

**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).

2016 IL App (4th) 150313-U

NO. 4-15-0313

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 29, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

MARK HOWARD,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
EDWARD W. HUNTLEY,	)	No. 14MR140
Defendant-Appellee,	)	
and	)	
THE ILLINOIS DEPARTMENT OF CORRECTIONS	)	
and JOHN DOE SUPERVISOR OF INMATE	)	Honorable
AFFAIRS,	)	Brian T. Otwell,
Defendants.	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court. Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed plaintiff's complaint, as plaintiff's cause of action against the Illinois Department of Corrections and its agents or employees is barred by sovereign immunity.

¶ 2 In March and June 2014, plaintiff, Mark Howard, filed a *pro se* complaint and amended complaint for declaratory judgment. In his complaint, Howard alleged defendants, Edward W. Huntley and the Illinois Department of Corrections (IDOC) and John Doe, as supervisor of DOC Inmate Affairs, failed to comply with a settlement agreement that entitled him to a kosher diet while in the custody of IDOC. Only defendant Huntley was served. In March 2015, upon a motion by defendant Huntley, the trial court dismissed Howard's complaint. Howard appeals, arguing he properly stated a claim for declaratory judgment. In contrast,

Huntley argues, in part, the dismissal was proper because Howard's suit is barred by sovereign immunity. We agree with Huntley and affirm.

¶ 3

### I. BACKGROUND

¶ 4 After the trial court dismissed Howard's initial complaint without prejudice in May 2014, in July 2014 Howard filed his amended complaint for declaratory judgment with a copy of an unsigned settlement agreement between him and IDOC. According to the alleged settlement agreement, it was entered to settle a lawsuit filed in the United States District Court for the Central District of Illinois. In that action, Howard alleged violations of his constitutional rights resulting from the denial of his right to practice his religion, Messianic Hebrew. As part of the agreement, the parties agreed Howard's religious affiliation would be changed to Messianic Hebrew and Howard would receive a kosher diet, except in certain circumstances. Defendant Huntley's name appears under the signature line under "On Behalf of the Illinois Department of Corrections." Huntley is identified as special litigation counsel for IDOC.

¶ 5 In his amended complaint, Howard alleged Huntley and IDOC were unresponsive to his correspondence, in which he asserted correctional officers refused "to acknowledge, verify or assist any type of process with the Plaintiff receiving his meal according to the agreement." Howard alleged the correctional officers also became indignant and attempted to provoke insolence from him. Howard asserted an actual controversy existed. He requested the enforcement of the terms of the agreement and "any other relief this Court deems necessary."

¶ 6 Later in June 2014, Huntley moved to dismiss the complaint under section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2014)). Huntley alleged the complaint failed to state a cause of action. Huntley argued Howard failed to

provide any facts showing he had any role in regard to Howard's meals. Huntley further maintained Howard essentially filed a claim for breach of contract against the State of Illinois—a claim barred by sovereign immunity.

¶ 7 In March 2015, the trial court granted Huntley's motion to dismiss. The court found Huntley was the only party defendant served in the case. The court found the cause of action related to a settlement between plaintiff Howard and IDOC. The court concluded Huntley was not a proper party and dismissed the case with prejudice.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Standard of Review

¶ 11 Under section 2-619.1 of the Procedure Code, a party may file a motion combining a section 2-615 motion to dismiss and a section 2-619 motion to dismiss. 735 ILCS 5/2-619.1 (West 2014). A section 2-615 motion challenges the legal sufficiency of a complaint, while a section 2-619 motion admits the sufficiency of the complaint but asserts an affirmative matter defeats the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21, 986 N.E.2d 626. Dismissals under both sections 2-615 and 2-619 are reviewed *de novo*. *Id.*

¶ 12 B. Sovereign Immunity

¶ 13 On appeal, plaintiff Howard, proceeding *pro se*, argues the trial court erred in granting the motion to dismiss. Howard maintains he "has a legal tangible interest" based on the agreed settlement and he is entitled to declaratory judgment. Howard further maintains a contract was formed, and a cause of action should not be dismissed unless no set of facts can be proved entitling the pleader to relief.

¶ 14 In response, Huntley contends Howard's claim is barred by sovereign immunity. Huntley argues case law establishes Howard's declaratory-judgment action, an action in which he seeks enforcement of the contract and "other relief," is an action against the State that cannot proceed outside the Court of Claims.

¶ 15 In 1971, the General Assembly granted the State sovereign immunity when it enacted the State Lawsuit Immunity Act (Act) (745 ILCS 5/0.01 to 1.5 (West 2014)). See *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 682-83, 840 N.E.2d 748, 752 (2005) (citing Pub. Act 77-1776, § 1, eff. January 1, 1972 ((1971 Ill. Laws 3446-47))). The Act provides "the State of Illinois shall not be made a defendant or party in any court" except as provided in three other acts, the Court of Claims Act (705 ILCS 505/1 to 29 (West 2014)), the Illinois Public Labor Relations Act (5 ILCS 315/1 to 28 (West 2014)), and the State Officials and Employee Ethics Act (5 ILCS 430/1 to 10 (West 2014)). 745 ILCS 5/1 (West 2014); see also *Hadley*, 362 Ill. App. 3d at 683, 840 N.E.2d at 752. Pursuant to sovereign immunity, neither the State nor any department of the State may be sued in a circuit court without the State's consent. *Joseph Construction Co. v. Board of Trustees of Governors State University*, 2012 IL App (3d) 110379, ¶ 26, 973 N.E.2d 486.

¶ 16 A plaintiff may not circumvent sovereign immunity by simply naming a State official as a nominal defendant. *Smith v. Jones*, 113 Ill. 2d 126, 131, 497 N.E.2d 738, 740 (1986). A cause of action is in actuality a claim against the State when the following exist: (1) the complaint contains no allegations an agent or employee of the State committed wrongful acts outside his or her scope of authority, (2) the alleged breached duty was not owed to the public independent of State employment, and (3) the alleged misconduct involved matters ordinarily

within the employee's usual and official State functions. *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 22, 977 N.E.2d 887. In the absence of the above criteria, a claim will be considered as one against the State if a judgment could control the State's actions or subject it to liability. *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 560, 831 N.E.2d 1159, 1164 (2005).

¶ 17 Howard's suit is barred by sovereign immunity. The record establishes Howard named Huntley, IDOC, and "John Doe Supervisor for Inmate Affairs" as defendants. Only Huntley was served. The only allegations regarding Huntley show he was to sign the settlement agreement on IDOC's behalf. There are thus no allegations (1) Huntley, or any named defendant, committed a wrongful act outside his scope of authority; (2) the alleged breach of duty was owed to the general public independent of State employment; or (3) the alleged misconduct involved a matter outside Huntley's official State function. Under these considerations, Howard's suit is thus one against the State. See *Carmody*, 2012 IL App (4th) 120202, ¶ 22, 977 N.E.2d 887. Considering *Jackson*, the same conclusion follows. Howard requested an order mandating compliance with the settlement agreement and "other relief," meaning a judgment by the circuit court would improperly control the actions of the State or subject it to liability. See *Jackson*, 358 Ill. App. 3d at 560, 831 N.E.2d at 1164.

¶ 18 That Howard purports to seek declaratory judgment does not avoid the bar of sovereign immunity. Section 8(b) of the Court of Claims Act grants the Court of Claims "exclusive jurisdiction" to determine "[a]ll claims against the State founded upon any contract entered into with the State of Illinois." 705 ILCS 505/8(b) (West 2014). Howard's complaint alleges the State breached its contract and an injury exists and requests compliance with the contract and "other relief." The complaint essentially asserts a breach-of-contract claim and falls

within the exclusive jurisdiction of the Court of Claims. See *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 164-65, 940 N.E.2d 1122, 1130-31 (2010).

¶ 19

### III. CONCLUSION

¶ 20

We affirm the trial court's judgment.

¶ 21

Affirmed.