

**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).

NO. 4-15-0350  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
April 20, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

STEVE THOMAS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Piatt County
HUGH FINSON,	)	No. 14MR53
Defendant-Appellee.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the circuit court's dismissal of plaintiff's *quo warranto* action.

¶ 2 In November 2014, defendant, Hugh Finson, was elected resident circuit judge in Piatt County. Plaintiff, Steve Thomas, unsuccessfully ran against defendant as a write-in candidate. Although defendant was elected by the citizens of Piatt County, he was assigned to a circuit court outside of Piatt County because his niece was the State's Attorney of Piatt County, thus causing an ongoing conflict of interest.

¶ 3 In December 2014, plaintiff commenced a *quo warranto* action against defendant, asserting defendant was serving in violation of the Illinois Constitution by not hearing a majority of his cases in Piatt County. In April 2015, the circuit court dismissed plaintiff's action with prejudice.

¶ 4 Plaintiff appeals, asserting the circuit court erred by (1) finding the Judicial Inquiry Board (Board) and Illinois Courts Commission (Commission) were the appropriate entities for deciding plaintiff's claim, (2) denying his request for the appointment of a special prosecutor, and (3) dismissing his *quo warranto* action with prejudice for failure to state a claim. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In September 2012, defendant was appointed resident circuit judge of Piatt County, which is within the Sixth Judicial Circuit. He then ran for election on the November 2014 ballot. Plaintiff was a write-in candidate for the position, but defendant ultimately garnered more votes. At all relevant times, Dana Rhoades, defendant's niece, served as the Piatt County State's Attorney. Due to the conflict of interest created by the nature of their relationship, defendant was assigned to other courts within the Sixth Judicial Circuit.

¶ 7 In December 2014, plaintiff filed a petition to appoint a special prosecutor for the purpose of pursuing a *quo warranto* action against defendant. Plaintiff sought to challenge the constitutionality of defendant, a resident circuit judge elected by Piatt County citizens, hearing cases a majority of the time in other Sixth Judicial Circuit courts. Plaintiff noted the Piatt County State's Attorney had a conflict of interest because she was related to defendant, and therefore plaintiff requested other agencies, such as the Attorney General's office, serve as special prosecutor. However, the Attorney General's office had already declined plaintiff's invitation to participate in the proceedings. In the event the circuit court could find no government entity willing to serve as special prosecutor, plaintiff volunteered to serve in that position.

¶ 8 In February 2015, defendant filed an objection to plaintiff's petition to appoint a special prosecutor, asserting plaintiff failed to establish why a special prosecutor should be appointed. Defendant asserted a special prosecutor was not necessary, because a private citizen could bring a *quo warranto* action. However, defendant argued plaintiff could not bring the action because he lacked sufficient personal interest in the outcome. Plaintiff filed a response later that month, asserting he had standing and his request for a special prosecutor was meritorious. He also requested the circuit court impose sanctions against defendant for filing a meritless response.

¶ 9 Also in February 2015, plaintiff filed a petition for leave to file a complaint in *quo warranto* as a private citizen because the Attorney General's office declined to prosecute. Plaintiff reiterated that he believed defendant was holding the office of resident circuit judge unconstitutionally because he was not presiding over Piatt County cases a majority of the time. Plaintiff also asserted he had standing because (1) he was defendant's sole opponent in the previous election at a time when defendant knew or should have known he was running for judge in violation of the Illinois Constitution; and (2) had defendant not run for the judicial position, plaintiff would have won the election. Plaintiff further contended he suffered damages as an attorney practicing in Piatt County because the inefficiency of the Piatt County court resulting from defendant's reassignment delayed proceedings, thus causing plaintiff financial damages. He then provided several examples of situations in which the court processes were delayed or proceedings transferred to another county due to the lack of a judge, which in turn resulted in delays in plaintiff collecting his fees or unnecessary travel expenses. The attached *quo warranto* complaint alleged defendant was occupying the office of resident circuit judge unconstitutionally because the majority of his time was spent hearing cases outside of Piatt County. Later that

month, however, plaintiff filed a motion for voluntary dismissal of his petition for leave to file a complaint in *quo warranto*.

¶ 10 In April 2015, following a hearing, the circuit court entered an order denying plaintiff's (1) petition for leave to file a complaint in *quo warranto*, (2) motion for the voluntary dismissal of his petition for leave to file a complaint in *quo warranto*, and (3) motion for the appointment of a special prosecutor. The court then dismissed the cause of action with prejudice. In a memorandum in support of its order, the court found any investigation as to whether defendant properly held his position was a matter for the Board and any adjudicatory hearings should be held before the Commission. Additionally, the court found plaintiff's underlying complaint failed to state a claim upon which relief could be granted.

¶ 11 The next day, plaintiff filed a motion to reconsider, asserting the circuit court's determination that the Board and Commission had jurisdiction over the cause of action was not based on arguments presented by defendant. Moreover, plaintiff argued the matter of law presented in this case was more appropriately resolved in the circuit court, as he did not allege any claims that would fall under the purview of the Board. Plaintiff also renewed his request for sanctions. Plaintiff later filed a second motion to reconsider the court's decision to dismiss the cause of action with prejudice. The court denied both motions to reconsider.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff asserts the circuit court erred by (1) finding the Board and Commission were the appropriate entities for considering plaintiff's claim, (2) denying his request for the appointment of a special prosecutor, and (3) dismissing his *quo warranto* action

with prejudice for failure to state a claim. We begin by examining the jurisdiction of the circuit court.

¶ 15 A. Jurisdiction of the Circuit Court

¶ 16 Plaintiff first argues the circuit court erred in concluding the Board and, by extension, the Commission, had exclusive jurisdiction over this cause of action. An issue regarding the circuit court's subject-matter jurisdiction is subject to *de novo* review. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294, 948 N.E.2d 1, 10 (2010).

¶ 17 From the outset, we note plaintiff concedes defendant meets the constitutional eligibility requirements set forth in article VI, section 11 of the constitution, which states, "No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him." Ill. Const. 1970, art. VI, § 11. Plaintiff also concedes defendant has committed no violation of the Illinois Code of Judicial Conduct. Rather, plaintiff's sole contention is certain constitutional language should be interpreted as requiring a resident circuit judge to serve a majority of his time in the circuit court to which he was elected.

¶ 18 In reaching its decision, the circuit court found all matters regarding judicial discipline fall under the purview of the Board and Commission. While it is generally true that judicial disciplinary matters should be resolved by the Commission (see, *e.g.*, *People ex rel. Judicial Inquiry Board v. Courts Comm'n*, 91 Ill. 2d 130, 134, 435 N.E.2d 486, 488 (1982)), this case presents an issue requiring constitutional interpretation.

¶ 19 In *People ex rel. Harrod v. Illinois Courts Comm'n*, 69 Ill. 2d 445, 372 N.E.2d 53 (1977), the supreme court considered the difference between the powers granted to the Commission and the powers granted to the judiciary. The court noted, "the judicial power in this

State is vested solely in the courts. This power includes, among other things, the authority to judicially interpret and construe constitutional provisions and statutes when necessary." *Id.* at 472-73, 372 N.E.2d at 65-66. Because the Commission is not part of the State's judicial system, it lacks the authority to interpret statutory ambiguities, or to compel judges to comply with its interpretation. *Id.* at 473, 372 N.E.2d at 66. The court further determined, "[t]he function of the Commission is one of fact finding. Its function in this case was to apply the facts to the *determined* law, not to determine, construe, or interpret what the law should be." (Emphasis in original.) *Id.* To interpret the constitution as providing the Commission with the power to interpret statutory language would have significant consequences, given its final orders cannot be reviewed for correctness. *Id.* If the Commission had such power to interpret statutory interpretation, and its interpretation differed from that of the appellate courts, trial judges would be forced to choose between (1) following appellate court authority and being subjected to sanctions, or (2) improperly rejecting appellate court authority to avoid sanctions. *Id.* Thus, to promote uniformity in the interpretation of the law, the constitution commits the exercise of these judicial functions to the judiciary. *Id.*

¶ 20 Despite the supreme court's holding in *Harrod*, defendant asserts the Board and Commission were the proper avenues for challenging his alleged constitutional violation, noting the Commission has the authority to remove a judge if he or she is constitutionally ineligible to serve. See *Goodman v. Ward*, 241 Ill. 2d 398, 413, 948 N.E.2d 580, 589 (2011). In support of his argument, defendant relies on *Judicial Inquiry Board*, 91 Ill. 2d at 136, 435 N.E.2d at 489, which held the Commission had the authority to interpret the rules of judicial conduct. However, we find that case readily distinguishable. In *Judicial Inquiry Board*, the supreme court explained, "[s]ince the Commission is the tribunal with final responsibility for applying the rules

of judicial conduct to disciplinary cases, there is no possibility that its interpretation of a rule will be at odds with an interpretation by a court. Thus the possibility referred to in *Harrod* of conflicting interpretations creating a dilemma for trial and appellate judges does not arise." *Id.* Unlike the interpretation of rules of judicial conduct, the Commission's interpretation of constitutional provisions certainly possesses the potential for conflicting interpretations between the Commission and the appellate courts. Allowing the Commission to make such an interpretation in this case fails to promote uniformity in the interpretation of the law as contemplated by *Harrod*. *Harrod*, 69 Ill. 2d at 473, 372 N.E.2d at 66. Thus, we find defendant's reliance on *Judicial Inquiry Board* unpersuasive.

¶ 21 Accordingly, we conclude the case was properly presented to the circuit court. Having determined the court erred in finding the Board and Commission had exclusive jurisdiction over plaintiff's claim, we next turn to the court's finding plaintiff's claim failed to state a cause of action.

¶ 22 B. *Quo Warranto* Action

¶ 23 Plaintiff next asserts the circuit court erred by (1) denying his petition to appoint a special prosecutor and (2) dismissing his *quo warranto* claim with prejudice for failure to state a claim. Both of these issues require us to examine the nature of the complaint. See *People ex rel. Baughman v. Eaton*, 24 Ill. App. 3d 833, 835, 321 N.E.2d 531, 532 (1974) (in determining whether to appoint a special prosecutor, "the court's attention must in some way be directed to the subject matter requiring a decision"). Therefore, we turn to the nature of *quo warranto* proceedings and the sufficiency of the complaint.

¶ 24 1. *Defining a Quo Warranto Action*

¶ 25           *Quo warranto* relief is an extraordinary remedy that allows interested individuals, with leave of court, to challenge a public individual who "usurps, intrudes into, or unlawfully holds or executes any office, or franchise, or any office in any corporation created by the authority of this State." 735 ILCS 5/18-101(1), 18-102 (West 2014); see also *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 546-47, 795 N.E.2d 281, 284 (2003). If the petitioner brings a successful *quo warranto* complaint, the public official is removed from office. 735 ILCS 5/18-108 (West 2014).

¶ 26           Generally, the circuit court's decision to grant or deny a petition for leave to file a *quo warranto* action will not be overturned absent an abuse of discretion. *Graf*, 206 Ill. 2d at 546-47, 795 N.E.2d at 284. However, where the court dismisses the claim for failure to state a cause of action, our review is *de novo*. *Bilski v. Walker*, 392 Ill. App. 3d 153, 157, 924 N.E.2d 1034, 1038 (2009). Moreover, the court's decision regarding whether to appoint a special prosecutor is reviewed for an abuse of discretion. *People v. Lanigan*, 353 Ill. App. 3d 422, 430, 818 N.E.2d 829, 837 (2004).

¶ 27                               2. *Merits of Plaintiff's Quo Warranto Complaint*

¶ 28           Plaintiff asserts the trial court erred by finding his underlying *quo warranto* petition failed to state a claim upon which relief could be granted. Specifically, plaintiff argues he has stated a cause of action for a *quo warranto* claim by alleging defendant's continued judicial service is in violation of the Illinois Constitution. We disagree.

¶ 29           As noted above, plaintiff does not challenge defendant's eligibility for office as set forth in article VI, section 11 of the constitution (Ill. Const. 1970, art. VI, § 11), nor does he assert defendant violated any rules of judicial conduct. Instead, he relies on other constitutional provisions—specifically, article VI, sections 7(b) and 16 (Ill. Const. 1970, art. VI, §§ 7(b),



(16))—to support his argument that defendant is presently holding office in violation of the constitution.

¶ 30 Section 7(b) states, "Unless otherwise provided by law, there shall be at least one Circuit Judge from each county." Ill. Const. 1970, art. VI, § 7(b). Additionally, section 16 states, in relevant part:

"General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. \*\*\* The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court[.]" Ill. Const. 1970, art. VI, § 16.

¶ 31 We apply the rules of statutory construction in interpreting constitutional language. *People ex rel. Chicago Bar Ass'n v. State Board of Elections*, 136 Ill. 2d 513, 526, 558 N.E.2d 89, 95 (1990). We begin by looking at the plain language of the constitution, which is the best indicator of the drafters' intent. *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65, 77, 691 N.E.2d 374, 380 (1998). In examining the plain language of the constitutional provision, we must rely on "the most natural and obvious meaning of the language." *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523, 911 N.E.2d 979, 988 (2009). If the language is clear and unambiguous, we need not look to extraneous sources to interpret the provision. *Graham v. Illinois State Toll Highway Authority*, 182 Ill. 2d 287, 301, 695 N.E.2d 360, 367 (1998).

¶ 32 Plaintiff asserts the constitutional language requiring the election of at least one judge from each county (Ill. Const. 1970, art VI, § 7(b)) requires the judge to serve in the county from which he was elected. While it would be ideal for a resident circuit judge to be able to

serve in his or her home county, nothing in the constitution requires it. To the contrary, the plain language dictates only that each county have the opportunity to elect at least one judge.

Moreover, such an interpretation is inconsistent with the language set forth in article VI, section 16, which allows the supreme court to temporarily reassign a judge. Ill. Const. 1970, art VI, § 16.

¶ 33 Similarly, plaintiff contends the language allowing a circuit judge to be "temporarily" reassigned should be interpreted to require that judge to serve a majority of time in his home county. Again, the plain language of the constitution contains no such provision. Further, such an interpretation is inconsistent with the remainder of the provision, which grants administrative authority over these judicial assignments to the supreme court. *Id.* Plaintiff's interpretation is also inconsistent with Illinois Supreme Court Rule 21(c) (eff. Dec. 1, 2008), which provides, "[t]he chief judge of each circuit may enter general orders in the exercise of his or her general administrative authority, including orders providing for assignment of judges, general or specialized divisions, and times and places of holding court." Requiring a circuit judge to hear a majority of cases in his home county would impede judicial efficiency and usurp the authority granted to the chief judge of each circuit by demanding the supreme court closely monitor the number of cases each judge hears in each county rather than focusing on the needs of the circuits. In many instances, it is impossible for a judge temporarily assigned to another county to simultaneously serve a majority of his time in his home county. We are not inclined to impose such a burden on the administration of the judicial system. Thus, we decline to adopt plaintiff's interpretation of the unambiguous provisions, the result of which would serve only to impede the administration of justice.

¶ 34 Plaintiff does not specifically address whether the constitutional language is ambiguous but, rather, argues we should consider the debates and discussion held during the 1970 constitutional convention. Because we find the constitutional language unambiguous, we need not examine the debates and discussion from the 1970 constitutional convention.

¶ 35 Accordingly, we conclude plaintiff's *quo warranto* complaint fails to state a cause of action, as he cannot establish defendant committed a constitutional violation warranting his removal from office. Because no set of facts exists upon which plaintiff could state a cause of action, the trial court did not err by denying plaintiff's petition for the appointment of a special prosecutor or dismissing plaintiff's complaint with prejudice.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's judgment.

¶ 38 Affirmed.