filing and prior to expiration of the usual 30-day period for the State to answer or plead.

¶ 7 In *Powell v. Lewellyn*, 2012 IL App (4th) 110168, 976 N.E.2d 1106, this court applied *Laugharn* in the context of an inmate's action for injunctive relief, where the trial court denied the relief two weeks after plaintiff's filing. On appeal, defendants did not file a brief, as they had never been served with plaintiff's petition. We concluded the trial court's ruling on the merits, before defendants had even been served with the petition, was premature:

"Thus, this case is not ripe for adjudication because defendants were never notified that a petition for injunctive relief had been filed against them. Without notice, they could not answer or otherwise plead. The trial court denied the petition only two weeks after it was filed. A plaintiff must be given a reasonable amount of time to obtain service on a defendant or defendants. 'If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice.' Ill. S. Ct. R. 103(b) (eff. July 1, 2007). If the defendant is properly served, he will then be entitled to answer or file a motion to dismiss within the appropriate length of time. Here, plaintiff was indigent and in jail when he filed his petition. Service of summons

might or might not have been forthcoming. But, as stated, only two weeks had passed since plaintiff filed his *pro se* petition. See *Segal v. Sacco*, 136 Ill. 2d 282, 289, 555 N.E.2d 719, 721-22 (1990) (finding 19-week delay in the service of process did not justify the dismissal of the plaintiff's action with prejudice). While we recognize 'the trial court possesses the inherent authority to control its own docket and the course of litigation, including the authority to prevent undue delays in the disposition of cases caused by abuses of the litigation process' (*J.S.A. v. M.H.*, 224 Ill. 2d 182, 196, 863 N.E.2d 236, 244 (2007)), the court's ruling on the merits here, before defendants had even been served with the petition, was premature." *Powell*, 2012 IL App (4th) 110168, ¶ 11, 976 N.E.2d at 1108.

We went on to disagree with the approach of a sister district, stating as follows:

"We note our disagreement with the Second District's recent decision in *People v. Nitz*, 2012 IL App (2d) 091165, 971 N.E.2d 633. In that case, like *Laugharn*, the defendant filed a petition for relief from judgment under section 2-1401. *Nitz*, 2012 IL App (2d) 091165, ¶ 4, 971 N.E.2d 633. Less than 30 days later, the trial court took up the matter, and an assistant State's Attorney appeared but did not participate beyond stating his name. *Nitz*, 2012 IL App (2d) 091165, ¶ 6, 971 N.E.2d 633. The court dis-

missed the petition *sua sponte*. *Nitz*, 2012 IL App (2d) 091165, ¶ 6, 971 N.E.2d 633. The defendant appealed, arguing *Laugharn* applied, and thus the trial court erred in dismissing his petition prior to the expiration of the 30-day period in which the State could respond. *Nitz*, 2012 IL App (2d) 091165, ¶ 8, 971 N.E.2d 633.

The Second District disagreed, finding the case distinguishable from *Laugharn* because the defendant did not give the State notice pursuant to section 2-1401(b). *Nitz*, 2012 IL App (2d) 091165, ¶ 12, 971 N.E.2d 633. Without service or a waiver of service, the court found the 30-day period for filing an answer by the State was irrelevant because it would 'never commence.' *Nitz*, 2012 IL App (2d) 091165, ¶ 12, 971 N.E.2d 633. Moreover, the court stated as follows:

'A remand "for further proceedings" would be meaningless, because no "further proceedings" will occur. The State will never answer or move to dismiss, and the State cannot be defaulted, because it was never served. Thus, remand would place the trial court in the position of being able to do nothing while the case remains on its docket permanently.'

Nitz, 2012 IL App (2d) 091165, ¶ 12, 971 N.E.2d 633.

After finding the petition deficient based on the failure to give notice, the court concluded dismissal without prejudice was proper. *Nitz*, 2012 IL App (2d) 091165, ¶ 13, 971 N.E.2d 633.

In contrast to our sister district, we find further proceedings in this case would not be 'meaningless' or wind up permanently etched on the trial court's docket. If plaintiff seeks to have his case heard, he can have defendants served. Otherwise, the trial court has the power to dismiss the case for want of prosecution after a reasonable period of time. Accordingly, we vacate the court's judgment and remand for further proceedings. We express no opinion on the merits of the substantive arguments raised by plaintiff in his petition." *Powell*, 2012 IL App (4th) 110168, ¶¶ 12-14, 976 N.E.2d at 1108-09.

¶ 8 Here, the dismissal as frivolous and without merit was by docket entry and neither provides an analysis of whether a sufficient claim has been stated nor lists other findings, which would facilitate review. We note the docket entry failed to direct the circuit clerk to mail a copy to plaintiff to notify him of the trial court's ruling. As in *Powell*, we conclude this case is not ripe for adjudication because defendants were never notified a petition for *mandamus* and injunctive relief had been filed against them.

¶ 9 III. CONCLUSION

¶ 10 Therefore, we vacate the Sangamon County circuit court's judgment and remand for further proceedings.

¶ 11 Judgment vacated; cause remanded for further proceedings.