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2015 IL App (4th) 140993-U

NO. 4-14-0993

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 14, 2015

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

BASHIR OMAR,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S.A. GODINEZ, PATRICIA MURPHY, and THE	)	No. 14MR427
ILLINOIS COURT OF CLAIMS,	)	
Defendants-Appellees.	)	Honorable
	)	Patrick W. Kelley,
	)	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, concluding the circuit court properly dismissed plaintiff's complaint as barred by sovereign immunity.

¶ 2 Plaintiff, Bashir Omar, is an inmate within the Illinois Department of Corrections (DOC). In May 2014, plaintiff filed a complaint for personal-injury and small-claims actions seeking declaratory judgment and an injunction against defendants: (1) S.A. Godinez, the Director of DOC (Director); (2) Patricia Murphy, the Commissioner of the Court of Claims (Commissioner); and (3) the Illinois Court of Claims. In January 2014, defendants filed a motion to dismiss based on the doctrine of sovereign immunity, which the circuit court granted in April 2014.

¶ 3 Plaintiff appeals, asserting the circuit court erred in dismissing his complaint as barred by sovereign immunity. For the following reasons, we affirm.

¶ 4

## I. BACKGROUND

¶ 5

In May 2008, while incarcerated at Menard Correctional Center (Menard), plaintiff was subject to a random "shakedown" of his cell. Following the shakedown, corrections officers confiscated numerous books and magazines from plaintiff's cell. Later that month, plaintiff filed a grievance with Menard's Administrative Review Board (Board), which the Board ultimately denied in January 2009.

¶ 6

### A. Court of Claims Proceedings

¶ 7

In April 2010, plaintiff filed a complaint in the Court of Claims, seeking \$502.55 as reimbursement for his improperly confiscated property. Defendant Murphy conducted the Court of Claims proceedings. We have no transcript of the proceedings; however, the Court of Claims summarized the following evidence when it issued its May 2012 order. See *Omar v. State of Illinois*, No. 10-CC-3426 (Court of Claims, May 8, 2012).

¶ 8

#### 1. Plaintiff's Testimony

¶ 9

During the Court of Claims hearing, plaintiff testified, despite receiving a ticket for possessing excessive property, his books and magazines fell within the range of personal property Menard's orientation manual permitted him to keep. According to plaintiff, corrections officers mixed his belongings with those of his cellmate and did not permit him an opportunity to identify his belongings before they were confiscated. When plaintiff expressed his intention to file a grievance, he received a slip of paper stating his property would be held until the grievance process was over, and at that time, he would have the opportunity to send his property out of DOC. Plaintiff signed a property hold so his property would be held during the pendency of the grievance process. As of the date of the Court of Claims hearing, plaintiff said he had received no information regarding his property, though he believed DOC had released the property to his

cellmate, who also claimed an interest in the property. Plaintiff explained this occurred despite his ability to provide receipts for the property where his cellmate could not.

¶ 10 Plaintiff denied having knowledge or receiving any information explaining he had 30 days to claim his property following the Board's order denying his grievance. The Court of Claims also denied his request for additional witnesses.

¶ 11 *2. Testimony from DOC Personnel*

¶ 12 Officer Casey Ward, a property officer at Menard, testified regarding the procedures for confiscating property. According to Ward, the inmate must take action on his confiscated property within 30 days of hearing on the ticket, or the property would be considered abandoned and later destroyed. Where the inmate intends to file a grievance, however, the property at issue is held until resolution of the grievance proceeding. In June 2008, Ward testified, plaintiff signed paperwork indicating he was filing a grievance. That same document noted the property was destroyed in September 2009 per the grievance office. Ward further testified it was the inmate's responsibility to inform the property office about the disposition of his grievance proceedings. Plaintiff did not file for administrative review of the Board's action in the circuit court.

¶ 13 *3. The Court of Claims' Decision*

¶ 14 The Court of Claims determined its role was not to review the administration of prison regulations, unless those alleged violations established the State was liable for a claim resounding in tort, citing *Montgomery v. State*, 41 Ill. Ct. Cl. 190 (1988), and *Brady v. State*, 32 Ill. Ct. Cl. 240 (1977). The court determined DOC destroyed plaintiff's property well after the 30 days provided by DOC regulations. The court therefore declined to create an individualized

rule pertaining to the disposition of an inmate's property at the conclusion of the grievance process and denied plaintiff's claim.

¶ 15 Plaintiff did not appeal the Court of Claims' ruling.

¶ 16 B. Circuit Court Proceedings

¶ 17 In May 2014, plaintiff filed a complaint for personal-injury and small-claims actions seeking declaratory judgment and an injunction for defendants' alleged violation of statutory and constitutional law, specifically his rights to equal protection and due process. See U.S. Const. amend. XIV; Ill. Const. 1970, art. I, § 2.

¶ 18 Plaintiff alleged Godinez failed to supervise his employees, which led to the employees violating prison procedures and committing fraud against him. According to plaintiff, Murphy then propagated those fraudulent claims before the Court of Claims by failing to present all of the evidence at the hearing, including her failure to call plaintiff's cellmate as a witness. Plaintiff also asserted the Court of Claims' decision was against the manifest weight of the evidence. Plaintiff argued the Court of Claims failed to provide him with equal protection and due process when it failed to (1) consider documents filed after July 6, 2011; (2) explain how the evidence supported its legal finding; and (3) determine plaintiff's action was a tort action that fell within the Court of Claims' purview.

¶ 19 Plaintiff alleged all of the defendants violated his constitutional rights "by not recognizing and resolving *all* the facts in accordance with Illinois laws and [DOC's] rules." (Emphasis in original.) Additionally, he alleged all of the defendants denied his right to equal protection "in *not* treating him like similar [*sic*] situated persons." (Emphasis in original.)

¶ 20 Plaintiff sought (1) declaratory judgment in accordance with the law; (2) an injunction mandating DOC provide information on its fraud in confiscating plaintiff's items and

correcting DOC's confiscation of his property; (3) compensation of \$502.55 for his books and \$1,000 for fraud; and (4) other just relief. Plaintiff attached the May 2012 Court of Claims order to his complaint.

¶ 21 In July 2014, defendant Godinez filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2012)), alleging plaintiff's claim was barred by sovereign immunity. Defendants Murphy and the Court of Claims were never served with a summons and therefore did not participate in the circuit court proceedings. The following month, plaintiff filed a response, asserting the Court of Claims deprived him of due process and equal protection by denying his claim. In October 2014, following a hearing via telephone, the circuit court dismissed plaintiff's complaint against all defendants pursuant to the doctrine of sovereign immunity.

¶ 22 This appeal followed. Because the circuit court entered a final order regarding all defendants, despite Murphy and the Court of Claims never being served, plaintiff appeals as to all defendants. We note, given the court did not enter judgment *against* any party that had not been served, the lack of service and absence of participation below are inconsequential. Additionally, defendants Murphy and the Court of Claims join defendant Godinez on appeal.

¶ 23 II. ANALYSIS

¶ 24 On appeal, plaintiff contends the circuit court erred in granting defendants' motion to dismiss. Defendants, in turn, assert the court properly dismissed plaintiff's complaint under the doctrine of sovereign immunity.

¶ 25 A. Standard of Review

¶ 26 Defendant Godinez filed his motion to dismiss pursuant to section 2-615 of the Civil Code. However, as the State notes, Godinez's motion asserted plaintiff's claim should be

dismissed solely under the doctrine of sovereign immunity, which is properly governed by section 2-619(a)(1) of the Civil Code (735 ILCS 5/2-619(a)(1) (West 2012)). Plaintiff did not challenge this mistake before the circuit court and responded to Godinez's sovereign-immunity argument. The court later dismissed plaintiff's complaint under the doctrine of sovereign immunity. Where the plaintiff suffers no prejudice, reversal is not warranted for mislabeling the motion to dismiss. See *Board of Trustees of Community College District No. 502, County of Du Page v. Department of Professional Regulation*, 363 Ill. App. 3d 190, 196, 842 N.E.2d 1255, 1260-61 (2006). Thus, we will review the court's dismissal pursuant to section 2-619(a)(1).

¶ 27 A section 2-619 motion to dismiss "admits the legal sufficiency of the complaint, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts an affirmative matter outside the complaint bars or defeats the cause of action." *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. In reaching its decision, the court may rely upon pleadings, depositions, and affidavits. *Gray v. National Restoration Systems, Inc.*, 354 Ill. App. 3d 345, 354, 820 N.E.2d 943, 952 (2004). However, the court is not required to accept legal conclusions or those conclusions unsupported by specifically alleged facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31, 976 N.E.2d 318. Our review is *de novo*. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583.

¶ 28 B. Sovereign Immunity

¶ 29 Plaintiff asserts the circuit court erred by dismissing his claim as precluded under the doctrine of sovereign immunity. We disagree.

¶ 30 By claiming sovereign immunity precludes plaintiff from pursuing his claim, defendants challenge the subject-matter jurisdiction of the circuit court. *Id.* ¶ 42, 32 N.E.3d 583.

Generally speaking, the doctrine of sovereign immunity precludes a citizen from suing the State or its departments without the State's consent. *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 559, 831 N.E.2d 1159, 1163 (2005). Illinois abolished the application of sovereign immunity under the 1970 Illinois Constitution, "[e]xcept as the General Assembly may provide by law." *Id.*; Ill. Const. 1970, art. XIII, § 4. In response, the General Assembly enacted the State Lawsuit Immunity Act (Immunity Act) (745 ILCS 5/0.01 to 1.5 (West 2012)). Under section 1 of the Immunity Act, the State of Illinois may not be named as a defendant in any court, except as provided under certain legislative acts, such as the Court of Claims Act (705 ILCS 505/1 to 29 (West 2012)). 745 ILCS 5/1 (West 2012).

¶ 31 Thus, to reach the issue of sovereign immunity, we must first determine whether plaintiff's action—which names as defendants the Director, the Commissioner, and the Court of Claims—constitutes an action against the State.

¶ 32 1. *Whether Plaintiff's Claim Is an Action Against the State*

¶ 33 A plaintiff may not avoid the State's sovereign immunity merely by naming a State official as a nominal defendant. *Smith v. Jones*, 113 Ill. 2d 126, 131, 497 N.E.2d 738, 740 (1986).

"An action is in reality a suit against the State when the following factors are present: (1) no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts [(scope of authority)]; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment [(source of duty)]; and (3) where the complained-of actions involve matters ordinarily within that

employee's normal and official functions of the State [(normal and official functions)]. [Citations.]." (Internal quotation marks omitted.) *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 22, 977 N.E.2d 887.

Even if the State fails to establish these three criteria, the cause will be considered to be against the State if " 'a judgment for the plaintiff could operate to control the actions of the [S]tate or subject it to liability.' " *Jackson*, 358 Ill. App. 3d at 560, 831 N.E.2d at 1164 (quoting *Jenkins v. Lee*, 209 Ill. 2d 320, 330, 807 N.E.2d 411, 418 (2004)).

¶ 34 a. Scope of Authority

¶ 35 As to the first factor, plaintiff appears to assert Godinez acted outside the scope of his authority because he failed to supervise his employees' allegedly improper destruction or transfer of plaintiff's property. Notably, plaintiff does not name the employees who allegedly destroyed his property, nor did he include them as parties to the lawsuit. The alleged violation of a departmental regulation does not mean the Director acted in excess of his authority, as "sovereign immunity presupposes the possibility of a legal wrong by a [S]tate employee." *Id.* at 561, 831 N.E.2d at 1164. Rather, "the question is whether the employee intended to perform some function within the scope of his or her authority when committing the legal wrong." *Id.* Nothing in the plaintiff's complaint suggests Godinez intended to perform some function outside the scope of his authority when DOC employees destroyed plaintiff's property.

¶ 36 As to Murphy, plaintiff alleged she failed to provide certain discovery documents to plaintiff and further failed to present the witnesses plaintiff deemed appropriate. Plaintiff asserts this violated his right to due process. "The requirement of due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an

opportunity to be heard and to enforce and protect his rights." *Reyes v. Court of Claims*, 299 Ill. App. 3d 1097, 1104, 702 N.E.2d 224, 230 (1998). Due process does not protect against an error for which the tribunal's judgment could be reversed. *Id.* at 1105, 702 N.E.2d at 230. Thus, even taking the allegations in plaintiff's complaint as true, the complaint fails to demonstrate Murphy's failure to provide certain discovery documents or call plaintiff's preferred witnesses deprived him of due process.

¶ 37 To the extent plaintiff alleged Murphy committed an equal-protection violation, his claim must also fail. Plaintiff's conclusory statement, "*all* the defendants denied plaintiff's rights under the Equal Protection of Law for Illinois and U.S. Constitutions in *not* treating him like similar[ly] situated persons," (emphases in original) is a claim unsupported by any facts. We are not required to accept conclusory claims unsupported by well-pleaded facts. See *Reynolds*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. This notion also applies to plaintiff's equal-protection claim against the Court of Claims.

¶ 38 With respect to the Court of Claims, plaintiff alleges the Court of Claims' order was unfair and against the manifest weight of the evidence. Even accepting as true plaintiff's allegation that the Court of Claims' decision was against the manifest weight of the evidence, plaintiff cannot demonstrate the Court of Claims violated his right to due process. Erroneous or unjust decisions by tribunals which otherwise have jurisdiction over the parties do not constitute a due-process violation. *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 413, 259 N.E.2d 282, 288 (1970). Rather, the issue is whether the tribunal issued a valid order or decree. *Id.* Without any well-pleaded facts to demonstrate the Court of Claims lacked jurisdiction, plaintiff could not show the Court of Claims acted outside the scope of its authority simply by issuing an unfavorable decision in a case in which it possessed jurisdiction.

¶ 39

b. Source of Duty

¶ 40

As to the second factor, plaintiff's complaint fails to support his claim that defendants breached any duties arising independent of their State employment. Rather, plaintiff's complaint asserts, (1) Godinez, as the Director, failed in his duty to properly supervise his employees; (2) Murphy, as Commissioner, failed to fulfill her duty of to be fair during the Court of Claims proceedings; and (3) the Court of Claims failed in its duty to fairly weigh his claim. All of these alleged duties arise solely from defendants' employment with the State.

¶ 41

c. Normal and Official Functions

¶ 42

As to the third factor, plaintiff appears to concede defendants' alleged wrongdoing arose as part of their normal and official functions. Plaintiff's complaint states Godinez is "responsible for the overall operation of [DOC] that includes enforcing *all* legal principles indicated herein and supervising *all* prisons and personnel/staff." (Emphases in original.) Because the issues against Godinez arise directly from his supervision of prison personnel and staff, plaintiff fails to allege Godinez acted outside of his normal and official function.

¶ 43

With respect to Murphy, plaintiff's complaint states her role as Commissioner "entails handling *all* matters of the [Court of Claims] that includes everything indicated herein as filed in the [Court of Claims] excepted [*sic*] the final resolving and opinion of cases." (Emphasis in original.) See 705 ILCS 505/13 (West 2012); 74 Ill. Adm. Code 790.110 (eff. July 1, 2000). The issues plaintiff raises against Murphy arise directly from her responsibilities as Commissioner; thus, plaintiff fails to allege Murphy acted outside of her normal and official function.

¶ 44

The same is true of the Court of Claims. Plaintiff's complaint states the Court of Claims "is the judicial body for *all* claims against the State of Illinois and agents/agencies when

claims are really against the State, which includes prisoners' claims." (Emphasis in original.)

Because the issues raised against the Court of Claims arise from an unfavorable adjudication of plaintiff's claims, plaintiff's complaint fails to demonstrate the Court of Claims acted outside of its normal and official function.

¶ 45 Because all factors weigh in favor of defendants, we conclude plaintiff's action is, in actuality, against the State. Even if these factors had not been met, plaintiff seeks monetary damages, which would subject the State to liability and control the State's actions. See *Jackson*, 358 Ill. App. 3d at 560, 831 N.E.2d at 1164. We therefore turn to whether plaintiff's claim against the State was properly brought before the circuit court.

¶ 46 *2. Whether Plaintiff's Claim Was Properly Before the Circuit Court*

¶ 47 The next issue we must resolve is whether plaintiff's claim against defendants was properly brought before the circuit court, or whether the court lacked subject-matter jurisdiction under the doctrine of sovereign immunity.

¶ 48 As noted above, section 1 of the Immunity Act provides the State of Illinois may not be named as a defendant in any court, except as provided under certain legislative acts, such as the Court of Claims Act. 745 ILCS 5/1 (West 2012). In turn, the Court of Claims Act provides the Court of Claims with exclusive jurisdiction over lawsuits against the State, including, in relevant part, (1) "[a]ll claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency" (705 ILCS 505/8(a) (West 2012)); and (2) "[a]ll claims against the State for damages in cases sounding in tort" (705 ILCS 505/8(d) (West 2012)). Where the doctrine of sovereign immunity applies to litigation filed in the circuit court, the court lacks jurisdiction over the claim. *Grainger v. Harrah's Casino*, 2014 IL App (3d) 130029, ¶ 24, 18 N.E.3d 265.

¶ 49 In his complaint, plaintiff concedes his claims against defendants resounded in tort. We agree. Plaintiff's claims of conversion and fraud are claims resounding in tort; accordingly, the Court of Claims would have exclusive jurisdiction over his claim. See *Cirrincione v. Johnson*, 184 Ill. 2d 109, 114, 703 N.E.2d 67, 70 (1998) (outlining the tort of conversion); *Illinois State Bar Ass'n Mutual Insurance Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 38, 983 N.E.2d 468 (describing fraud as a tort).

¶ 50 Accordingly, the circuit court did not err in dismissing plaintiff's tort claims as barred by the doctrine of sovereign immunity.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 53 Affirmed.