

**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).

2014 IL App (4th) 140267-U

NO. 4-14-0267

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 13, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

PHILIP R. WOLFF,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
GREGG SCOTT, Director, Rushville Treatment and	)	No. 13MR330
Detention Facility,	)	
Defendant-Appellee.	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in dismissing plaintiff's petition for *habeas corpus* relief where he failed to state a valid claim.

¶ 2 In June 2013, plaintiff, Philip R. Wolff, filed a petition for writ of *habeas corpus* naming Gregg Scott, Director of the Rushville Treatment and Detention Facility, as defendant.

In February 2014, the trial court granted defendant's motion to dismiss. Plaintiff appeals, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 We note the record on appeal does not include the record of the proceedings where the trial court declared plaintiff a sexually violent person (SVP) and committed him to the Rushville Treatment and Detention Facility, which commitment is the underlying subject of this

appeal. Therefore, we take the relevant details of the underlying action from plaintiff's *habeas corpus* petition.

¶ 5 In June 2013, plaintiff filed a petition for writ of *habeas corpus* pursuant to article 10 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/10-101 to 137 (West 2012)). In his petition, plaintiff stated in October 1997 he entered a negotiated guilty plea to one count of predatory criminal sexual assault and was sentenced to 10 years in the Department of Corrections (DOC). Plaintiff became eligible for mandatory supervised release in June 2003. Shortly prior to that time, the State filed a petition seeking plaintiff's civil commitment pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1-99 (West 2002)). At the probable cause hearing, plaintiff's appointed counsel stipulated to the evaluation of the DOC evaluator for purposes of the probable cause determination. In March 2004, plaintiff's counsel advised it would be in plaintiff's best interest to "voluntarily commit himself as a[n] [SVP]." Plaintiff believed he had no other choice but to comply with his counsel's advice. Shortly thereafter, the trial court "entered into record an [i]nitial [o]rder of [c]ommitment and a [s]tipulation and [f]inding [o]rder, which is based upon the same wording and format as a criminal plea agreement."

¶ 6 In his petition, plaintiff argued (1) the trial court lacked jurisdiction to accept his stipulation because the Act does not authorize voluntary commitments, (2) the court's failure to appoint a defense expert violated his due-process rights under the Illinois and United States Constitutions when the court relied solely on the State's experts during the commitment proceedings, (3) the court lacked the authority to accept plaintiff's stipulation to commitment, and (4) the evidence was insufficient to support a finding plaintiff was an SVP because the

experts who testified against him used the improper standard of "to a reasonable degree of psychological certainty" when evaluating him instead of the "beyond a reasonable doubt" standard.

¶ 7 In December 2013, defendant filed a motion to dismiss pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2012)), arguing the petition failed to state claims viable under section 10-124 of the Procedure Code (735 ILCS 5/10-124 (West 2012)). In January 2014, plaintiff responded to defendant's motion to dismiss. On February 18, 2014, the trial court granted defendant's motion to dismiss. On April 8, 2014, this court granted plaintiff's motion to file a late notice of appeal. On April 14, 2014, plaintiff filed his late notice of appeal.

¶ 8 II. ANALYSIS

¶ 9 Initially, we note plaintiff's *pro se* brief fails to adhere to Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013), which pertains to appellate briefs. The brief does not contain a statement of issues presented for review or a statement of facts referencing pages in the record. Nor does the record on appeal include the record in the underlying SVP proceedings.

¶ 10 "The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules." *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)).

¶ 11 As stated, plaintiff's brief does not conform to Rule 341(h). However, we may

still consider the appeal despite plaintiff's failure to file a sufficient brief, "so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511, 748 N.E.2d 222, 226 (2001). Despite plaintiff's failure to comply with Rule 341(h), and considering the Attorney General's clear and cogent brief on defendant's behalf, we will consider the appeal.

¶ 12 We review a trial court's decision to grant a motion to dismiss pursuant to section 2-615 of the Procedure Code *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). The question on appeal is whether the allegations of the complaint, when viewed in the light most favorable to plaintiff, sufficiently state a cause of action upon which relief can be granted. *Id.* at 58, 896 N.E.2d at 331.

¶ 13 At issue is the dismissal of plaintiff's petition for *habeas corpus* relief. Our supreme court has stated *habeas corpus* relief is available only on the grounds specified in section 10-124 of the Procedure Code (735 ILCS 5/10-124 (West 2012)). *Beacham*, 231 Ill. 2d at 58, 896 N.E.2d at 331. According to our supreme court:

"It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. [Citations.] A complaint for order of *habeas corpus* may not be used to review proceedings that do not

exhibit one of these defects, even though the alleged error involves a denial of constitutional rights. [Citations.] Although a void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' [citation], including a *habeas* proceeding [citations], the remedy of *habeas corpus* is not available to review errors which only render a judgment voidable and are of a nonjurisdictional nature." *Id.* at 58-59, 896 N.E.2d at 332.

¶ 14 On appeal, plaintiff's primary argument is the trial court did not have statutory authority under the Act to accept his stipulation and "voluntarily" commit him as an SVP since the Act provides only for "involuntary" commitment. However, plaintiff does not cite a single case to support this proposition. Nor does he direct us to any part of the Act that prohibits a stipulation of SVP.

¶ 15 Plaintiff relies on *In re Alex T.*, 375 Ill. App. 3d 758, 873 N.E.3d 1015 (2007), for the principle that statutorily limited jurisdiction applies to other than criminal cases. In *Alex T.*, the appellate court vacated the involuntary admission order under the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/1-100 to 129 (West 2004)) because the respondent had a pending felony charge, which divested the court of jurisdiction. *Id.*, at 759, 763, 873 N.E.2d at 1016, 1019. However, the Mental Health Code has no applicability here.

¶ 16 Defendant argues the trial court had jurisdiction, both subject matter and personal. We agree.

¶ 17 As noted above, plaintiff cites no authority to support his argument the Act provides only for involuntary commitment, thereby rendering the trial court powerless to order his commitment as an SVP and divesting the court of jurisdiction. Defendant cites no authority to the contrary, but correctly points out nowhere in the Act is the word "involuntary" mentioned.

¶ 18 Since the briefs were filed in this case, the Second District Appellate Court has issued a decision in *In re Commitment of Walker*, 2014 IL App (2d) 130372, which addresses whether the Act authorizes stipulations. The court found as follows:

"We find respondent's first contention ill taken.

Respondent argues that nothing in the Act authorized the stipulation; therefore, he asserts, the trial court should not have accepted it. Essentially, respondent is arguing that a respondent in proceedings under the Act must be compelled to partake in an evidentiary hearing, even where he or she does not desire one. We cannot infer such a rule from the fact that the Act does not expressly contemplate stipulations. Indeed, respondent points to no authority barring the use of stipulations in proceedings under the Act. As the State points out, stipulations are generally favored, as they promote the efficient disposition of cases, simplify issues, and reduce the expense of litigation. [Citation.] Stipulations will be enforced unless unreasonable, procured by fraud, or violative of public policy. [Citation.] Respondent also analogizes his stipulation to a guilty plea; however, as noted, proceedings under

the Act are civil. [Citations.]" *Id.* ¶ 36.

¶ 19 In accordance with *Walker*, the trial court in the case *sub judice* had the authority to accept plaintiff's stipulation and enter the commitment order. The court also had personal jurisdiction over plaintiff in light of the fact he participated in the SVP proceedings. See *In re Detention of Erbe*, 344 Ill. App. 3d 350, 363-364, 800 N.E.2d 137, 148-49 (2003), and *In re Detention of Lieberman*, 356 Ill. App. 3d 373, 378, 826 N.E.2d 479, 483 (2005) (the court had personal jurisdiction over the SVP respondent when he appeared and participated in the proceedings).

¶ 20 Plaintiff also attempts to argue he should not be held to the stipulation since he only reads at a third-grade level. However, that argument also fails to state a claim for *habeas corpus* relief. Plaintiff admits he was represented by counsel, upon whose advice he relied. He makes no claim such advice was improper. Whether or not the advice was sound is irrelevant to the question of jurisdiction. See *People v. Hubbard*, 2012 IL App (2d) 101158, ¶¶ 12, 22, 964 N.E.2d 646 (the voluntariness of a guilty plea has no bearing on jurisdiction).

¶ 21 For the foregoing reasons, we find plaintiff's jurisdictional arguments are unavailing.

¶ 22 Plaintiff also cannot meet the second criteria for *habeas corpus* relief because he has not demonstrated a postcommitment occurrence entitling him to immediate release. See *Beacham*, 231 Ill. 2d at 58, 896 N.E.2d at 332. As defendant correctly argues, plaintiff's stipulation and the trial court's acceptance thereof were the very acts which allowed for his confinement. Further, plaintiff is not entitled to release because he must remain in custody "until such time as [he] is no longer a sexually violent person" as required under section 40 of the Act.

725 ILCS 207/40(a) (West 2012).

¶ 23 Plaintiff's claims fail to meet either standard for *habeas corpus* relief. Therefore, the trial court did not err when it granted defendant's motion to dismiss.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.