2012 IL App (5th) 110170-U

NO. 5-11-0170

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ANTHONY T. GAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Alexander County.
	)	
v.	)	No. 10-MR-77
	)	
STACY REESE and ERIC FORT,	)	Honorable
	)	Charles C. Cavaness,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Spomer and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly dismissed an inmate's complaint against two correctional officers because the inmate's claims must be brought in the Court of Claims.

¶ 2 The plaintiff, Anthony T. Gay, an inmate at the Illinois Tamms Correctional Center, appeals from the dismissal of his *pro se* four-count complaint seeking compensatory and punitive damages from the defendants, Stacy Reese and Eric Fort. He seeks the reversal of the dismissal and a remand of the case to the trial court for further proceedings.

¶ 3 BACKGROUND

¶ 4 On November 16, 2010, the plaintiff filed a *pro se* four-count complaint alleging cruel and unusual punishment, under the eighth amendment of the United States Constitution, and intentional infliction of emotional distress, and seeking compensatory and punitive damages against the defendants, two correctional officers at the Tamms Correctional Center.

¶ 5 The plaintiff directed counts I and II of his complaint against correctional officer

Stacy Reese. The plaintiff alleged that on July 3, 2010, at approximately 11 p.m., he became extremely anxious, causing him to push his emergency call button to alert Officer Reese. The plaintiff contended that Officer Reese ignored his call and instead played a loud radio frequency into his cell for approximately three hours. The plaintiff contends that the loud frequency caused his ears to ring, gave him a headache, and caused him emotional distress.

¶ 6 Similarly, the plaintiff directed counts III and IV of his complaint against correctional officer Eric Fort. The plaintiff alleged that on September 9, 2010, at approximately 5:10 p.m., Officer Fort played a loud radio frequency into his cell for approximately two hours, which was experienced by "everybody in the wing." The plaintiff stated he filed emergency grievances with the warden after each incident involving Officers Reese and Fort. On November 5, 2010, the plaintiff executed two affidavits in regards to his efforts and stated he never received a response regarding either grievance.

¶ 7 On February 8, 2011, the defendants filed a combined motion to dismiss and motion for summary judgment pursuant to sections 2-615, 2-619, and 2-1005(c) of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619, 2-1005(c) (West 2010)). The defendants raised three arguments in support of their motions: (1) the plaintiff's complaint failed to state a claim, (2) the circuit court lacked jurisdiction over the plaintiff's complaint, and (3) the plaintiff failed to exhaust all administrative remedies regarding his grievances. In support of the section 2-619 and summary judgment motions, the defendants presented an affidavit of an employee from the Illinois Department of Corrections Administrative Review Board. The employee stated in her affidavit that she could not locate any grievances filed by the plaintiff.

¶ 8 On February 23, 2011, the plaintiff filed a motion requesting an additional hearing, pursuant to *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), to determine whether employees of the state had interfered with his efforts to exhaust all administrative remedies. The plaintiff filed a combined response to the defendants' motion to dismiss and motion for

summary judgment, alleging that the court had subject matter jurisdiction or, alternatively, that his claim should be removed to federal court. The plaintiff also alleged that because no prison officials timely responded to his emergency grievances, genuine issues of material fact existed, and the court was precluded from concluding that he failed to fully exhaust all administrative remedies.

¶ 9 On April 6, 2011, the circuit court issued an order dismissing the plaintiff's complaint in its entirety. The circuit court concluded that the plaintiff's complaint should have been filed in the Illinois Court of Claims and that the circuit court lacked jurisdiction. In addition, the court found that the plaintiff failed to fully exhaust all administrative remedies. On April 22, 2011, the plaintiff filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 Before discussing the substantive issues of the case, we first must address whether appellate jurisdiction is proper. At the time the circuit court dismissed the plaintiff's complaint, the lower court only expressly addressed counts II and III of the claim. The circuit court's order did not refer to count IV of the plaintiff's complaint, and the court mistakenly believed that there was no count I. Generally, "[u]nless specifically authorized by supreme court rules, the appellate court has no jurisdiction to review judgments, orders, or decrees that are not final." *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 106, 816 N.E.2d 345, 353 (2004). A final order is one that concludes the litigation between the parties on the merits and disposes of all pending issues and parties. *Smith v. Policemen's Annuity & Benefit Fund*, 391 Ill. App. 3d 542, 909 N.E.2d 300 (2009). The court must consider the question of whether the order is final with respect to the particular facts and circumstances of each case. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 350, 781 N.E.2d 1072, 1077 (2002). Therefore, when determining whether a circuit court's order is final, we "look to its substance and effect rather than to its form." *Id.*

¶ 12 In this case, appellate jurisdiction is proper because the circuit court apparently granted the defendants' combined motions on all four counts. In issuing a final order, if "the trial court does not specify the grounds for its order dismissing the plaintiff's complaint, [this court] will presume it was upon one of the grounds properly urged by [the defendant]." *Giles v. General Motors Corp.*, 344 Ill. App. 3d 1191, 1196, 802 N.E.2d 858, 862 (2003).

¶ 13 Here, the defendants based the combined motions on the plaintiff's failure to state a claim, the circuit court's lack of jurisdiction due to sovereign immunity, and the plaintiff's failure to exhaust all administrative remedies. Even though the circuit court failed to specify the grounds for its dismissal and addressed only the lack-of-jurisdiction argument regarding count II and the failure-to-exhaust argument regarding count III, the record as a whole indicates that the lower court intended to dismiss all counts of the plaintiff's complaint.

¶ 14 We next turn to the merits of the circuit court's order dismissing the case.

¶ 15 Section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)) allows a litigant to file a section 2-615 motion to dismiss, a section 2-619 motion to dismiss, and a section 2-1005 motion for summary judgment as a single motion (735 ILCS 5/2-615, 2-619, 2-1005 (West 2010); *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1114, 942 N.E.2d 758, 761 (2011)). The grant of a hybrid motion to dismiss filed pursuant to section 2-619.1 is subject to *de novo* review. *Taylor*, 406 Ill. App. 3d at 1114, 942 N.E.2d at 761.

¶ 16 Whether the circuit court properly dismissed the plaintiff's complaint, because the court lacked subject matter jurisdiction, hinges on the defendants' actions as state officials. The doctrine of sovereign immunity protects the state from interference with the performance of governmental functions and preserves and protects state funds. *City of Carbondale v. Bower*, 332 Ill. App. 3d 928, 933, 773 N.E.2d 182, 186 (2002). The Illinois Constitution of 1970 abolished sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. Accordingly, the General Assembly reestablished sovereign

immunity in the State Lawsuit Immunity Act (745 ILCS 5/0.01 to 1.5 (West 2010)), which states, "Except as provided in *** the Court of Claims Act, *** the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2010). Furthermore, the Court of Claims has "exclusive jurisdiction to hear and determine *** [a]ll claims against the State for damages in cases sounding in tort." 705 ILCS 505/8(d) (West 2010).

¶ 17 In addition, sovereign immunity will preclude an action in circuit court where the wrongful act allegedly stemmed from a state employee's breach of duty that exists solely by virtue of his or her employment by the state. *Currie v. Lao*, 148 Ill. 2d 151, 158, 592 N.E.2d 977, 980 (1992). Consequently, sovereign immunity protects state employees and applies in an action naming a state employee as a defendant where the action's impact on the state makes it, for all practical purposes, a suit against the state. *Evans v. Page*, 341 Ill. App. 3d 486, 490, 792 N.E.2d 805, 808 (2003).

¶ 18 The determination of whether an action is a claim against the state turns upon an analysis of the issues involved and the relief sought, rather than the formal designation of the parties. *Currie*, 148 Ill. 2d at 158, 592 N.E.2d at 980. The question of whether sovereign immunity applies often takes into account three factors: (1) whether the state employee acted beyond the scope of his authority, (2) whether the actions derive from a duty arising exclusively from state employment, and (3) whether the actions were the employee's normal and official functions. *Jinkins v. Lee*, 209 Ill. 2d 320, 330, 807 N.E.2d 411, 418 (2004). Even when these criteria are not met, a court must also consider the relief sought. *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 356, 751 N.E.2d 1187, 1193 (2001).

¶ 19 Sovereign immunity, however, does not immunize a state employee for his own acts of negligence merely because he was acting within the scope of his employment. *Currie*, 148 Ill. 2d at 158, 592 N.E.2d at 980. If the government official's actions are not authorized and not uniquely related to his employment, he or she is not protected by sovereign immunity.

Currie, 148 Ill. 2d at 164-65, 592 N.E.2d at 982-83; see also *Campbell v. White*, 207 Ill. App. 3d 541, 566 N.E.2d 47 (1991) (holding that the defendant was acting in a manner uniquely related to his governmental employment and was therefore protected).

¶ 20 Here, the plaintiff asserts that Reese and Fort intentionally inflicted emotional distress by broadcasting a loud radio frequency into his cell. He argues that the officers acted beyond their delegated authority, precluding them from using sovereign immunity to shield them from suit, and therefore, his action belongs in the circuit court.

¶ 21 In this case, however, sovereign immunity requires this case to be tried in the Court of Claims. The alleged actions by the officers arose uniquely from their employment as state officials. But for their employment at the correctional facility, the officers would not have committed the acts of which the plaintiff complains. In addition, the officers did not act beyond their delegated authority conferred by their employment. In regards to the prison's intercom system, the officers did not have a duty of care to the general public independent of their employment, but rather the officers' actions originated solely from their duties uniquely held as correctional officers employed by the state. Therefore, because the defendants were acting as state officials, the claim is one against the state. The claim belongs to the Court of Claims, and the circuit court properly dismissed it for lack of subject matter jurisdiction.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the circuit court's order granting the defendants' combined motions for dismissal and summary judgment is affirmed.

¶ 24 Affirmed.