

NOTICE

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2014 IL App (4th) 130591-U

NO. 4-13-0591

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 11, 2014

Carla Bender

4th District Appellate
Court, IL

CHRISTINE GRACHECK,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE COURT OF CLAIMS OF THE STATE OF)	No. 11MR668
ILLINOIS and THE BOARD OF TRUSTEES OF THE)	
UNIVERSITY OF ILLINOIS,)	Honorable
Defendants-Appellees.)	John Schmidt,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying appellant's petition for writ of *certiorari* where she was afforded adequate notice and opportunity to be heard before the Court of Claims.
- ¶ 2 In December 2007, appellant, Christine Gracheck, filed two actions in the Court of Claims of the State of Illinois (Court of Claims) against appellee, the Board of Trustees of the University of Illinois (University), related to injuries she sustained in a slip-and-fall accident on University property. In November 2011, the Court of Claims dismissed her complaints, finding Gracheck filed them after the statute of limitations had expired. In August 2012, Gracheck filed a petition for writ of *certiorari* in the trial court, arguing she was denied due process by the Court of Claims. Thereafter, the trial court denied her petition, finding no denial of due process had occurred.

¶ 3 Gracheck appeals, arguing the trial court erred in denying her petition for writ of *certiorari*. We affirm.

¶ 4 I. BACKGROUND

¶ 5 According to Gracheck's affidavit (attached to her petition for writ of *certiorari*), on December 17, 2005, she sustained a fall outside a University residence hall.

¶ 6 On April 12, 2006, Gracheck spoke to Doug Caldwell, a University employee, and asked him how to file a claim for injuries. Caldwell told her to mail a Property Damage/Public Injury Report to the University's Office of Campus Risk Management. Gracheck did so and thereafter retained counsel to represent her in the matter.

¶ 7 On October 3, 2006, Gracheck's attorney spoke with Caldwell. Caldwell told Gracheck's attorney the University did not perform its own snow removal. It appears Gracheck's attorney believed until November 28, 2007, an unnamed third party performed snow removal for the University.

¶ 8 On December 17, 2007, Gracheck filed two complaints, one for property damage (case No. 08-CC-1803) and one for personal injuries (case No. 08-CC-1804) in the Court of Claims against the University related to the fall two years earlier. (These complaints do not appear in the record on appeal.)

¶ 9 On March 11, 2008, the University filed a motion to dismiss Gracheck's complaints pursuant to section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2008)), arguing, *inter alia*, the complaints were time barred by the statute of limitations.

¶ 10 In her objection to the University's motion to dismiss, Gracheck argued, *inter alia*,

the limitations period should be tolled due to Caldwell's misrepresentations. According to Gracheck, respondents are estopped from invoking the statute of limitations where a claimant "has been lulled into a false sense of security by the respondent." Her attorney submitted an affidavit, which stated the following:

"1. On October 3, 2006, I spoke to Doug Caldwell of the [University].

2. On October 3, 2006, Doug Caldwell advised me [Gracheck] filed her notice of claim for the personal injuries she sustained at the [University] on December 17, 2005.

3. On October 3, 2006, Doug Caldwell advised me he was an attorney with the [University] for the Office of Claims Management, the Office of Campus Risk Management[,] and the University of Illinois Safety [and] Compliance Department.

4. On October 3, 2006, Doug Caldwell advised me the [University] performed none of its own snow removal operations."

Another of Gracheck's attorneys later submitted an affidavit stating he "did not learn nor advise [Gracheck] that the statements made by Doug Caldwell, agent for the [University], that the [University] did not perform snow removal operations itself was false, until the month before the suit was filed."

¶ 11 In its September 1, 2011, order, the Court of Claims dismissed claim No. 08-CC-1804, and found the following:

"Respondent's [section] 2-619 Motion to Dismiss is granted.

Before this Court is [Gracheck's] personal injury claim against the [University]. Pursuant to section [22-1] of the Court of Claims Act, any person who brings a claim for personal injuries in the Court of Claims against the [University], shall file in the office of the Attorney General and also in the office of the Court of Claims specific notice of the claim within one year from the date that such an injury was received or such cause of action accrued. (705 ILCS 505/22-1). The failure to file such notice mandates dismissal of the claim and forever bars the Claimant from further action in the Court of Claims for such personal injury. (705 ILCS [505]/22-2). The only instance where a Claimant is not required to file such notice is where Claimant files his or her complaint before the Court of Claims within one year of the accrual of his or her claim. (705 ILCS 505/22-1). Claimant has failed to file the notice as required under 705 ILCS 505/22-1 and has filed her claim beyond one year from the date of its accrual.

Accordingly, [Gracheck's] claim is dismissed with prejudice."

¶ 12 On September 27, 2011, Gracheck filed a petition for rehearing in case No. 08-CC-1804, which the Court of Claims denied on November 7, 2011. The docket entry for November 7, 2011, shows the Court of Claims also dismissed Gracheck's outstanding complaint for property damage (case No. 08-CC-1803) that same day. (On appeal, Gracheck does not

differentiate her argument regarding the two complaints and states in her brief both were dismissed for her failure to timely file them.)

¶ 13 On December 6, 2011, Gracheck filed a petition for writ of *certiorari* in the trial court, arguing she was denied due process by the Court of Claims when it dismissed her complaints as untimely. According to Gracheck, the University "should have been estopped from invoking the limitations period to afford [her] due process." Gracheck requested the court to direct the Court of Claims to "certify and bring the record of the proceedings of the Court of Claims" before the court and, following review of the record, asked the court to reverse the judgment of the Court of Claims.

¶ 14 On November 7, 2012, the Court of Claims filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)), arguing, *inter alia*, Gracheck failed to state a cause of action for a writ of *certiorari*. According to the Court of Claims, the trial court was limited to reviewing whether Gracheck received due process. The Court of Claims maintained Gracheck was afforded her constitutional right to due process where she received an adequate opportunity to be heard. The Court of Claims contended Gracheck was improperly seeking review of the correctness of its decision.

¶ 15 On March 11, 2013, the University filed a memorandum of law in support of its own motion to dismiss as well as the Court of Claims' motion to dismiss. (The University's motion to dismiss does not appear in the record on appeal nor on the trial court's docket sheet.) Like the Court of Claims, the University argued the relief Gracheck sought was nothing more than an improper attempt to have the trial court review the correctness of the decision of the Court of Claims.

¶ 16 During the June 14, 2013, hearing in the trial court, Gracheck argued Caldwell's misrepresentation amounted to fraud, which is an exception to the statute of limitations, and she did not receive due process as a result of the Court of Claims failing to address that issue. The following colloquy took place between the court and Gracheck's attorney:

"THE COURT: Did you get a hearing at the Court of Claims?

MS. COHEN: No.

THE COURT: They denied you a hearing?

MS. COHEN: Denied having a hearing.

THE COURT: Were you allowed to file pleadings?

MS. COHEN: Yes.

THE COURT: Were responses filed to your pleadings?

MS. COHEN: Yes.

THE COURT: Okay. Then was a ruling issued based on your pleadings?

MS. COHEN: A ruling was issued which said: We're not going to look at your arguments because it wasn't filed timely."

During another exchange, the court questioned Gracheck's other attorney as follows:

"THE COURT: Did they let you file pleadings?

MR. PINZUR: We filed, but they didn't address them.

THE COURT: How do you know they didn't address them?

Did they read them? You don't know that.

MR. PINZUR: We do from—if—if the Court gets the record, the Court will see that they didn't address it."

¶ 17 At the conclusion of the hearing, the trial court dismissed Gracheck's petition. In making its ruling, the court stated after reviewing Gracheck's petition in its entirety "numerous times" and taking everything in it as "true and correct" it did not find a violation of due process had taken place. According to the court, "[t]hey were allowed to file pleadings, address their issues, [and] the Court of Claims ruled. This is basically, in this Court's opinion, a second attempt at a second bite at an apple in this courtroom."

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, Gracheck argues the trial court erred in denying her petition for writ of *certiorari* where she was denied her constitutional right to due process by the Court of Claims. We disagree.

¶ 21 A motion to dismiss brought pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615) (West 2012)) attacks the sufficiency of the complaint. *O'Hara v. State Farm Mutual Automobile Insurance Co.*, 137 Ill. App. 3d 131, 134, 484 N.E.2d 834, 836 (1985). The court accepts all well-pleaded facts as true, but not conclusions of law or factual conclusions not supported by specific allegations of fact. *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878, 743 N.E.2d 676, 683 (2001). A trial court's order dismissing a case may be affirmed on any basis found in the record. *In re Marriage of Buck*, 318 Ill. App. 3d 489, 497, 742 N.E.2d 378, 384 (2000). A trial court's decision to grant a motion to dismiss is reviewed *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220, 720 N.E.2d 1034, 1039 (1999).

¶ 22 The doctrine of sovereign immunity "protects the State from interference in its performance of the functions of government and preserves its control over State coffers." (Internal quotation marks omitted.) *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 159, 940 N.E.2d 1122, 1128 (2010). The Illinois Constitution of 1970 abolished sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. The General Assembly reinstated sovereign immunity by enacting the State Lawsuit Immunity Act (Immunity Act) (745 ILCS 5/1 to 1.5 (West 2012)). Section 1 of the Immunity Act (745 ILCS 5/1 (West 2012)) provides "the State of Illinois shall not be made a defendant or party in any court" except as provided by, *inter alia*, the Court of Claims Act (Act) (705 ILCS 505/1 to 29 (West 2012)). The Act established the Court of Claims as the exclusive forum for litigants to make claims against the State (705 ILCS 505/8 (West 2012)), including "[a]ll claims against the State for damages in cases sounding in tort" (705 ILCS 505/8(d) (West 2012)).

¶ 23 The Act does not provide for the review of decisions of the Court of Claims because the Court of Claims is not a "court" within the meaning of article VI of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI). *Klopper v. Court of Claims*, 286 Ill. App. 3d 499, 505, 676 N.E.2d 679, 683 (1997). Thus, its decisions are generally not subject to judicial review. *Klopper*, 286 Ill. App. 3d at 502, 676 N.E.2d at 682. However, a narrow exception exists where allegations are presented the Court of Claims deprived the party of his constitutional right to due process. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 261, 786 N.E.2d 174, 177 (2003).

¶ 24 The common-law writ of *certiorari* provides a means whereby a party who has no avenue of appeal or direct review may obtain limited review over actions by a court or other tribunal exercising quasi-judicial functions. *Reichert*, 203 Ill. 2d at 260, 786 N.E.2d at 177. The

purpose of a writ of *certiorari* is to have the entire record of the inferior tribunal brought before the trial court to determine, from that record alone, if the former proceeded according to the applicable law. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427, 551 N.E.2d 640, 645 (1990). However, there is no right to review by *certiorari*, and the issuance of the writ is within the sound discretion of the trial court. *Stratton*, 133 Ill. 2d at 428, 551 N.E.2d at 646. A petition for *certiorari* relief is properly denied if the court finds the plaintiff cannot prevail or is not entitled to the review he seeks. *Tanner v. Court of Claims*, 256 Ill. App. 3d 1089, 1092, 629 N.E.2d 696, 699 (1994).

¶ 25 On appeal, Gracheck cites this court's decision in *Tanner* for the proposition the trial court *must* grant the petition for writ of *certiorari* and order the production of the full Court of Claims record to determine her due process rights were abridged. We disagree. As stated, "there is no absolute right to review by *certiorari*." *Stratton*, 133 Ill. 2d at 428, 551 N.E.2d at 646. Instead, as acknowledged by *Tanner*, "the issuance of a writ of *certiorari* is within the discretion of the court." *Tanner*, 256 Ill. App. 3d at 1092, 629 N.E.2d at 699.

¶ 26 In *Tanner*, the plaintiff filed suit in the Court of Claims, alleging the University breached its contract with him by failing to award him a Ph.D. *Tanner*, 256 Ill. App. 3d at 1090, 629 N.E.2d at 697. The claim was denied, and the plaintiff sought a writ of *certiorari*, arguing his due process rights were violated by the Court of Claims where it applied the wrong standard of review and failed to take up specific issues which he raised to support his breach of contract claim. *Tanner*, 256 Ill. App. 3d at 1091, 629 N.E.2d at 698. Under the specific facts of that case, this court determined the trial court improperly dismissed the plaintiff's petition without first examining the record of proceedings in the Court of Claims. *Tanner*, 256 Ill. App. 3d at

1092-93, 629 N.E.2d at 699 ("the record from the inferior tribunal must normally be made a part of the trial court record for the court to review").

¶ 27 However, *Tanner* also recognized a trial court may properly deny a petition for writ of *certiorari* without reviewing the full Court of Claims record when, as a matter of law, the plaintiff is not entitled to the review sought. *Tanner*, 256 Ill. App. 3d at 1092, 629 N.E.2d at 699 ("there may be instances when the writ is properly denied if, as a matter of law, the court is able to determine plaintiff cannot prevail or he is not entitled to the review he seeks"). This case presents such an instance as the trial court had all the information needed to determine whether Gracheck received due process. Due process is satisfied by the proceedings in the Court of Claims when an orderly proceeding is held and the party is provided with notice and an opportunity to be heard. *Reichert*, 203 Ill. 2d at 261, 786 N.E.2d at 177. Once Gracheck filed her complaint, the Court of Claims conducted orderly proceedings during which Gracheck received adequate notice and opportunity to be heard. When the University filed its motion to dismiss, the Court of Claims provided Gracheck with notice of that motion. She was then allowed to file her objection to the University's motion. Following the Court of Claims' decision, Gracheck's petition for rehearing was accepted and ruled on.

¶ 28 The failure of the Court of Claims to hold a formal hearing does not mean Gracheck's argument was not heard or that she was denied due process. See *Lawless v. Central Production Credit Assn.*, 228 Ill. App. 3d 500, 515, 592 N.E.2d 1210, 1219 (1992) ("the word 'hearing' is not necessarily restricted to an oral presentation by the parties and may instead refer to the court's consideration of a written presentation by the parties"); *Department of Central Management Services/Illinois Commerce Comm'n v. Illinois Labor Relations Board, State Panel*,

406 Ill. App. 3d 766, 770, 943 N.E.2d 1136, 1140 (2010) (parties may be heard solely through their presentation of written arguments and documentary evidence). In each of her pleadings, Gracheck argued Caldwell's misrepresentations caused her to file her complaint after the limitations period had run. Gracheck made extensive legal arguments and cited case law for the proposition the statute of limitations should be tolled in cases of misrepresentation or fraud. Gracheck also attached affidavits as exhibits in support of her position. As a result, the trial court was able to determine from the motions and responses thereto filed with it Gracheck could not prevail on her due-process claim. *Cf., Tanner*, 256 Ill. App. 3d at 1092-93, 629 N.E.2d at 699 ("from the limited pleadings in the record before us, it is impossible to determine the nature, extent, and terms of the alleged contract which the University supposedly breached").

¶ 29 Finally, the question of whether the Court of Claims erred regarding the statute of limitations issue is not reviewable. Due process is not violated where the Court of Claims merely misconstrues the law or otherwise commits an error for which its judgment should be reversed. *Reichert*, 203 Ill. 2d at 261, 786 N.E.2d at 177; *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72, 79-80, 485 N.E.2d 332, 335 (1985) (writ of *certiorari* is not available to review the correctness of any decision of the Court of Claims). Thus, even if the Court of Claims erred in its determination, a misconstruction of law does not amount to a due-process violation. *Reyes v. Court of Claims of the State of Illinois*, 299 Ill. App. 3d 1097, 1105, 702 N.E.2d 224, 230 (1998) (finding the plaintiff's due process rights would not be violated even if it found the Court of Claims ruled incorrectly regarding the statute of limitations).

¶ 30 In sum, due process was satisfied where Gracheck was afforded the opportunity to be heard in the Court of Claims. Accordingly, the trial court did not err in denying Gracheck's petition for writ of *certiorari*.

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.