

FIRST DIVISION
December 22, 2014

No. 1-13-2343

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SYLVESTER ANTHONY HARTIGAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 M5 000219
)	
JOHN NEVEN a/k/a JACK NEVEN,)	Honorable
)	Maureen Patricia Feerick,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 **Held:** Plaintiff's complaint was properly dismissed with prejudice where his claims were barred by the doctrine of sovereign immunity.
- ¶ 2 *Pro se* plaintiff Sylvester Anthony Hartigan appeals from the trial court's June 26, 2013, dismissal of his complaint filed against defendant John Neven a/k/a Jack Neven. On appeal, plaintiff contends that the trial court erred in dismissing his complaint. We affirm.
- ¶ 3 The record shows that plaintiff was employed by the Illinois Department of Transportation (IDOT) as an "Acting Lead Worker 'A' Group Highway Maintainer." On

December 11, 2012, defendant, who was plaintiff's supervisor, issued a "Report of Rule Infraction" to plaintiff, charging him with various infractions he allegedly committed on November 17, 2012, including, time sheet fraud, endangering the motoring public, fraudulent use of the State radio, appearing at the Stevenson Yard without authorization, fraudulent use of overtime, and conduct unbecoming a State worker. Plaintiff denied the charges, maintaining that defendant "piled charges in retaliation for whistle blowing."

¶ 4 On February 6, 2013, plaintiff filed a *pro se* complaint against defendant, stating that defendant defamed him when he, with willful and wanton disregard for his character, conveyed to other people in plaintiff's community and work environment that he had endangered the motoring public, committed a fraudulent use of overtime, and conducted himself in a way that was unbecoming of a State worker. Plaintiff maintained that defendant knew or reasonably should have known that these accusations were false, but nevertheless made them in retaliation and to undermine the effectiveness of his work. Plaintiff sought monetary relief in the amount of \$10,000 plus court costs. In support, plaintiff attached a copy of the December 11, 2012 Report of Rule Infraction.

¶ 5 Defendant, by Attorney General, moved to dismiss the complaint for lack of subject matter jurisdiction pursuant to section 2-619(a)(1) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2012)). In it, defendant argued that plaintiff's claims were barred by the doctrine of sovereign immunity because it precluded any redress sought against State employees acting within the scope of their employment. In addition, defendant alleged that the complaint should be dismissed pursuant to section 2-619(a)(9) of the Code because the doctrine of public officials' immunity bars claims against public officials for performance of their discretionary duties as a public official. In support, defendant attached numerous documents,

including his own affidavit, which stated that it was within his official duties to organize and direct work crews for the Stevenson Expressway. Specifically, defendant “direct[ed] subordinates to snow removal and emergency maintenance operations.” Defendant further attested that he ensured that his staff performed their duties, and took appropriate disciplinary action when those duties were not completed.

¶ 6 On June 6, 2013, plaintiff filed a *pro se* response, essentially contending that the alleged infractions at issue were trumped-up by defendant in retaliation for a lawsuit plaintiff filed against him. Specifically, plaintiff asserted that the lawsuit he filed against defendant related to smoking in the work place, which exacerbated his “condition,” and that defendant was in violation of the State Officials and Employees Ethics Act (Ethics Act) (5 ILCS 430/1 *et seq.* (West 2012)), for lying to his superiors despite being warned during plaintiff’s own investigation that he was “committing a Class A misdemeanor for his retaliatory actions against a whistle blower.” Defendant replied that plaintiff failed to dispute that defendant was acting in his capacity as a State of Illinois employee, and reiterated that plaintiff’s claims were barred by the doctrines of sovereign immunity and public officials’ immunity.

¶ 7 On June 26, 2013, the trial court granted defendant’s motion on the basis of public officials’ immunity and dismissed plaintiff’s complaint with prejudice. Plaintiff filed a timely notice of appeal asking this court to reverse the June 26 order and remand the cause for a trial.

¶ 8 On appeal, plaintiff maintains that the trial court erred in dismissing his complaint because whistleblower actions brought under the Ethics Act are not barred by sovereign immunity.

¶ 9 Initially, defendant contends that plaintiff’s brief should be stricken and this appeal dismissed because he failed to comply with the requirements of Supreme Court Rule 341(h) (eff.

Feb. 6, 2013). While we agree with the observed deficiencies, we decline to strike the brief. Plaintiff's *pro se* status does not relieve him of the burden of complying with the supreme court rules governing appellate procedures. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 425 (2005). However, because we are able to discern the legal issues from the record and defendant's brief, we decline to dismiss the appeal. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001) (the court may entertain an appeal as long as it understands the issues plaintiff intends to raise and where it has "the benefit of a cogent brief of the other party").

¶ 10 Defendant acknowledges in his brief that the circuit court dismissed the complaint based on the doctrine of public officials' immunity, but argues that plaintiff's defamation action was barred by sovereign immunity. We agree.

¶ 11 Decisions granting a section 2-619 motion are reviewed *de novo*, and may be affirmed on any ground supported by the record. *Matthews v. Chicago Transit Authority*, 2014 IL App (1st) 123348, ¶ 65. Section 2-619 of the Code provides a means for obtaining summary disposition of issues of law or of easily proved issues of fact. 735 ILCS 5/2-619 (West 2012); *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993). Under section 2-619(a)(1), a complaint must be dismissed when "the court does not have jurisdiction of the subject matter of the action" (735 ILCS 5/2-619(a)(1) (West 2012)), including when the court lacks jurisdiction because the action is barred by sovereign immunity (*Cortright v. Doyle*, 386 Ill. App. 3d 895, 899 (2008)).

¶ 12 The State Lawsuit Immunity Act provides that the State "shall not be made a defendant or party in any court" except as provided in the Court of Claims Act, the Illinois Public Labor Relations Act, and the State Officials and Employees Ethics Act. 745 ILCS 5/1 (West 2012).

The Court of Claims Act provides that the Illinois Court of Claims has exclusive jurisdiction over “[a]ll claims against the State for damages in cases sounding in tort.” 705 ILCS 505/8(d) (West 2012). For purposes of sovereign immunity, suits against a State department or agency are considered to be suits against the State. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34 (2009). The circuit court lacks jurisdiction to hear a claim when sovereign immunity applies. *Id.*

¶ 13 Whether an action is in fact against the State depends on the issues involved and relief sought, but not the formal designation of the parties. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). Otherwise, a plaintiff could circumvent the State’s immunity by naming an individual State employee as the defendant to a lawsuit that could serve to control the State’s actions. *Id.* at 159. Therefore, the prohibition against making the State a party to a lawsuit cannot be evaded simply by making the action against an employee of the State when the real claim is against the State. *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 21. An action that is nominally against a State employee is in reality against the State when: (1) there are no allegations that the employee acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed by the employee independent of his State employment; and (3) the complained-of actions involve matters ordinarily within the employee’s normal and official functions. *Cortright*, 186 Ill. App. 3d at 900.

¶ 14 Here, under those criteria, we find that plaintiff’s action was in reality against the State. Plaintiff did not allege facts demonstrating that defendant acted beyond the scope of his authority when he issued a disciplinary report to plaintiff charging him with work infractions. Defendant explained in his affidavit that his responsibilities at work included ensuring subordinate staff, which included plaintiff, performed their duties, and that he could take appropriate disciplinary

action when necessary. As stated in defendant's brief, preparing disciplinary reports and charging employees with work violations fall within the scope of a supervisor's authority. See *Cortright*, 386 Ill. App. 3d at 900-02 (State employees were acting within the scope of their authority as supervisors when they accused plaintiff of underperforming, sleeping at a meeting, having poor judgment, and being incompetent). Moreover, while malicious conduct is outside the scope of a State employee's employment (*Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 354 (2001)), plaintiff failed to allege malice on the part of defendant where he simply made a conclusory remark that defendant was retaliating against him. Plaintiff likewise failed to allege facts showing that defendant breached a duty he owed independent of his State employment, or that defendant's complained-of actions were not ordinarily within his normal official functions. Therefore, because plaintiff's complaint was in fact against the State, the circuit court lacked subject matter jurisdiction to hear the claim where it was barred by the doctrine of sovereign immunity. *Meyer*, 392 Ill. App. 3d at 34.

¶ 15 We further note that even if the above criteria were not met, sovereign immunity would still apply because a judgment for plaintiff could operate to control the actions of the State or subject it to liability. See *Currie*, 148 Ill. 2d at 158 (an action brought nominally against a State employee will be found to be against the State "where a judgment for plaintiff could operate to control the actions of the State or subject it to liability"). Here, plaintiff is seeking monetary damages from a supervisor for statements made in a disciplinary report regarding plaintiff's work performance. As pointed out by defendant in his brief, a judgment for plaintiff could intimidate State supervisors when making personnel decisions, thereby impeding the State's ability to manage its employees and ensure they follow work rules and policies. See *Wozniak v. Conry*, 288 Ill. App. 3d 129, 133 (1997) (stating that "when a supervisor for a state department

or entity is sued by an employee for statements regarding the employee's work-related conduct and pending personnel decisions, the suit necessarily threatens to control the actions of the state"). It does not even matter if, as here, the plaintiff alleges that the defendant's comments were knowingly false. *Id.*

¶ 16 In concluding that plaintiff's claims are barred by the doctrine of sovereign immunity, we find unpersuasive plaintiff's argument that the trial court erred in dismissing his complaint because whistleblower actions brought under the Ethics Act (5 ILCS 430/1 *et seq.* (West 2012)), provide an exception to sovereign immunity. Protected activities under the Ethics Act include: when a State employee discloses or threatens to disclose to a supervisor or to a public body an activity of another State employee that he reasonably believes is in violation of the law; provides information to or testifies before any public body conducting an investigation into any violation of a law by any other State employee; or assists in a proceeding to enforce the provisions of the Ethics Act. 5 ILCS 430/15-10 (West 2012). Plaintiff's complaint is not brought under that law, however. The complaint sounds in tort. Plaintiff asserted that defendant defamed him in an attempt to undermine his effectiveness at work, and, for unexplained reasons, retaliated against him. Accordingly, the Ethics Act does not apply here.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.