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2018 IL App (3d) 160549-U

Order filed January 4, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

MICHAEL MUNSON,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	La Salle County, Illinois.
)	
v.)	
)	
CITY OF LA SALLE, CITY OF OTTAWA,)	
CITY OF OGLESBY, CITY OF MENDOTA,)	Appeal No. 3-16-0549
CITY OF STREATOR, CITY OF PRINCETON,)	Circuit No. 15-MR-208
LA SALLE COUNTY, BUREAU COUNTY,)	
PUTNAM COUNTY, TRI-COUNTY DRUG)	
ENFORCEMENT NARCOTICS TEAM,)	
ILLINOIS STATE POLICE,)	
)	
Defendants)	The Honorable
)	Eugene P. Daugherty,
(Illinois State Police, Defendant-Appellee).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed detinue complaint for lack of subject matter jurisdiction where complaint was filed against state agency and Court of Claims has exclusive jurisdiction.

¶ 2 Plaintiff, Michael Munson, filed a detinue complaint against defendants in the La Salle County Circuit Court, seeking to recover his silver coins, which were seized by the Illinois State Police pursuant to a warrant. Thereafter, the trial court entered an order, at plaintiff's request, dismissing all defendants but the Illinois State Police. The Illinois State Police filed a motion to dismiss, arguing that the circuit court lacked subject matter jurisdiction over plaintiff's claim. The trial court granted the motion and dismissed plaintiff's complaint with prejudice. Plaintiff appeals the dismissal of his complaint. We affirm.

¶ 3 **FACTS**

¶ 4 On June 3, 2002, the Illinois State Police Drug Task Force executed a search warrant on plaintiff's home in Ottawa. Inside plaintiff's home, the Illinois State Police found a safe containing 155 Troy one-ounce silver coins. They seized and inventoried the coins, along with other items from plaintiff's home.

¶ 5 Criminal proceedings were instituted against plaintiff. Those proceedings ended, and no forfeiture proceedings were filed with respect to the silver coins. Plaintiff filed a motion in the criminal proceedings for return of his property. All property was returned to plaintiff except for the silver coins. According to the La Salle County State's Attorney, the coins could not be located.

¶ 6 In May 2015, plaintiff filed his detinue complaint in the La Salle County Circuit Court against defendants seeking the return of his silver coins. The complaint alleged that he was the rightful owner of the coins, which he acquired through inheritance from his father. Plaintiff sought return of the coins, so he could give them to his son. In his request for relief, plaintiff sought entry of "an order returning the 155 Troy ounce silver coins or in the alternative that the Defendants be ordered to pay the price of the coins, costs and any other relief ***."

¶ 7 Through discovery, plaintiff learned that the Illinois State Police never transferred the coins to any other defendant. On plaintiff’s request, the trial court entered an order dismissing all defendants except the Illinois State Police in March 2016.

¶ 8 In July 2016, the Illinois State Police filed a motion to dismiss plaintiff’s complaint, arguing that the trial court lacked subject matter jurisdiction over plaintiff’s claim based on sovereign immunity. The trial court granted the motion and dismissed plaintiff’s complaint with prejudice for lack of jurisdiction, finding that plaintiff’s only avenue for relief was the Court of Claims. Plaintiff filed a motion to reconsider, which the trial court denied.

¶ 9 ANALYSIS

¶ 10 Section 2-619(a)(1) of the Code of Civil Procedure (Code) provides for the involuntary dismissal of an action based on lack of subject matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2014). We review *de novo* the grant or denial of a motion to dismiss under section 2-619(a)(1). *Shirley v. Harmon*, 405 Ill. App. 3d 86, 90 (2010).

¶ 11 I. Sovereign Immunity

¶ 12 In 1870, sovereign immunity became a constitutional doctrine in Illinois. *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952, ¶ 25. Article IV, section 26, of the Illinois Constitution of 1870 provided: “The state of Illinois shall never be made defendant in any court of law or equity.” Ill. Const. 1870, art. IV, § 26.

¶ 13 One hundred years later, the Illinois Constitution of 1970 abolished sovereign immunity, “[e]xcept as the General Assembly may provide by law.” Ill. Const. 1970, art. XIII, § 4. In response, the General Assembly, pursuant to its constitutional authority, passed the State Lawsuit Immunity Act (Act) (745 ILCS 5/0.01 *et seq.* (West 2014)). *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952, ¶ 28. Section 1 of the Act provides that, except as provided

in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2004)) and other specified statutes, “the State of Illinois shall not be made a defendant or party in any court.” 745 ILCS 5/1 (West 2014). The Court of Claims Act constitutes a partial waiver of sovereign immunity and provides that the Court of Claims possesses exclusive jurisdiction to hear and determine various matters, including “[a]ll claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit” and, with certain exceptions, limits a claimant’s damages. 705 ILCS 505/8(d) (West 2014).

¶ 14 Sovereign immunity extends to suits against an agency or department of the State of Illinois. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34 (2009). The Illinois State Police is a state agency. See 20 ILCS 5000/10 (West 2014).

¶ 15 If sovereign immunity applies, the circuit court lacks subject matter jurisdiction to hear the claim. *Meyer*, 392 Ill. App. 3d at 34. A court that lacks subject matter jurisdiction possesses only the power to dismiss the action. *Id.* at 35.

¶ 16 When a plaintiff’s suit is based on a claim that has the potential to subject the State to liability, it must be brought in the Court of Claims. *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 395 (1984). Jurisdiction of the Court of Claims is not limited to monetary claims. *G. H. Sternberg & Co. v. Bond*, 30 Ill. App. 3d 874, 878 (1975). A plaintiff may pursue remedies other than money in the Court of Claims. *Id.*

¶ 17 The gist of a detinue action is that the defendant is wrongfully in possession of personal property which belongs to the plaintiff. *Gary Acceptance Corp. v. Napilillo*, 86 Ill. App. 2d 257, 261 (1967). A successful plaintiff is entitled to the return of his property or, if it cannot be found, a judgment in the amount of the property’s value. *Mineika v. Union National Bank of Chicago*, 30 Ill. App. 3d 277, 283 (1975). Detinue is similar to replevin in that both actions give the

plaintiff his property or, alternatively, its value. See *Robinson v. Peterson*, 40 Ill. App. 132, 134 (1890). Both detinue and replevin are common-law torts. See 77 C.J.S. *Replevin* § 1 (2017).

¶ 18 Here, plaintiff filed his detinue action in circuit court against a state agency, the Illinois State Police, seeking return of his silver coins, or alternatively, the cash value of them. Because plaintiff’s claim has the potential to subject the State to liability, it must be brought in the Court of Claims. See *Ellis*, 102 Ill. 2d at 395. The trial court properly dismissed plaintiff’s complaint for lack of subject matter jurisdiction. See *Meyer*, 392 Ill. App. 3d at 35.

¶ 19 II. Constitutional Considerations

¶ 20 Plaintiff argues that because the Court of Claims has ruled that a writ of replevin, which is similar to a writ of detinue, is not available in the Court of Claims (see *A-Reliable Auto Parts & Wreckers, Inc. v. The State of Illinois*, 54 Ill. Ct. Cl. 455, 456 (2001)), he will be denied his constitutional rights of free access to the courts and due process if he is not allowed to pursue his detinue claim in circuit court.

¶ 21 A. Free Access

¶ 22 Article I, section 12 of the Illinois Constitution, also known as the free access clause, provides: “Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.” Ill. Const. 1970, art. I, § 12.

¶ 23 This section does not create a constitutional right to a certain remedy, or mandate that a certain remedy be provided in any specific form; rather, it merely expresses a general statement of philosophy. *Schultz v. Lakewood Elec. Corp.*, 362 Ill. App. 3d 716, 724 (2005) (citing *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill.2d 64, 83 (2002)). Section 12 “traditionally has been construed as a goal as opposed to a requirement of a specific remedy.” *Healy v. Owens–*

Illinois, Inc., 359 Ill.App.3d 186, 197 (2005). This section “only requires there be some remedy for an alleged wrong.” *Martinez v. Department of Public Aid*, 348 Ill.App.3d 788, 794 (2004).

¶ 24 A plaintiff seeking redress from the State is only permitted to proceed in the Court of Claims for whatever relief he may obtain there. *Magna Trust Co. v. Department of Transportation, Division of Water Resources*, 234 Ill. App. 3d 1068, 1072 (1992). Even if the Court of Claims lacks authority to grant the specific remedy or relief sought by the plaintiff, the plaintiff cannot proceed with his action in circuit court. See *id.* at 1071-72.

¶ 25 Here, the relief plaintiff requested in his detinue complaint was the return of his coins, or alternatively, their value. Even if plaintiff is unable to obtain a writ of detinue in the Court of Claims, he can still obtain money damages. Therefore, he is not left without a remedy, and the free access clause is not violated. See *Martinez*, 348 Ill.App.3d at 794.

¶ 26 B. Due Process

¶ 27 “Requirements of due process are met by conducting an orderly proceeding in which a party receives adequate notice and an opportunity to be heard.” *Reichert v. Court of Claims of State of Illinois*, 203 Ill. 2d 257, 261 (2003). “The General Assembly in providing for the Court of Claims and in establishing procedures for it intended to provide an orderly process for the presentation and deciding of claims against the State.” *Seifert v. Standard Paving Co.*, 64 Ill. 2d 109, 121 (1976), *overruled on other grounds by Rossetti Contracting Co., Inc. v. Court of Claims*, 109 Ill. 2d 72 (1985). Requiring claims against the State to be pursued in the Court of Claims does not violate the due process clause. *Mora v. State*, 68 Ill. 2d 223, 228 (1977); *Seifert*, 64 Ill. 2d at 121. Due process is violated only if a person is deprived of all remedies to enforce an existing right. *Schultz*, 362 Ill. App. 3d at 725 (citing *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930)).

¶ 28 Plaintiff's ability to pursue an action in the Court of Claims affords him due process. See *Seifert*, 64 Ill. 2d at 121. Even though the Court of Claims Act may limit the relief plaintiff seeks, requiring him to file his complaint in the Court of Claims does not violate his due process rights because the Court of Claims provides him an avenue through which he may obtain relief. See *id.*; *Mora*, 68 Ill. 2d at 228.

¶ 29 C. Federal Authority

¶ 30 Finally, plaintiff argues that he is entitled to bring his claim in circuit court based on language contained in a federal district court case in which the court stated: “[U]nder Illinois law, a non-defendant seeking the return of seized property has an adequate remedy at law by way of a replevin action.” *Manos v. Caira*, 162 F. Supp. 2d 979, 991 (N.D. Ill. 2001). While federal district court decisions can provide guidance and serve as persuasive authority, we are not bound to follow them. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 355 Ill. App. 3d 352, 360 (2005). Simply because a federal court stated that a party may pursue a replevin action against the State does not entitle plaintiff, who was a defendant in criminal proceedings and had property seized pursuant to a lawful warrant, to pursue a detinue claim against the Illinois State Police in circuit court.

¶ 31 CONCLUSION

¶ 32 For the reasons set forth above, plaintiff's detinue action was properly dismissed by the circuit court for lack of jurisdiction. Plaintiff must pursue his claim in the Court of Claims.

¶ 33 The judgment of the circuit court of La Salle County is affirmed.

¶ 34 Affirmed.