

NOTICE  
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2018 IL App (5th) 160468-U

NO. 5-16-0468

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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MARLON L. WATFORD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Randolph County.
	)	
v.	)	No. 16-MR-83
	)	
JAMIE BOYD and BOBBI WHEELER,	)	Honorable
	)	Eugene E. Gross,
Defendants-Appellees.	)	Judge, presiding.

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JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Welch and Overstreet concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's *sua sponte* dismissal of plaintiff's FOIA complaint is vacated, and the cause is remanded for further proceedings.

¶ 2 Plaintiff, Marlon L. Watford, appeals from the circuit court's *sua sponte* dismissal of the complaint he filed pursuant to the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). For the reasons that follow, this court vacates the judgment of the circuit court and remands this cause for further proceedings.

¶ 3 **BACKGROUND**

¶ 4 For the past 20 years, plaintiff has been serving a sentence of natural life imprisonment for first-degree murder in Kankakee County case number 97-CF-578. On

September 27, 2016, plaintiff filed with the clerk of the circuit court of Randolph County a *pro se* FOIA complaint. (At the time of filing, plaintiff was an inmate at Menard Correctional Center, which is in Randolph County.) The complaint named two defendants—Jamie Boyd, who was the State's Attorney of Kankakee County, and Bobbi Wheeler, who was a paralegal in Boyd's office. In his complaint, plaintiff averred that in April 2016, State's Attorney Boyd, through paralegal Wheeler, denied his FOIA request for "a copy of all the toxicology reports of Michael Calvin and a copy of all discovery documents from case number 97-CF-578," and he claimed that this denial was improper under the FOIA. Plaintiff sought an order compelling the defendants to turn over the documents he had requested, plus a civil penalty and attorney fees.

¶ 5 On September 28, 2016—that is, one day after the FOIA complaint was filed with the circuit clerk—the Randolph County circuit court entered a written order dismissing the complaint *sua sponte*. The court explained its dismissal of the FOIA complaint as follows: "Plaintiff has pending a post-conviction petition in Kankakee County case 97-CF-578. This action is an attempt to circumvent the Circuit Court of Kankakee County and to violate the discovery process. Randolph County is not the proper venue to direct disclosure of material in a Kankakee County murder case. The discovery issues must be taken up in 97-CF-578 in Kankakee County." The order noted that the matter was before the court "pursuant to local rule prior to issuance of summons." (No particular local rule was cited.) This *pro se* appeal followed.

¶ 6

## ANALYSIS

¶ 7 In this court, plaintiff has filed a *pro se* appellant's brief. Neither of the two named defendants in this cause has filed an appellee's brief. The lack of any brief from the defendants is unsurprising, for the record on appeal does not contain any indication that either defendant was ever served with a summons or a copy of the complaint. Indeed, there is no indication that the circuit clerk ever issued a summons in this cause. Furthermore, nothing in the record suggests that either defendant had any reason to be aware of the complaint prior to the court's *sua sponte* dismissal of it. Under these circumstances, neither defendant is a party to this appeal. See, e.g., *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶ 8 (defendants, having never been served with plaintiff's pleading, were not parties to the appeal).

¶ 8 In his *pro se* appellant's brief, plaintiff focuses on the merits of his FOIA case and on the circuit court's refusal to allow him to appear personally in court prior to the *sua sponte* dismissal of his complaint. However, the key issue in this appeal is one that plaintiff has not presented to this court, namely, whether the circuit court's *sua sponte* dismissal of the complaint must be vacated for the reason that it was premature.

¶ 9 In general, this court adheres to the long-established principle that a court of review should decide only those questions that the parties present to it. See, e.g., *Greenlaw v. United States*, 554 U.S. 237, 244 (2008); *People v. Givens*, 237 Ill. 2d 311, 323 (2010). This court generally heeds the United States Supreme Court's admonition that a reviewing court should not "sally forth each day looking for wrongs to right" by deciding issues that it raises *sua sponte*. (Internal quotation marks omitted.) *Greenlaw*,

554 U.S. at 244. However, under Illinois Supreme Court Rule 366, every Illinois reviewing court has the authority to "enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief \*\*\* that the case may require." Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). This rule grants the authority to raise and decide unbriefed issues. *People v. Rodriguez*, 336 Ill. App. 3d 1, 14 (2002). Searching the record for unbriefed reasons to reverse a circuit court's judgment is definitely not something that should normally be done. *Givens*, 237 Ill. 2d at 323. A reviewing court must refrain from exercising this authority when such exercise would "have the effect of transforming [the reviewing] court's role from that of jurist to advocate." *Rodriguez*, 336 Ill. App. 3d at 14. Indeed, a reviewing court should exercise its authority to address unbriefed issues only where "a clear and obvious error exists in the trial court proceedings." *Givens*, 237 Ill. 2d at 325.

¶ 10 Here, the unbriefed issue concerns error that is clear in the short and simple record on appeal. Furthermore, the issue is easy to resolve without the aid of argument and without any danger of transforming this court's role from that of a jurist to that of an advocate.

¶ 11 Under section 11(a) of the FOIA, a person may challenge a public body's denial of his FOIA request for documents by filing "[a] suit for injunctive or declaratory relief." 5 ILCS 140/11(a) (West 2016). The requester may file his suit in the circuit court for the county where the public body has its principal office or where the requester resides. *Id.* § 11(b). In such a suit, the public body has the burden of proving, by clear and convincing evidence, that its refusal of the FOIA request "is in accordance with the

provisions of [the FOIA]." *Id.* § 11(f). The circuit court considers the matter *de novo*. *Id.* If the court determines that the public body improperly withheld public records, it may order the public body to produce those records. *Id.* § 11(d). The court may award attorney fees to a requester who prevails in his FOIA suit. *Id.* § 11(i). If the court determines that the public body willfully and intentionally failed to comply with the FOIA, it may impose upon the public body a "civil penalty." *Id.* § 11(j).

¶ 12 Here, plaintiff filed his FOIA suit in the county where he resided, *i.e.*, where he was imprisoned. He sought injunctive relief, attorney fees (despite proceeding *pro se*), and imposition of a civil penalty.

¶ 13 Without doubt, a FOIA complaint is a civil pleading. See, *e.g.*, *Lucas v. Prisoner Review Board*, 2013 IL App (2d) 110698, ¶ 30. Therefore it is subject to the usual rules of civil practice. See 735 ILCS 5/1-108 (West 2016) (article II of the Code of Civil Procedure, known as the Civil Practice Law, applies to matters of procedure in proceedings that are brought pursuant to statutes outside the Code of Civil Procedure, to the extent that the procedures are not regulated by those statutes themselves). The clerk of the circuit court must issue summons upon request of the plaintiff. *Id.* § 2-201(a). A summons must be directed to each defendant. Ill. S. Ct. R. 101(a) (eff. Jan. 1, 2018). A copy of the complaint must be attached to any summons used in making service. Ill. S. Ct. R. 104(a) (eff. Jan. 1, 2018). The plaintiff is obligated to have summons issued and to arrange for the prompt service of summons. *Zincoris v. Hobart Brothers Co.*, 243 Ill. App. 3d 609, 617 (1993). After a defendant has been served with a summons and a copy

of the complaint, he has 30 days, exclusive of the day of service, in which to file his answer or otherwise file his appearance. Ill. S. Ct. R. 101(d) (eff. Jan. 1, 2018).

¶ 14 Beyond these basic rules, two prior decisions assist in deciding this appeal—*People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), and *Powell v. Lewellyn*, 2012 IL App (4th) 110168. *Laugharn* involved a convicted felon who filed a *pro se* petition seeking relief from the final judgment in her felony case. See 735 ILCS 5/2-1401 (West 2016). Our supreme court noted that where a petitioner seeks relief from a final judgment, the respondent usually has 30 days in which to answer or otherwise plead. *Laugharn*, 233 Ill. 2d at 323. The court held that a respondent is entitled to that 30-day period, and, as a matter of law, the petition is not ripe for adjudication until the time has expired. *Id.* If a circuit court *sua sponte* dismisses the petition before the 30-day period has expired, the circuit court "short-circuit[s] the proceedings." *Id.* That is, the circuit court deprives the respondent of the time to which he is entitled, and it rules prematurely. *Id.* Therefore, a *sua sponte* dismissal within the 30-day period to answer must be vacated. *Id.*

¶ 15 In *Powell*, a jail inmate filed a *pro se* petition for injunctive relief against three jail employees. *Powell*, 2012 IL App (4th) 110168, ¶ 3. Just 13 days after the petition was filed with the circuit clerk, the circuit court *sua sponte* dismissed the petition on the ground that an injunctive order was not proper given the petition's allegations. *Id.* ¶¶ 6, 10. Apparently, the three defendants were never served with summons. *Id.* ¶ 10. On appeal, the appellate court cited Illinois Supreme Court Rule 103(b) (eff. July 1, 2007), which permits a circuit court to dismiss an action without prejudice if the plaintiff has failed to exercise "reasonable diligence" in obtaining service of process upon a defendant

prior to expiration of the applicable statute of limitations. *Id.* ¶ 11. The appellate court found that in the case before it, the circuit court had failed to give the plaintiff a reasonable amount of time to obtain service on the defendants. *Id.* Relying on *Laugharn*, the appellate court held that where a plaintiff files a petition for injunctive relief and damages, and the circuit court *sua sponte* dismisses the petition without affording the plaintiff a reasonable time to obtain service on the defendants, the court acts prematurely, *i.e.*, before the case has become ripe for adjudication, and the *sua sponte* dismissal must be vacated. *Id.* ¶¶ 10-11.

¶ 16 Following the reasoning in *Laugharn* and *Powell*, the circuit court's *sua sponte* dismissal of plaintiff's FOIA complaint must be vacated. The dismissal order was entered before the expiration of the 30-day period for the defendants to answer. There is no indication that either of the two defendants had been served with a summons or, for that matter, with a notice or a copy of the complaint. Plaintiff had not been given (anything close to) a reasonable amount of time in which to obtain service upon the defendants. In addition, there is no indication that either defendant had actual notice of the filing of the complaint prior to the *sua sponte* dismissal. Under these circumstances, this court has no choice but to vacate the order dismissing plaintiff's FOIA complaint and to remand the cause for further proceedings consistent with this order. Plaintiff will need to arrange for service of process upon the defendants within a reasonable time.

¶ 17 In his *pro se* appellant's brief, plaintiff also argues that the circuit court erred in entering an order stating that plaintiff could file his complaint upon payment of a \$2.24

filing fee. This issue is moot, since the court clearly permitted plaintiff to file his FOIA complaint despite an apparent failure to pay the fee.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court is vacated, and the cause is remanded for further proceedings consistent with this order.

¶ 20 Judgment vacated; cause remanded for further proceedings.