2026 IL App (1st) 250797-U

No. 1-25-0797

Order filed October 8, 2026

FOURTH DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 CR 17515
	)	
JOHN SEARLES,	)	Honorable
	)	William G. Gamboney,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MITCHELL delivered the judgment of the court.
Justice Navarro and Justice Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is reversed where (1) defendant had no opportunity to respond to a motion to dismiss, (2) the oral motion to dismiss was unsupported by affidavit, and (3) defendant's filing of a complaint in the wrong division was not a proper basis for dismissal.

¶ 2 Defendant, John Searles, appeals the dismissal of a complaint for administrative review that he filed in his criminal case. The issue presented is whether the circuit court erred in dismissing the complaint because the summons had not issued in compliance with the Illinois Administrative Review Law, but defendant was not present in court and did not have an opportunity to respond to

the motion to dismiss. For the following reasons, we reverse the circuit court's dismissal and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)) and attempted armed robbery (720 ILCS 5/8-4, 5/18-2 (West 2000)). He was sentenced to 75 years in prison without good-time credit or the possibility of parole. This court affirmed his conviction on direct appeal. *People v. Searles*, 346 Ill. App. 3d 1178 (2004) (table) (unpublished order under Illinois Supreme Court Rule 23). Defendant then filed a series of post-conviction petitions. This court affirmed the dismissal of his first post-conviction petition. *People v. Searles*, 366 Ill. App. 3d 1224 (2006) (table) (unpublished order under Illinois Supreme Court Rule 23). This court reversed and remanded the denial of leave to file a successive post-conviction petition (*People v. Searles*, 2022 IL App (1st) 210043, ¶ 3) and later vacated that opinion after the Illinois Supreme Court issued a supervisory order directing this court to reconsider in light of *People v. Moore*, 2023 IL 126461. *People v. Searles*, 221 N.E.3d 422 (2023) (table). This court again affirmed the denial of leave to file a successive post-conviction petition. *People v. Searles*, 2024 IL App (1st) 210043-U, ¶ 1.

¶ 5 Defendant subsequently filed a claim with the Torture Inquiry and Relief Commission, alleging that a detective tortured and physically coerced him into confessing. Following its review of his claim, the Torture Commission issued a final administrative decision finding that there was insufficient evidence of torture to merit referral for judicial review. On December 28, 2020, the Torture Commission served defendant with the decision letter. On January 27, 2021, defendant placed a document titled "Administrative Review Law Petition" in the mail at Menard Correctional

Center, where he is incarcerated. Though substantively a complaint for administrative review of the Torture Commission's decision, the document contained the caption and docket number for defendant's criminal case. The document included his Torture Commission claim reference number in the case caption. On February 9, 2021, the circuit court stamped it as received, and the complaint was filed into his criminal case.

¶ 6 When the circuit court called the case, the Torture Commission appeared through counsel. Defendant did not appear. The Torture Commission made an oral motion to dismiss the complaint on the grounds that summons was not issued within 35 days of service of the administrative decision, as the ARL requires. The circuit court dismissed the complaint that day, issuing a written order which identified two grounds for dismissal: that defendant's complaint was filed improperly in criminal court, and that he failed to file within 35 days as required by the ARL.

¶ 7 The Illinois Supreme Court granted defendant's motion for supervisory order and directed this court to treat his notice of appeal as a properly perfected appeal from the April 30, 2021 dismissal order. This appeal followed. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Mar. 12, 2021).

¶ 8 II. ANALYSIS

¶ 9 Defendant argues that the circuit court erred in granting the Torture Commission's oral motion to dismiss because the complaint was timely filed under the ARL per the mailbox rule (Ill. S. Ct. R. 373(b) (eff. July 1, 2017)) and because he was provided no opportunity to respond to the motion with evidence that he made a good-faith effort to cause summons to timely issue. He further argues that his filing the complaint in the wrong division was not a proper basis for dismissal and

that the Torture Commission's oral motion to dismiss was legally insufficient as it was unsupported by affidavit.

¶ 10 The Torture Commission concedes that defendant timely filed the complaint by placing a copy in the prison mailbox on January 27, 2021. The Torture Commission instead focuses its argument for affirmance on the issuance of summons—or purported lack thereof—and contends that dismissal was appropriate because there is no evidence in the record that a summons issued at all or that defendant made a good-faith effort to cause one to issue within the 35-day window. The Torture Commission argues that no affidavit was necessary to support its motion to dismiss because affidavits are only necessary when extrinsic facts form the basis of the motion, and here, defendant's failure to issue summons is clear from the record.

¶ 11 We review dismissal of an action for failure to comply with the ARL *de novo*. *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*, 2015 IL App (1st) 143324, ¶ 10.

¶ 12 The ARL has strict timing requirements for the commencement of an action seeking review of a final administrative decision. It requires filing a complaint and issuing summons within 35 days of service of the decision. 735 ILCS 5/3-103 (West 2020). Failure to comply with the summons requirement does not deprive the court of jurisdiction, but it may result in dismissal unless the plaintiff can demonstrate a good-faith effort to comply. *City National Bank & Trust Co. v. Illinois Property Tax Appeal Board*, 108 Ill. App. 3d 979, 980 (1982); *Cox v. Board of Fire & Police Commissioners*, 96 Ill. 2d 399, 403-04 (1983).

¶ 13 An exception to the requirement that summons issue within 35 days exists where the summons was not filed due only to circumstances outside of the plaintiff's control. *Hanke v. Department of Professional Regulation*, 296 Ill. App. 3d 825, 829 (1998). Courts have applied the

exception where plaintiffs have demonstrated a "good-faith effort" to issue summons. *Azim v. Department of Central Management Services*, 164 Ill. App. 3d 298, 303 (1987) (finding the exception applied where the delay in issuance of summons was caused solely by errors of the clerk's office); *City National Bank & Trust Co.*, 108 Ill. App. 3d at 980, 983 (holding an ARL action was timely commenced where the deputy circuit clerk told plaintiff that summons would be issued within the 35 days, but it was actually issued later due to inadvertent clerk error).

¶ 14 Here, the Torture Commission's decision letter was served on December 28, 2020. Defendant placed his complaint for administrative review into the mailbox on January 27, 2021. As an inmate, defendant is exempt from electronic filing (Ill. S. Ct. R. 9(d)(1)(a) (eff. Aug. 14, 2020)), and thus the date he placed the complaint into the mailbox is considered his filing date. Ill. S. Ct. R. 373(b) (eff. July 1, 2017). Both parties agree on appeal that defendant timely filed the complaint, leaving only the issuance of summons in dispute. The record contains no indication that summons was issued or that defendant made any kind of effort to cause summons to issue.

¶ 15 Defendant argues that this is because he was provided no opportunity to respond to the motion to dismiss, and thus no opportunity to present evidence that he either issued summons or made some good-faith effort to do so. Indeed, the Torture Commission orally moved to dismiss in defendant's absence, and the circuit court dismissed the complaint that same day. It is clear from the record that defendant was not provided notice of the motion or the dismissal itself until after the dismissal was entered and thus had no opportunity to respond to the motion.

¶ 16 Though courts generally favor providing opportunities to respond to motions to dismiss as a matter of basic due process (*People v. Bradley*, 2017 IL App (4th) 150257, ¶¶ 15-16; *Merneigh v. Lane*, 87 Ill. App. 3d 852, 854-55 (1980)), the Illinois Supreme Court has clarified that a

violation of the right to respond does not necessarily require reversal. *People v. Stoecker*, 2020 IL 124807, ¶ 25 ("Although the error is serious, it does not necessarily render the proceedings automatically unfair or unreliable."). Rather, it is subject to harmless error review. *Id.* In *Stoecker*, our supreme court found that the failure to provide a petitioner an opportunity to respond to a motion to dismiss his section 2-1401 petition (735 ILCS 5/2-1401) was a harmless error because the claims were procedurally defaulted and patently incurable as a matter of law and because no additional proceedings would have enabled him to prevail on his claim for relief. *Id.* ¶¶ 25-26.

¶ 17 This court found there was no prejudice to a defendant denied the opportunity to respond where dismissal of his petition was inevitable because his claim could never succeed on the merits. *People v. Taylor*, 349 Ill. App. 3d 718, 721 (2004) ("While defendant asks this court to reverse and remand for further proceedings, such action would have little remedial effect and would only delay dismissal.").

¶ 18 Here, defendant's complaint for administrative review is not patently incurable as a matter of law. Nor was dismissal of his complaint inevitable, as it was in *Stoecker* and *Taylor*. If defendant were to present sufficient evidence that he made a good-faith effort to issue summons, there would be no basis for dismissal. It may be that defendant did *not* make any effort to issue summons, that none was issued, and that his complaint ought to be dismissed after all, as the Torture Commission suggests. Nonetheless, the record before us is silent as to those possibilities, and due process requires that he at least receive an opportunity to present evidence that he either complied with or tried to comply with the summons requirement.

¶ 19 The Torture Commission argues that defendant cannot demonstrate that he made a good-faith effort to issue a summons because the record does not contain a copy of an unsigned summons

or an affidavit concerning its address. But this argument neglects that he had no opportunity to present any such evidence. The Torture Commission relies on several cases in which courts found that the good-faith exception to the summons requirement did not apply. Yet in most of these cases, the plaintiffs were provided some kind of opportunity to either respond in writing or participate in a hearing before courts found that they did not meet the exception. *Palos Bank & Trust Co.*, 2015 IL App (1st) 143324, ¶¶ 7-8 (the court held a hearing on the combined motions to dismiss); *Brazas v. Property Tax Appeal Board*, 309 Ill. App. 3d 520, 525, 530 (1999) (both plaintiffs filed responses to the motions to dismiss); *Blumhorst v. Illinois Department of Employment Security*, 335 Ill. App. 3d 1075, 1077 (2002) (the court held a hearing on the motion to dismiss). In *Brazas*, for example, the second taxpayer—whose situation the Torture Commission analogizes to defendant's—plainly *admitted* that he failed to issue summons in a notarized response to the motion to dismiss. 309 Ill. App. 3d at 530. No such opportunity for a response existed in the present case, and certainly no such admission.

¶ 20 Next, the Torture Commission argues that its motion to dismiss was sufficient without an affidavit, because an affidavit is only necessary where extrinsic facts form the basis of the motion. It contends that the failure to issue summons is clear from the record, and thus that the basis of its motion to dismiss was not formed by extrinsic facts. The Code of Civil Procedure provides that, if the affirmative matter does not appear on the face of the pleading attacked, the motion shall be supported by affidavit. 735 ILCS 5/2-619(a)(9) (West 2020); *Griffin v. Universal Casualty Co.*, 274 Ill. App. 3d 1056, 1063 (1995). The Torture Commission's conclusory suggestion that its motion to dismiss did not rely on extrinsic facts is unpersuasive. It is certainly not apparent on the face of the complaint whether defendant caused summons to issue or whether the Torture

Commission was served with summons, nor is it clear from the record on the whole whether defendant made any efforts to cause summons to issue. We thus reject the Torture Commission's assertion that an affidavit was unnecessary and find that the circuit court erred in granting this unsupported oral motion.

¶ 21 The circuit court also concluded that defendant's complaint was filed improperly in criminal court. Though administrative review actions are typically heard in the general chancery section (Cook County Cir. Ct. G.O. 1.2, 2.1(b)(1) (Jan. 1, 2008)), filing an action into the "wrong" department, division or district does not warrant dismissal. Cook County Cir. Ct. G.O. 1.3(b) (Aug. 1, 1996). Rather, transfer is appropriate. General Order 1.3 provides a mechanism by which such actions should be transferred to the Presiding Judge for the purpose of transferring the action to the proper division or district. Cook County Cir. Ct. G.O. 1.3(c) (Aug. 1, 1996).

¶ 22 The circuit court is a court of general jurisdiction, and the existence of separate divisions for distinct categories of cases does not affect the power of judges to hear and dispose of matters properly pending in circuit court. *Fulton-Carroll Center, Inc. v. Industrial Counsel of Northwest Chicago, Inc.*, 256 Ill. App. 3d 821, 823 (1993). Thus, it was also not a proper basis for dismissal that defendant filed a complaint for administrative review in the criminal division rather than the chancery division. The circuit court had jurisdiction over defendant's complaint for administrative review, even if it was filed in the wrong division.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the circuit court's dismissal of the complaint and remand the matter for proceedings consistent with this order.

¶ 25 Reversed and remanded.