

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) 170491-U

NO. 4-17-0491

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 23, 2018

Carla Bender
4th District Appellate
Court, IL

GERALD JONES,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
ELDON KENNEL, RANDY PFISTER, and THE)	No. 15MR12
ILLINOIS DEPARTMENT OF CORRECTIONS,)	
Defendants-Appellees.)	The Honorable
)	Jennifer Hartmann Bauknecht,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s order in which it concluded that the court of claims had exclusive jurisdiction.

¶ 2 In February 2015, plaintiff, Gerald Jones, filed a complaint for injunctive relief and monetary damages against the Illinois Department of Corrections and two of its employees (defendants). In January 2016, the circuit court granted the State’s motion to dismiss after concluding that the court of claims had exclusive jurisdiction. 705 ILCS 505/8(d) (West 2016). Plaintiff appeals, arguing that the circuit court had jurisdiction because he requested injunctive relief. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is a prisoner in the Illinois Department of Corrections. In February 2015, plaintiff filed a complaint for injunctive relief and monetary damages against defendants. Count

I, which alleged that defendants violated his constitutional rights when they denied his request for a kosher diet, access to a rabbi, and a Jewish calendar, sought injunctive relief and compensation of “\$500[] Per Day From All Defendant[s] jointly and severally as law allows including leave to obtain punitive damages[.]” Count II alleged that defendants violated his rights under the Religious Freedom Restoration Act and requested damages “against all defendants jointly and severally where [the] law allows and cost and leave to seek punitive damages.” Count III alleged libel and defamation and sought compensation of “\$2,000 and leave to seek punitive damages[.]” Count IV alleged retaliation and requested “\$8,000 and injunction [*sic*] relief against all defendants *** and leave to seek punitive damages where [the] law so allows.” Count V alleged conspiracy and requested “\$8,000 against all the defendants *** and leave to seek punitive damages.” Count VI alleged that his eighth amendment rights were violated and sought \$8,000, leave to seek punitive damages, and injunctive relief. Finally, count VII alleged intentional infliction of emotional distress and requested “\$8,000 against all defendants *** and leave to seek and obtain punitive damages.”

¶ 5 In May 2015, the State filed a motion to dismiss in which it argued that plaintiff had failed to allege sufficient facts to support any cognizable claim. 735 ILCS 5/2-615 (West 2014). In June 2015, plaintiff filed a motion for summary judgment requesting injunctive relief and a jury trial for the determination of the amount of his monetary damages. 735 ILCS 5/2-1005 (West 2014).

¶ 6 In January 2016, the circuit court concluded that the court of claims had exclusive jurisdiction and therefore granted the State’s motion to dismiss. In June 2017, the circuit court denied plaintiff’s motion to reconsider.

¶ 7 This appeal followed.

¶ 8

II. ANALYSIS

¶ 9 Plaintiff appeals, arguing the circuit court had jurisdiction because he requested injunctive relief. We disagree and affirm.

¶ 10

A. The Applicable Law

¶ 11 “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, 831 N.E.2d 1159, 1163 (2005). The purpose of this doctrine is to protect the state from interference with the performance of governmental functions and “to preserve and protect State funds.” *Toth v. England*, 348 Ill. App. 3d 378, 387, 809 N.E.2d 702, 709 (2004).

¶ 12 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 established sovereign immunity through the enactment of the State Lawsuit Immunity Act (Immunity Act). 745 ILCS 5/1 (West 2016). As relevant to this case, the Immunity Act provides that the State “shall not be made a defendant or party in any court” except as provided in the Court of Claims Act (Claims Act) (705 ILCS 505/1 *et seq.* (West 2016)). 745 ILCS 5/1 (West 2016).

¶ 13 The Claims Act provides that the court of claims “shall have exclusive jurisdiction to hear and determine *** [a]ll claims against the State for damages in cases sounding in tort[.]” 705 ILCS 505/8(d) (West 2016). “This language is clear and unambiguous; all claims against the state for damages sounding in tort must be brought in the Court of Claims—no other tribunal, including our circuit courts, has jurisdiction of any such claim.” *Fritz v. Johnston*, 209 Ill. 2d 302, 310, 807 N.E.2d 461, 466 (2004). The State’s sovereign immunity extends to suits against a state agency or department, and when sovereign immunity applies, the circuit court

lacks jurisdiction to review the claim. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34, 912 N.E.2d 690, 693 (2009). However, the circuit court has jurisdiction when a plaintiff requests injunctive relief to prevent unauthorized or unconstitutional conduct by the State or to compel the State's compliance with legal or other constitutional requirements. *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 48, 32 N.E.3d 583. "Whether an action against the State is within the exclusive jurisdiction of the Court of Claims depends on the issues involved and the type of relief sought." *Ellis v. Board of Governors of State Colleges and Universities*, 102 Ill. 2d 387, 394, 466 N.E.2d 202, 206 (1984).

¶ 14 Subject matter jurisdiction "refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). The circuit court has an independent duty to consider its own subject matter jurisdiction. *In re Rico L.*, 2012 IL App (1st) 113028, ¶ 109, 977 N.E.2d 1100. Subject matter jurisdiction cannot be waived, stipulated, or consented to by the parties. *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 13, 28 N.E.3d 987. At any time, the circuit court may *sua sponte* consider whether it has jurisdiction. *Id.* The lack of subject matter jurisdiction deprives the circuit court of all powers except to dismiss the action. *Id.* The existence of subject matter jurisdiction is a question of law reviewed *de novo*. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18, 28 N.E.3d 795.

¶ 15 In *Ellis*, a professor filed a suit against her university in the circuit court. Her complaint argued that she had been discharged without good cause and sought "an award of damages and appropriate injunctive relief for [her] employment rights." 102 Ill. 2d at 389. The circuit court concluded that the court of claims had exclusive jurisdiction over the subject matter of the suit and dismissed the professor's claim. *Id.* The supreme court affirmed, reasoning as

follows:

“[Merely] [b]ecause plaintiff seeks injunctive relief, in addition to money damages, does not mean, as plaintiff asserts, that her suit must be severed into two parts, that portion of the suit for money damages being brought in the Court of Claims and the other portion being brought in the circuit court. *** [I]f a plaintiff is not attempting to enforce a present claim against the State, but rather seeks to enjoin a State officer from taking future actions in excess of his delegated authority, then the immunity prohibition does not pertain. [Citation]. However, we agree *** that the plaintiff's suit in the instant case is clearly based upon a present claim which has the potential to subject the State to liability and thus must be brought in the Court of Claims.” *Id* at 395.

¶ 16 In *Leetaru*, 2015 IL 117485, ¶ 1, a student filed a complaint in the circuit court requesting injunctive relief, arguing that if the university was going to investigate him for misconduct, it should be required to carry out that investigation in accordance with the rules, policies, bylaws, and regulations it had promulgated to govern such investigations. Defendants argued that the court of claims had exclusive jurisdiction over the matter. *Id.* ¶ 2. The circuit court agreed and dismissed the student's case. *Id.* The supreme court reversed, reasoning as follows:

“[D]efendants assert that sovereign immunity principles should bar the action in circuit court because it seeks to enforce a present claim against the State and would interfere with the performance of a governmental function. This argument is untenable. Unlike cases such as *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387 (1984), which sought damages and other relief based on discharge of a tenured university professor, or *Healy v. Vaupel*, 133

Ill. 2d 295 (1990), which sought damages for personal injuries sustained by a gymnast during university-sponsored gymnastics activities, [plaintiff’s] action does not seek redress for some past wrong. As we have explained, it seeks *only* to prohibit future conduct *** undertaken by agents of the State in violation of statutory or constitutional law or in excess of their authority. Claims of this kind are not against the State at all and do not threaten the State’s sovereign immunity.” (Emphasis added.) *Id.* ¶ 51.

¶ 17 B. This Case

¶ 18 We first note that this would be a more difficult case if plaintiff were only suing the state employees instead of suing the state employees *and* the Illinois Department of Corrections. See *Jinkins v. Lee*, 209 Ill. 2d 320, 330, 807 N.E.2d 411, 418 (2004) (discussing when an action is against the State even when the plaintiff’s action is only against state employees).

¶ 19 Likewise, if plaintiff were merely seeking injunctive relief, then the circuit court would have jurisdiction to resolve his claims. *Leetaru*, 2015 IL 117485, ¶ 48. However, unlike in *Leetaru*, the plaintiff is not suing “*only to prohibit future conduct[.]*” (Emphasis added.) *Id.* ¶ 51. Instead, plaintiff has requested thousands of dollars in compensatory damages and “\$500.00 Per Day From All Defendant[s] jointly and severally as [the] law allows including leave to obtain punitive damages[.]” This request for damages directly implicates the Illinois Department of Corrections—a state department that is cloaked in sovereign immunity. *Meyer*, 392 Ill. App. 3d at 34; *Brandon v. Bonell*, 368 Ill. App. 3d 492, 510, 858 N.E.2d 465, 484 (2006).

¶ 20 Accordingly, the plain language of the Claims Act shows that the court of claims, rather than the circuit court, has jurisdiction over this case. 705 ILCS 505/8(d) (West 2016) (the court of claims shall have “exclusive jurisdiction” over “[a]ll claims against the State for damag-

es in cases sounding in tort[.]”); *Fritz*, 209 Ill. 2d at 310.

¶ 21

III. CONCLUSION

¶ 22

For the reasons stated, we affirm the trial court’s judgment.

¶ 23

Affirmed.