No _____

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD S. PHILLIPS

PETITIONER,

V.

DAWN LEANN PHILLIPS

RESPONDENT,

ON PETITION FOR A LATE WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS

MOTION FOR LEAVE TO FILE LATE PETITION FOR WRIT OF CERTIORI INSTANGERY

EDWARD S, PHILLIPS #S01121

PETITIONER-APPELLANT, PRO SE

MENARD CORRECTIONAL CENTER

P.O. BOX 1000

MENARD, IL 62259

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR LATE WRIT OF CERTIORARI

Comes now Edward S. Phillips, pro se and moves this honorable court for leave to file late petitioner's writ for Certiorarii.

In support petitioner states the following:

1.) Edward S. Phillips's Petition for Certiorari was due 04/18/2018. Due to a miscalculation it was mailed on 04/19/2018 and therefore dated 04/19/2018, one day past the April 18th postal date necessary to meet this courts mail box rule.

2.) Edward S. Phillips prays that this court would excuse the one day delay for the filing date.

3.) Limitation is not jurisdictional and in the interest of justice Edward S. Phillips prays that this court might reach the merits of untimely presentation. Taliani v. Chrans 189 F 3d 597 (7th Cir. 1999). Dunlop v U.S. 250 F,3d 1001 (6th Cir. 2001) whence the cause cited arose in the Federal Habeous Corpusof due process, fundamental , fairness and the law of this court.

Edward S. Phillips, pro se pleadings were not ever remotely liberally construed and on opposing council material Edward S. Phillips was ordered to submit pleadings as if he were a trained attorney while the court feqined ignorance of the null contents and intent of the pro se pleadings. The positions of law reflects the courts previous holding that limited library access prevented Edward S. Phillips from citing here.

4.) The records in this case shows prejudice when Edward S. Phillips tried to enforce a marital settlement agreement clearly and explicitly shows the state courts held judicial bias in all proceedings. Trial court bias ignored the documents while agreeing with legally and factually incorrect positions of opposing counsel.

5.) The effect of this case if left unaddressed as body of law which permited Illinois's circuit and appellate courts to decide questions of law 180 degrees contrary to the laws of this court's regular judicial proceeding involving a pro se litigant opposed by the court's trained colleges which certainly protects the opposing parties windfall of thousands of dollars in cash acquired in direct and clear violation of the marital settlement agreement which the courts of Illinois

refuse to enforce.

CONCLUSION

Wherefore for the foregone reasons Edward S. Phillips pray the honorable court allows him to file a one day late Writ for Certiorari

Date: August 11 2018

Respectfully submitted,

Edward S. Phillips

Edward S. Phillips

Defendant – Appellant

Pro Se

P. O. Box 1000

Menard, IL 62259

SUPREME COURT OF ILLINOIS

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January 18, 2018

In re: In re Marriage of Dawn LeAnn Phillips, respondent, and Edward Scott Phillips, petitioner. Leave to appeal, Appellate Court, Fourth *District.*
122961

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 02/22/2018.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

2017 IL App (4th) 160866-U

NO. 4-16-0866

FILED
October 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from
DAWN LeANN PHILLIPS,	)	Circuit Court of
Petitioner-Appellee,	)	Brown County
and	)	No. 03D23
EDWARD SCOTT PHILLIPS,	)	
Respondent-Appellant.	)	Honorable
	)	Diane M. Lagoski,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Knecht concur in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in dismissing respondent's *mandamus* action (735 ILCS 5/2-615 (West 2014)) and replevin action (735 ILCS 5/2-619(5) (West 2014)).

¶ 2 In December 2003, the trial court granted the dissolution of marriage between petitioner, Dawn LeAnn Ritchey, formerly known as Dawn Phillips, and respondent, Edward Scott Phillips, reserving the issues of property division, maintenance, and custody. In August 2005, the parties entered into a marital settlement agreement, which the court incorporated into its August 26, 2005, dissolution judgment. In May 2013, respondent filed a *pro se* petition for writ of *mandamus* against petitioner, petitioner's father, the O'Fallon police department and the St. Clair County State's Attorney office. In October 2013, petitioner filed a motion to strike pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), which, as a result of several continuances, the court ultimately granted in June 2015. At

that time, respondent was given 60 days to amend. In October 2015, respondent filed five petitions for writ of *mandamus*, a civil complaint summons, petition for order of *habeas corpus ad testificandum*, an application to proceed as a poor person, and a motion for the appointment of counsel. In October 2015, petitioner filed a motion to dismiss the *mandamus* action pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), which the trial court granted. In April 2016, respondent filed a complaint for replevin. In June 2016, petitioner filed a motion to dismiss pursuant to 2-619 of the Code (735 ILCS 5/2-619 (West 2014)), which the court granted.

¶ 3 On appeal, respondent argues the trial court (1) erred in dismissing the *mandamus* petitions without leave to amend and (2) improperly dismissed the replevin action as untimely. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2003, petitioner filed a petition for dissolution of marriage, which the trial court granted, reserving the issues of property division, maintenance, and custody. In August 2005, the parties entered into a marital settlement agreement on the reserved issues, which was filed with the court and incorporated into the court's August 26, 2005, dissolution judgment. The agreement provided for the respondent's 10 firearms to be given to Greg Flynn, a gun dealer, for resale. Eight of the firearms were in the possession of the O'Fallon police department pursuant to a previously entered order of protection, and two were in petitioner's possession. Under the terms of the agreement, the proceeds of the firearms sales were to be placed in an account which was intended to be applied toward respondent's child support obligation. Additionally, as part of the agreement, petitioner agreed to give respondent certain items of his personal property in petitioner's possession.

¶ 6 In May 2013, respondent filed a petition for writ of *mandamus* against petitioner,

petitioner's father, the O'Fallon police department, and the St. Clair County State's Attorney office seeking to enforce provisions of the marital settlement agreement. Specifically, the respondent sought to require the sale of firearms in petitioner's possession, application of the proceeds toward his child support obligation, and the return of personal property in petitioner's possession that he alleged was never returned. By means of an affidavit from Greg Flynn, respondent alleged petitioner contacted Flynn, indicating she no longer intended to sell the firearms and she and her father later retrieved them.

¶ 7 In October 2013, petitioner filed a section 2-615 motion to strike, contending the original *mandamus* action lacked specificity and respondent needed to separate the claims. In June 2015, the trial court heard the motion, granted it, and gave respondent 60 days to amend. In August 2015, respondent requested an extension of time to file, which the court granted, giving him until December 1, 2015, to file. In October 2015, respondent simultaneously filed five petitions for writ of *mandamus*, civil complaint summons, petition for order of *habeas corpus ad testificandum*, an application to proceed as a poor person, and a motion for the appointment of counsel. In October 2015, petitioner filed a section 2-615 motion to dismiss the *mandamus* action, contending *mandamus* was not the proper form of relief since petitioner was not a state official. In February 2016, the trial court agreed and granted the motion.

¶ 8 In April 2016, respondent filed a complaint for a replevin action. In June 2016, petitioner filed a section 2-619 motion to dismiss, arguing the action was untimely because it fell outside the 10-year statute of limitations for written contracts. In August 2016, the trial court agreed the statute of limitations had run, since the marital agreement was incorporated into the dissolution judgment in August 2005, and it granted petitioner's motion. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Lack of an Appellee's Brief

¶ 11 Initially, we note petitioner appellee has not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E. 493, 495 (1976); *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1099 (2009).

¶ 12 The nature and issues of this case are such that the merits of respondent appellant's claim may be addressed here absent a responding appellee brief.

¶ 13 B. Section 2-615 Motion To Dismiss

¶ 14 Respondent argues the trial court's dismissal of his petition for a writ of *mandamus* was improper, citing section 14-109 of the Code, titled "Seeking wrong remedy not fatal." 735 ILCS 5/14-109 (West 2014). We disagree.

¶ 15 Section 14-109 states as follows:

> "Seeking wrong remedy not fatal. Where relief is sought under Article XIV of this Act and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended pleadings or upon

> the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party demand complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed." 735 ILCS 5/14-109 (West 2014).

¶ 16 The language of section 14-109, in reference to *mandamus* actions, mirrors that of section 2-617 of the Code (735 ILCS 5/2-617 (West 2016)), which refers only to dismissals with prejudice. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 488, 639 N.E.2d 1282, 1291 (1994).

¶ 17 *Mandamus* is an extraordinary remedy. To be entitled to an order of *mandamus*, the petitioner needs to establish "a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 465, 804 N.E.2d 546, 552 (2004).

¶ 18 The grant of a motion to dismiss pursuant to section 2-615 of the Code is subject to *de novo* review. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007). "Where the dismissal was proper as a matter of law, we may affirm the circuit court's decision on any basis appearing in the record." *Rodriguez*, 376 Ill. App. 3d at 433, 876 N.E.2d at 663 (citing *MKL Pre-Press Electronics/MKL Computer Media Supplies, Inc. v. La Crosse Litho Supply, LLC*, 361 Ill. App. 3d 872, 877, 840 N.E.2d 687, 691 (2005)).

¶ 19 In the case before this court, the trial court granted the motion to strike because respondent was pursuing the wrong cause of action, not because he was seeking the wrong remedy. Therefore, section 14-109 does not apply.

¶ 20 The trial court did not dismiss the case with prejudice as respondent was allowed

to bring another action under the same set of facts. The court stated, when granting the motion to strike, "There are ways to do it, Mr. Phillips, and I cannot give you legal advice. *** But, you know, you can keep trying if you want to." The court did not merely believe respondent needed to amend his pleadings to allege a different remedy. Instead, the court attempted to get respondent to understand he was pursuing the wrong cause of action. Therefore, section 14-109 would not apply to these facts.

¶ 21 Accordingly, we must analyze whether the petition for *mandamus* was appropriate to determine if the trial court was correct in striking the complaint on its face. A writ of *mandamus* applies exclusively to public officials and is not the proper cause of action because the petitioner is not a public official. *Snyder*, 208 Ill. 2d at 465, 804 N.E.2d at 552. The trial court, in its analysis of the section 2-615 motion, stated, "I am likely to grant [opposing counsel's] motion because he's correct, *mandamus* is for public officials. Dawn Ritchey and her father are not public officials. There may be remedies to get what you want, but this is not it." As such, the court did not err in granting the motion to strike the complaint as respondent could not meet either of the two elements needed to state a cause of action for *mandamus*, namely a clear duty of the public official to act and a clear authority in the public official to comply with the writ.

¶ 22 C. Section 2-619 Motion To Dismiss

¶ 23 Respondent argues the trial court erred in granting the motion to dismiss pursuant to section 2-619 because the statute of limitations had not run. We disagree.

¶ 24 For written contracts, the statue of limitations is 10 years. 735 ILCS 5/13-619(a)(5) (West 2016). "Under section 2-619(a)(5), a defendant may raise a statute of limitations issue in a motion to dismiss. When a defendant does so, the plaintiff must provide enough facts

to avoid application of the statute of limitations." *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 84, 651 N.E.2d 1132, 1138 (1995) (citing *Ruklick v. Julius Schmid, Inc.*, 169 Ill. App. 3d 1098, 1107-08, 523 N.E.2d 1208, 1214 (1988)). This time bar is tolled until the breach occurs, the petitioner learns of the breach, or has reason to know of it, if discovery is not immediate. *Newell v. Newell*, 406 Ill. App. 3d 1046, 1051, 942 N.E.2d 776, 781 (2011). "[R]eview of a section 2-619 dismissal is *de novo*." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367, 799 N.E.2d 273, 277 (2003).

¶ 25 Here, respondent filed a replevin action in April 2016 and petitioner responded by filing a section 2-619 motion to dismiss, claiming the matter was time-barred. The burden was on petitioner to show some factual basis to avoid the statute of limitations. Respondent alleges in his brief that he was unaware of the breach until July 2007. According to the respondent, he had until July 2017 to bring an action for breach of contract. However, none of respondent's pleadings in the motion for replevin alleged the date of discovery or why he could not have discovered the facts alleged in his brief before the 10-year period expired. He submitted no affidavit or other pleadings establishing any factual basis for claiming an inability to discover the alleged breach earlier. The only document in the pleadings with a date was the attached 2005 marital settlement agreement, which respondent alleged petitioner breached. Even at hearing, respondent failed to reference any document, affidavit, or other evidence to establish a basis for tolling the statute of limitations due to his alleged discovery of the breach in 2007. Respondent failed to raise this issue before the trial court. "A trial judge, sitting as the trier of fact, is limited to the record made at trial." *People v. Barnes*, 48 Ill. App. 3d 226, 230, 363 N.E.2d 50, 53 (1977). Therefore, the court could only rely on the information before it, namely the August 2005 marital settlement agreement. Based on the pleadings, the court was correct in its

assessment that the April 2016 replevin cause of action was time barred.

¶ 26 D. Personal Jurisdiction of James Ritchey

¶ 27 Respondent contends the trial court erred when it stated it did not have jurisdiction over James Ritchey, petitioner's father, in the petition for writ of *mandamus*. We disagree.

¶ 28 "Absent a general appearance, personal jurisdiction can only be acquired by service of process in the manner directed by statute." (Emphasis omitted.) *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶ 20, 23 N.E. 3d 370.

¶ 29 Respondent argues he had subject-matter jurisdiction over James Ritchey in the petition for writ of *mandamus*. We need not reach this issue because a review of the record reveals the trial court's dismissal was for lack of personal jurisdiction. The trial court stated:

> "I realize his name appears—in there but that gives me no authority over him. In order, jurisdiction is a difficult concept even for lawyers ***. But what that means is the court has to in some way get authority over somebody to make any kind of ruling with regard to that."

Respondent failed to show any proof Ritchey was served with a summons. In fact, the record seems to indicate that Ritchey was not served, as the court stated:

> "[The summons to James Ritchey] was only filed in the court and placed in those two files because those were the numbers that, the caption numbers that were on it. Mr. Phillips without, I can't give you legal advice but without doing anything else the Court has no jurisdiction over Mr. Ri[t]chey. So while I have this

pleading with those numbers I can't do anything with him unless something happens first, and I can't tell you what this is, so there you are."

As the court saw no evidence of service of process, the court stated it did not have jurisdiction over James Ritchey.

¶ 30 Respondent raises additional issues regarding jurisdiction over petitioner's father, James Ritchey, none of which are relevant to our decision here since no evidence of personal jurisdiction was ever shown. "Mere contentions, without argument or citation [to] authority, do not merit consideration on appeal." *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 521-22 (2001). We note respondent's self-represented status does not relieve him of the duty to put forth clear argument on a relevant question that is capable of decision. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010). Accordingly, we need not consider these other issues. See *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139 (noting the failure to comply with Rule 341(h)(7) results in forfeiture of the argument).

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm.

¶ 33 Affirmed.

Additional material from this filing is available in the Clerk's Office.