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2016 IL App (3d) 150789-U

Order filed November 29, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

JAMES DOLIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-15-0789
	)	Circuit No. 15-MR-324
	)	
TARRY WILLIAMS,	)	Honorable
	)	Cory D. Lund,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The circuit court did not err in (1) dismissing plaintiff's *mandamus* petition for lack of subject matter jurisdiction, or (2) denying plaintiff's request to amend his *mandamus* petition.

¶ 2 Plaintiff, James Dolis, an inmate at Stateville Correctional Center, filed a *mandamus* petition seeking to compel defendant, Tarry Williams, the warden of Stateville, to reimburse him for medical copayments that plaintiff contends were wrongly deducted from his prison account.

On appeal, plaintiff contends that the circuit court erred in granting the State's motion to dismiss

his *mandamus* petition. Alternatively, defendant argues that the circuit court erred in denying his request to amend his *mandamus* petition. We affirm.

¶ 3

### FACTS

¶ 4

On February 10, 2015, plaintiff filed a *mandamus* petition against defendant. The petition alleged that plaintiff received dental services at the Stateville healthcare unit on March 26 and 27, 2014. On each day, plaintiff had to sign “a 5.00 money voucher.” The petition claimed that on both days, plaintiff was indigent and should have been exempt from the \$5 copayment pursuant section 3-6-2(f) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-2(f) (West 2014)). Section 3-6-2(f) provides, in relevant part:

“The Department [of Corrections (IDOC)] shall require the committed person receiving medical or dental services on a non-emergency basis to pay a \$5 co-payment to the Department for each visit for medical or dental services. The amount of each co-payment shall be deducted from the committed person’s individual account. \*\*\* A committed person who is indigent is exempt from the \$5 co-payment and is entitled to receive medical or dental services on the same basis as a committed person who is financially able to afford the co-payment. For purposes of this Section only, ‘indigent’ means a committed person who has \$20 or less in his or her Inmate Trust Fund at the time of such services and for the 30 days prior to such services.” *Id.*

¶ 5

The petition alleged that on September 18, 2014, plaintiff received a “trust fund print out” that showed his prison account had been charged a \$5 copayment for each day he received dental services. The “print out” showed that the two medical copayments were deducted from his account on July 29, 2014, and that plaintiff was indigent on March 26 and 27, 2014.

¶ 6 The petition alleged that “[o]n about Nov. 3, 2014,” plaintiff filed a grievance with a counselor regarding the copayments. The counselor responded on November 26, 2014, stating that medical copayments were taken out in large groups a couple times a year rather than at the time of service. The counselor denied plaintiff’s grievance. A grievance officer also reviewed plaintiff’s grievance and denied it for being untimely. Plaintiff alleged that defendant “signed off” on the grievance officer’s denial of his grievance. Plaintiff also alleged that he sent his grievance back to the grievance officer for reconsideration, explaining that his grievance was not untimely. Plaintiff claimed that he never received a response. Plaintiff then sent a letter to the Stateville business office, which was responsible for deducting the copayments. The business office responded that he was correct but needed to file a grievance to have the money reimbursed.

¶ 7 The petition’s prayer for relief stated as follows:

“Wherefore Plaintiff prays this court will issue and [*sic*] order of *mandamus* compelling Defendant IDOC to:

(A) Immediately reimburse the 2 co-pays illegally taken.

(B) Pay Plaintiff \$50.00 dollars for attorney fees for the copies, research and time spent bringing this action. To immediately put the 50.00 dollars on his trust fund along with the 2 co-pays for a total of \$60.00 dollars.”

¶ 8 Plaintiff attached a copy of the letter he allegedly sent to the business office at Stateville, along with an “Inmate Transaction Statement.” The “Inmate Transaction Statement” showed that plaintiff never had more than \$8 in his prison account between February 11 and March 25, 2014.

¶ 9 The Attorney General’s office filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)) on behalf of defendant.

The motion to dismiss argued that: (1) plaintiff failed to properly exhaust his administrative remedies, (2) the circuit court lacked jurisdiction to impose monetary damages against the State under the doctrine of sovereign immunity, and (3) the petition failed to state a cause of action for *mandamus*. Defendant attached documentation of plaintiff's grievance proceedings as exhibits to the motion to dismiss.

¶ 10 The docket sheet indicates that a hearing on defendant's motion to dismiss was held on August 27, 2015. However, the record on appeal does not include a transcript of the hearing. Following the hearing, the circuit court entered a written order stating as follows:

“This matter coming to be heard for hearing on Defendant's motion to dismiss, it is hereby ordered:

1. Defendant's motion is granted on the basis that the Court lacks jurisdiction to award Plaintiff a monetary award. Plaintiff's petition is dismissed with prejudice.”

¶ 11 Plaintiff filed a motion to reconsider, requesting that the court vacate its order and grant his *mandamus* petition or, alternatively, allow him to amend his petition. The motion to reconsider alleged the following regarding plaintiff's request to amend his petition:

“Pursuant [to] 735 ILCS 5/14-109 Seeking Wrong Remedy Not Fatal. If this court still determines *mandamus* not proper despite the defendants [*sic*] violation of law denies them sovereign immunity and renders this action no longer considered against the State. Plaintiff should be allowed to amend his pleadings as it is a complaint and also obtain a permanent injunction.”

¶ 12 The circuit court denied the motion to reconsider.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff contends that the circuit court erred in dismissing his *mandamus* petition because the court had jurisdiction to award monetary damages in a *mandamus* action. Alternatively, plaintiff argues that the circuit court erred in not allowing him to amend his petition, as he requested to do in his motion to reconsider. We find that the circuit court properly dismissed plaintiff’s *mandamus* petition on the basis that it lacked jurisdiction to award plaintiff monetary damages pursuant to the doctrine of sovereign immunity and properly denied plaintiff’s motion to reconsider.

¶ 15 “Sovereign immunity is a common-law doctrine that bars lawsuits against the government unless the government consents to be sued.” *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 559 (2005). The Illinois Constitution abolished the doctrine of sovereign immunity “[e]xcept as the General Assembly may provide by law \*\*\*.” Ill. Const. 1970, art. XIII, § 4. The General Assembly subsequently enacted the State Lawsuit Immunity Act (Act) (745 ILCS 5/0.01 *et seq.* (West 2014)). Section 1 of the Act provides: “Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court.” 745 ILCS 5/1 (West 2014).

¶ 16 The Court of Claims Act provides that the Court of Claims shall have exclusive jurisdiction over nine enumerated matters, including “[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 2014). “Sovereign immunity of the State extends to suits against a state agency or department and when it applies, the circuit court lacks jurisdiction to hear the claim.” *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34 (2009).

¶ 17 Here, plaintiff named Williams, rather than the State, as the defendant in his *mandamus* action. However, “[w]hether an action is in fact one against the State and hence one that must be brought in the Court of Claims depends on the issues involved and the relief sought.” *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 45. “[T]he prohibition ‘against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested.’ ” *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990) (quoting *Sass v. Kramer*, 72 Ill. 2d 485, 491(1978)).

¶ 18 Generally, a claim is against the State rather than a state employee when the following criteria are met:

“ ‘(1) [there are] no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment; and (3) where the complained-of actions involve matters ordinarily within that employee’s normal and official functions of the State \*\*\*.’ ” *Management Ass’n of Illinois, Inc. v. Board of Regents of Northern Illinois University*, 248 Ill. App. 3d 599, 607 (1993) (quoting *Robb v. Sutton*, 147 Ill. App. 3d 710, 716 (1986)).

¶ 19 Even if the above criteria are not met, “[s]overeign immunity will apply whenever a judgment for the plaintiff could operate either to control the actions of the State or subject it to liability.” *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 351 (2001). “A party seeking a monetary judgment against an agency payable out of state funds must bring its action in the Court of Claims.” *Meyer*, 392 Ill. App. 3d at 35.

¶ 20 We find that plaintiff’s *mandamus* action in the instant case was against the State rather than defendant in his personal capacity. Initially, we find that two of the three criteria for determining that a claim is really against the State rather than the defendant in his personal capacity were met in this case. The conduct of which plaintiff complained—namely, wrongfully deducting \$10 from his prison account—stemmed from a duty defendant owed to plaintiff due to his employment as warden of Stateville and was a matter within defendant’s normal employment duties. Regarding the remaining criterion, we acknowledge the *mandamus* petition alleged that defendant acted beyond the scope of his authority in that it alleged that the copayments were deducted from plaintiff’s account in violation of 3-6-2(f) of the Code (730 ILCS 5/3-6-2(f) (West 2014)).

¶ 21 However, despite the allegation that defendant acted beyond the scope of his statutory authority, the nature of the relief sought—a monetary judgment from the IDOC—rendered the suit one against the State rather than Williams personally. See *Welch*, 322 Ill. App. 3d at 351. In the prayer for relief, the *mandamus* petition referred to the IDOC as the defendant rather than Williams and sought reimbursement of the \$5 copayments from the IDOC. Because the *mandamus* petition requested a money judgment against the IDOC, a state agency, the petition had the potential to subject the State to liability and was barred by the doctrine of sovereign immunity. See *Meyer*, 392 Ill. App. 3d at 35. Consequently, the Court of Claims has exclusive jurisdiction over the matter, and the circuit court properly dismissed the petition for lack of subject matter jurisdiction. See *id.* at 34.

¶ 22 In coming to this conclusion, we reject plaintiff’s argument that the circuit court had jurisdiction to grant the monetary relief his petition sought pursuant to section 14-105 of the Code of Civil Procedure (735 ILCS 5/14-105 (West 2014)), which provides: “If judgment is

entered in favor of the plaintiff, the plaintiff shall recover damages and costs.” While section 14-105 may allow for an award of damages in *mandamus* actions in some situations, it does not allow for such relief here where the recovery of the copayments from the IDOC is barred by the doctrine of sovereign immunity. See *Alden Nursing Center-Lakeland, Inc. v. Patla*, 317 Ill. App. 3d 1, 12 (2000) (holding that *mandamus* will not lie against a state agency for money judgments); *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 395 (1984) (holding that a where a plaintiff in a *mandamus* action seeks to enforce a present claim which has the potential to subject the State to liability, the suit must be brought in the Court of Claims).

¶ 23

We also reject plaintiff’s argument that the circuit court erred in not allowing him to amend his *mandamus* petition, as he requested to do in his motion to reconsider. Specifically, plaintiff argues that the circuit court should have allowed him to amend his *mandamus* petition “to request an injunction to stop IDOC’s further theft of funds.” Plaintiff contends that he had a statutory right to so amend his petition under section 14-109 of the Code of Civil Procedure.

Section 14-109 provides:

“Where relief is sought under Article XIV of this Act and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to



demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.” 735 ILCS 5/14-109 (West 2014).

¶ 24 Here, the circuit court did not determine that plaintiff pled facts in his *mandamus* petition which entitled him to relief but that he merely sought the wrong remedy. Rather, the circuit court determined that it did not have subject matter jurisdiction to order a monetary award—the only relief requested in the *mandamus* petition. As such, section 14-109 is inapplicable.

¶ 25 Additionally, we find that the circuit court did not err in disallowing plaintiff to amend his *mandamus* petition to add a claim for a permanent injunction because plaintiff did not request to amend his petition until after the court had dismissed the petition with prejudice. *Tomm’s Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14 (“A complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies.”).

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Will County is affirmed.

¶ 28 Affirmed.