

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).

2021 IL App (4th) 200044-U

NO. 4-20-0044

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 2, 2021
Carla Bender
4th District Appellate
Court, IL

EDWARD LEE CLEMMONS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
LEONTA JACKSON,)	No. 18MR182
Defendant-Appellee.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff’s petition for *habeas corpus* relief that challenged his conviction under Kansas law and the decision by Kansas officials to transfer plaintiff to the Illinois Department of Corrections under the Interstate Corrections Compact.
- ¶ 2 In August 2017, plaintiff, Edward Lee Clemmons, filed a *pro se* petition for *habeas corpus* relief against defendants, the Illinois Department of Corrections (DOC), John Baldwin (the former director of DOC), Michael Melvin (a former warden of Pontiac Correctional Center), and Teri Kennedy (the Pontiac Correctional Center warden when plaintiff filed his notice of appeal). The trial court dismissed the first three parties, leaving Kennedy as the sole defendant. See *Hennings v. Chandler*, 229 Ill. 2d 18, 23 n.2 (2008) (the proper defendant in a *habeas corpus* action is the warden with custody of the plaintiff). In January 2020, the court dismissed the petition, concluding it lacked subject matter jurisdiction.

¶ 3 As an initial matter, we address an issue raised in defendant’s brief on appeal. Defendant notes Kennedy was replaced as warden of Pontiac Correctional Center by Leonta Jackson, who should be substituted as appellee. Accordingly, we have substituted Jackson as the named defendant because she is plaintiff’s current custodian. 735 ILCS 5/10-107 (West 2018).

¶ 4 On appeal, plaintiff argues (1) Illinois state and federal courts have concurrent subject matter jurisdiction over his *habeas corpus* pleading, (2) *habeas corpus* personal and subject matter jurisdiction is a federal question and a right afforded by the Illinois Constitution, and (3) Illinois suspended plaintiff’s access to and foreclosed *habeas corpus* relief. For the following reasons, we affirm the trial court’s judgment.

¶ 5 I. BACKGROUND

¶ 6 In August 2017, plaintiff filed a *pro se* petition for *habeas corpus* relief. The petition alleged that, in 1984, plaintiff was convicted of first degree murder, attempted murder, aggravated robbery, and unlawful possession of a firearm in the district court of Wyandotte County, Kansas. (In April 1995, Kansas authorities transferred plaintiff to a DOC facility pursuant to the Interstate Corrections Compact (ICC) (730 ILCS 5/3-4-4 (West 2020))).

¶ 7 Plaintiff filed numerous unsuccessful collateral challenges to his convictions in Kansas courts. *Clemmons v. State*, 330 P.3d 441 (Kan. Ct. App. 2014) (noting six previous collateral attacks and dismissing the seventh petition as successive, untimely, and meritless). In January 2017, plaintiff filed a petition in a Kansas trial court, challenging his transfer to Illinois under the ICC and requesting an order directing Kansas officials to transfer him to a Kansas correctional facility. *Clemmons v. Kansas Secretary of Corrections*, 421 P.3d 257 (Kan. Ct. App. 2018). The trial court dismissed plaintiff’s petition, concluding plaintiff’s confinement in Illinois did not deprive him of a protected liberty interest, and the appellate court affirmed. *Id.*

In July 2018, the Kansas Supreme Court dismissed a petition for a writ of *habeas corpus* because plaintiff's presence in the state was a prerequisite to the exercise of *habeas corpus* jurisdiction. Plaintiff also filed several unsuccessful *habeas corpus* petitions and civil rights actions in federal court. *Clemmons v. Kennedy*, No. 18-cv-1464 (C.D. Ill. Mar. 27, 2019); *Clemmons v. Read*, No. 96-C-0965 (N.D. Ill. Apr. 3, 1996).

¶ 8 In August 2017, plaintiff filed a petition for *habeas corpus* relief in Sangamon County asking the court to find (1) Kansas illegally abducted him in 1984 by extraditing him from Missouri to Kansas for his trial, (2) his Kansas conviction was void as a result, and (3) Kansas officials violated a Kansas court order by transferring him to DOC. Plaintiff asserted the Illinois courts had the authority to litigate these claims because the ICC transformed into federal law when Kansas and Illinois used the ICC to transfer him to DOC.

¶ 9 The Sangamon County circuit court transferred the case to Livingston County because plaintiff was confined in the Pontiac Correctional Center. Defendants moved to dismiss for lack of subject matter jurisdiction. The trial court dismissed three defendants and left Kennedy as the sole defendant. In January 2020, the court granted defendant's section 2-619 (735 ILCS 5/2-619 (West 2018)) motion to dismiss, concluding it lacked subject matter jurisdiction.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff argues (1) Illinois state and federal courts have concurrent subject matter jurisdiction over his *habeas corpus* pleading, (2) *habeas corpus* personal and subject matter jurisdiction is a federal question and a right afforded by the Illinois Constitution, and (3) Illinois suspended plaintiff's access to and foreclosed *habeas corpus* relief.

¶ 13 “The absence or presence of jurisdiction is a purely legal question, and our review therefore is *de novo*.” *In re Luis R.*, 239 Ill. 2d 295, 299, 941 N.E.2d 136, 139 (2010). With only one exception not relevant here, the Illinois Constitution confers the trial court’s subject matter jurisdiction. *Id.* at 300. The constitution provides,

“Circuit courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit courts shall have such power to review administrative action as provided by law.” Ill. Const. 1970, art. VI, § 9.

“Thus, except in the context of administrative review, an Illinois circuit court possess subject matter jurisdiction as a matter of law over all ‘justiciable matters’ brought before it.” *Luis R.*, 239 Ill. 2d at 300.

¶ 14 A justiciable matter is “a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Bellville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). A complaint need only allege the existence of a justiciable matter and a defectively stated claim sufficiently invokes the court’s subject matter jurisdiction. *Id.* at 340. “In other words, the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine.” (Emphasis in original.) *Luis R.*, 239 Ill. 2d at 301. “Whether a justiciable matter is presented

must be determined by the courts on a case-by-case basis.” *McCormick v. Robertson*, 2015 IL 118230, ¶ 21, 28 N.E.3d 795.

¶ 15 Defendant asserts the trial court lacked subject matter jurisdiction in this matter because it lacked the power to hear and determine whether Kansas legally convicted plaintiff of crimes committed in Kansas under Kansas law or whether Kansas officials violated Kansas law in transferring plaintiff to DOC. We note the circuit court generally has subject matter jurisdiction over *habeas corpus* claims and over actions brought by prisoners in DOC, even if the prisoner was in DOC custody pursuant to the ICC. For example, the circuit court would have subject matter jurisdiction if plaintiff raised claims about the conditions of his confinement or claims arising under Illinois law because these are justiciable matters. However, plaintiff’s particular claims in this case do not fall “within the general class of cases that the court has the inherent power to hear and determine.” *Id.* ¶ 23. This is so because Illinois courts do not have the inherent authority to define, determine, or prosecute the criminal laws of another state. *Huntington v. Attrill*, 146 U.S. 657, 669 (1892) (“Crimes and offenses against the laws of any state can only be defined, prosecuted, and pardoned by the sovereign authority of that state; and the authorities, legislative, executive, or judicial, of other states take no action with regard to them, except by way of extradition, to surrender offenders to the state whose laws they have violated, and whose peace they have broken.”).

¶ 16 Plaintiff’s *habeas corpus* petition asked the trial court to find (1) Kansas illegally abducted him in 1984 by extraditing him from Missouri to Kansas for his trial, (2) his Kansas conviction was void as a result, and (3) Kansas officials violated a Kansas court order by transferring him to DOC. As defendant correctly points out, any decision by an Illinois court on

these questions of Kansas criminal law would be advisory because Kansas would not be bound by the decision.

¶ 17 As discussed above, the presence of a justiciable matter is a prerequisite to subject matter jurisdiction, which reserves “the exercise of judicial authority for situations where an actual controversy exists.” *McCormick*, 2015 IL 118230, ¶ 21. An “actual controversy”

“ ‘does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events. [Citations.] The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties’ rights, the resolution of which will aid in the termination of the controversy or some part thereof [Citations.]’ (Internal quotation marks omitted.)” *Ferguson v. Patton*, 2013 IL 112488, ¶ 23, 985 N.E.2d 1000 (quoting *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill. 2d 381, 390, 639 N.E.2d 571, 575 (1994)).

Plaintiff has failed to raise a justiciable matter meeting these requirements because an Illinois court is not the proper tribunal to adjudicate plaintiff’s claims under Kansas law. Any decision by an Illinois court on the legality of Kansas’s criminal proceedings would be advisory and would not aid in the termination of the controversy. Kansas would not be bound by a decision of an Illinois court regarding whether Kansas illegally abducted plaintiff in 1984 by extraditing him

from Missouri to Kansas for his trial or whether Kansas officials violated a Kansas court order by transferring him to DOC.

¶ 18 Moreover, the ICC does not permit Illinois to review another state’s criminal convictions, and such a claim is not justiciable merely because Illinois has physical custody of plaintiff. The ICC provides, in part, “Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]” 730 ILCS 5/3-4-4, art. V(a) (West 2018). Moreover, Kansas may at any time transfer plaintiff back to Kansas or another ICC state. 730 ILCS 5/3-4-4, art. IV(c) (West 2018). Courts in other states have uniformly interpreted the ICC as prohibiting a receiving state from adjudicating matters related to the sending state’s judgment of conviction or transfer decisions. See *Findlay v. Lewis*, 837 P.2d 145, 147 (Ariz. 1992) (the sending state had jurisdiction to hear and determine plaintiff’s request for transfer, not the receiving state); *Brant v. Fielder*, 883 P.2d 17, 21 (Colo. 1994) (appellant was subject to the jurisdiction of the sending state and the existence of that legal remedy precluded the receiving state from granting *habeas corpus* relief); *Dugger v. Jackson*, 598 So. 2d 280, 282 (Fla. Dist. Ct. App. 1992) (receiving state lacked jurisdiction over inmate’s criminal sentence imposed by sending state); *Leach v. Dahm*, 763 N.W.2d 83, 85-86 (Neb. 2009) (receiving court lacked jurisdiction over inmate’s challenge to the constitutionality of her sentence imposed by sending state); *Ellis v. DeLand*, 786 P.2d 231 (Utah 1990) (the receiving state was not authorized to entertain a petition for writ of *habeas corpus* requesting transfer back to sending state).

¶ 19 For the foregoing reasons, we conclude the trial court properly dismissed plaintiff’s petition for *habeas corpus* relief where the trial court lacked jurisdiction to determine whether Kansas illegally abducted him in 1984 by extraditing him from Missouri to Kansas for

his trial or whether Kansas officials violated a Kansas court order by transferring him to DOC.

Accordingly, we affirm the judgment of the trial court.

¶ 20

III. CONCLUSION

¶ 21

For the reasons stated, we affirm the trial court's judgment.

¶ 22

Affirmed.