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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) 170010-U

NO. 4-17-0010

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 12, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

|                                                  |   |                        |
|--------------------------------------------------|---|------------------------|
| WALTER J. BRZOWSKI,                              | ) | Appeal from            |
| Plaintiff-Appellant,                             | ) | Circuit Court of       |
| v.                                               | ) | Sangamon County        |
| DEPARTMENT OF CORRECTIONS,                       | ) | No. 15MR0353           |
| CHRISTOPHER CASON, JULIA F. BERNALL, and         | ) |                        |
| ANASTASIA WIERMA,                                | ) |                        |
| Defendants                                       | ) | Honorable              |
|                                                  | ) | Rudolph M. Braud, Jr., |
| (Department of Corrections, Defendant-Appellee). | ) | Judge Presiding.       |

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court’s dismissal of the case for lack of subject matter jurisdiction.

¶ 2 On March 30, 2015, plaintiff, Walter J. Brzowski, filed a civil tort action for recoupment of loss in Sangamon County. Brzowski v. Department of Corrections, No. 15-MR-353 (Cir. Ct. Sangamon County). The State filed a motion for extension of time on May 29, 2015, and a motion to dismiss combined with a memorandum of law on June 15, 2015. On June 6, 2016, defendant filed a petition for *habeas corpus* release. Defendant responded the petition should be denied. In September 2016, plaintiff filed a document titled “petition for leave upon a stagnated case.” Defendant responded the petition should be denied, and a phone hearing was held on December 6, 2016. The trial court dismissed plaintiff’s claims with prejudice, stating (1)

plaintiff failed to allege facts sufficient to state a cause of action, (2) plaintiff's claim against the Department of Corrections (DOC) is barred by the doctrine of sovereign immunity, (3) plaintiff's petition for *habeas corpus* release is barred by *res judicata* and collateral estoppel, as a ruling on the merits has been reached in the Third District Appellate Court, and (4) the circuit court lacked subject-matter jurisdiction over the claim because tort claims seeking money damages are within the exclusive jurisdiction of the court of claims. *Brzowski v. Department of Corrections*, No. 15-MR-0353 (Cir. Ct. Sangamon County). Plaintiff appeals, arguing (1) defendant lacked authority over him, (2) his imprisonment was illegal, (3) his prior convictions were misclassified, and (4) defendant's July 19, 2015, motion to dismiss was untimely. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

### A. Will County Case No. 07-OP-0595

¶ 5

This case stems from an order of protection barring plaintiff from contacting his ex-wife and two sons. On April 12, 2007, Will County issued the order of protection in Will County case No. 07-OP-0595.

¶ 6

### B. Will County Case Nos. 10-CF-1923 and 10-CF-2494

¶ 7

In 2010, plaintiff was charged in two separate cases for violating the order of protection. In 2011, Will County case No. 10-CF-1923, plaintiff was convicted of violating the order of protection and the trial court sentenced him to two concurrent one-year sentences and a four-year mandatory supervised release (MSR) term. Also in 2011, Will County case No. 10-CF-2494, plaintiff was convicted of violating the order of protection, and the trial court sentenced him to two concurrent three-year sentences and a four-year MSR term. The two sentences were to run consecutively for a total of four years' imprisonment and MSR.

¶ 8 In September 2013, plaintiff completed both terms of imprisonment and was released from prison to begin his four-year MSR term. He was arrested 20 days later for multiple MSR violations, as he was unable to find a suitable host site, and he was remanded to DOC to serve the remainder of his MSR term.

¶ 9 In 2015, plaintiff appealed both convictions, and the cases were consolidated. On May 18, 2015, the Third District reversed plaintiff's 2011 convictions, holding the trial court failed to properly admonish plaintiff of his right to waive counsel and remanded the cases for new trials. *People v. Brzowski*, 2015 IL App (3d) 120376-U (May 18, 2015) (unpublished order under Supreme Court Rule 23). On remand, plaintiff pled guilty to violating the order of protection at issue in Will County case No. 10-CF-1923. On July 22, 2015, the trial court sentenced him to three years' imprisonment and a four-year MSR term.

¶ 10 In June 2015, plaintiff filed a petition for *habeas corpus* in the circuit court of Will County, arguing he was entitled to immediate release because he had completed serving his time from the 2015 sentencing order in case No. 10-CF-1923. In March 2016, the Will County Circuit Court dismissed the petition. In June 2017, the appellate court reversed, finding plaintiff had served his time, and the court ordered his immediate release. *Brzowski v. Pierce*, 2017 IL App (3d) 160228-U (June 8, 2017) (unpublished order under Supreme Court Rule 23). He was released from DOC on July 20, 2017.

¶ 11 C. Sangamon County Case No. 15-MR-353

¶ 12 In March 2015, plaintiff commenced this action, Sangamon County case No. 15-MR-0353, while an inmate at the Pinckneyville Correctional Center. Plaintiff entitled his complaint "civil tort action for recoupment of loss" and alleged on July 25, 2013, while an

inmate at the East Moline Correctional Center, he was given a disciplinary ticket for unauthorized movement. He appeared for an adjustment committee hearing on the charge.

¶ 13 Named defendants Bernall and Wierma were present at the hearing. Plaintiff asserts they “strongly appeared to” deprive plaintiff of his due-process rights by not allowing him to present a defense to the charge. An argument between the three ensued during which time plaintiff threatened to enjoin Bernall and Wierma in another case. Bernall issued plaintiff another disciplinary ticket for threat and intimidation.

¶ 14 Plaintiff appeared for another adjustment committee hearing in July 2013 to address the charges stemming from Bernall’s ticket. Named defendant Cason was a committee member. The committee found plaintiff guilty of the charge and included segregation as part of the disciplinary action. Plaintiff was taken to segregation on July 31, 2013, and remained there until September 10, 2013.

¶ 15 Plaintiff alleged he gave the named defendants “notice” to inform them they lacked “lawful authority” over him because his convictions were void. He claimed the trial judge had no authority over him or his actions because he had sought to have the judge removed from the case. Plaintiff sought \$4200 in damages for time spent in segregation as a result of the “void” tickets. He further alleged the named defendants conspired together to improperly retaliate against him. Finally, because plaintiff argued he was improperly imprisoned, he sought to be released from DOC.

¶ 16 Defendant was served on April 29, 2015. Bernall, Wierma, and Cason were named as defendants but never served and thus are not parties to this action. Defendant’s responsive pleading was due on May 29, 2015, pursuant to Illinois Supreme Court Rule 181 (Ill. S. Ct. R. 181 (eff. Jan. 4, 2013)). On May 29, 2015, defendant filed a motion for an extension of

time, requesting a 21-day extension through June 19, 2015, to file a responsive pleading. The circuit court did not rule on the motion before June 19, 2015, when defendant filed its motion to dismiss plaintiff's complaint. Plaintiff did not respond to either the motion for extension of time or the motion to dismiss.

¶ 17 On June 6, 2016, defendant filed a petition for *habeas corpus* release within Sangamon County case No. 15-MR-0353. Defendant responded the petition should be denied. In September 2016, plaintiff filed a document titled "petition for leave upon a stagnated case." Defendant responded the petition should be denied.

¶ 18 On December 6, 2016, a phone conference hearing was held on defendant's motion to dismiss. Plaintiff orally objected to the motion to dismiss on the basis it was untimely. In December 2016, the circuit court ruled on the motion for extension of time and the motion to dismiss as well as the petition for *habeas* release and for leave upon a stagnated case. It held it had the authority to hear and grant defendant's motion for extension of time. It dismissed plaintiff's claims on several grounds: (1) failure to state a claim upon which relief can be granted (735 ILCS 5/2-615 (West 2014)), (2) issues of sovereign immunity, (3) issues of *res judicata* and collateral estoppel, and (4) lack of subject-matter jurisdiction. The trial court dismissed plaintiff's *habeas* complaint and tort claims with prejudice.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, plaintiff challenges (1) the dismissal of his *habeas* complaint in Sangamon County case No. 15-MR-0353 and (2) the Sangamon County circuit court's dismissal of his tort claims relating to time spent serving his MSR term in Will County case No. 10-CF-

1923. Defendant asserts plaintiff's release from DOC custody relating to Will County case No. 10-CF-1923 moots any request for release. We address these issues in turn.

¶ 22 A. Release from DOC

¶ 23 Plaintiff asks to be released from DOC custody, but defendant asserts this claim is moot. An issue is moot if “no actual controversy exists or when events have occurred that make it impossible for the reviewing court to render effectual relief.” *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 2016 IL 118129, ¶ 10, 51 N.E.3d 788. “ ‘As a general rule, courts of review in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.’ ” *Id.* (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998)).

¶ 24 Plaintiff argued he should be released from DOC custody because he served all of the MSR time remaining from the 2015 sentencing order in Will County case No. 10-CF-1923. This issue was addressed in *Brzowski v. Pierce*, 2017 IL App (3d) 160228-U, where the Third District agreed plaintiff had served his time for both his original sentence and MSR term and ordered his release. Plaintiff was released from DOC custody on June 20, 2017. Plaintiff, in his reply, agrees he has been released. Because this appeal presents no live case or controversy on this issue and plaintiff was granted the relief he sought, we need not address this issue as it is moot.

¶ 25 B. Tort Claims

¶ 26 Defendant filed a motion to dismiss plaintiff's tort claim under section 2-619.1 of the Illinois Code of Civil Procedure, arguing the circuit court did not have jurisdiction over the cause of action. 735 ILCS 5/2-619.1 (West 2014). The circuit court dismissed on four bases: (1) failure to state a claim for which relief can be granted, (2) issues of sovereign

immunity, and (3) lack of subject-matter jurisdiction. On appeal, plaintiff contends the circuit court erred in dismissing his complaint with prejudice.

¶ 27

### 1. *Standard of Review*

¶ 28

A motion to dismiss under Section 2-619 “admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action.” *Kean v. Wal-mart Stores, Inc.*, 235 Ill. 2d 351, 361, 919 N.E.2d 926, 931-32 (2009). This court reviews a circuit court’s grant of a motion to dismiss under section 2-619 *de novo*. *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 18, 977 N.E.2d 887.

¶ 29

### 2. *Dismissal for Lack of Subject-Matter Jurisdiction*

¶ 30

The Court of Claims Act confers exclusive jurisdiction of the court of claims to hear and determine “[a]ll claims against the State for damages in cases sounding in tort.” 705 ILCS 505/8(d) (West 2014). “The determination of whether an action is a suit against the State, and thus one that must be brought in the Court of Claims, turns upon an analysis of the issues involved and relief sought.” *Walker v. Rogers*, 272 Ill. App. 3d 86, 88, 650 N.E.2d 272, 273-74 (1995). An action is against the state when a “judgment for the plaintiff would operate to control the actions of the State or subject it to liability.” *Currie v. Lao*, 148 Ill. 2d 151, 158, 592 N.E.2d 977, 980 (1992). When a plaintiff seeks monetary damages payable out of state funds, the action must be brought in the court of claims. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 35, 912 N.E.2d 690, 693 (2009).

¶ 31

Defendant, the Department of Corrections, is a department of the State. Plaintiff’s tort claim seeks: (1) a finding of liability against defendant and (2) monetary damages against defendant would be payable out of state funds. Plaintiff’s complaint is explicitly titled a “civil tort action for recoupment of loss.” Allegations of plaintiff’s tort claim and the relief sought give

rise to the conclusion plaintiff's cause of action is against the state and thus must be brought in the court of claims. Because the court of claims has exclusive jurisdiction over such matters, the trial court properly dismissed plaintiff's claim for lack of subject-matter jurisdiction.

¶ 32 The circuit court's judgment should be affirmed. The circuit court correctly stated it lacked subject-matter jurisdiction over plaintiff's tort claim because the court of claims has exclusive jurisdiction to adjudicate such claims.

¶ 33 *3. Remaining Issues*

¶ 34 Because the circuit court properly dismissed plaintiff's claim for lack of subject-matter jurisdiction, we need not reach a decision on (1) failure to state a claim upon which relief can be granted, (2) issues of sovereign immunity, or (3) issues of *res judicata* and collateral estoppel.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's dismissal of the plaintiff's *habeas* complaint and tort claim in Sangamon County case No. 15-MR-0353.

¶ 37 Affirmed.