APPENDIX

United States Court of Appeals For the
Seventh Circuit Chicago, Illinois 60604

January 9, 2023

ILANA DIAMOND ROVNER, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge
AMY J. ST. EVE, Circuit Judge

No. 21-2896

DAVID R. JOHNSON,
Plaintiff-Appellant,

Appeal from the United States District Court for the Northern District for the Northern Dist. of Illinois, Eastern Div.

v.

No 1:20-cv-05862
Franklin U. Valderrama, Judge.

STATE OF ILLINOIS,
Defendant-Appellee.

ORDER

On consideration of the Petition for Rehearing, filed by Plaintiff-Appellant on January 4, 2023, all member of the original panel have voted to DENY the Petition for Rehearing.

According, the Petition for Rehearing is Denied.

UNITED STATES COURT of APPEALS

No. 21-2896

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 21, 2022
Decided December 22, 2022

ILANA DIAMOND ROVNER Circuit Judge
(same also the Judges in U.S. App. 15-3096)

MICHAEL Y. SCUDDER Circuit Judge

Circuit Judge AMY J. ST. EVE. Circuit Judge

DAVID R. JOHNSON, Plaintiff-Appellant,
v.
STATE OF ILLINOIS, Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:20-cv-05862
Franklin U. Valderrama, Judge.

O R D E R

David Johnson appeals the dismissal of his civil-rights suit in which he alleged due-process violations in various state proceedings related to an allegedly wrongful traffic stop. The district court dismissed the case with prejudice, determining that the state was immune under the Eleventh

Amendment and that the court lacked * We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C). NONPRECEDENTIAL DISPOSITION To be cited only in accordance with FED. R. APP. P. 32.1 No. 21-2896 Page 2 jurisdiction under the Rooker-Feldman doctrine to disturb state-court judgments. Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983). We affirm the judgment, though we modify it to reflect that the claim barred by Rooker Feldman must be dismissed without prejudice. We draw the following facts from Johnson's complaint, which includes attachments from underlying state proceedings. See FED. R. CIV. P. 10(c); Barwin v. Vill. of Oak Park, 54 F.4th 443, 453 (7th Cir. 2022). In 2010, Johnson filed two complaints in the Illinois Court of Claims. In the first, he sued state and local officials for damages related to an allegedly wrongful traffic stop in which he was arrested and had his driver's license summarily suspended. When the officials did not timely answer, Johnson moved for a default judgment. Soon after, Johnson filed his second Court of Claims complaint, this time against the State of Illinois, seeking a default judgment as a sanction for the officials' failure in the prior proceeding to answer his complaint. The Court of Claims dismissed both complaints for failure to state a claim. Johnson then sought review of the dismissal orders by petitioning an Illinois trial court for a common-law writ of certiorari. He alleged that the Court of Claims was biased against him and had

improperly denied him a default judgment based on the officials' untimely answer. The state trial court dismissed his petitions for failure to state a claim. The state appellate court upheld the dismissal of the petitions and, as relevant here, concluded that Johnson did not sufficiently allege a due-process claim to challenge the adequacy of the Court of Claims proceedings. Johnson's subsequent petition for leave to appeal to the Illinois Supreme Court was denied. See Johnson v. Ill. Ct. of Claims, 108 N.E.3d 874 (Ill. 2018). Johnson then turned to federal court and sued the State of Illinois for damages resulting from (1) due-process violations in the Court of Claims proceedings, (2) due process violations in the state-court proceedings, and (3) the dismissal of his wrongful traffic-stop claim in the Court of Claims. See 42 U.S.C. §§ 1983, 1985, 1986. The district court dismissed the case with prejudice. The court determined that the Eleventh Amendment barred Johnson's claims, and that no exception allowing suits against a state was present here. In the alternative, the court concluded that it lacked subject-matter jurisdiction under the Rooker-Feldman doctrine because Johnson's claims arose from state cases in which state courts had rendered a final judgment. No. 21-2896 Page 3 On appeal, Johnson does not engage the district court's Rooker-Feldman analysis and instead continues to challenge the manner in which the Court of Claims and the state courts addressed his claims. We begin with the threshold matter of jurisdiction. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 283 (2005). Under the Rooker-Feldman doctrine, the lower federal courts may not adjudicate

cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." Id. at 284; see Bauer v. Koester, 951 F.3d 863, 866 (7th Cir. 2020). To the extent Johnson raises a due-process challenge to the Court of Claims proceedings, this claim is barred by Rooker-Feldman because he would have us review issues already decided by the state courts. But Rooker-Feldman does not bar federal courts from reviewing Johnson's due process claim with regard to the Illinois circuit court, appellate court, and Supreme Court proceedings. Johnson does more than generally challenge the state-court decisions; he asserts that the process by which the state courts reached their decisions was tainted because the state court conspired against him with other government actors. With this claim, Johnson seeks redress for an injury independent of the one caused (allegedly) by the state-court determination on his grievances with the Court of Claims, and thus the claim is not barred by Rooker-Feldman. See Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995) (Rooker-Feldman doctrine does not bar plaintiff's claim "that people involved in the [state-court] decision violated some independent right of his, such as the right (if it is a right) to be judged by a tribunal that is uncontaminated by politics"); see also Johnson v. Orr, 551 F.3d 564, 570 (7th Cir. 2008). To the extent Johnson challenges the merits determination of the Court of Claims, Rooker-Feldman does not apply because that tribunal is a legislative rather than adjudicative body of the state. See 705 ILCS 505/8(a); People v. Philip Morris, Inc., 759 N.E.2d 906, 912 (Ill. 2001);

Gilbert v. Ill. State Bd. of Educ., 591 F.3d 896, 900 (7th Cir. 2010). Although the state trial court acts as a court of review with respect to certiorari actions alleging due-process violations, the Illinois Court of Claims Act provides no method of review over the merits of Court of Claims decisions. Reichert v. Ct. of Claims, 786 N.E.2d 174, 177 (Ill. 2003). The district court rightly dismissed these claims, though in doing so it need not have discussed the Eleventh Amendment. Those claims, which Johnson brought against the State, are not permitted under § 1983, § 1985, or § 1986 because a state is not a No. 21-2896 Page 4 "person" under those statutes. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (§ 1983); Ennin v. CNH Indus. Am., LLC, 878 F.3d 590, 597 (7th Cir. 2017) (§ 1985 and § 1986 claims are derivative of underlying claims). Courts should resolve § 1983 claims against states on statutory, not constitutional grounds. Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens, 529 U.S. 765, 779 (2000); Holton v. Ind. Horse Racing Comm'n, 398 F.3d 928, 929 (7th Cir. 2005). Lastly, a word about the disposition. Insofar as Rooker-Feldman deprived the district court of jurisdiction over Johnson's due-process challenge to the Court of Claims proceedings, that dismissal should be "without prejudice on the merits, which are open to review in state court to the extent the state's law of preclusion permits." Frederiksen v. City of Lockport, 384 F.3d 437, 438 (7th Cir. 2004); see also Jakupovic v. Curran, 850 F.3d 898, 904 (7th Cir. 2017). Johnson's remaining statutory claims were properly dismissed with prejudice. We thus AFFIRM the judgment of the district court as modified.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DAVID JOHNSON,
Plaintiff,

v.

THE STATE OF ILLINOIS,
Defendant.

No. 1:20-cv-05862

Judge Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

Acting pro se, Plaintiff David Johnson (Johnson) filed this federal action alleging claims under 28 U.S.C. §§ 1983 and 1985 against Defendant the State of Illinois (the State). R. 4, Compl. at 2. 1 *Johnson's Complaint stems from* a set of claims seeking over $10 million in *damages related to an allegedly wrongful traffic stop,* which were filed in and subsequently dismissed by the Illinois Court of Claims. R. 8- 6, 5/10/18 Order at 2.2 While somewhat difficult to discern, Johnson apparently asserts three claims under 28 U.S.C. §§ 1983 and 1985: (1) alleging that the State violated his due process rights by denying his motion for default judgment and 1Citations to the docket are indicated by "R." followed by the docket number and, where necessary, a page or paragraph citation. 2 The Court may take "judicial notice of matters which are so commonly

known within the community as to be indisputable among reasonable men, or which are capable of certain verification through recourse to reliable authority." McCray v. Hermen, 2000 WL 684197, at *2 n.1 (N.D. Ill. May 23, 2000) (quoting Green v. Warden, U.S. Penitentiary, 699 F.2d 364, 369 (7th Cir. 1983)). "Included in these matters are 'proceedings in other courts, both within and outside of the federal judicial system, if the proceedings have a direct relation to matters at issue.'" Id. (quoting same); see also Ennenga v. Starns, 677 F.3d 766, 774 (7th Cir. 2012) ("Taking judicial notice of matters of public record need not convert a motion to dismiss into a motion for summary judgment."). Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 1 of 9 PageID #:280 Johnson v. State of Illinois Doc. 26 Dockets.Justia.com 2 allegedly tampering with the docket to permit late filing, (2) challenging the Court of Claims' denial of his Motion for Default, and (3) alleging that one of the Court of Claims Commissioners should have recused himself from the proceedings. Compl. at 5–6.

The State argues that the Court should dismiss Johnson's Complaint under Federal Rule of Civil Procedure 12(b)(1) because the Court lacks subject-matter jurisdiction and under Federal Rule of Civil Procedure 12(b)(6) because Johnson has failed to state a claim. R. 7, Mot. Dismiss; R. 8, Memo. Dismiss at 3. The State's Motion to Dismiss is granted because the Court does not have subject matter jurisdiction over Johnson's claim. Background Johnson originally filed suit in the Illinois Court of Claims seeking millions of dollars in

damages for alleged violations of his constitutional rights during a traffic stop where he was arrested and received a summary suspension of his driver's license. 5/10/18 Order at 2.3 Johnson then filed a second complaint in the Court of Claims arguing that he was entitled to a default judgment because the defendants did not timely file an answer within sixty days. Id. Ultimately, both of Johnson's Court of Claims complaints were dismissed for failure to state a claim. Id. In 2016, Johnson filed separate petitions for writ of certiorari before the Illinois circuit court, seeking review of the Court of Claims decisions, but the circuit court 3The Court accepts as true all of the well-pleaded facts in the complaint and draws all reasonable inferences in favor of the plaintiff. Platt v. Brown, 872 F.3d 848, 851 (7th Cir. 2017). Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 2 of 9 PageID #:281 3 dismissed Johnson's petitions with prejudice for failure to state a claim and for not alleging a due process violation. 5/10/18 Order at 2–3. In 2018, the Illinois Appellate Court affirmed the circuit Court's decision. Id. Johnson then filed a Petition for Leave to Appeal to the Illinois Supreme court, which was denied. R. 10 at 51. Johnson then filed the instant suit in federal court.

Johnson appears to: (1) allege that the State violated his due process rights by denying his motion for default judgment and allegedly tampering with the docket to permit late filing, (2) challenge the Court of Claims' denial of his Motion for Default, and (3) allege that one of the Court of Claims Commissioners should have recused himself from the proceedings. Compl. at 2.

For the reasons that follow, the State's Rule 12(b)(1) motion is granted. Standard of Review A Rule 12(b)(1) motion tests whether the court has subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7, 570 F.3d 811, 820 (7th Cir. 2009). Standing is an "essential component of Article III's case or-controversy requirement," and the plaintiff "bears the burden of establishing standing . . . in the same way as any other matter on which the plaintiff bears the burden of proof . . . ." Apex Digital, Inc. v. Sears Roebuck & Co., 572 F.3d 440, 443 (7th Cir. 2009). In order to survive a Rule 12(b)(1) motion, the plaintiff bears the burden of establishing subject matter jurisdiction. Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell, 770 F.3d 586, 588–89 (7th Cir. 2014). When deciding a facial challenge to subject matter jurisdiction—that is, when the defendant argues that the plaintiff's allegations as to jurisdiction are inadequate—"the district court must Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 3 of 9 PageID #:282 4 accept as true all well-pleaded factual allegations, and draw reasonable inferences in favor of the plaintiff." Ezekiel v. Michel, 66 F.3d 894, 897 (7th Cir. 1995). But district courts may also "look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." Taylor, 875 F.3d at 853 (citing Apex Digital, 572 F.3d at 444). In that case, "no presumptive truthfulness attaches to plaintiff's allegations," and the court is "free to weigh the evidence and satisfy itself as to the existence of its

power to hear the case." Apex Digital, 572 F.3d at 444 (internal citations omitted). Analysis The State advances three arguments in support of its Motion to Dismiss.

First, the State argues that the Eleventh Amendment bars all claims against the State. Memo. Dismiss at 3.

Second, the State contends that the Court lacks subject matter jurisdiction over Johnson's claim under the Rooker-Feldman doctrine. Id. Third, the State asserts that Johnson fails to state a claim. Id. The Court addresses, where necessary each argument in turn.

I. Eleventh Amendment Immunity The Eleventh Amendment provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State." U.S.CONST. amend XI. " The Eleventh Amendment deprives federal courts jurisdiction to consider most suits against states. Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 4 of 9 PageID #:2835 State agencies and officials sued in their official capacities are 'the state' for Eleventh Amendment purposes." Olison v. Governor Ryan, 2000 WL 1263597, at *4 (N.D. Ill. Sept. 5, 2000) (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); Kentucky v. Graham, 473 U.S. 159, 169 (1985)); see also Ind. Prot. and Advoc. Servs. v. Ind. Fam. and Soc. Servs. Admin., 603 F.3d 365, 370 (7th. Cir. 2010) ("If properly raised, the amendment bars actions in

federal court against a state, state agencies, or state officials acting in their official capacities.") (internal citations omitted). Furthermore, "state agencies and officials in their official capacity cannot be sued under Section 1983 for damages." Olison, 2000 WL 1263597, at *4 (internal citations omitted); see also Will, 491 U.S. at 71 ("Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity.").There are three, limited exceptions to the Eleventh Amendment bar against suits against states. The first is consent—that is, a state may waive immunity and agree to suit in federal court. Ind. Prot. and Advoc. Servs., 603 F.3d at 371. The State's Motion to Dismiss stated that the State has not consented to suit. Memo. Dismiss at 5. That alone constitutes sufficient grounds to rule out the first exception. The second exception is abrogation of the state's immunity by a valid exercise of Congress' powers. Ind. Prot. and Advoc. Servs., 603 F.3d at 371. Johnson brought his claims pursuant to Sections 1983 and 1985 of the Civil Rights Act. Compl.Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 5 of 9 PageID #:284 6 However, the Supreme Court has held that a State is not a person that can be sued under Section 1983, meaning Congress did not and could not abrogate the State's immunity by enacting Section 1983. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989) (holding that "neither a State nor its officials

acting in their official capacities are 'persons' under § 1983"). " The claims under Sections 1985 . . . are also not exceptions to state sovereign immunity, as [this] law[] [was] not intended to abrogate a state's Eleventh Amendment immunity." Jimenez v. Illinois, 2012 WL 174772, at *4 (N.D. Ill. Jan. 18, 2012), aff'd sub nom. Jimenez v. Waller, 498 F. App'x 633 (7th Cir. 2012) (citingRucker v. Higher Educational Aids Bd., 669 F.2d 1179, 1184 (7th Cir. 1982)). The third exception is the doctrine articulated by the Supreme Court in Ex parte Young, 209 U.S. 123 (1908) which "allows private parties to sue individual state officials for prospective relief to enjoin ongoing violations of federal law." Council 31 of the Am. Fed'n of State, Cnty. and Mun. Emps. v. Quinn, 680 F.3d 875, 882 (7th Cir. 2012) (emphasis added) (internal citations omitted). Johnson's Complaint names the State of Illinois as the only defendant. Compl. at 1. In his Response, Johnson appears to suggest that he is bringing suit against the Illinois Secretary of State Jesse Whiterather than the State of Illinois, and therefore, presumably, no Eleventh Amendment bar exists. R. 10, First Resp. at 1–4; However, a "complaint may not be amended by the briefs in opposition to a motion to dismiss."Agnew v. Nat'l Collegiate Athletic Ass'n, 683 F.3d 328, 348 (7th Cir. 2012). Even if the Court were to allow Johnson to amend his Complaint to name Secretary White, he would be required to sue Secretary Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 6 of 9 PageID #:2857 White in his official rather than individual capacity; *since Plaintiff Johnson requests damages rather than prospective injunctive relief,*

*any claim against Secretary White would fare no better than his claims against the State. Id. at 4. While Johnson insists that his Complaint does not seek damages against the State, a plain reading of the Complaint belies that assertion. See First Resp. at 4 ("Essentially, [Johnson] is seeking an injunction, where he [is] deprived, by Jesse White . . . of his rights to due process and entitlement . . . for 2 default judgment[s] which [are] being ignored."). In point of fact, Johnson wants the Court to award him money damages for the State's alleged due process violations, which the Court cannot do under the Eleventh Amendment. Compl. at 6 ("[Johnson] is seeking damages under 42 U.S.C. [§§] 1983 and 1985, due to the State of Illinois['] violation of his rights in each of the reviewing Court[s] who violated it and for each of the cases they violated it in, but is to work with and settle for only the amount sought in the first claim, with condition for an agreeable Police Racial Profiling State law . . . .").*4 In short, the Eleventh Amendment forecloses Johnson's claim against the State and none of the exceptions that allow suits against a state are present here. While the Court could end its analysis at this juncture, in the interest of completeness, the Court addresses the State's second argument under Rule 12(b)(1). 4To the extent Johnson is requesting that this Court order the creation of "Police Racial Profiling State law," this Court's role is to interpret state law in the narrowest way possible, not expand or create state law. See Pisciotta v. Old Nat. Bancorp, 499 F.3d 629, 635–36 (7th Cir. 2007). And, as discussed in the next Section, see Supra Section II, the Illinois state

courts have already rejected Johnson's claims. Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 7 of 9 PageID #:286 8 II. Rooker-FeldmanDoctrineThe State also moves to dismiss the Complaint for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. Memo. Dismiss at 6. The Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005). In effect, lower federal courts—such as this one—are not vested with appellate authority over state courts. Sykes v. Cook Cty Cir. Ct. Probate Div., 837 F.3d 736, 741(7th Cir. 2016). Rather, "the Supreme Court of the United States is the only federalcourt that may review judgments entered by state courts in civil litigation."Haroldv. Steel, 773 F.3d 884, 885 (7th Cir. 2014). The rationale for the Rooker-Feldman doctrine is that "no matter how wrong a state court judgment may be under federal law, only the Supreme Court of the United States has jurisdiction to review it." Sykesv. Cook Cty. Circuit Court Prob. Div., 837 F.3d 736, 742 (7th Cir. 2016); Brown v. Bowman, 668 F.3d 437, 442 (7th Cir. 2012).Johnson's claims stem from his challenges of the Illinois Court of Claims' dismissal decisions. See generally Compl. Johnson first brought the matter to the Circuit Court of Will County, which dismissed his two cases. 5/10/18 Order at 2. From there, Johnson appealed to the Illinois Court of Appeals, which affirmed the

dismissal. Id. When his appeal failed, Johnson filed a Petition for Leave to Appeal to the Illinois Supreme Court, which was denied. R. 10 at 51. Contrary to Johnson's Case: 1:20-cv-05862 Document #: 26 Filed: 09/21/21 Page 8 of 9 PageID #:287 (9) arguments, there exists no state court decision to enforce, as his state court complaints were all dismissed. First Resp. at 1. Rather, Johnson appears to request that the Court overturn the Court of Claims dismissal. Id. Since Johnson's claim arise from state cases where the state courts rendered a final judgment, the Court lacks jurisdiction over the matter and it must be dismissed.5Conclusion For the foregoing reasons, the Court grants the State's Motion to Dismiss [7]. Johnson's Motion to Stri[ke] the Request for Jury Trial [25] is denied as moot. Since Johnson does not request leave to file an amended complaint in his Responses, see R. 10, R. 17, R. 21, and the Court finds no basis to allow an amendment—as such an attempt appears to be futile based on the Eleventh Amendment and the Rooker-Feldman Doctrine—the Court dismisses Johnson's Complaint [4] with prejudice. This civil case is terminated. Dated: September 21, 2021United States District Judge Franklin U. Valderrama5Because the Court has found that it lacks subject matter jurisdiction over Johnson's claims, it need not address the State's arguments that Johnson fails to state a claim under Rule 12(b)(6). SeeRizzi v. Calumet City, 11 F. Supp. 2d 994, 995 (N.D. Ill. 1998) ("If the court dismisses [a] count . . . of the complaint for lack of subject matter jurisdiction, the accompanying [12(b)(6)] defense becomes moot and need not be addressed.")

SUPREME COURT OF UNITED STATES

No.	
14-1173	
Title:	David R. Johnson, Petitioner
	v.
	Illinois, et al.
Docketed:	March 25, 2015
Lower Ct:	Appellate Court of Illinois, First District
Case Nos.:	(1-13-2109)
Decision Date:	April 30, 2014
Discretionary Court Decision Date:	September 24, 2014

~~Date~~~	~~~~~~~~Proceedings and Orders~
	~~
Dec 11 2014	Petition for a writ of certiorari filed. (Response due April 24, 2015)
May 5 2015	DISTRIBUTED for Conference of May 21, 2015.
May 26 2015	Petition DENIED.
Jun 13 2015	Petition for Rehearing filed.
Jun 25 2015	DISTRIBUTED.
Jul 20 2015	Rehearing DENIED.

UNITED STATESCOURT of APPEALS
No. 15-2186

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 3, 2016
Decided February 3, 2016

DANIEL A. MANION Circuit Judge

ILANA DIAMOND ROVNER Circuit Judge
(same also the Judges in U.S. App. 21-2896)

DAVID F. HAMILTON Circuit Judge

DAVID R. JOHNSON, Plaintiff-Appellant,
v.
ILLINOIS COURT OF CLAIMS ,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 15C3096
Edmond E. Chang, Judge.

O R D E R

David Johnson appeals the dismissal of his civil rights action brought against the Illinois Court of Claims, its judges, and its clerks, alleging that the

tribunal violated his right to due process when it denied his motion for a default judgment in a suit before it. We affirm.

After examining the briefs and record, we have concluded that oral argument is unnecessary. Thus the appeal is submitted on the briefs and record. See FED. R. APP. P. 34(a)(2)(C).

Johnson filed suit in the Illinois Court of Claims, seeking millions of dollars in damages related to an allegedly wrongful traffic stop. He contended that he was entitled to a default judgment under Illinois law because the defendants did not timely file an answer. But the tribunal denied his motion for a default judgment and permitted the defendants to file a late motion to dismiss.

Johnson then filed this suit under 42 U.S.C. § 1983 in the federal district court alleging that the Court of Claims violated his right to due process by denying his motion for default judgment and "tampering" with the docket to permit late filing. A week later, he petitioned for a temporary restraining order to enjoin the Court of Claims essentially to reverse its decision to permit the late filing and enter judgment in his favor.

The district court denied Johnson's motion for a temporary restraining order because he had not shown either that he would suffer immediate irreparable harm if relief was not granted or that he was likely to prevail on the merits of the underlying action. The court acknowledged that § 1983

authorizes federal courts to issue an injunction against state-court proceedings, but it concluded that principles of federalism counseled against its intervention in an ongoing state court proceeding absent a showing that the tribunal acted in bad faith.

The district court ordered Johnson to show cause why his case should not be dismissed given that injunctive relief would not be permitted without a showing of bad faith and that his "tampering" allegations against the Court of Claims did not state a plausible claim. Johnson responded by reiterating his accusations that the Court of Claims acted in bad faith when it extended the defendants' filing deadline and tampered with its docket to permit the filing. But the court concluded that neither example alleged a plausible instance of bad faith, so it dismissed the case.

On appeal Johnson generally challenges the district court's conclusion that he had not alleged bad faith sufficient to justify federal intrusion into a state-court proceeding. The district court, however, properly invoked the principles of equity, comity, and federalism that restrain federal courts in a § 1983 action from intruding on state-court proceedings. Felder v. Casey, 487 U.S. 131, 138, 147 (1988); Mitchum v. Foster, 407 U.S. 225, 243 (1972); O'Keefe v. Chisholm, 769 F.3d 936, 937, 940 (7th Cir. 2014). Johnson's proposed injunction would dictate to a state tribunal how it must manage its procedural rules, but states may prescribe rules of procedure governing litigation in their own tribunals, and the federal courts will defer to such prescription. Felder,

487 U.S. at 138, 147; Christensen v. Cnty of Boone, Ill., 483 F.3d 454, 465 (7th Cir. 2007); see, e.g., SKS & Assocs. v. Dart, 619 F.3d 674, 676, 682 (7th Cir. 2010) (abstention doctrine required federal court to deny Case: 15-2186 Document: 32 Filed: 02/03/2016 Pages: 3 No. 15-2186 Page 3 claim for equitable relief from enjoining state court to speed up adjudication of pending actions).

To the extent that the abstention doctrine does not prevent federal courts from enjoining state proceedings that involve bad faith, a plaintiff must show that he has no adequate remedy at law in the state proceedings. See, e.g., Mulholland v. Marion Cnty. Election Bd., 746 F.3d 811, 818 (7th Cir. 2014); SKS, 619 F.3d at 676, 679, 680; Collins v. Kendall Cnty., Ill., 807 F.2d 95, 98 (7th Cir. 1986). Johnson has an adequate remedy at law: he may pursue a timely appeal in the state proceedings. We have considered Johnson's remaining arguments, and none has merit. AFFIRMED.

SUPREME COURT OF ILLINOIS

David R. Johnson
2041 S. Michigan
#203
Chicago Il 60616

September 26, 2018.

In re:, David R. Johnson, petitioner v. Illinois Court of Claims, respondent Leave to appeal, Appellate Court, Third District. 123815

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

The mandate of this Court will issue to the Appellate Court on 10/31/2018.

SUPREME COURT OF ILLINOIS

December 10, 2018

David R. Johnson
2041 S. Michigan
#203
Chicago Il 60616

In re: Johnson, v. Court of Claims,
. 123815

Today the following order was enter in the caption case.

Motion by Petitioner, *pro se*, leave to appeal. Denied.

Order entered by the Court.

This Court's mandate shall issue forthwith to the Appellate Court, third

cc: Appellate Court, Third District
Carl J Eltz

IN THE COURT OF CLAIMS
STATE OF ILLINOIS
Date: August 30 2016.

DAVID R. JOHNSON	)	
CLAIMANT,	)	
V.	)	
STATE OF ILLINOIS'S SECRETARY	)	
OF STATE OFFICE, ROBERT J.	)	
SPRAGUE, DELORES J. MARTIN,	)	
STATE OF ILLINOIS SECRETARY OF	)	
STATE POLICE DEPT AND OFFICER	)	11CC0752
BRJAN SIMS KANKAKEE COUNTY	)	
AND KANKAKEE COUNTY COURT,	)	
KANKAKEE COUNTY CLERK AND	)	
COUNTY'S COURT CLERK, .	)	
KATHRYN THOMAS, KANKAKEE	)	
'THE KANKAKEE STATE, ATTORNEY	)	
OFFICE, ASSISTANT ATTORNEY	)	
GENERAL TCHEDL Y DESIRE	)	
RESPONDENT	)	

ORDER

This manner coming before the Court to be heard on ***Respondent's Motion to Dismiss Claimant's Amended Complaint,*** the Court being fully advised in the premises;

The Court Finds; Claimant has failed to state a claim pursuant to 735 ILCS 5/2-61.S. Based upon lhe foregoing, Respondent's Motion to Dismiss is granted and the case dismissed in its entirety with prejudice. The filing date stamped, hereon is the filing date of this Order.

Concurrence of 4 judges

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
2018

DAVID R. JOHNSON	) Appeal from the Circuit
Plaintiff-Appellant	) Court of the 12th Judicial,
v.	) Circuit Will County, Illinois,
ILLINOIS CURT OF	) Circuit Nos.16-MR-469
CLAIMS	) and 16-MR-2500
Defendant-Appellee.	)
	) Honorable
	) John C Anderson
	) Judge, Presiding

JUSTICE McDADE delivered the judgment of the court. Justices Lytton and O'Brien concurred in the judgment.

SUMMARY ORDER

In 2010, plaintiff, David R. Johnson, filed a complaint in the Court of Claims seeking "$10,100,000.00" in damages for alleged violations of his rights during a traffic stop in which he was arrested and received a summary suspension of his driver's license. He named as respondents the Kankakee County court clerk, the deceased judge who heard his traffic case, and the Kankakee County State's Attorney. The respondents moved to dismiss the case. Plaintiff filed a motion for default judgment, stating that respondents had failed to respond within 60 days. The motion was denied.

Plaintiff filed a second complaint while the first complaint was pending naming only the State of Illinois, alleging that the Court of Claims erred in allowing the first case to continue when respondents had failed to respond within 60 days. Plaintiff again moved for default judgment on this basis. Ultimately, both Court of Claims complaints were dismissed for failure to state a claim.

In 2016, Plaintiff filed separate petitions for writ of *certiorari* seeking review of the Court of Claims decisions, which are the subject to this appeal. The first petition stated that plaintiff sought judicial review of the Court of Claims case, however, the petition failed to contain any substantive allegations. The Court of Claims entered an appearance and a motion to dismiss. In response to the motion to dismiss, plaintiff filed motions (1) to strike the motion to dismiss, (2) for sanctions, and (3) for a default judgment. The circuit court dismissed plaintiff's petition with prejudice pursuant to section 2-615 of the Code of Civil Procedure (C0de) (735 ILCS 5/2-615 (West 2016) for failure to state a claim, stating that repleading would not cure the defects.

Plaintiff's second petition for writ of *certiorari* stated that the Court of Claims was biased against him, respondents had not answered the complaint in a timely manner, respondents failed to respond to his discovery requests, and the motion to dismiss was "filed in bad faith and desperation." The Court of Claims filed a motion to dismiss. Plaintiff again responded by filing motions for default and to strike the motion to dismiss. With the parties present, the court took all pending motions under advisement. The court ultimately dismissed plaintiff's petition

with prejudice "pursuant to 735 ILCS 5/2-615, 2-603 and ***Reichert v. Court of Claims***, 203 Ill. 2d 257, 261 (2003)," for not alleging a due process violation. Plaintiff now appeals from the dismissal of both *certiorari* petitions.

On appeal, we construe plaintiff's *pro se* brief to the best of our abilities. It appears that plaintiff is arguing that (1) the circuit court erred in dismissing his *certiorari* petitions, and (2) he should have received *certiorari* through a default judgment. Because plaintiff's petitions did not support its contentions by specific facts or state a due process claim, as is necessary for certiorari from a Court of Claims case, we find that the circuit correctly dismissed the petition and denied the motions for default.

The court granted the motions to dismiss pursuant to 2-615 of the Code. "A section 2-615 motion to dismiss tests

Whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state sufficient facts to establish a cause of action upon which relief may be granted." *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶ 11. When ruling on a motion under section 2-615, the circuit court accepts well-pleaded facts as true, but will not "take mere conclusions of law or fact contained within the challenged pleading as rue unless they are supported by specific factual allegations." *Id.* Therefore, we must determine whether plaintiff's petitions stated sufficient facts allow *certiorari* review of his Court of Claims complaints.

The Court of Claims Act "provides no method

of review of decisions of the Court of Claims." ***Reichert***, 203 Ill. 2d at 261. Our supreme court has held that

"*certiorari* is available to address alleged deprivations of due process by the Court of Claims. [Citation.] However, *certiorari* may not be used to review the correctness of a decision by the Court of Claims based upon the merits of the case before it. [Citation.] Requirements of due process are met by conducting an orderly proceeding in which a party receives adequate notice and an opportunity to be heard. [Citation.] Due process is not abridged where a tribunal misconstrues the law or otherwise commits an error for which its judgment should be reversed. [Citation.] *Id.*

Here, plaintiff's first petition for *certiorari* did not include any allegations or facts, but instead summarily stated that he wanted the circuit court to review the judgment of the Court of Claims. In his second petition, plaintiff raised contentions that (1) the Court of Claims was biased against him, (2) respondents had not answered the complaint in a timely manner, (3) respondents failed to respond to his discovery requests, and (4) the motion to dismiss was "filed in bad faith and desperation." None of these contentions were supported by any specific factual allegations as is necessary. *Chang Hyun Moon*, 2015 IL App (1st) 143606, ¶11. Moreover, none of the contentions provided any showing that plaintiff was denied adequate notice or an opportunity to be heard in the Court of Claims. Stated another way, plaintiff did not allege a due process violation, which is required in order to receive *certiorari*. A writ of *certiorari* is not available

to "review the correctness of a decision by the Court of Claims," which is what plaintiff sought in his petitions. ***Reichert***, 203 Ill. 2d at 261. Therefore, the circuit court correctly dismissed plaintiff's petition. Further, as plaintiff's petitions failed to state a claim, he was not entitled to a default judgment. See *Suttles v. Vogel*, 126 Ill. 2d 186, 193 (1988) (a default judgment is only available when the pleading state a cause of action.)

Plaintiff also raises a series of arguments relating to the merits of his original Court of Claims complaints. On appeal from a dismissal of a case, we only consider the appropriateness of the court's dismissal; we do not review the merits of the petition for *certiorari*. *Reichert*, 203 Ill. 2d at 261; see also *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 14.

Therefore, we do not reach plaintiff's other arguments.

The judgment of Will County is affirmed. This decision is issued in accordance with Illinois Supreme Court rule 24(c)(2) eff. July 1, 2011).

Affirmed.

2014 Il App(1) 132109
N0 1-13-2109
Summary Order filed April 30, 2014, Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

DAVID R. JOHNSON	) Appeal from Circuit .
Plaintiff-Appant	) Court of Cook County
vs.	)
STATE OF ILLINOIS	)
JESSE WHITE as	) No.13 L 3180
EX-OFFICIO CLERK	)
OF THE COURT OF	)
CLAIMS Chief Justice	) The **Honorable**
ROBERT J. SPRAGUE	) **Moira S Johnson**
Deputy Clerk DELORES	) Judge Presiding
J MARTIN, Judge	)
NORMA) F. JANN,	)
Judge PETER J.	)
BIRNBAUM Judge	)
ROBERT J. STEFFEN,	)
Judge DONALD J.	)
STORINO, Judge MARY	)
PAT BURNS, Judge	)
GERALD E. KUBASIAK	)
Defendant -Appellees.	)

NOTE: This order was filed under Supreme Court Rule 23 (c)(2) and may not be cited as precedent by

any party except in limited circumstances allowed under Rule 23 (e)(1)

PRESIDING JUSTICE HYMAN delivered the judgment of the court. Justice Pucinski and Mason concurred in the judgment

SUMMARY ORDER

1. Plaintiff David S. Johnson brings this *pro se* appeal from the dismissal of his petition for writ of *certiorari* filed in the circuit court against all of the judges of the Court of Claims and the Secretary of State in his capacity as ex-officio clerk of that court. Johnson maintains that the Court of Claims should have granted default judgment for defendants' alleged failure to abide by 74 Ill. Admin. Code Sec. 790.100. This rule sets forth the time for respondents to answer a complaint. The circuit court dismissed the petition under section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)), as well as several motions brought by Johnson. The circuit court found it lacked jurisdiction without a final order having been entered by the Court of Claims. We affirm. Since the appeal was taken before final judgment by the Court of Claims, it was premature, and the circuit court could not consider any other matters brought before it. ***Reichert v. Court of Claims***, 203 Ill. 2D 257, 261 (2003) ("Generally, certiorari will not lie until final judgment has been entered by the tribunal whose decision is sought to be reviewed.").

2. The pertinent facts are straight-forward. In 2010, Johnson filed his first complaint in the Court of Claims seeking millions of dollars in damages for alleged violations of his rights during a traffic stop in which he was arrested, and received a summary suspension of his driver's license. Among the respondents were the Kankakee County Court Clerk, the deceased judge who heard his traffic case, and the Kankakee State's Attorney. Seventy-one days after the complaint's filing, respondents moved to dismiss.

3. Johnson filed a second complaint in the Court of Claims on July 26, 2012, naming only the State of Illinois, alleging that the Court of Claims erred by permitting the original case to continue due to respondents' failure to answer within 60 days, which Johnson contended was a mandatory deadline under Rule 790.100. 74 Ill. Admin Code Sec. 790.100. On this same ground, in October 2012, Johnson moved for a default judgment in both cases. On December 26, 2012, the Court of Claims denied the motion for a default judgment in the original case. On January 10, 2013, while the motion to dismiss was pending in the second case, Johnson petitioned for direct review in this court of the denial of default judgment in the original case. On motion, we dismissed the appeal for lack of jurisdiction.

4. On February 28, 2013, the Court of Claims dismissed the original complaint and gave Johnson 30 days to amend. In a separate order the same day, the Court of Claims denied Johnson's motion for default in the second case.

On March 29, 2013, Johnson filed an amended complaint in the original case.

5. Two days before he filed the amended complaint, Johnson filed a Petition for Writ of *Certiorari* asking the circuit court to vacate orders of the Court of Claims which denied him a default judgment, among other things. The circuit court granted respondents' motion to dismiss under section 2-619.1, finding that no final judgment had yet been entered by the Court of Claims and, therefore, the circuit court lacked jurisdiction. This appeal followed.

6. Section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2010)) allows a party to combine motions to dismiss under sections 2-615, 2-619, and 2-619.1 motion to dismiss under either section 2-615 or section 2-619 of the Code. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482 ¶ 10.

7. Although called "the Court of Claims," within the meaning of article VI of the Illinois Constitution (Ill. Const. 1970, art. VI), it is not a "court." The General Assembly established the Court of Claims "to receive and resolve claims against the State." *People v. Philip Morris, Inc.*, 198 Ill. 2d 87 97 (2001). Under section 8 of the Court of Claims Act, the Court of Claims has exclusive jurisdiction to hear and determine "[a]ll claims against the State." 705 ILCS 505/8(a) (West 2012). The Court of Claims Act does not provide a method of review of decisions of the Court of Claims, so the circuit court acts as a court of review through a *certiorari* action. *Reichert*, 203 Ill.2d at 260-261. "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." *id.*

8. Johnson maintains that the Court of Claims lacked jurisdiction by failing to follow its own rule of procedure. Essentially, he argues the Court of Claims should be deprived of or found to have waived its ability to hear his cases by allegedly ignoring Rule 790.100. But as the Illinois Supreme Court explained in ***Reichert***, an error of judgment (if it exists) does not affect jurisdiction over the case. Only after a final order ending the case may a *certiorari* action be filed, unless subject matter jurisdiction is at issue. ***Reichert***, 203 Ill.2d at 263. An order is final and appealable if it "'terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.'" *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *R.W. Dunteman Co., v. G/G Enterprises*, Inc., 181 Ill. 2d 153, 159 (1988)).

9. While theoretically an agency could be said to be acting without jurisdiction whenever it makes an erroneous ruling, the supreme court has rejected this argument as well. "We are confident *** that a reviewing court can make the appropriate distinction between an erroneous decision and one which lacks statutory authority." *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 244 (1989). The Court of Claims

had statutory authority to hear the complaints.

10. An order of default, let alone an order denying default, is not a final judgment or an interlocutory order appealable as of right. *Fidelity National Title Insurance Co. of New York v. Westhaven Properties Partnership*, 386 Ill. App. 3d 201, 211 (2007). It is an interlocutory order precluding the defaulting party from making additional defenses to liability, and does not dispose of the case or determine the rights of the parties. Id. The circuit court correctly determined that the petition could not be entertained because it lacked jurisdiction without a final order. Moreover, under settled law, an order dismissing a complaint with leave to amend does not constitute a final order or terminate the litigation. *Smith v. Central Illinois Regional Airport*, 207 Ill 2d 578, 585 (2003) (The courts decision to grant leave to amend indicates that defendants' motions were not final dispositions of the case, and thus it cannot be considered a final order."); *Sherman West Court v. Arnold*, 407 Ill. App. 3d 748, 751-754 (2011) (final order terminates proceedings before agency). This dismissal order in the original complaint gave Johnson 30 days to file an amended complaint, which he filed two days after filing the petition in the circuit court. Whether we take notice of the amended complaint or not, the appeal remains premature--the outcome was still open and the proceedings on-going. See *Palm v. 2800 Lake Shore Drive Condominium Assn*, 2013 IL 110505, ¶ 31 (order not final where dismissal is without prejudice and with leave to refile).

11. As such, both cases brought by Johnson remain pending before the Court of Claims, and the circuit court correctly dismissed the petition for a writ.

12. Affirmed.

Attorney for Respondent, LISA MADIGAN, Attorney General of Illinois, Assistant Attorney ELAINE WYDER-HARSHMAN