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).

2022 IL App (4th) 200194-U

NO. 4-20-0194

FILED
July 14, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WALTER PEGUES, Plaintiff-Appellant, v. GREGG SCOTT, Program Director, Illinois Department of Human Services Treatment and Detention Facility at Rushville, Illinois, Defendant-Appellee.	)	Appeal from the Circuit Court of Schuyler County No. 19CH4 Honorable Roger B. Thomson, Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Sovereign immunity barred plaintiff's action seeking to enjoin the program director of the Rushville Treatment and Detention facility from using top bunk beds in double-occupancy cells. Plaintiff did not allege defendant violated any specific law or regulation or sufficiently show defendant acted in excess of his authority or discretion for an exception from the bar of sovereign immunity to apply.

¶ 2 In February 2019, plaintiff, Walter Pegues, filed a *pro se* emergency complaint for injunctive relief against defendant, Gregg Scott, program director of the Illinois Department of Human Services Treatment and Detention Facility at Rushville, Illinois. Plaintiff, a civilly detained resident of the facility, sought to enjoin "double celling" of detainees or forcing them to use the top bunks of bunk beds based on alleged safety concerns. The trial court granted defendant's motion to dismiss based on sovereign immunity.

¶ 3 Plaintiff appeals, contending sovereign immunity does not apply when he alleged defendant acted outside of his authority as program director. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In his complaint, plaintiff, a civil detainee at the Rushville facility, alleged he sustained injuries as the result of a "top-bunk fall." Defendant was the program director and chief administrative officer at the facility.

¶ 6 The facility originally functioned as a juvenile maximum security correctional institution, with each cell designed for single occupancy. Sometime in 2005 or 2006, the State, through the Department of Human Services (Department), converted the facility for confinement of "patients" civilly confined under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2004)). When the Department took over, employees converted cells to double occupancy by installing top bunks with a four-step steel ladder affixed to the end of the beds. Plaintiff alleged the process was "improvised," there were no safety rails, and the top bunks were dangerous. He alleged numerous patients found getting into or out of the top bunks dangerous, uncomfortable, and unsafe. Patients fell out of the bunks while sleeping or moving because there was no method to secure the mattress to the top bunks and the metal was slippery. Plaintiff alleged a "shockingly high" number of patients sustained injuries, including head injuries, broken bones, and a death. Plaintiff also alleged patients filed "[n]umerous complaints, letters, grievances, incident reports, and other direct communication" that defendant ignored.

¶ 7 Plaintiff generally pled defendant knew of the danger but took no action to correct it. He further alleged state law, federal law, Department administrative regulations, and the common law required defendant to correct, remove, or modify the risk of injury and ensure the safety of patients at the facility. However, plaintiff did not cite to specific laws or regulations.

Plaintiff further alleged defendant and his subordinate staff established a pattern of retaliation against patients who filed grievances. However, plaintiff provided no specific details. Plaintiff sought an injunction prohibiting defendant from forcing patients to utilize the top bunks and engaging in acts of retaliation for bringing the complaint.

¶ 8 Defendant moved to dismiss plaintiff's complaint under sections 2-615 and 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615, 2-619 (West 2018)). Defendant alleged plaintiff failed to plead sufficient facts to state a claim, lacked standing, and the action was barred by sovereign immunity. In his reply, plaintiff argued in part that sovereign immunity did not bar the action because defendant acted in excess of his authority, thus his conduct was not an action of the State.

¶ 9 After a hearing, the trial court dismissed the petition based on sovereign immunity. There is no report of proceedings of the hearing or substitute for such a report in the record. Plaintiff states he requested a transcript and was refused but has not otherwise documented that assertion.

¶ 10 Plaintiff filed a motion to reconsider. The record contains two documents denying the motion. Both state May 11, 2020, as the date the trial court entered the order. However, one is filed stamped on March 11, 2020, and the other on May 11, 2020. Plaintiff filed a notice of appeal on April 15, 2020.

¶ 11 II. ANALYSIS

¶ 12 Plaintiff contends the trial court erred in dismissing his complaint under section 2-619 of the Procedure Code on the basis sovereign immunity barred him from suing defendant in his official capacity. He argues sovereign immunity does not apply because defendant acted in violation of the law or in excess of his authority.

¶ 13 Before addressing the merits, we note we have jurisdiction over this appeal, despite the record being unclear as to when the trial court denied plaintiff's motion to reconsider. Plaintiff filed his notice of appeal on April 15, 2020. If the motion to reconsider was denied on March 11, 2020, the notice of appeal was timely because it was filed within 60 days of the order denying the motion to reconsider. See *In re Illinois Courts Response to COVID-19 Emergency*, Ill. S. Ct., M.R. 30370 (eff. Mar. 24, 2020) (extending the deadline for the filing of a notice of appeal from 30 days to 60). If the motion was denied on May 11, 2020, plaintiff's notice of appeal was initially premature but became effective on May 11, 2020, when the motion was denied. See Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017) ("[A] notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered."); *In re Marriage of Valkiunas*, 389 Ill. App. 3d 965, 967-68 (2008). Accordingly, we have jurisdiction over this appeal and now address the merits.

¶ 14 The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proven issues of fact at the outset of litigation. *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 15. "A section 2-619 motion for involuntary dismissal asserts affirmative matters such as defenses of sovereign immunity." *Id.* "We review a section 2-619 dismissal *de novo*." *Richter v. Prairie Farms Dairy, Inc.*, 2015 IL App (4th) 140613, ¶ 22; *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009) (stating *de novo* standard for section 2-615 and 2-619 motions to dismiss). A section 2-619 motion to dismiss admits well-pleaded allegations of fact, but it does not admit conclusions of law and conclusory factual allegations unsupported by specific factual allegations in the complaint. *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 16.

¶ 15 "The Illinois Constitution of 1970 abolished sovereign immunity but gave the legislature the power to restore it." *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 682 (citing Ill. Const. 1970, art. XIII, § 4). The General Assembly revived the doctrine in the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.* (West 2018)), which states, except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2018)) and other specified statutes, "the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2018). "Thus, sovereign immunity bars lawsuits by a private citizen against the State in state court unless the legislature has waived the immunity." *Hadley*, 362 Ill. App. 3d at 683 (citing *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 249 (1998)).

¶ 16 In turn, the Court of Claims Act vests the court of claims with exclusive jurisdiction over multiple enumerated matters, including "[a]ll claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency." 705 ILCS 505/8(a) (West 2018). The court of claims also has exclusive jurisdiction over all claims sounding in tort. *Id.* § 8(d). Courts lack jurisdiction over lawsuits barred by sovereign immunity. *Toth v. England*, 348 Ill. App. 3d 378, 387 (2004); *City* of *Carbondale v. Bower*, 332 Ill. App. 3d 928, 935 (2002).

¶ 17 Sovereign immunity seeks to protect the State from interference in its performance of government functions and preserve control over State coffers. *Illinois Collaboration on Youth v. Dimas*, 2017 IL App (1st) 162471, ¶ 30. "Sovereign immunity prohibits a court from entering a mandatory injunction directing the State to take specific action." *Bower*, 332 Ill. App. 3d at 935. Because the purpose of sovereign immunity is to bar private litigants from controlling the State's actions, the same rule applies to negative

injunctions, which prohibit the State from taking a specific action. *Hadley*, 362 Ill. App. 3d at 682-83.

¶ 18 Determining whether a suit is against the State is not controlled by the formal identification of the parties. *Dimas*, 2017 IL App (1st) 162471, ¶ 33. The prohibition against making the State a party to a suit cannot be evaded by making the action nominally one against employees of the State when the real claim is against the State itself and the State is the vitally interested party. *Id.* ¶ 34. It is presumed the State, or a state department, cannot violate the constitution or state laws. *Id.* ¶ 33.

¶ 19 An exception to the rule applies to suits to enjoin conduct that violates the law or exceeds a public official's authority. *American Federation of State, County & Municipal Employees, Council 31 v. Ryan*, 347 Ill. App. 3d 732, 745 (2004). Thus, "sovereign immunity affords no protection when agents of the State have acted in violation of statutory or constitutional law or in excess of their authority." *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 50. "However, a suit that seeks to enjoin public officials from taking actions in a governmental matter over which they have discretionary authority is deemed to be an action against the State, and sovereign immunity consequently does then apply." (Emphasis omitted.) *Ryan*, 347 Ill. App. 3d at 745.

¶ 20 Here, sovereign immunity bars plaintiff's complaint. Plaintiff brought his action against defendant in his official capacity as program director of the facility, seeking to enjoin the State's act of double celling patients and use of top bunk beds at the facility. Thus, plaintiff's action is against the State and subject to the exclusive jurisdiction of the court of claims. While plaintiff alleges an exception applies because defendant acted outside of his authority, plaintiff's complaint contained only conclusory statements to that effect and did not point to any specific

law or administrative provision prohibiting the use of double bunks, specifying the design of such bunks, or demonstrating that use of the bunks and "double-celling" of patients was not a matter in defendant's discretion.

¶ 21 Indeed, we further find guidance in the context of the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.* (West 2018)), which is similar to the Sexually Violent Persons Commitment Act, but in which the director of the Department of Correction administers the facilities as opposed to the Director of the Department. Compare *id.* § 8 with 725 ILCS 207/50(a) (West 2018). Under the Sexually Dangerous Persons Act, it has been noted that " '[o]perating a prison is an extremely difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are exclusively within the province of the legislative and executive branches of government.' " *People v. Conley*, 2020 IL App (2d) 180953, ¶ 12 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 375 (2003). Thus, the Sexually Dangerous Persons Act provides "substantial discretion in determining the appropriate care and treatment to be given to a sexually dangerous person." (Internal quotation marks omitted.) *Id.* ¶ 13. We find the same discretion applies under the Sexually Violent Persons Commitment Act, which provides the Department shall provide a secure facility and "provide by rule for the nature of the facility, the level of care to be provided in the facility, and the custody and discipline of persons placed in the facility." 725 ILCS 207/50(b) (West 2018).

¶ 22 In his brief, plaintiff generically cites to "Title 59 Illinois Admin. Code Part § 299.00," stating it "offers any civil detainee held at [the facility] certain rights and protections that include reasonable personal safety." But plaintiff did not provide such a citation in his complaint, and in his brief, he does not cite to any specific sections of the administrative code expressly prohibiting what plaintiff seeks to enjoin—the "double celling" of patients or use of

double bunk beds. Plaintiff also suggests defendant acted in violation of constitutional law. However, plaintiff again did not cite to specific constitutional provisions in his complaint.

¶ 23 Overall, examination of plaintiff's complaint makes clear the basis for the lawsuit is the claimed negligence of defendant in the performance of his duty as an officer of the State. See *Healy v. Vaupel*, 133 Ill. 2d 295, 311 (1990). Given defendant's discretion in operating the facility, and that plaintiff's complaint did not provide specific statutes or regulations defendant allegedly violated, the exception allowing a suit to enjoin conduct violating the law or exceeding defendant's authority does not apply. Plaintiff's complaint did not sufficiently allege he is attempting to enjoin defendant from taking future actions in excess of his delegated authority. Instead, the complaint sought to present a claim which has the potential to subject the State to liability and thus must be brought in the court of claims. See *Ellis v. Board of Governors of State Colleges and Universities*, 102 Ill. 2d 387, 395 (1984).

¶ 24 We further note nothing indicates plaintiff sought to amend his complaint or show at the hearing on the motion to dismiss that defendant violated a specific law, regulation, or constitutional provision concerning the use of double cells and bunk beds, or that defendant lacked discretion over the design and use of the bunk beds. Plaintiff has not provided a transcript or substitute of the hearing to show otherwise. As the appellant, plaintiff had the burden to present a sufficiently complete record of the trial proceedings to support his claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). As such, we resolve any doubts which arise from the incompleteness of the record against plaintiff. See *Foutch*, 99 Ill. 2d at 392.

¶ 25 Because we determine the trial court properly dismissed the complaint based on sovereign immunity, we need not and do not address defendant's alternate contentions that plaintiff also lacked standing and failed to state a claim for injunctive relief.

¶ 26 ## III. CONCLUSION

¶ 27 The trial court did not err in determining sovereign immunity barred plaintiff's suit. Accordingly, we affirm the trial court's judgment dismissing the complaint.

¶ 28 Affirmed.