

2018 IL App (1st) 170847-U

No. 1-17-0847

Order filed February 13, 2018

Fifth Division

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 DISTRICT

LULA CARWELL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 L 50370
)	
ILLINOIS COURT OF CLAIMS,)	Honorable
)	James M. McGing,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's order denying plaintiff's petition for writ of *certiorari* where she was afforded an opportunity to be heard by the Court of Claims.

¶ 2 Plaintiff, Lula Carwell, appeals an order of the circuit court granting defendant Court of Claims' motion to dismiss her complaint for writ of *certiorari*, which sought review of the Court of Claims' dismissal of her back wage compensation claim against the Illinois Department of Human Services (the Department). On appeal, plaintiff contends the circuit court erred in

denying her petition where the Court of Claims' improper dismissal of her complaint violated her due process right to be heard on the merits of her claim. For the following reasons, we affirm.

¶ 3 On July 17, 2007, plaintiff, a security therapy aide at the Elgin Mental Health Facility (Elgin), was placed on administrative leave based on criminal charges which were filed against her related to the alleged abuse and neglect of a resident. On August 15, 2007, plaintiff was suspended from her employment pending the outcome of the litigation. She was later acquitted of the criminal charges on June 16, 2009, but the Department requested a disciplinary investigation into the incident. Pursuant to the investigation, there was a finding that plaintiff violated state policies pertaining to neglect and abuse that warranted her discharge.

¶ 4 On December 17, 2010, the Illinois Civil Service Commission overturned that finding, and plaintiff was reinstated to her position at Elgin. She sought and was paid back wages by the Department for the period of July 2010 through December 2010.

¶ 5 In an attempt to recover the back wages from 2007 to 2009, plaintiff filed a claim in the chancery division of the circuit court to reduce the Commission's order to a judgment on April 10, 2013 ("the chancery case").¹ In response to her complaint, the Department moved to dismiss the complaint and submitted Elgin's business manager, Ben Newhouse's affidavit. Newhouse averred that he was authorized to pay back wages to eligible employees from the current fiscal year, but for back wage claims from prior fiscal years, the employee was required to complete and submit a back wage form to Central Management Services (CMS). He further averred that the Department paid plaintiff back wages for a period of July 2010 through December 2010, but to his knowledge, plaintiff did not submit a form for the period prior to July 2010.

¹ Plaintiff claims she made several attempts to procure her lost wages for the period between 2007 and 2009 but Elgin refused to provide documentation and issue a back wage statement. However, there is nothing in the record on appeal to support this assertion.

¶ 6 On October 18, 2013, the circuit court dismissed the claim with prejudice for lack of jurisdiction pursuant to State Lawsuit Immunity Act (Immunity Act) (745 ILCS 5/1 to 1.5 (West 2012)), finding that the Court of Claims had exclusive jurisdiction over the claim.

¶ 7 On November 14, 2013, plaintiff received an email from Newhouse, stating that he found the paperwork for her 2011 back wage claim. The email did not reference a specific time frame for back wages. Plaintiff signed the paperwork, but on November 20, 2013, she received a letter from Kathleen Davlin, the Administrator of CMS Back Wage Claims, notifying her that her claim for the period of February 2010 through June 2010 was denied as untimely because she failed to file her claim within one year of the occurrence of action giving rise to or creating the authorization for the claim. The letter noted that the order from the Commission was entered on December 17, 2010, and plaintiff's claim for back wages was dated October 2, 2013.

¶ 8 Plaintiff subsequently filed a complaint in the Court of Claims on December 16, 2013, alleging she was denied wages owed to her by the Department for the time frame between 2007 and 2009. Her complaint is not in the record. The Department filed a motion to dismiss, which is also absent from the record. It attached Davlin's affidavit, who averred, in pertinent part, that CMS denied as untimely plaintiff's claim for back wages for the period of February 2010 until June 2010 and had no record of plaintiff filing a claim for back wages for the period of July 2007 to June 2009.

¶ 9 Plaintiff responded to the motion to dismiss, although her response is not contained in the record. On January 4, 2016, the Court of Claims dismissed her suit, citing the two-year statute of limitations set forth in the Court of Claims Act (705 ILCS 505/22(h) (West 2012)). The Court of Claims found that plaintiff's cause of action would have accrued no later than the Commission's

decision on December 17, 2010, but plaintiff filed suit on December 16, 2013, more than two years later. Plaintiff filed a motion to reconsider, which is again not contained in the record. The Court of Claims denied the motion finding that plaintiff had “not raised any new facts or a misapprehension of law sufficient to warrant reconsideration.”

¶ 10 Plaintiff thereafter filed a complaint for writ of *certiorari* in the circuit court in the instant case on June 6, 2016, seeking reversal of the Court of Claims’ dismissal of her claim for back wages. She alleged the Court of Claims deprived her of her due process rights to be heard on the merits of her claim. She alleged that the Department informed her in 2013 that the document for her 2011 benefits had been found, which demonstrated that her claim was timely prepared but not processed, and she filed her claim in the Court of Claims immediately after her claim was denied. Further, plaintiff argued that the Court of Claims should have estopped the Department from pleading the statute of limitations as a defense because the Department’s misconduct in misplacing her claim form was responsible for the delay in resolving her claim for back wages. Finally, plaintiff alleged that her due process rights were violated because she was deprived of a meaningful and fair hearing on her claim.

¶ 11 The Court of Claims moved to dismiss plaintiff’s complaint, arguing that her Court of Claims complaint was filed outside the statute of limitations and, under the Court of Claims Act, the limitations period is jurisdictional. Further, the circuit court’s order in the earlier chancery case was an affirmative matter defeating plaintiff’s claims in the instant case because her claim for back wages for 2007 through 2009 was previously dismissed with prejudice. The Court of Claims additionally argued that the circuit court could only review due process violations, which did not occur here. Plaintiff responded, claiming that the Court of Claims improperly dismissed

her claim without reviewing its merits and she timely prepared her back wages form in 2011, but the document was lost until Newhouse emailed her about it in 2013.

¶ 12 The circuit court granted the Court of Claims' motion to dismiss, finding that plaintiff's due process rights were not violated simply because the Court of Claims denied her claim based on statute of limitations grounds. The court acknowledged that its review was limited to the due process violation, but further found that plaintiff's underlying claim was filed beyond the statute of limitations. This appeal followed.

¶ 13 On appeal, plaintiff contends that the circuit court erred in denying her petition for writ of *certiorari* where the Court of Claims' improper dismissal denied her the right to be heard on the merits of her claim and, therefore, she was denied her constitutional right to due process.

¶ 14 The circuit court granted the Court of Claims' motion to dismiss under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). Section 2-619.1 enables defendants to bring combined motions to dismiss to assert both that the plaintiff failed to state a claim upon which relief could be granted under section 2-615, and that the claim was filed beyond the time permitted by law and thus defeated by another affirmative matter under section 2-619. 735 ILCS 5/2-619.1 (West 2016). In reviewing a dismissal pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2615, 2-619 (West 2016)), "we accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party." *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682, 684 (2010). Dismissal under each section is proper where plaintiff alleges no set of facts that would entitle her to relief. *Id.* We review dismissal pursuant to both sections *de novo*. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 766 (2009).

¶ 15 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 (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 2016)). Section 1 of the Immunity Act (745 ILCS 5/1 (West 2016)) 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 2016)). The Act established the Court of Claims as the exclusive forum for litigants to make claims against the State (705 ILCS 505/8 (West 2016)), 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 2016)).

¶ 16 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); *Krozel v. Court of Claims*, 2017 IL App (1st) 162068, ¶ 14; *Klopfers v. Court of Claims*, 286 Ill. App. 3d 499, 505 (1997). Thus, its decisions are generally not subject to judicial review. *Klopfers*, 286 Ill. App. 3d at 502; *Krozel*, 2017 IL App (1st) 162068, ¶ 14. However, our supreme court has recognized a narrow exception via *certiorari* action to address allegations that the Court of Claims violated a party’s constitutional right to due process. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 261 (2003).

¶ 17 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. *Id.* at 260. The purpose of a writ of *certiorari* is to have the entire record of the inferior tribunal brought before the circuit court to determine, from that record alone, if the former proceeded according to the applicable law. *Krozel*, 2017 IL App (1st) 162068, ¶ 14; *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990). However, “ ‘certiorari may not be used to review the correctness of a decision by the Court of Claims based on the merits of the case before it.’ ” *Krozel*, 2017 IL App (1st) 162068, ¶ 14 (citing *Reichert*, 203 Ill. 2d at 261). The issuance of the writ is within the sound discretion of the circuit court. *Stratton*, 133 Ill. 2d at 428. 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 (1994).

¶ 18 We find the circuit court properly denied plaintiff’s complaint for writ of *certiorari*. 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. Once plaintiff filed her complaint, the Court of Claims conducted orderly proceedings during which plaintiff received adequate notice and opportunity to be heard. When defendant filed its motion to dismiss, she was allowed to file her response. Following the Court of Claims’ decision, plaintiff filed a motion for reconsideration, which the Court of Claims ultimately denied. Thus, plaintiff was given the opportunity to be heard during orderly proceedings.

¶ 19 Plaintiff acknowledges here that she conceded to the Court of Claims that her complaint was untimely filed, but argues the Court of Claims should have addressed her assertions that the

conduct by the department caused her untimely filing, raising equitable tolling of the statute of limitations. Nothing in the record demonstrates that the Court of Claims did not consider these assertions. Plaintiff's complaint to the Court of Claims, response to the motion to dismiss, and motion to reconsider, are not in the record. See *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (an appellant has the burden of providing a complete record on appeal, and any doubts arising from the incompleteness of the record are construed against the appellant). From her pleadings in the circuit court and brief on appeal, it is clear she raised these arguments to the Court of Claims. Plaintiff therefore took the opportunity to be heard on these arguments and was not denied due process.

¶ 20 Additionally, 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; *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72, 79-80 (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 (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).

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.