

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).

2013 IL App (4th) 120609-U

NO. 4-12-0609

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
May 29, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

DeWAYNE GOODMAN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S.A. GODINEZ,	)	No. 12MR436
Defendant-Appellee.	)	
	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court vacated and remanded the circuit court's *sua sponte* dismissal of prisoner's *pro se* petition for *mandamus* and injunctive relief prior to service of summons and complaint on defendant, 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 10, 2012, plaintiff, DeWayne Goodman, filed a *pro se* petition for *mandamus* under article 14 of the Code of Civil Procedure (Code) (735 ILCS 5/14-101 to 14-109 (West 2010)). On May 30, 2012, the circuit court entered a docket entry noting it reviewed the prisoner's petition and found it to be frivolous and without merit, dismissing the case.

¶ 3 Defendant appeals, *pro se*, arguing the circuit court erred in summarily dismissing his complaint as frivolous. Because the court dismissed the complaint prior to service of the summons and complaint on defendant, we vacate the judgment and remand for further

proceedings.

¶ 4

## I. BACKGROUND

¶ 5 On May 10, 2012, plaintiff filed a *pro se* petition for *mandamus* in the circuit court. He asserted he was not properly served with the disciplinary tickets within eight days of an "altercation" between him and two correction guards in April 2011 at Pickneyville Correctional Center, the administrative review board expunged all disciplinary sanctions related to those tickets, he was transferred to Tamms Correctional Center, and he was improperly placed on administrative detention status for "'a history of assaultive behavior.'" Plaintiff requested the court to order defendant to "expunge all disciplinary sanctions imposed as a result of non adjustment committee recommendation; remove Plaintiff from administrative detention status; and transfer Plaintiff back to general population at a medium (Level 2) facility."

¶ 6 The record does not contain a certificate of service showing plaintiff served defendant with summonses or show the circuit clerk issued summonses.

¶ 7 On May 30, 2012, the circuit court, by docket entry, held it reviewed plaintiff's petition and found it "to be frivolous and without merit" and dismissed the complaint.

¶ 8 This appeal followed.

¶ 9

## II. ANALYSIS

¶ 10 While plaintiff challenges the merits of the circuit court's dismissal of his complaint, we first address whether this matter is even ripe for adjudication. The record does not show defendant was served notice or a summons for the complaint.

¶ 11 Section 14-102 of the Code provides, "Upon 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.

¶ 12 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. We concluded the trial court's ruling on the merits was "not ripe for adjudication because defendants were never notified that a petition for injunctive relief had been filed against them." *Powell*, 2012 IL App (4th) 110168, ¶ 11, 976 N.E.2d 1106. We further stated, "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." *Powell*, 2012 IL App (4th) 110168, ¶ 11, 976 N.E.2d 1106.

¶ 13 The principles of *Powell* and *Laugharn* control and the circuit court's decision must be vacated. Here, this case is not ripe for adjudication. Plaintiff filed a *mandamus* complaint on May 10, 2012. Twenty days later, the court held it reviewed plaintiff's petition and found it "to be frivolous and without merit" and dismissed the complaint. The record does not show defendant has been served or issued summons or a reasonable amount of time had passed

to permit plaintiff to notify defendant.

¶ 14 If a plaintiff wants his claims heard, he must serve the defendant and if he does not pursue his case, the circuit court may dismiss it for want of prosecution after a reasonable time. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 976 N.E.2d 1106.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we vacate the circuit court's judgment and remand for further proceedings.

¶ 17 Judgment vacated; cause remanded for further proceedings.