

NOTICE

Decision filed 05/06/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120389-U

NO. 5-12-0389

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).

JOHN LEE TILLER,
Plaintiff-Appellant,

v.

ILLINOIS PRISONER REVIEW BOARD,
Defendant-Appellee.

) Appeal from the
) Circuit Court of
) Clinton County.
)
) No. 12-MR-41
)
) Honorable
) William J. Becker,
) Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Spomer and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court's dismissal of the plaintiff's complaint for *mandamus* relief was based on the Prisoner Review Board's claim of sovereign immunity, the decision of the circuit court is reversed and remanded.

¶ 2 The plaintiff, John Lee Tiller, appeals the dismissal of his complaint for *mandamus* relief. The circuit court dismissed the plaintiff's complaint for lack of subject matter jurisdiction based on the defendant Prisoner Review Board's claim of sovereign immunity. For the reasons that follow, we reverse and remand.

¶ 3 **BACKGROUND**

¶ 4 In 1975, the plaintiff was convicted of first-degree murder for the shooting death of a police officer. He was sentenced to an indefinite term of 100 to 200 years in prison. In 1984, the plaintiff became eligible for parole. The plaintiff received annual parole hearings for the next four years. The Prisoner Review Board (Board) denied parole following each hearing. At the time of the plaintiff's conviction, the statute regarding parole hearings stated

that the Board must provide "rehearing not more than 12 months from the date of denial." Ill. Rev. Stat. 1975, ch. 38, ¶ 1003-3-5(f). In 1988, the Board denied the plaintiff parole and scheduled the plaintiff's next parole hearing for October 1991. The Board relied upon an amendment to section 3-3-5(f), which stated that the Board may "schedule a rehearing no later than 3 years from the date of the parole denial, if the Board finds that it is not reasonable to expect that parole would be granted at a hearing prior to the scheduled rehearing date" (Ill. Rev. Stat., 1988 Supp., ch. 38, ¶ 1003-3-5(f)). The plaintiff filed a complaint for *mandamus* relief in which he argued that the amendment to the statute as applied to him was an *ex post facto* law. The circuit court agreed with the plaintiff and found the amendment unconstitutional. The Board appealed to the Illinois Supreme Court. See *Tiller v. Klincar*, 138 Ill. 2d 1 (1990) (hereinafter *Tiller I*).

¶ 5 In *Tiller I*, our supreme court agreed with the circuit court and found that the amendment to section 3-3-5(f) as applied to the plaintiff was an *ex post facto* law. *Tiller v. Klincar*, 138 Ill. 2d 1, 12 (1990). Thus, the supreme court upheld the circuit court's order requiring the Board to grant the plaintiff annual parole hearings. The plaintiff's parole hearings continued annually until 2012. In 2012, the maximum interval between hearings was changed from three years to five years. See 730 ILCS 5/3-3-5(f) (West Supp. 2011). Relying upon that amendment to the statute, the Board denied the plaintiff parole at the 2012 hearing and scheduled the next parole hearing for 2015, finding that it was not reasonable to expect that the plaintiff would be granted parole before 2015. The plaintiff then filed the instant complaint for *mandamus* relief.

¶ 6 In his complaint for *mandamus* relief, the plaintiff argued that the Board was barred from changing the interval time for the plaintiff's parole hearings due to *res judicata*, the law of the case, and collateral estoppel. The circuit court disagreed, finding *Fletcher v. Williams*, 179 Ill. 2d 225 (1997), to be dispositive of the plaintiff's contentions. The Illinois Supreme

Court's decision in *Fletcher* overruled the *ex post facto* finding in *Tiller I*. *Fletcher*, 179 Ill. 2d at 236. The circuit court dismissed the plaintiff's complaint on the basis that *Fletcher* had overruled *Tiller I*. The court allowed the plaintiff to file an amended complaint. In the plaintiff's amended complaint, he incorporated his previous arguments and also argued that the statute governing parole hearings at the time of the plaintiff's conviction had created a liberty interest in annual parole hearings. He further argued that, because he had been granted parole hearings for the 15 years since *Fletcher* was decided, he had a vested right to annual parole hearings.

¶ 7 The Board moved to dismiss the plaintiff's amended complaint, arguing that the court lacked subject matter jurisdiction based on sovereign immunity. The plaintiff argued that the relief he sought defeated the State's sovereign immunity. The circuit court dismissed the plaintiff's amended complaint, finding that it lacked subject matter jurisdiction due to the State's sovereign immunity. From that dismissal, the plaintiff appeals.

¶ 8 ANALYSIS

¶ 9 We review *de novo* the order granting a motion to dismiss a complaint for *mandamus* relief, specifically, a motion to dismiss filed pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). The circuit court's sole basis for dismissal was that it lacked subject-matter jurisdiction because of the State's sovereign immunity. In cases such as this, a *mandamus* action to compel a public officer to perform a clear and mandatory duty is not an action against the State because there is a presumption that the State, or a department thereof, does not violate state laws and that any violation is by a state officer or head of a department of the State. *Senn Park Nursing Center v. Miller*, 104 Ill. 2d 169, 189 (1984). Indeed, there are numerous cases where the circuit court has ruled on the merits of a *mandamus* claim against the Prisoner Review Board. See, e.g., *Crump v. Illinois Prisoner Review Board*, 181 Ill. App.

3d 58, 60-63 (1989) (where the prisoner filed a *mandamus* complaint to compel the Prisoner Review Board to grant him parole, the circuit court determined the outcome of the case based on the merits of the plaintiff's complaint); *Blythe v. Lane*, 194 Ill. App. 3d 451 (1990) (where the circuit court determined that the plaintiff did not have a valid *mandamus* claim when the plaintiff asked that the court order the Prisoner Review Board to discharge the plaintiff from parole). Thus, the circuit court erred when it dismissed the plaintiff's claim based solely on the Board's argument that it was protected by sovereign immunity. We decline to address the State's argument that the plaintiff's complaint failed to state a cause of action for *mandamus* relief. This argument was not advanced in the circuit court and was not a basis for the court's ruling. On remand, the State is free to raise this argument in a motion to dismiss should it choose to do so.

¶ 10

CONCLUSION

¶ 11 For the foregoing reasons, the judgment of the circuit court of Clinton County is reversed and remanded.

¶ 12 Reversed and remanded.