

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) 150034-U

NO. 4-15-0034

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 17, 2015
Carla Bender
4th District Appellate
Court, IL

ROBERT F. RUSSO,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	Adams County
THE PEOPLE OF THE STATE OF ILLINOIS,)	No. 14MR189
Respondent-Appellee.)	
)	Honorable
)	Scott H. Walden,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the circuit court did not err in dismissing petitioner's *pro se* petition for writ of *certiorari*.

¶ 2 In October 2014, petitioner, Robert F. Russo, filed a *pro se* petition for writ of *certiorari* in the circuit court of Adams County, seeking review of the dismissal of his cause of action in the Illinois Court of Claims. In December 2014, the circuit court ordered his petition stricken.

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

¶ 4 I. BACKGROUND

¶ 5 In October 2014, petitioner filed a *pro se* petition for writ of *certiorari* in the circuit court of Adams County. Petitioner also filed an application to sue as a poor person and a

motion for the appointment of counsel. Petitioner is currently serving a 60-year sentence for murder. In his petition, petitioner alleged he was working in the dining area at Menard Correctional Center on May 6, 2011. A supervisor issued "caustic materials" to another inmate to scrub and mop the floor. Petitioner claimed the supervisor did not supervise or instruct the inmate on the proper use of the materials, and the inmate "left standing a wet and dangerously slippery film on the floor." Petitioner stated he slipped and fell, requiring a total left hip replacement.

¶ 6 As a result of his injuries, petitioner filed a *pro se* civil-rights complaint (42 U.S.C. § 1983 (2006)) in federal court in October 2011. In August 2012, the district court found petitioner's claim "sounds in negligence rather than in deliberate indifference" and thus did not implicate the United States Constitution. *Russo v. CFSS Powell*, No. 11-CV-0922-MJR (S.D. Ill. Aug. 17, 2012). The court stated while relief in federal court was foreclosed to petitioner, a negligence suit could still be pursued in state court.

¶ 7 In September 2012, petitioner filed a notice to commence an action seeking \$100,000 in monetary damages with the Illinois Court of Claims. According to petitioner, the State filed a response in December 2012. In February 2014, the Court of Claims notified the parties the final hearing would take place on April 29, 2014. According to petitioner, the State filed a motion to dismiss on April 15, 2014, based on the issue of procedural default.

¶ 8 In July 2014, the Court of Claims granted the State's motion to dismiss. In October 2014, the Court of Claims denied petitioner's petition for rehearing.

¶ 9 Thereafter, petitioner filed the petition for writ of *certiorari* that is at issue in this appeal. In December 2014, the circuit court of Adams County ordered petitioner's *certiorari* petition stricken. The court found petitioner's claim without merit, stating there was "no basis for

the filing of this action in Adams County." While petitioner had been sent to prison for murder committed in Adams County, "the basis of his claim is an injury in another county while in the Menard Correctional Center."

¶ 10 The circuit court also noted the Court of Claims has exclusive jurisdiction to hear the merits of petitioner's claim against the State of Illinois. Petitioner's claim in the Court of Claims was dismissed and his motion to reconsider was denied. The court noted petitioner did "not allege that he was not given an opportunity to be heard on his motion to reconsider." Thus, the court stated petitioner's complaint was without merit. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, petitioner argues the circuit court erred in *sua sponte* striking his petition for writ of *certiorari*. We disagree.

¶ 13 Initially, we note the State has not filed a brief in response to plaintiff's *pro se* appeal. However, because the record is simple and the claimed errors are such that we can easily decide them without the aid of a brief from the State, we will decide the case on the merits. *Mason v. Snyder*, 332 Ill. App. 3d 834, 837-38, 774 N.E.2d 457, 460 (2002) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)). Moreover, we may affirm the circuit court's judgment on any basis in the record. *Beacham v. Walker*, 231 Ill. 2d 51, 61, 896 N.E.2d 327, 333 (2008).

¶ 14 The Court of Claims Act (Act) (705 ILCS 505/1 to 29 (West 2014)) 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).

¶ 15 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").

¶ 16 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)).

¶ 17 In the case *sub judice*, petitioner indicated he suffered his injury in May 2011. However, he did not file his notice of intent to file an action in the Court of Claims until September 2012. According to section 22-1 of the Act (705 ILCS 505/22-1 (West 2014)), any person who brings a claim for personal injuries in the Court of Claims must file in the office of the Attorney General and the office of the Court of Claims notice within one year from the date the injury was received or the cause of action accrued. The failure to file such a notice mandates dismissal of the action and forever bars the claimant from further action in the Court of Claims. 705 ILCS 505/22-2 (West 2014). Since petitioner failed to file his notice within the one-year time period, his cause of action in the Court of Claims was properly dismissed.

¶ 18 With these principles of law in mind, our review of the petition for *certiorari* is limited to determining whether plaintiff was afforded due process before the Court of Claims. Here, plaintiff filed his cause of action, and the State responded with its arguments. The Court of Claims provided petitioner with the notice of the hearing which, in the end, was not held because the Court of Claims granted the State's motion to dismiss. Petitioner had notice and an opportunity to be heard during the process. He was merely barred from filing his claim due to his failure to file his notice of intent within the one-year period set forth in the Act. Moreover, following the Court of Claims' decision, his petition for rehearing was accepted and ruled on.

¶ 19 While petitioner raises the issue regarding the failure to timely file his notice of intent, this issue is not reviewable. Due process is not violated where the Court of Claims

merely 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. Thus, even if the Court of Claims erred in its determination, a misconstruction of law does not amount to a violation of due process. *Reyes v. Court of Claims*, 299 Ill. App. 3d 1097, 1105, 702 N.E.2d 224, 230 (1998) (finding the plaintiff's due-process rights would not be violated even if it found the Court of Claims ruled incorrectly regarding the statute of limitations).

¶ 20 Here, due process was satisfied where petitioner was afforded the opportunity to be heard in the Court of Claims. Accordingly, the circuit court did not err in dismissing the petition for writ of *certiorari*.

¶ 21 III. CONCLUSION

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

¶ 23 Affirmed.