

NOTICE

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2014 IL App (4th) 130822-U

NO. 4-13-0822

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED

March 21, 2014

Carla Bender
4th District Appellate
Court, IL

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|---------------------------------------|---|------------------|
| CLAYBORN L. SMITH, JR., |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | Sangamon County |
| ROBERT J. SPRAGUE and JUSTICES OF THE |) | No. 12MR1029 |
| ILLINOIS COURT OF CLAIMS, |) | |
| Defendants-Appellees. |) | Honorable |
| |) | John Schmidt, |
| |) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the circuit court did not err in granting defendants' motion to dismiss plaintiff's petition for writ of *certiorari*.

¶ 2 In November 2012, plaintiff, Clayborn L. Smith, Jr., filed a *pro se* petition for writ of *certiorari* against defendants, Robert J. Sprague and the justices of the Illinois Court of Claims. In April 2013, defendants filed a motion to dismiss, which the circuit court granted in September 2013.

¶ 3 On appeal, plaintiff argues the circuit court erred in dismissing his petition for writ of *certiorari*. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, plaintiff, an inmate in the Illinois Department of Corrections, filed a *pro se* petition for writ of *certiorari* in the circuit court of Sangamon County against the

justices of the Illinois Court of Claims. Plaintiff alleged he filed a complaint with the Court of Claims seeking recovery for damage to his television while he was in prison and an overcharge by the prison commissary. The Court of Claims denied him relief following a trial.

¶ 6 Plaintiff's petition alleged his television was working prior to June 8, 2006, when prison guards at Menard Correctional Center conducted a shakedown of his cell. Plaintiff and his cell mate were taken to a shower room while the guards conducted the shakedown of the cell. Upon their return, plaintiff alleged the television was facedown in the back of the cell. Plaintiff plugged in the television, but it did not work properly. Plaintiff submitted a grievance, which was denied.

¶ 7 Plaintiff also alleged that, while he was incarcerated at Stateville Correctional Center, he was charged for two bags of coffee at the commissary when he had only ordered and received one bag. Plaintiff submitted a grievance about the alleged overcharge, and the administrative review board recommended he receive a package of coffee at no charge during his next commissary visit. Plaintiff alleged he did not receive any reimbursement.

¶ 8 Plaintiff filed a verified complaint in the Court of Claims, seeking damages from the State for the broken television and the coffee overcharge. The Court of Claims held a trial on June 5, 2009, during which plaintiff introduced the affidavit of Eric Johnson, his Menard cell mate, into evidence. Johnson's affidavit corroborated plaintiff's claim that the television was working prior to the shakedown but not so after they returned to their cell.

¶ 9 In May 2012, the Court of Claims issued an opinion in which it rejected plaintiff's claims regarding the television and the coffee overcharge. The Court of Claims found plaintiff failed to show his cell was closed off to other inmates when he was removed from the cell on June 8, 2006. Thus, even assuming the television was working before the shakedown and not

afterward, plaintiff failed to meet his burden of showing the television was in the exclusive control of the prison guards who conducted the shakedown. The Court of Claims also found plaintiff failed to substantiate his claim regarding the coffee overcharge, as he did not offer a receipt, commissary slip, or other evidence to support his claim. Accordingly, the Court of Claims denied plaintiff's claim.

¶ 10 In his *certiorari* petition, plaintiff alleged the Court of Claims failed to hear in a meaningful manner his verified complaint, Johnson's affidavit, plaintiff's trial testimony, and exhibits. Plaintiff also alleged the Court of Claims did not hear his complaint in accordance with the Code of Civil Procedure and the Unified Code of Corrections.

¶ 11 In April 2013, defendants, by and through the Illinois Attorney General, filed a motion to dismiss plaintiff's *certiorari* petition pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2012)). Defendants argued a petition for *certiorari* is appropriate only if the Court of Claims denied due process by failing to provide notice and an opportunity to be heard. As plaintiff acknowledged he received a trial on his complaint, he was not denied due process.

¶ 12 In June 2013, plaintiff filed a response to the motion to dismiss, alleging the Court of Claims arbitrarily disregarded certain evidence and thereby deprived him of his right to a meaningful opportunity to be heard in a meaningful manner. In September 2013, the circuit court granted defendants' motion to dismiss. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff argues the trial court erred in dismissing his petition for writ of *certiorari*. We disagree.

¶ 15 A. Standard of Review

¶ 16 In the case *sub judice*, the circuit court granted defendants' motion to dismiss pursuant to section 2-615 of the Procedure Code. A motion to dismiss under section 2-615 challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.'" *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The circuit court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review the dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 17 B. Writ of *Certiorari*

¶ 18 The Court of Claims Act (Act) (705 ILCS 505/1 to 29 (West 2012)) created an exception to the doctrine of sovereign immunity by allowing a party to bring monetary claims against the State in the Court of Claims. *Reichert v. Court of Claims*, 389 Ill. App. 3d 999, 1002, 907 N.E.2d 930, 933 (2009). Because the Act does not provide a method of review of decisions of the Court of Claims, *certiorari* is available to address claims of alleged due-process violations by the Court of Claims. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 261, 786 N.E.2d 174, 177 (2003); see also *Klopper v. Court of Claims*, 286 Ill. App. 3d 499, 502-03, 676 N.E.2d 679, 682 (1997).

¶ 19 In *certiorari* actions, the circuit court acts as a court of review. *Reichert*, 203 Ill. 2d at 260-61, 786 N.E.2d at 177. "The purpose of *certiorari* review is to have the entire record

of the inferior tribunal brought before the court to determine, from the record alone, whether the tribunal proceeded according to applicable law." *Reichert*, 203 Ill. 2d at 260, 786 N.E.2d at 177.

"However, *certiorari* may not be used to review the correctness of a decision by the Court of Claims based upon the merits of the case before it. [Citation.] Requirements of due process are met by conducting an orderly proceeding in which a party receives adequate notice and an opportunity to be heard. [Citation.] Due process is not abridged where a tribunal misconstrues the law or otherwise commits an error for which its judgment should be reversed." *Reichert*, 203 Ill. 2d at 261, 786 N.E.2d at 177.

See also *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72, 79-80, 485 N.E.2d 332, 335 (1985) (writ of *certiorari* is not available to review the merits of a decision by the Court of Claims); *Lake v. State of Illinois*, 401 Ill. App. 3d 350, 353, 928 N.E.2d 1251, 1255 (2010) (stating the circuit court "may not review the correctness of a decision based upon the merits of the case before the Court of Claims"); *Reichert*, 389 Ill. App. 3d at 1002-03, 907 N.E.2d at 933-34; *Reyes v. Court of Claims*, 299 Ill. App. 3d 1097, 1105, 702 N.E.2d 224, 230 (1998) ("[d]ue process does not guarantee against erroneous or unjust decisions"); *Klopper*, 286 Ill. App. 3d at 503, 676 N.E.2d at 682.

¶ 20 We recognize that the supreme court's recitation of the law in *Reichert* was *obiter dictum*, as the court found the plaintiff's *certiorari* petition was prematurely filed, but note such a statement " 'of a court of last resort can be tantamount to a decision and therefore binding in the absence of a contrary decision of that court.' " *Nudell v. Forest Preserve District*, 207 Ill. 2d 409, 416, 799 N.E.2d 260, 264 (2003) (quoting *Cates v. Cates*, 156 Ill. 2d 76, 80, 619 N.E.2d

715, 717 (1993)).

¶ 21 No contrary authority exists from the supreme court concerning the proper scope of review for *certiorari* actions seeking review of Court of Claims decisions. Thus, the *obiter dictum* from *Reichert* is binding. Moreover, *Reichert* is consistent with previous decisions from the supreme court and appellate courts. See *Rossetti*, 109 Ill. 2d at 79-80, 485 N.E.2d at 335; *Reyes*, 299 Ill. App. 3d at 1106, 702 N.E.2d at 231 (writ of *certiorari* "is not available to review the correctness of any decision of the Court of Claims based on the merits of the case"); *Klopper*, 286 Ill. App. 3d at 503, 676 N.E.2d at 682; *Hyde Park Medical Laboratory, Inc. v. Court of Claims*, 259 Ill. App. 3d 889, 896, 632 N.E.2d 307, 312 (1994) (declining "to extend the scope of review permitted in *Rossetti* to the merits of decisions from the Court of Claims").

¶ 22 Our supreme court has also noted "there is no absolute right to review by *certiorari*" and the issuance of a writ rests within the sound discretion of the circuit court. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 428, 551 N.E.2d 640, 646 (1990). "A petition for *certiorari* relief is properly denied if the court finds that the plaintiff cannot prevail or that he is not entitled to the review he seeks." *Lake*, 401 Ill. App. 3d at 353, 928 N.E.2d at 1255 (citing *Tanner v. Court of Claims*, 256 Ill. App. 3d 1089, 1092, 629 N.E.2d 696, 699 (1994)).

¶ 23 With these principles of law in mind, our review is limited to determining whether plaintiff was afforded due process before the Court of Claims. In his petition for *certiorari*, plaintiff stated the Court of Claims held a trial on his claims, and he presented evidence, including his own testimony, exhibits, and his cellmate's affidavit. Thus, plaintiff's own allegations in his petition indicate he had notice of the proceedings and was afforded the opportunity to be heard on his claims.

¶ 24 Although plaintiff's petition contains some allegations that purport to implicate due-process concerns, these allegations are conclusory in nature and not supported by specific facts. See *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009) (stating "a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations"). For example, plaintiff alleged the Court of Claims failed to hear his complaint in accordance with provisions of the Procedure Code, which state pleadings should be construed liberally and no pleading is bad in substance if it reasonably informs the opposing party of the nature of the claim or defense set forth therein. See 735 ILCS 5/2-603(c), 2-612(b) (West 2012). However, the Court of Claims did not dismiss plaintiff's complaint or find it insufficient but conducted a trial on the merits.

¶ 25 Plaintiff also argued the Court of Claims failed to hear in a meaningful manner his verified complaint, his testimony, his cellmate's affidavit, and the exhibits, all of which went uncontested by the State. Plaintiff alleged the Court of Claims did not hear his claims in accordance with section 3-7-4 of the Unified Code of Corrections (730 ILCS 5/3-7-4 (West 2012)), which states the Department of Corrections shall make rules governing the protection of inmates, employees, and their property. Once again, these allegations consist of conclusions rather than specific facts and are insufficient to survive a dismissal motion.

¶ 26 The allegations in plaintiff's petition for *certiorari* indicated he received notice of the proceedings and an opportunity to be heard on his complaint. Thus, he received the process he was due. While plaintiff disagrees with the decision of the Court of Claims, a review of the merits is not appropriate. Accordingly, we find the circuit court did not err in granting defendants' motion to dismiss.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we affirm the circuit court's judgment.

¶ 29 Affirmed.