

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).

2015 IL App (4th) 140433-U

NO. 4-14-0433

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2015
Carla Bender
4th District Appellate
Court, IL

CLAYBORN SMITH, JR.,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ,)	No. 13MR859
Defendant-Appellee.)	
)	Honorable
)	Rudolph M. Braud,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the circuit court properly dismissed plaintiff's petition for *mandamus* relief as barred by the doctrine of sovereign immunity.
- ¶ 2 Plaintiff, Clayborn Smith, Jr., is an inmate at Stateville Correctional Center (Stateville). In September 2013, plaintiff filed a petition for *mandamus* relief alleging defendant, S.A. Godinez, in his individual capacity, breached his ministerial duties as the Director of the Department of Corrections (Director) by interfering with plaintiff's personal-property agreement that allowed him to possess a typewriter in his cell. In January 2014, defendant filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619 (West 2012)), asserting plaintiff's claims were barred by sovereign immunity and belonged in the court of claims. In April 2014, the circuit court granted defendant's motion to dismiss.

¶ 3 Plaintiff appeals, asserting the petition (1) stated a claim for *mandamus* relief, (2) was not barred by sovereign immunity, and (3) was properly brought in the circuit court rather than the court of claims. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2012, plaintiff filed a grievance with the Illinois Department of Corrections (Department) after his typewriter was confiscated by Department officials. In March 2013, defendant denied plaintiff's grievance. Defendant explained plaintiff's typewriter had been confiscated at the direction of the Department's administrative staff based on defendant's bulletins Nos. 2012-51 and 2012-60, which stated typewriters would be confiscated as contraband in maximum-security facilities, such as Stateville. The Department placed inmates' confiscated typewriters in the respective inmate's personal property to be collected upon his discharge from the maximum-security facility.

¶ 6 In September 2013, plaintiff filed in the circuit court a petition seeking *mandamus* relief against defendant, alleging defendant interfered with the performance of his contract with the Department by removing his typewriter from his possession. Plaintiff alleged defendant's interference violated (1) Illinois contract law; (2) the Illinois constitution, article I, sections 2, 12, and 23 (Ill. Const. 1970, art. I, §§ 2, 12, 23); and (3) section 120.40(a) of the Illinois Administrative Code (20 Ill. Adm. Code 120.40(a) (West 2012)), which required defendant to follow all laws related to the performance of his service to the Department. Attached to plaintiff's petition as exhibit A was a personal-property agreement issued by the Department to plaintiff in October 2007, which stated plaintiff received a typewriter from the Department commissary and outlined certain restrictions or misbehaviors that could result in the Department confiscating the typewriter.

¶ 7 In January 2014, defendant filed a motion to dismiss plaintiff's petition pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)). Therein, defendant asserted plaintiff's contract claim (1) belonged in the court of claims, and (2) was barred by sovereign immunity.

¶ 8 In April 2014, the circuit court entered an order granting defendant's motion to dismiss, finding plaintiff's petition for *mandamus* relief was a contract claim against the State and was therefore barred by sovereign immunity. Moreover, the court found a *mandamus* petition was not the appropriate avenue for plaintiff's constitutional claims.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff contends the circuit court erred in granting defendant's motion to dismiss, as he had a clear right to *mandamus* relief. Defendant, in turn, asserts the court properly dismissed plaintiff's petition for lack of jurisdiction because it was improperly filed in the circuit court rather than the court of claims and, thus, was barred by the doctrine of sovereign immunity

¶ 12 A. Standard of Review

¶ 13 The circuit court dismissed plaintiff's petition pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)) after finding plaintiff's claim was barred by sovereign immunity. In a section 2-619 motion to dismiss, "[d]ismissal is proper when there are no genuine issues of material fact and dismissal is proper as a matter of law." *Butler v. Mayer, Brown & Platt*, 301 Ill. App. 3d 919, 922, 704 N.E.2d 740, 743 (1998). In reaching its decision, the court may rely upon pleadings, depositions, and affidavits. *Gray v. National Restoration Systems, Inc.*, 354 Ill. App. 3d 345, 354, 820 N.E.2d 943, 952 (2004). However, the court is not

required to accept legal conclusions or those conclusions unsupported by specifically alleged facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31, 976 N.E.2d 318. Our review is *de novo*. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583.

¶ 14 Having established the appropriate standard of review, we first turn to the jurisdictional bases upon which the circuit court dismissed plaintiff's claim.

¶ 15 B. The Circuit Court's Jurisdiction

¶ 16 The circuit court dismissed plaintiff's petition, finding under the doctrine of sovereign immunity, the court of claims possessed exclusive jurisdiction over plaintiff's claims. First, we examine whether plaintiff's decision to name defendant in his individual capacity rather than his capacity as Director overcomes defendant's claim of sovereign immunity.

¶ 17 1. *Naming Defendant in his Individual Capacity*

¶ 18 Defendant first argues plaintiff's petition improperly names defendant in his individual capacity when, in actuality, defendant was acting as an agent for the State. Plaintiff asserts defendant exceeded his authority and breached a duty independent of his State employment.

¶ 19 Under section 1 of the State Lawsuit Immunity Act, the State of Illinois may not be named as a defendant in any court, except as provided under certain legislative acts, such as the Court of Claims Act (705 ILCS 505/1 to 505/29 (West 2012)). 745 ILCS 5/1 (West 2012). Where the plaintiff institutes a cause of action against a State official in his individual capacity, we must consider the issues involved and the relief sought to determine whether the action is one against the State. A plaintiff may not avoid the State's sovereign immunity merely by naming a

State official as a nominal defendant. *Smith v. Jones*, 113 Ill. 2d 126, 131, 497 N.E.2d 738, 740 (1986).

"An action is in reality a suit against the State when the following factors are present: (1) no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts [(scope of authority)]; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment [(source of duty)]; and (3) where the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State [(normal and official functions)]. [Citations.]." (Internal quotation marks omitted.) *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 22, 977 N.E.2d 887.

Even if the State fails to establish these three criteria, the cause will be considered to be against the State if " 'a judgment for the plaintiff could operate to control the actions of the [S]tate or subject it to liability.' " *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 560, 831 N.E.2d 1159, 1164 (2005) (quoting *Currie v. Lao*, 148 Ill. 2d 151, 158, 592 N.E.2d 977, 980 (1992)).

¶ 20 As to the first factor, plaintiff alleges defendant, by implementing a policy declaring typewriters contraband, caused the removal, from plaintiff's cell, of a Swintec typewriter defendant previously purchased. As Director of the Department, implementation of such a policy would clearly be within the scope of defendant's authority. Plaintiff fails to identify any basis to consider the Director's establishment of rules to regulate the conduct of the inmates housed in the facility wrongful. Regarding the second factor, the duty defendant owed

plaintiff arose from defendant's position as a State official, specifically, as the Director of the Department. Defendant promulgated prison rules, such as the confiscation of typewriters, as part of his duties as Director, which is not a duty owed to the general public.

¶ 21 Finally, the complained-of actions arise from matters ordinarily within defendant's normal and official functions as Director. The authority to regulate the possession of personal property is within the Department's discretion. See *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1256, 739 N.E.2d 897, 901 (2000) (prison officials may place restrictions on the type and quantity of personal property an inmate may possess in his cell). Thus, regulating the possession of typewriters, a matter of personal property, would fall within the normal and official functions of the Director.

¶ 22 Moreover, a finding for plaintiff in this instance would control the Department's ability to regulate prison inmates' possession of typewriters and would therefore interfere with its authority to regulate personal property. It would also tie the Director's and Department's hands in terms of their ability to rescind personal-property agreements despite changing circumstances at prison facilities. Finally, should plaintiff prevail, other inmates with similar agreements for typewriters or other personal property could file lawsuits subjecting the Department to liability for failing to ensure its officials followed Illinois contract laws. Accordingly, a decision in plaintiff's favor would operate to control the actions of the State or subject it to liability.

¶ 23 Thus, despite plaintiff filing his petition against defendant in his individual capacity, we conclude plaintiff's action is effectively one against the State.

¶ 24 Plaintiff further asserts defendant exceeded the scope of his authority by violating State, federal, and local laws pertaining to the performance of contracts. It is true that the doctrine of sovereign immunity provides no shield where the State's agent violates the law or

exceeds his authority, thus permitting a plaintiff to pursue an action against the agent in the circuit court rather than the court of claims. *Leetaru*, 2015 IL 117485, ¶ 45, 32 N.E.3d 583. However, this exception does not apply "where the challenged conduct amounts to simple breach of contract and nothing more[.]" *Id.* ¶ 47, 32 N.E.3d 583. Similarly, the exception does not apply where a State official has merely erroneously exercised the authority delegated to him. *Id.* Because plaintiff specifically alleges defendant anticipatorily breached his contract with the State—conduct amounting to a simple breach of contract—the doctrine of sovereign immunity applies to plaintiff's claim.

¶ 26 *2. Court of Claims*

¶ 28 As stated above, the State of Illinois may not be named as a defendant in any court, except as provided under certain legislative acts, such as the Court of Claims Act (705 ILCS 505/1 to 29 (West 2012)). 745 ILCS 5/1 (West 2012). The Court of Claims Act, in turn, provides the court of claims with exclusive jurisdiction over lawsuits against the State, including, in relevant part, (1) "[a]ll claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency" (705 ILCS 505/8(a) (West 2012)); (2) "[a]ll claims against the State founded upon any contract entered into with the State of Illinois" (705 ILCS 505/8(b) (West 2012)); and (3) "[a]ll claims against the State for damages in cases sounding in tort" (705 ILCS 505/8(d) (West 2012)).

¶ 29 In his reply brief, plaintiff asserts, "[w]hile the underlying issue is [defendant's] confiscation of [plaintiff's] security approved typewriter[r] contracted to [plaintiff] without [plaintiff] breaching the performance of the contract. [Defendant] has a mandatory obligation to perform specific ministerial duties[.]" He goes on to state defendant's ministerial duties required defendant to ensure he and the Department complied with contract law. This circular argument is unpersuasive. In its simplest form, plaintiff asserts defendant breached his ministerial duties by interfering with plaintiff's contractual right to a typewriter. Claims against the State of Illinois founded upon any contract or sounding in tort, fall under the exclusive jurisdiction of the Court of Claims. (705 ILCS 505/8 (West 2012)). See, e.g., *Carmody*, 2012 IL App (4th) 120202, ¶ 20, 977 N.E.2d 887 (claims for tortious interference with contract barred by sovereign immunity); *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 394-95, 466 N.E.2d 202, 206 (1984) (Court of Claims possessed exclusive jurisdiction of a wrongful-discharge claim whether the basis arose from contract or tort law).

¶ 30 During the pendency of this appeal, plaintiff filed a motion to cite additional authority, wherein in he asked us to consider a related court of claims decision regarding the loss of his typewriter (*Smith v. State of Illinois*, 14-CC-3818 (2015)). In that case, plaintiff filed a claim against the State alleging the Department failed to safeguard his personal property, including his typewriter, upon his transfer to Stateville. *Smith v. State of Illinois*, 14-CC-3818 (2015). The court's sole discussion of plaintiff's claim regarding his typewriter consists of the statement: "The portion of the claim regarding the typewriter is denied because [the prison's] typewriter policy is not reviewable by this court." *Smith v. State of Illinois*, 14-CC-3818 (2015). Plaintiff asserts this statement means the court of claims does not have jurisdiction over his claim that defendant tortuously interfered with his typewriter contract. We disagree with plaintiff's

interpretation of the order. Plaintiff's court of claims action revolved around the issue of bailment—the extent to which the Department was liable for personal property lost or damaged upon his transfer to Stateville. In issuing its order, the court of claims noted it does not review the administration of prison regulations "except in cases where proof of violations of existing regulations tends to establish liability of the Respondent under recognized principles of tort law." *Smith v. State of Illinois*, 14-CC-3818 (2015) (quoting *Montgomery (Walter) v. State*, 41 Ill. Ct. Cl. 190, 193 (1988)). In this case, plaintiff alleges defendant's alleged misconduct constituted tortious interference with a contract, a recognized principle of tort law. Therefore, contrary to plaintiff's assertion, the court of claims would have jurisdiction over the present claim.

¶ 31 Accordingly, the circuit court did not err in dismissing plaintiff's petition for *mandamus* relief pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)).

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 34 Affirmed.