2019 IL App (1st) 180370-U

THIRD DIVISION
March 20, 2019

No. 1-18-0370

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TIMOTHY RADKE,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 16 CH 15425
	)	
THE ILLINOIS COURT OF CLAIMS,	)	The Honorable
	)	Neil H. Cohen,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's dismissal of a petition for writ of *certiorari* or *mandamus* directing the Illinois Court of Claims to consider a motion for class certification that the petitioner had filed as a claimant in that court is affirmed.

¶ 2 The petitioner, Timothy Radke, appeals from an order of the Circuit Court of Cook County dismissing his petition seeking issuance of the common law writ of *certiorari* or *mandamus* to direct the respondent, the Illinois Court of Claims, to consider the merits of a motion that the petitioner filed as a claimant in the court of claims, requesting to maintain a claim as a class

action. The court of claims had declined to consider the merits of the petitioner's motion for class certification after concluding that it lacked the legal authority to adjudicate any claim as a class action. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On August 10, 2010, the petitioner filed a putative class action complaint in the Illinois Court of Claims. He alleged that the University of Illinois and the Board of Trustees of the University of Illinois (collectively, the University) had published certain admissions criteria stating that the applicants most likely to be admitted to the University were those with strong academic records, competitive standardized test scores, and a history of involvement in extracurricular activities. The petitioner alleged that he submitted an application to the University demonstrating that he satisfied these criteria and paid the $40 application fee, but the University denied him admission. He alleged that, despite the criteria it published, the University had actually engaged in a process of systematically favoring and giving preferential treatment to applicants who were well-connected politically and financially, as compared to applicants who had demonstrated superior academic credentials. He alleged that if he had known of the University's practices, he would not have applied for admission or incurred the $40 application fee. The petitioner's complaint sought damages on behalf of himself and a putative class of similarly-situated individuals who had applied for admission to the University between 1999 and 2009, paid application fees, and were denied admission. It pled theories of liability including breach of contract and common law fraud.

¶ 5 The petitioner filed a motion for class certification on the same day he filed his complaint, but resolution of that motion was held in abeyance pending the completion of discovery. Ultimately, the parties submitted written briefs on the issue of whether the court of claims

possessed the legal authority to adjudicate a claim as a class action. On January 27, 2014, the court of claims conducted oral argument on that question. The merits of the petitioner's motion for class certification continued to be held in abeyance until the court of claims resolved the question of its own authority.

¶ 6 On June 29, 2015, the court of claims issued a written decision. With one judge dissenting, the majority of the court of claims determined that it did not have jurisdiction to adjudicate a claim as a class action. The analysis by the court of claims began with the recognition that no provision of the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2014)) affirmatively granted it the authority to adjudicate class action claims against the state or demonstrated a waiver by the state of its sovereign immunity from class action claims. It also recognized that the consideration of issues surrounding class certification would tax the court's resources and that such a burden should not be assumed without an express mandate by the General Assembly.

¶ 7 The court of claims rejected the argument advanced by the petitioner that the Court of Claims Rules (74 Ill. Adm. Code 790) granted it the authority to use the class action as a procedural device. Specifically, the petitioner had relied on Court of Claims Rule 20, which states, "Except as otherwise provided by this Part or by the Court of Claims Act [705 ILCS 505], pleadings and practice shall follow the Civil Practice Law [735 ILCS 5/Art II] and the Rules of the Supreme Court of Illinois." 74 Ill. Adm. Code 790.20 (2000). The petitioner had argued that, because this rule provided that practice in the court of claims shall follow the Civil Practice Law (735 ILCS 5/art. II (West 2014)), and the Civil Practice Law contains a provision authorizing actions to be maintained as class actions (735 ILCS 5/2-801 (West 2014)), therefore the provision authorizing class actions had been adopted as part of the Court of Claims Rules. The court of claims majority rejected this argument, stating, "Many sections of the Civil Practice Law

are not applicable to the Court of Claims and its jurisdictional authority." It stated that it only had subject matter jurisdiction over a claim when jurisdiction was granted to it by statute, and it could not define its own jurisdiction through its adoption of rules of practice.

¶ 8 The court of claims further cited the language of section 11(a) of the Court of Claims Act providing that " 'the claimant shall in *all* cases set forth fully in *his petition* the claim ***' " and requiring that the petition be verified by the affidavit of the claimant, his agent, or attorney. (Emphasis in original.) 705 ILCS 505/11(a) (West 2014). It determined that this statutory language required that all potential claimants file individual petitions that were verified. It also cited section 12 of the Court of Claims Act, which permits the court of claims to direct any claimant to appear and be examined on oath concerning any matter pertaining to a claim. 705 ILCS 505/12 (West 2014). The court of claims determined this statutory provision "assumes the claimant is before the Court and can be compelled to appear and testify under oath, not possible in the class context with thousands of absent class members." The court of claims therefore dismissed the petitioner's putative class action claim.

¶ 9 Judge Kubasiak filed a dissent in which he agreed with the petitioner's argument that the Court of Claims Rules allowed class actions by incorporating the Civil Practice Law, which contained a provision providing for class actions. He reasoned that silence in the Court of Claims Act concerning class actions should not be interpreted as excluding their use. He disagreed with the majority's interpretation of section 11(a) of the Court of Claims Act (705 ILCS 505/11(a) (West 2014)), reasoning that nothing in the language of that statute required the filings of individual petitions. He also noted that consolidation of filed claims was recognized as procedurally appropriate in the court of claims.

¶ 10 On July 23, 2015, the petitioner filed a petition for rehearing in the court of claims, which

the parties briefed. The court of claims denied the motion for rehearing on August 4, 2016. On October 31, 2016, the court of claims entered an order pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), finding no just reason to delay the appeal of the orders entered on June 29, 2015, and August 4, 2016, dismissing the class action claim and denying rehearing.

¶ 11 On November 29, 2016, the petitioner filed in the circuit court a one-count petition for a common law writ of *certiorari*. His subsequently filed an amended petition to add a second count seeking a writ of *mandamus*, which is the pleading at issue in this appeal. As to both counts, the petitioner argued generally that the decision by the court of claims that it lacked jurisdiction to consider a claim as a class action had denied him the opportunity to be heard on the merits of his motion for class certification or the class allegations of his complaint. His arguments before the circuit court largely tracked that of Judge Kubasiak's dissenting opinion, which the petitioner argued had correctly interpreted the law concerning the availability of the class action device in the court of claims. He argued that the decision of the majority of the court of claims had incorrectly interpreted the law concerning the court of claims' own jurisdiction. He requested the circuit court to issue either a writ of *certiorari* or *mandamus* to direct the court of claims to consider the merits of his motion for class certification.

¶ 12 The Illinois Court of Claims, which was the respondent in the circuit court, filed motions to dismiss both counts of the amended petition, which the circuit court granted. Regarding the first count, which sought issuance of common law writ of *certiorari*, the circuit court determined that *certiorari* was available only to address deprivations of due process by the court of claims, and it was evident from the pleadings and exhibits that the petitioner had received adequate due process as a matter of law. The circuit court found that any argument that the petitioner had been denied due process was actually a challenge to the merits of the court of claims' decision, which the

circuit court lacked jurisdiction to consider in a petition for writ of *certiorari*. Regarding the second count, the circuit court determined that *mandamus* was not available as a remedy in this case. The circuit court reasoned that the count for *mandamus* was not actually seeking to compel the court of claims to perform a nondiscretionary duty, as *mandamus* requires, but instead it sought to compel the court of claims to reverse what the petitioner contended was an erroneous decision. Therefore, the circuit court dismissed with prejudice both counts of the amended petition. The plaintiff filed a timely notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 This appeal involves the circuit court's granting of the respondent's combined motion to dismiss both counts of the petitioner's amended petition pursuant to section 2-619.1 of the Code of Civil Procedure. 735 ILCS 5/2-619.1 (West 2016). In that motion, the respondent challenged the legal sufficiency of both counts of the petition under section 2-615 of the Code of Civil Procedure (*id.* § 2-615 (West 2016)), as well as the circuit court's subject matter jurisdiction to review the merits of a decision of the court of claims pursuant to section 2-619(a)(1) of the Code of Civil Procedure (*id.* § 2-619(a)(1) (West 2016)). The circuit court granted the motion to dismiss under both provisions. In reviewing the propriety of a motion to dismiss under either section 2-615 or section 2-619(a)(1), this court accepts all well-pleaded facts in the complaint as true and draws all reasonable inferences from those facts in favor of the nonmoving party. *Krozel v. Court of Claims*, 2017 IL App (1st) 162068, ¶ 13. This court's review is *de novo*. *Id.*

¶ 15 The foundational argument advanced by the petitioner on appeal is that the court of claims erred by refusing to hear his class action claim on the merits. He raises three main contentions in support of this argument. First, he contends that the court of claims misinterpreted the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2016)) by interpreting the omission of any statutory

language concerning class actions to indicate a legislative intent that the court of claims lacked the authority to adjudicate a claim as a class action. Second, he contends that the court of claims misinterpreted its own rules as prohibiting class actions, as its rules provide that practice in the court shall follow the Civil Practice Law (735 ILCS 5/art. II (West 2016)), and the Civil Practice Law includes a provision allowing actions to be maintained as class actions (735 ILCS 5/2-801 (West 2016)). 77 Ill. Adm. Code 790.20 (2000). Third, he argues that the court of claims has allowed claims to be adjudicated as class actions in the past, and it violated principles of *stare decisis* by departing from its own precedent in this case.

¶ 16 This court lacks the authority to review outright the petitioner's argument that the court of claims erred in its determination of its own authority to adjudicate a claim as a class action. It is well-established that decisions of the court of claims are not subject to appellate review. *Reichert v. Court of Claims of the State of Illinois*, 203 Ill. 2d 257, 261 (2003); *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72, 79 (1985). The court of claims is not a "court" within the meaning of the judicial article of the Illinois Constitution (Ill. Const. 1970, art. VI). *Id.* at 78. Instead, it is part of the legislative branch of the state government. *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 96 (2001) (citing Pub. Act 83-865, § 1 (eff. Sept. 26, 1983)). Its function is not to adjudicate cases. *Id.* at 97. Rather, it exists as a means for the assertion of claims against the state in light of the statutory retention of sovereign immunity principles that prevent the state from being made a defendant or party in any court. Pub. Act 83-865, § 1; see 745 ILCS 5/1 (West 2016). " 'It is in essence the legislature—the body called upon to fund any awards—that is deciding through the Court of Claims the merits of the claims before it.' " *Philip Morris*, 198 Ill. 2d at 97 (quoting *S.J. Groves & Sons Co. v. State of Illinois*, 93 Ill. 2d 397, 405 (1982)).

¶ 17 Despite the unavailability of appellate review of decisions by the court of claims, the

supreme court has determined that the common law writ of *certiorari* may serve as a method to address alleged deprivations of due process by the court of claims. *Reichert*, 203 Ill. 2d at 261; *Rossetti Contracting*, 109 Ill. 2d at 79-80. "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." *Reichert*, 203 Ill. 2d at 260. The supreme court has emphasized that *certiorari* may not be used to review the correctness of a decision by the court of claims based on the merits of a case before it. *Id.* at 261. Rather, the reviewing court determines whether the requirements of due process were met through the provision of "an orderly proceeding in which a party receives adequate notice and an opportunity to be heard." *Id.* "Due process is not abridged where a tribunal misconstrues the law or otherwise commits an error for which its judgment should be reversed." *Id.*

¶ 18 Applying these principles, this court has consistently limited its scope of review of petitions seeking issuance of the writ of *certiorari* to the question of whether the court of claims denied a petitioner due process. *Krozel*, 2017 IL App (1st) 162068 at ¶¶ 18, 22-24; *Reyes v. Court of Claims of the State of Illinois*, 299 Ill. App. 3d 1097, 1105 (1998); *Klopfer v. Court of Claims*, 286 Ill. App. 3d 499, 505-06 (1997); *Hyde Park Medical Laboratory, Inc. v. Court of Claims*, 259 Ill. App. 3d 889, 896 (1994). Thus, consistent with the law set forth above, for the writ of *certiorari* to serve as a means of reviewing the decision by the court of claims, we must first address whether the action of the court of claims deprived the petitioner of due process.

¶ 19 On this point, the petitioner argues that the court of claims' decision denying him the statutory right to proceed as a class action is a violation of due process of law. He contends that the count of his petition seeking a writ of *certiorari* "challenged the denial of [his] procedural due process right to be heard on his class action claim." He argues that the court of claims

"denied [him] due process when it foreclosed its jurisdiction to hear [his] claims and denied [him] his statutory right to have his class action claims heard."

¶ 20 Procedural due process concerns the constitutional adequacy of the specific procedures employed to deny a person of life, liberty, or property interests. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31. The protections of procedural due process are triggered only when a constitutionally protected liberty or property interest is at stake, to which a person has a legitimate claim of entitlement. *Hill v. Walker*, 241 Ill. 2d 479, 485 (2011). " ' "Therefore, the starting point in any procedural due process analysis is a determination of whether one of those protectable interests is present, for if there is not, no process is due." ' " *Id.* (quoting *Wilson v. Bishop*, 82 Ill. 2d 364, 368 (1980) (quoting *Polyvend, Inc. v. Puckorius*, 77 Ill. 2d 287, 293-94 (1979))); *East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 415-16 (1997).

¶ 21 As stated above, the petitioner's brief asserts that he has a "procedural due process right to be heard on his class action claim." The fatal problem for the petitioner's argument, however, is that he has cited this court to no legal authority for the proposition that he possesses a constitutionally protected property interest in seeking to maintain his breach of contract or fraud claims as a class action. Although the petitioner may possess a property interest in his own individual cause of action, see *Bradford v. Soto*, 159 Ill. App. 3d 668, 673 (1987), he is not alleging that the court of claims deprived him of his interest in pursuing his individual cause to its full and final resolution in that court. Rather, his argument assumes he has the same kind of property interest in asserting the claims of other individuals as the representative party of a class. The petitioner has neither cited legal authority nor articulated a reasoned legal argument in

support of the proposition that such a constitutionally protected interest exists. Given this failure on the part of the petitioner, this court has no obligation to address or consider this issue. *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 45. It is well-established that a party forfeits an issue by failing to articulate an argument to support it. *Id.*; Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (arguments in appellate brief must be supported by citation to legal authority). As the petitioner has forfeited the issue of whether the court of claims deprived him of due process by declining to consider his motion for class certification, no basis exists upon which he would be entitled to issuance of the writ of *certiorari*. We therefore affirm the judgment of the circuit court dismissing the count of the amended petition seeking this relief.

¶ 22 The petitioner next argues that the circuit court erred in dismissing the count of his amended petition seeking issuance of a writ of *mandamus* directing the court of claims to consider his motion for class certification on its merits. He argues that the court of claims has "a mandatory duty to follow its own non-discretionary rules." He argues that the circuit court incorrectly concluded that its issuing of a writ of *mandamus* in this circumstance would amount to directing the court of claims to reach a particular decision or to exercise its discretion in a particular manner. Instead, he contends that his count for *mandamus* was a proper request for the circuit court to direct the court of claims "to perform its mandatory duty to follow its own nondiscretionary rules that were expressly adopted pursuant to statute."

¶ 23 *Mandamus* is an extraordinary remedy that may be used to direct a public official or body to perform a ministerial duty, which is one that does not involve the exercise of judgment or discretion. *Hyde Park Medical Laboratory*, 259 Ill. App. 3d at 894. It is available only where the petitioner demonstrates that he has a clear right to the requested relief, a clear duty exists on the part of the public official or body to act, and clear authority exists for the public officer or body

to comply with the order granting *mandamus*. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, even if the judgment or discretion has been erroneously exercised. *Hyde Park Medical Laboratory*, 259 Ill. App. 3d at 894. However, it has been recognized as a proper remedy to direct a judge of a lower tribunal to act when the judge has failed to do so. *Dupree v. Patchett*, 361 Ill. App. 3d 789, 791 (2005) (citing *Torres v. Walsh*, 98 Ill. 2d 338, 352 (1983)). It may also be used to compel an agency of state government to follow its own rules. *Turner-El*, 349 Ill. App. 3d at 479.

¶ 24 The petitioner argues that the above standards are satisfied in this context. His argument is grounded in Court of Claims Rule 20, which states, "Except as otherwise provided by this Part or by the Court of Claims Act [705 ILCS 505], pleadings and practice shall follow the Civil Practice Law [735 ILCS 5/Art II] and the Rules of the Supreme Court of Illinois." 74 Ill. Adm. Code 790.20 (2000). He reasons that, because Rule 20 provides that practice in the court of claims shall follow the Civil Practice Law (735 ILCS 5/art. II (West 2016)), which contains a provision authorizing actions to be maintained as class actions (735 ILCS 5/2-801 (West 2016)), and no other provision of the Court of Claims Rules (74 Ill. Adm. Code 790) or the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2016)) negates the use of class actions, therefore the provision authorizing class actions is incorporated as part of the Court of Claims Rules. Based on this rationale, he contends that the court of claims has a mandatory duty to follow its rules permitting class actions. He argues that it has no discretion to decline to follow such rules, as the word "shall" in Rule 20 indicates a mandatory obligation imposed on the court of claims.

¶ 25 We reject the petitioner's argument that he is entitled to the writ of *mandamus* in this context. Bearing in mind that *mandamus* is an extraordinary remedy, we cannot accept the

argument that the court of claims has a "ministerial" duty under its own rules to consider a request to adjudicate a claim as a class action. Instead, the question of whether the court of claims can adjudicate class actions must, we believe, involve some exercise of judgment or discretion by the court of claims. This owes to the fact that the court of claims is an administrative body within the legislative branch, not a court of law within the judicial branch. As such, we cannot treat it as the perfect equivalent of a circuit court or engage in "the assumption that proceedings in the Court of Claims must be conducted as proceedings in a court of law." *Seifert v. Standard Paving Co.*, 64 Ill. 2d 109, 121 (1976). Therefore, for purposes of considering whether *mandamus* relief is appropriate, the court of claims must be afforded some flexibility when determining exactly how the provisions of the Civil Practice Law apply in that administrative body, as the Civil Practice Law was enacted for use in the circuit courts.

¶ 26 The General Assembly granted discretionary authority to the court of claims to establish rules for its own governance and for the regulation of practice within that body. 705 ILCS 505/9(A) (West 2016). Pursuant to that authority, the court of claims adopted a rule providing that pleadings and practice shall follow the Civil Practice Law, except as otherwise provided by the Court of Claims Rules or the Court of Claims Act. 74 Ill. Adm. Code 790.20 (2000). It is clear, though, that not every provision of the Civil Practice Law can be literally applied in the court of claims, even where no exception is explicitly "otherwise provided" in the Court of Claims Rules or the Court of Claims Act. For example, the Civil Practice Law includes procedures pertaining to actions with multiple defendants (see 735 ILCS 5/2-405 (West 2016)), even though the court of claims has jurisdiction only over the State of Illinois. Thus, in light of the discretionary authority granted to the court of claims to establish rules for its own governance and the regulation of practice therein, some exercise of judgment or discretion must be made by

the court of claims when determining exactly how the procedures in the Civil Practice Law apply in proceedings before it. See *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 538 (1970) (administrative body "is entitled to a measure of discretion in administering its own procedural rules in such a manner as it deems necessary"); *Hoardwood, Inc. v. Department of Public Aid*, 175 Ill. App. 3d 432, 436 (1988) (reviewing court accords discretion to administrative agencies in the construction and application of their rules). We therefore conclude that *mandamus* is inappropriate in this context, and we affirm the judgment of the circuit court dismissing the count of the amended petition seeking *mandamus* relief.

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 29 Affirmed.