

**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).

**FILED**

February 23, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2018 IL App (4th) 170513-U  
NO. 4-17-0513

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

|                                    |   |                  |
|------------------------------------|---|------------------|
| CHARLES DONELSON,                  | ) | Appeal from      |
| Plaintiff-Appellant,               | ) | Circuit Court of |
| v.                                 | ) | Sangamon County  |
| STATE OF ILLINOIS COURT OF CLAIMS, | ) | No. 17MR131      |
| Defendant-Appellee.                | ) |                  |
|                                    | ) | Honorable        |
|                                    | ) | John M. Madonia, |
|                                    | ) | Judge Presiding. |

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

**ORDER**

¶ 1 *Held:* The circuit court did not err by dismissing plaintiff’s writ of *certiorari* because plaintiff failed to allege facts showing a due process violation.

¶ 2 In January 2017, plaintiff, Charles Donelson, filed *pro se* a petition for writ of *certiorari* seeking review of a decision of defendant, the State of Illinois Court of Claims. In May 2017, the Illinois Court of Claims filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2016)), asserting plaintiff failed to allege any facts showing it denied plaintiff due process. After a July 2017 hearing, the Sangamon County circuit court granted the Illinois Court of Claims’ motion to dismiss. Plaintiff appeals, asserting the circuit court erred by dismissing his petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is an inmate in the Department of Corrections. He filed a complaint in

the Illinois Court of Claims alleging the Department of Corrections converted his property. *Donelson v. State of Illinois*, No. 15-CC-3997 (Illinois Court of Claims). Plaintiff alleged that, on October 9, 2013, he was transferred from Menard Correctional Center to Pontiac Correctional Center. In the transfer, the Department of Corrections lost and/or destroyed plaintiff's personal property, including food, hygiene products, gym shoes, legal documents, and family photographs. According to his petition for writ of *certiorari*, plaintiff also asserted he filed multiple grievances at Pontiac Correctional Center regarding his missing property. Plaintiff was discharged but later returned to the Department of Corrections. When plaintiff returned to Pontiac Correctional Center, he inquired about his grievances and was told they were deemed moot when he was discharged.

¶ 5 In the Illinois Court of Claims case No. 15-CC-3997, the Department of Corrections filed a motion to dismiss plaintiff's complaint under section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2014)), alleging plaintiff had failed to exhaust the required administrative remedies. Specifically, plaintiff had not filed a grievance with the Administrative Review Board. Attached to the motion to dismiss was an affidavit from Sarah Johnson of the Administrative Review Board, stating the board had not received a grievance from plaintiff.

¶ 6 After a hearing on the Department of Corrections' motion to dismiss, the Illinois Court of Claims entered an order granting the motion to dismiss. *Donelson*, No. 15-CC-3997 (Illinois Court of Claims, Jan. 4, 2017). The Illinois Court of Claims noted section 25 of the Illinois Court of Claims Act (Act) (705 ILCS 505/25 (West 2016)) provides that, before the State can be sued, a potential claimant must exhaust all of his or her administrative, legal, or equitable remedies prior to filing suit in the Illinois Court of Claims. The failure to do so is a ground for immediate dismissal. The Illinois Court of Claims pointed out plaintiff did not file additional

documents proving he exhausted his administrative remedies after the Department of Corrections raised his failure to exhaust administrative remedies in its motion to dismiss. The court did note plaintiff argued the “Rule 55 Departmental Report” was not the correct report and did not contain the correct documents. However, he did not include any extra documents proving his exhaustion of administrative remedies. Thus, the Illinois Court of Claims found plaintiff failed to exhaust all administrative remedies and immediate dismissal was warranted.

¶ 7 On January 18, 2017, plaintiff filed his petition for writ of *certiorari* in the Sangamon County circuit court, asserting the Illinois Court of Claims issued an illegal order and judgment because he had shown the Department of Corrections had made the grievance unavailable. Plaintiff attached the Illinois Court of Claims’ January 4, 2017, order to his petition. That order is the only document from the underlying Illinois Court of Claims case included in the record on appeal. In May 2017, the Illinois Court of Claims filed a motion to dismiss and a memorandum of law in support of the motion to dismiss, asserting plaintiff failed to state a cause of action for a writ of *certiorari* because he did not allege facts showing a due process violation.

¶ 8 After a July 10, 2017, hearing, the circuit court granted the Illinois Court of Claims’ motion to dismiss with prejudice, noting plaintiff was merely challenging the results of the decision by the Illinois Court of Claims and not challenging the due process administered in the proceedings. Thus, a writ of *certiorari* was not appropriate relief under these set of facts.

¶ 9 On July 13, 2017, plaintiff filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). Thus, this court has jurisdiction under Illinois Supreme Court Rule 301(eff. Feb. 1, 1994).

¶ 10

## II. ANALYSIS

¶ 11 Plaintiff challenges the circuit court’s dismissal of his petition for writ of *certiorari* under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). A section 2-615 motion to dismiss challenges the complaint’s legal sufficiency based on defects apparent on its face. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 19, 69 N.E.3d 834. In ruling on such a motion, “a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts.” *Blumenthal*, 2016 IL 118781, ¶ 19. The court must determine “whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.” *Blumenthal*, 2016 IL 118781, ¶ 19. This court reviews *de novo* the grant of a section 2-615 motion to dismiss. *Blumenthal*, 2016 IL 118781, ¶ 19.

¶ 12 The First District recently explained a circuit court’s review of a decision by the Illinois Court of Claims. See *Krozel v. Illinois Court of Claims*, 2017 IL App (1st) 162068, ¶ 14, 77 N.E.3d 1165.

“When the 1970 Illinois Constitution (Ill. Const. 1970, art. XIII, § 4) abolished the doctrine of sovereign immunity, ‘[e]xcept as the General Assembly may provide by law,’ the legislature established the Court of Claims with exclusive jurisdiction to hear and determine ‘[a]ll claims against the State.’ [Citation.] The function of the Court of Claims is not to adjudicate cases but rather ‘to receive and resolve claims against the state.’ [Citation.] The Act does not provide a method of review of Court of Claims decisions. However, our supreme court has determined that a party may use *certiorari* as a means to address alleged deprivations of due process. [Citation.] ‘The purpose of *certiorari* review is to have the entire record of the inferior tribunal brought

before the court to determine, from the record alone, whether the tribunal proceeded according to applicable law.’ [Citation.] However, ‘*certiorari* may not be used to review the correctness of a decision by the Court of Claims based upon the merits of the case before it.’ [Citation.] Instead, a reviewing court determines whether the requirements of due process were met through the provision of ‘an orderly proceeding in which a party receive[d] adequate notice and an opportunity to be heard.’ [Citation.] ‘Due process is not abridged where a tribunal misconstrues the law or otherwise commits an error for which its judgment should be reversed.’ [Citation.]” *Krozel*, 2017 IL App (1st) 162068, ¶ 14.

¶ 13 In his *certiorari* petition, plaintiff asserted the Illinois Court of Claims issued an illegal order and judgment based on the merits of the case before it. He claimed the court erroneously held he failed to file additional documents proving exhaustion of administrative remedies. Moreover, plaintiff contended he did file an exhibit with the petition that detailed the grounds making exhaustion unavailable. Plaintiff asserted he had claimed and shown the Department of Corrections had made the grievance unavailable.

¶ 14 We agree with the circuit court plaintiff’s *certiorari* petition did not raise a due process violation. Simply labeling an order as “illegal” does not constitute a violation of a person’s due process rights. Plaintiff did not assert any facts indicating he did not receive adequate notice or was denied an opportunity to be heard. Here, plaintiff seeks review of the merits of the Illinois Court of Claims’ finding he did not exhaust administrative remedies, which is not allowed under Illinois law. *Krozel*, 2017 IL App (1st) 162068, ¶ 14.

¶ 15 Additionally, we address plaintiff’s contention the record he sent to Sangamon County is not the record on appeal. However, as the appellant, plaintiff “ha[d] the burden to

present a sufficiently complete record of the proceedings at trial to support a claim of error.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. Here, plaintiff never filed a motion to supplement the record on appeal under Illinois Supreme Court Rule 329 (eff. July 1, 2017) with the allegedly missing documents.

¶ 16

### III. CONCLUSION

¶ 17 For the reasons stated, we affirm the Sangamon County circuit court’s judgment.

¶ 18 Affirmed.