

NOTICE

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2019 IL App (4th) 170461-U

NO. 4-17-0461

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 1, 2019

Carla Bender

4th District Appellate

Court, IL

TOOLA O. TAYLOR,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Brown County
SUSAN MOORE, TAMI WEBER, and TIM ZEECK,)	No. 16MR51
Defendants-Appellees.)	
)	Honorable
)	Jerry J. Hooker,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in granting defendants’ motions to dismiss.

¶ 2 Plaintiff, Toola O. Taylor, an inmate at the Western Illinois Correctional Center (Western), *pro se* filed a complaint against defendants, Susan Moore (Moore), Tami Weber (Weber), and Tim Zeeck (Zeeck), alleging they caused him “to incur an unlawful, unauthorized pecuniary loss and/or obligation.” The trial court dismissed plaintiff’s complaint, and he now appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 21, 2016, plaintiff filed a complaint against defendants, seeking compensatory damages in the amount of \$14.40 and “punitive or exemplary damages” against each individual defendant in the amount of \$200 “for their roles in costing him to incur an

unlawful, unauthorized pecuniary loss and/or obligation.” The complained-of incident stems from plaintiff’s request for copies of his medical records and the subsequent debiting of his Western Illinois Correctional Center Trust Fund account (account).

¶ 5 In his complaint, plaintiff alleged that, at the time of the incident, Moore was a nurse in Western’s Health Care Unit (HCU) and “responsible for the screening and copying of [his] request for medical records”; Zeeck was a correctional officer at Western and was “serving as security for the HCU”; and Weber was “employed as the/a ‘Trust Officer’ ” and was responsible for crediting and debiting his account. Plaintiff further alleged that defendants’ acts were “committed with the intention to permanently deprive [him] of the beneficial use of his property pursuant to 720 ILCS 5/15-3(b)” and that defendants “fraudulently obtained the pecuniary loss to [him] by bringing about a transfer of his interest or possession of said property to another to secure the performance thereof, pursuant to 720 ILCS 5/17 et. seq.” He alleged that defendants “stole” his property “whereby they obtained control over it where it was not authorized by *** him, pursuant to 720 ILCS 5/16-1.”

¶ 6 Plaintiff attached three exhibits to his complaint: (1) an “Offender Authorization for Payment” form (money voucher); (2) his account transaction statement; and (3) a letter written by plaintiff to the warden of Western. The money voucher indicated plaintiff refused to authorize the debiting of his account. Moore and Zeeck signed the money voucher as witnesses. The account transaction statement indicates his account was debited \$14.40 for copies of medical records. In his letter to the warden, defendant explained that at the time he made his request, he believed inmates were entitled to one free copy of their medical records and he would not have requested a copy if he knew he would be charged. He also informed the warden that upon

learning he would be charged, he refused to sign the money voucher, as required by Western policy, and therefore it was fraudulent to debit his account, as the policy was violated.

¶ 7 On March 8, 2017, defendant Moore filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)), in which she argued the complaint “consists of conclusory allegations,” “does not identify a clear cause of action,” and “does not allege sufficient facts to adequately plead a cause of action.” Moore added that even assuming plaintiff was attempting to bring a conversion claim, he still failed to allege sufficient facts because the copies were made pursuant to his request and Moore simply followed Western’s policy; thus, she never assumed unauthorized control over plaintiff’s property, an essential element of conversion.

¶ 8 On March 10, 2017, defendants Weber and Zeeck filed a joint section 2-615 motion to dismiss. They noted that plaintiff could not rely on sections of the Criminal Code to sustain a civil cause of action and he therefore failed to set forth a legally recognizable claim. Moreover, even assuming he had stated a claim, Weber and Zeeck argued it would be barred as to them by the doctrine of sovereign immunity.

¶ 9 Plaintiff filed a response to both motions to dismiss. In response to Moore’s motion to dismiss, plaintiff argued his complaint did in fact set forth a cause of action for conversion. In response to the motion to dismiss filed by Weber and Zeeck, plaintiff again asserted he had set forth sufficient facts to state a cause of action against them. In addition, he asserted sovereign immunity did not apply because their actions violated Western’s policy and, as a result, they exceeded their authority and were no longer acting as agents of the State.

¶ 10 On May 11, 2017, the trial court held a hearing on defendants’ motions to dismiss and granted the motions, finding the complaint failed to “allege any factual allegations in support

of each element of the claim.” Moreover, the court concluded defendant was barred by sovereign immunity from bringing a complaint against Weber and Zeeck.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff argues his complaint alleged sufficient facts to state a cause of action against defendants for the tort of conversion. Defendant Moore contends the exhibits attached to plaintiff’s complaint demonstrate he expressly requested copies of his medical records, thus negating an essential element of conversion, namely, an unauthorized assumption of control over plaintiff’s property. Defendants Weber and Zeeck assert plaintiff’s claim against them is barred by the doctrine of sovereign immunity.

¶ 14 We review *de novo* a dismissal order pursuant to section 2-615 of the Code. *Reynolds v. Jimmy John’s Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25. “A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint.” *Illinois Ass’n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 16. “In ruling on a section 2-615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record.” *Reynolds*, 2013 IL App (4th) 120139, ¶ 25.

¶ 15 A section 2-615 motion “presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted.” *Id.* However, conclusions of law and conclusory allegations of fact unsupported by specific facts are not considered well-pleaded and therefore are not deemed admitted. *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17; *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1059 (2002). Rather, because Illinois is a fact-pleading

jurisdiction, to survive a 2-615 motion to dismiss, a complaint must set forth a legally recognized claim and contain facts in support of each element that brings the claim within the cause of action. *Rabin v. Karlin and Fleisher, LLC*, 409 Ill. App. 3d 182, 186 (2011). A cause of action should be dismissed pursuant to section 2-615 only if it is “clearly apparent that the plaintiff can prove no set of facts which would entitle him or her to recover.” *McFatridge v. Madigan*, 2013 IL 113676, ¶ 16.

¶ 16 A. Defendants Weber and Zeeck

¶ 17 Weber and Zeeck argue the trial court’s dismissal of plaintiff’s complaint was proper because the court lacked subject matter jurisdiction over the complaint as it was barred by sovereign immunity. We agree.

¶ 18 The Illinois Constitution of 1970 abolished the defense of sovereign immunity “[e]xcept as the General Assembly may provide by law.” Ill. Const. 1970, art. XIII, § 4. The legislature subsequently enacted the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.* (West 2016)), which provides that “the State of Illinois shall not be made a defendant or party in any court” (745 ILCS 5/1 (West 2016)) except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2016)) (and other acts not relevant to this disposition). In the Court of Claims Act, the legislature vested the Court of Claims with exclusive jurisdiction over “[a]ll claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit ***.” 705 ILCS 505/8(d) (West 2016).

¶ 19 “Whether an action is in fact one against the State, and hence one that must be brought in the Court of Claims, depends not on the formal identification of the parties but rather on the issues involved and the relief sought.” *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990). An action brought nominally against a State employee in their individual capacity will be found to

be a claim against the State where a judgment for the plaintiff could operate to control the actions of the State or subject it to liability. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). If an action seeks compensation for past harm and monetary damages, the claim has the potential to control the State's actions or may subject it to liability and must be brought in the Court of Claims. *Robb v. Sutton*, 147 Ill. App. 3d 710, 713 (1986). "The doctrine of sovereign immunity affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority ***." (Internal quotation marks omitted.) *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 45.

¶ 20 Here, plaintiff seeks compensation for an alleged past harm and monetary damages, and his claim against Weber and Zeeck has the potential to control the State's actions and subject it to liability. Zeeck was employed as a correctional officer at Western and provided security for the HCU. Weber was employed as a trust officer and responsible for crediting and debiting plaintiff's account. The actions of the defendants, as alleged by plaintiff, relate to their official duties. Plaintiff does not allege that either Weber or Zeeck violated the law or exceeded their authority in their actions. Because the plaintiff's claim of conversion against Weber and Zeeck is essentially a claim against the State, it is barred by the doctrine of sovereign immunity, and the trial court properly dismissed the complaint against them.

¶ 21 B. Defendant Moore

¶ 22 Moore is not a State employee and makes no such claim of sovereign immunity. Instead, she argues plaintiff has failed to state a cause of action against her because he did not allege sufficient facts to support a claim of conversion.

¶ 23 Plaintiff asserts he alleged facts sufficient to state a cause of action against Moore for the tort of conversion. "The four elements of conversion are (1) an unauthorized and

wrongful assumption of control, dominion, or ownership by defendant over plaintiff's personalty; (2) plaintiff's right in the property; (3) plaintiff's right to the immediate possession of the property, absolutely and unconditionally; and (4) a demand for possession of the property." *Marekas-Palcek v. Schwartz, Wolf & Bernstein, LLP*, 2017 IL App (1st) 162746, ¶ 14 (citing *Cirrincone v. Johnson*, 184 Ill. 2d 109, 114 (1998)). Thus, we must determine whether plaintiff sufficiently alleged facts in support of all four elements of conversion that, if established, could entitle him to relief.

¶ 24 As to the first element, plaintiff alleged a "pecuniary loss *** for *unauthorized* copies of his medical records." (Emphasis added.) However, in an exhibit attached to his complaint, plaintiff admitted he was "charged for copies of medical records that [he] *had requested*." (Emphasis added.) "An exhibit attached to a complaint becomes part of the pleading for every purpose, including the decision on a motion to dismiss." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. The exhibit controls where it contradicts the allegations in a complaint. *Id.* Here, plaintiff's own complaint discloses that Moore was in fact authorized by him to make copies of his medical records. Because plaintiff cannot establish the first element of conversion, we find the trial court properly granted Moore's section 2-615 motion to dismiss.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court granting defendants' motions to dismiss.

¶ 27 Affirmed.