

**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).

2018 IL App (4th) 160601-U

NO. 4-16-0601

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 9, 2018

Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

WALTER J. BRZOWSKI,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
ILLINOIS PRISONER REVIEW BOARD,	)	No. 15MR179
W. FOX, and J. PATE,	)	
Defendants	)	Honorable
	)	John M. Madonia,
(Illinois Prisoner Review Board,	)	Judge Presiding.
Defendant-Appellee).	)	

JUSTICE KNECHT delivered the judgment of the court.  
Justices Steigmann and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Despite plaintiff’s failure to serve all named defendants with notice of his complaint, this court has appellate jurisdiction to review the trial court’s order; the trial court’s language in the dismissal order indicates the court dismissed plaintiff’s complaint against all defendants.

(2) The trial court did not err in dismissing, under section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2014)), plaintiff’s petition for cause of civil tortious action, as the court of claims has exclusive jurisdiction to hear plaintiff’s claim seeking damages against the Illinois Prisoner Review Board.

¶ 2 In March 2015, plaintiff, Walter J. Brzowski, filed his petition for cause of civil tortious action against defendants. Plaintiff asserted defendants W. Fox and Joseph Pate, parole agents, overreached their authority by forcing plaintiff to comply with the Electronic Home Detention Law (730 ILCS 5/5-8A-1 *et seq.* (West 2012)) when home detention and electronic

monitoring were not ordered by defendant, Illinois Prisoner Review Board (Board). Plaintiff further asserted Fox and Pate acted in a retaliatory manner to his filing grievances regarding their conduct and conducted a warrantless search of his home. Plaintiff requested \$48,800 in damages.

¶ 3 In June 2015, the Board filed a combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2014)), arguing, in part, the trial court lacked jurisdiction over plaintiff's complaint. The Board emphasized plaintiff's claim is one for damages against the State, which may be pursued only in the court of claims. The trial court agreed and dismissed the complaint. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In his complaint, plaintiff asserted he was released for a four-year term of mandatory supervised release on September 10, 2013. At that time, he was placed "under some challengeable parole stipulations 'ordered' onto him by the [Board]." These stipulations were originally put into place in May 2013 and included "global positional system electronic surveillance." Upon his release from prison, plaintiff went to the approved parole site, his mother's residence in Chicago, Illinois. On September 11, 2013, Fox arrived at the residence and "immediately started overstepping his limited statutory authority." Fox and Pate forced plaintiff to comply with electronic monitoring, a parole condition not ordered by the Board. Fox forcibly instructed plaintiff, with threats of returning to prison, not to leave his mother's residence without permission. Fox informed plaintiff he must submit requests for permission to leave the residence no later than 72 hours before he desired to leave. Plaintiff was forced to comply due to fear of returning to prison.

¶ 6 According to the complaint, on September 12, 2013, the electronic-monitoring

device was installed on plaintiff's left leg. Plaintiff informed Fox and Pate of all his movement. However, on September 14, 2013, Fox called plaintiff and alleged there had been some improper prior movement. Fox became irate and unprofessional. Fox "arrogantly ignored" plaintiff's explanations and "bullied" plaintiff to an in-person meeting on September 19, 2013. At that meeting, plaintiff was placed in hand restraints and moved to a holding room. Fox and another agent intimidated and threatened plaintiff. Plaintiff was released to his mother's residence.

¶ 7 Plaintiff further alleged he, on September 20, 2013, filed a complaint regarding Fox's conduct. On September 24, 2013, Pate called plaintiff and harassed him with another charge of improper movement. On October 1, 2013, while the grievance complaint was pending, Pate appeared at plaintiff's mother's house to conduct a search check. During the search, the parole agents discovered a defunct rifle. Plaintiff was returned to prison that day.

¶ 8 In the complaint, plaintiff asserted the Cook County circuit court found him not guilty of the charge of unlawful use of a weapon in October 2014. Pate's and Fox's retaliatory and spiteful conduct caused him to be improperly imprisoned. Plaintiff sought \$48,800 (\$100 for each of his days in prison), as well as punitive damages.

¶ 9 The Board moved to dismiss the complaint in June 2015. The Board argued, in part, dismissal was warranted under section 2-619(a)(1) of the Civil Code (735 ILCS 5/2-619(a)(1) (West 2014)), as the trial court lacked subject-matter jurisdiction over plaintiff's claim. The Board maintained plaintiff seeks damages from the State. According to the Board, the court of claims has exclusive jurisdiction to hear and determine "all claims against the State for damages sounding tort \*\*\*." 705 ILCS 505/8(d) (West 2012).

¶ 10 The trial court agreed with the Board, finding plaintiff's claim must be addressed

in the court of claims. When addressing the Board’s other grounds for dismissal, such as the alleged failure to state a cause of action, the court concluded “the parole agents were performing acts within their authority.” The court granted the Board’s motion to dismiss.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Appellate Jurisdiction

¶ 14 The Board initially argues plaintiff’s appeal must be dismissed for lack of appellate jurisdiction, as the order is not final for purposes of appeal. The Board maintains plaintiff, despite naming Fox and Pate as defendants, failed to serve summons on either. As a result, the Board contends, when the trial court granted the Board’s motion to dismiss, the action was not dismissed against Fox and Pate. Citing *Zak v. Allson*, 252 Ill. App. 3d 963, 965, 625 N.E.2d 160, 161-62 (1993), the Board argues the judgment adjudicated the rights and liabilities of fewer than all parties and is not appealable absent a finding of no just reason for delaying appeal under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 15 Final judgments by circuit courts in civil cases are appealable as of right. Ill. S. Ct. Rule 301 (eff. Feb. 1, 1994). This court gains jurisdiction of such final judgments when a notice of appeal is final. *Id.* When, however, a final judgment has been made to fewer than all parties in an action, this court does not acquire jurisdiction until the trial court makes a special finding of no just reason for delaying appeal or enforcement under Rule 304(a). Ill. S. Ct. Rule 304(a) (eff. Mar. 8, 2016).

¶ 16 In *Zak*, 252 Ill. App. 3d at 965, the appellate court found it lacked jurisdiction over an appeal when one of the defendants had not been served. The *Zak* trial court considered a

breach-of-contract action against two named defendants, Mike Allson and Anthony Tinghino. *Id.* at 963. The plaintiff effectuated service of process on Tinghino but failed to serve Allson. *Id.* at 963-64. Tinghino filed a motion to dismiss based on *res judicata*, which the trial court granted. *Id.* at 964. On appeal, the First District found it lacked jurisdiction and dismissed the appeal. *Id.* at 965. The court found “unclear” Allson’s connection to the earlier lawsuit, the basis for Tinghino’s motion to dismiss, and noted Allson had not been served. *Id.* Concluding the trial court had not made a special finding under Rule 304(a), the court found the action had not been terminated to Allson and it lacked jurisdiction to review the order. *Id.*

¶ 17 Later decisions show the failure to serve all defendants is not detrimental to appellate jurisdiction if the record shows the trial court’s decision was final to all parties. For example, in *Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Casualty Co.*, 2013 IL App. (1st) 113038, ¶ 14, 988 N.E.2d 670, the court concluded “[t]he trial court’s decisive word choice, ‘this case is dismissed,’ ” and the expressed finding the unserved defendant was not a proper party defendant, confirmed the trial court’s intent to dismiss the complaint in its entirety to all named defendants. The First District concluded it had jurisdiction over this appeal under Rule 301.

¶ 18 *Zak* and *Byer Clinic* are consistent. As it did in *Byer Clinic*, the reviewing court looked not just at the fact the defendants were not all served but as to the effect of the motion to dismiss. Here, we find the trial court dismissed the entire complaint. Fox and Pate were parole agents “performing acts within their authority” and the claim for monetary damages—damages sought from all three defendants—were to be addressed in the court of claims. The court then held: “This *cause* is dismissed with prejudice \*\*\*.” (Emphasis added.) We have jurisdiction over

plaintiff's appeal under Rule 301.

¶ 19 B. Trial Court's Subject-Matter Jurisdiction

¶ 20 The Board argues the trial court lacked subject-matter jurisdiction over plaintiff's claim, asserting, because plaintiff's complaint is one against the State, only the court of claims has jurisdiction. The Board contends the case, therefore, must be dismissed under section 2-619(a)(9) of the Civil Code (735 ILCS 5/2-619(a)(9) (West 2014)).

¶ 21 In granting the State's motion to dismiss, the trial court made multiple rulings on appeal. The court noted the Board's motion to dismiss was filed after the appropriate time period had expired, but it declined to sanction the Board by striking the pleading. The court found plaintiff's allegations failed to state a claim upon which relief may be granted. In addition, the court concluded plaintiff's claim for monetary damages should be addressed in the court of claims.

¶ 22 We begin with the trial court's finding the court of claims has jurisdiction over plaintiff's complaint and the Board's argument the trial court, therefore, lacked subject-matter jurisdiction. When considering a motion to dismiss under section 2-619, a court must accept as true all well-pleaded facts and grant the motion when it appears no set of facts may be proved allowing the plaintiff to recover. *Moon v. Rhode*, 2016 IL 119572, ¶ 15, 67 N.E.3d 220. We review orders granting section 2-619 motions to dismiss *de novo*. *Id.* If we find the trial court lacked jurisdiction, we need not resolve or consider the other arguments on appeal. See *Swope v. Northern Illinois Gas Co.*, 221 Ill. App. 3d 241, 243, 581 N.E.2d 819, 821 (1991) (holding "[w]hen a trial court lacks subject-matter jurisdiction, the only thing it has the power to do is dismiss the action"); see also *Meyer v. The Department of Public Aid*, 392 Ill. App. 3d 31, 35,

912 N.E.2d 690, 693 (2009) (“Because we find that the circuit court properly dismissed the plaintiff’s claim against the Department for lack of subject[-]matter jurisdiction, we cannot address the plaintiff’s class[-]action arguments on appeal.”).

¶ 23           The General Assembly determined the court of claims possesses exclusive subject-matter jurisdiction over monetary claims against the state. *R.L. Vollintine Construction, Inc. v. Illinois Capital Development Board*, 2014 IL App (4th) 130824, ¶ 27, 19 N.E.3d 741. In determining whether an action is one against the State for purposes of the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2014)), the formal identification of the parties in the record is not dispositive; “substance takes precedence over form.” *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 44, 32 N.E.3d 583. The question of whether an action is one against the State that must be brought in the court of claims turns on the issues involved and the relief sought. *Id.* ¶ 45. Actions may be brought in the circuit court against state officers who perform illegally or who act under authority the officer does not have. *Id.* ¶ 46. This exception is aimed “at situations where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids.” *Id.* ¶ 47.

¶ 24           Here, the action against the Board for money damages is an action against the State that must be brought in the court of claims. The only conduct of the Board in plaintiff’s complaint is the implementation of “challengeable” stipulations. In his complaint, plaintiff made no assertion or explanation as to the reasons the stipulations are “challengeable.” There are thus no well-pled allegations the Board was acting in a manner which the law forbids. The complaint’s allegations of misconduct are directed toward Pate and Fox, who allegedly acted outside their authority in engaging in retaliatory conduct and in a warrantless search. Pate and

