

No. 15-1305

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD LEE McDONALD,)	Appeal from the United States
)	District Court for the Northern
Plaintiff-Appellant,)	District of Illinois, Eastern Division.
)	
v.)	
)	No. 13-cv-2262
CHAPLAIN GEORGE ADAMSON,)	
ASSISTANT WARDEN DARRYL)	
EDWARDS, and WARDEN MARCUS)	
HARDY,)	The Honorable
)	JOAN B. GOTTSCHALL,
Defendants-Appellees.)	Judge Presiding.

**BRIEF AND SUPPLEMENTAL APPENDIX
OF DEFENDANTS-APPELLEES**

LISA MADIGAN
Attorney General
State of Illinois

CAROLYN E. SHAPIRO
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellees.

FRANK H. BIESZCZAT
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2234
fbieszczat@atg.state.il.us

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

JURISDICTIONAL STATEMENT 1

ISSUES PRESENTED FOR REVIEW 3

STATEMENT OF THE CASE 4

 Grievances 4

 Court of Claims Proceeding 4

 District Court Proceeding 6

SUMMARY OF ARGUMENT 9

ARGUMENT 10

 I. The Dismissal of McDonald’s Claim Regarding Friday Prayer Should Be Affirmed Because That Claim Is Now Moot. 10

 II. McDonald Is Precluded From Relitigating His Claims About Friday Prayer, Confiscated Cassette Tapes, And Stolen Prayer Rugs By The Court Of Claims Decision..... 11

 A. Claim and issue preclusion warrant dismissal under Rule 12(b)(6) when it is apparent from the complaint that they apply. 11

 B. McDonald is precluded under Illinois law from relitigating factual issues that were resolved by the Court of Claims..... 11

 C. This Court applies Illinois law to determine the preclusive effect of a Court of Claims decision..... 16

 D. Illinois courts would give preclusive effect to a Court of Claims decision. 20

CONCLUSION 22

TABLE OF AUTHORITIES

CASES

<i>Aljabri v. Holder</i> , 745 F.3d 816 (7th Cir. 2014)	10
<i>Amalgamated Transit Union, Local 241 v. Chi. Transit Auth.</i> , 2014 IL App (1st) 122526	20, 21
<i>Bank of Am. v. WS Mgmt., Inc.</i> , 2015 IL App (1st) 132551	12
<i>Buckhalter v. Pepsi-Cola General Bottlers, Inc.</i> , 820 F.2d 892 (7th Cir. 1987)	17, 18
<i>Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.</i> , 2011 IL 111611	20
<i>DJL Farm LLC v. U.S. Eenvtl. Prot. Agency</i> , 813 F.3d 1048 (7th Cir. 2016)	10
<i>Du Page Forklift Serv., Inc. v. Material Handling Servs., Inc.</i> , 195 Ill. 2d 71 (2001)	12
<i>Eichwedel v. Curry</i> , 700 F.3d 275 (7th Cir. 2012)	10
<i>Estate of Pessin v. State, Dep’t of Transp., Div. of Highways</i> , 302 Ill. App. 3d 417 (1999)	19
<i>Fortres Grand Corp. v. Warner Bros. Entm’t Inc.</i> , 763 F.3d 696 (7th Cir. 2014)	4
<i>Goodwin v. Bd. of Trs. of Univ. of Ill.</i> , 442 F.3d 611 (7th Cir. 2006)	16
<i>Greenawalt v. Ind. Dep’t of Corr.</i> , 397 F.3d 587 (7th Cir. 2005)	15
<i>Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.</i> , 804 F.3d 826 (7th Cir. 2015)	11

<i>Kiswani v. Phoenix Sec. Agency, Inc.</i> , 584 F.3d 741 (7th Cir. 2009)	1
<i>Kremer v. Chem. Constr. Corp.</i> , 456 U.S. 461 (1982)	16
<i>Michaelis v. Ill. Dep’t of Mental Health & Developmental Disabilities</i> , 61 Ill. Ct. Cl. 270 (2008)	12
<i>Muhammad v. Oliver</i> , 547 F.3d 874 (7th Cir. 2008)	11
<i>Pakovich v. Verizon LTD Plan</i> , 653 F.3d 488 (7th Cir. 2011)	10
<i>Pedersen v. Vill. of Hoffman Estates</i> , 2014 IL App (1st) 123402	20
<i>People v. Mordican</i> , 64 Ill. 2d 257 (1976)	20, 21
<i>People v. Philip Morris, Inc.</i> , 198 Ill. 2d 87 (2001)	16
<i>People v. Weilmuenster</i> , 283 Ill. App. 3d 613 (1996)	21
<i>Reichert v. Court of Claims</i> , 203 Ill. 2d 257 (2003)	17, 19, 20
<i>River Park, Inc. v. City of Highland Park</i> , 184 Ill. 2d 290 (1998)	12
<i>Rossetti Contracting Co., Inc. v. Court of Claims</i> , 109 Ill. 2d 72 (1985)	16
<i>Sornberger v. City of Knoxville</i> , 434 F.3d 1006 (7th Cir. 2006)	20, 21
<i>Tanner v. Court of Claims</i> , 256 Ill. App. 3d 1089 (1994)	19
<i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008)	11

<i>United States v. Utah Constr. & Mining Co.</i> , 384 U.S. 394 (1966)	16
<i>Univ. of Tenn. v. Elliott</i> , 478 U.S. 788 (1986)	16
<i>Vill. of Posen v. Ill. Fraternal Order of Police Labor Council</i> , 2014 IL App (1st) 133329	21
<i>White v. Keely</i> , 814 F.3d 883 (7th Cir. 2016)	19
<i>Williams v. Wisconsin</i> , 336 F.3d 576 (7th Cir. 2003)	15
Other Authorities	
28 U.S.C. § 1291	2
28 U.S.C. § 1331	1
28 U.S.C. § 1738	16
42 U.S.C. § 1983	1
42 U.S.C. § 1997e(a)	15
Fed. R. App. P. 4	1
Fed. R. Civ. P. 12	11
Fed. R. Civ. P. 15	15
Fed. R. Civ. P. 25	15
Federal Rule of Civil Procedure 58	1
Federal Rule of Civil Procedure 59	1
Federal Rule of Civil Procedure 60	1
705 ILCS 505/8 (2014)	4
735 ILCS 5/2-101 <i>et seq.</i> (2014)	17

20 Ill. Admin. Code § 504.830.....	4
20 Ill. Admin. Code § 504.850.....	4
74 Ill. Admin. Code § 790.20.....	17, 21
74 Ill. Admin. Code § 790.50.....	17, 18
74 Ill. Admin. Code § 790.55.....	17, 18, 21
74 Ill. Admin. Code § 790.110.....	17, 18
74 Ill. Admin. Code § 790.120.....	17, 18
74 Ill. Admin. Code § 790.155.....	17, 18
74 Ill. Admin. Code § 790.170.....	18
74 Ill. Admin. Code § 790.200.....	18-19
74 Ill. Admin. Code § 790.220.....	17
Restatement (Second) of Judgments § 28	21

JURISDICTIONAL STATEMENT

Plaintiff-Appellant Donald Lee McDonald's jurisdictional statement is not complete and correct. Defendants-Appellees, Chaplain George Adamson, Assistant Warden Darryl Edwards, and Warden Marcus Hardy, submit this jurisdictional statement as required by Circuit Rule 28(b).

McDonald, an inmate at Stateville Correctional Center, filed a complaint under 42 U.S.C. § 1983, alleging that defendants violated his rights under the First and Fourteenth Amendments to the United States Constitution. R1-12 (A2-13). Because those claims were brought pursuant to federal law, the district court had federal question jurisdiction under 28 U.S.C. § 1331. On August 22, 2014, the district court entered an order dismissing McDonald's claims. R183-87 (A35-39). That same day, the court entered judgment under Federal Rule of Civil Procedure 58. R188 (A1).

On September 11, 2014, less than 28 days later, McDonald filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(3). R190-94. The court construed the motion as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), *see Kiswani v. Phoenix Sec. Agency, Inc.*, 584 F.3d 741, 742 (7th Cir. 2009) ("motion designated as one for reconsideration should be considered as a motion to alter or amend the judgment if it is timely filed"), and denied it on January 29, 2015. R197-98 (A40-41). On February 12, 2015, McDonald filed a notice of appeal (R199) that was timely under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv). Although, for the reasons stated in Argument Section I, *see infra* pp. 10-11, this Court no longer has jurisdiction over the portion of McDonald's

appeal as to his claim about Friday prayer because that claim is moot, this Court has jurisdiction over the remainder of the appeal under 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether McDonald's claim that Chaplain Adamson allowed him to attend Friday prayer only every other week is moot.
2. Whether McDonald's claims regarding Friday prayer, confiscated cassette tapes, and stolen prayer rugs are barred by issue preclusion.

STATEMENT OF THE CASE¹

Grievances

McDonald, a practicing Muslim (R8 (A9)), filed grievances on September 2 and November 29, 2009,² claiming that Stateville staff violated his First and Fourteenth Amendment rights to the free exercise of religion and equal protection of the laws by interfering with his ability to attend Friday prayer and to comply with dietary restrictions during Ramadan. R20-21, R23 (A21-22, A24). In support, McDonald submitted a letter asserting that Muslim inmates could attend Friday prayer only every other week because even though services were held every week, only half of the housing units were allowed to attend each service. R17-18 (A18-19). The Director of the Department of Corrections ultimately denied the grievances, while noting that Chaplain Adamson had explained that religious events of all faiths were sometimes delayed or cancelled pursuant to security needs. R24-25 (A25-26).

Court of Claims Proceeding

On July 23, 2010, McDonald filed a complaint in the Illinois Court of Claims,³ in which he named the State of Illinois and the Department of Corrections as

¹ Because this Court construes all well-pleaded facts and reasonable inferences in the light most favorable to the plaintiff on review of an order dismissing a claim under Federal Rule of Civil Procedure 12(b)(6), *Fortres Grand Corp. v. Warner Bros. Entm't Inc.*, 763 F.3d 696, 700 (7th Cir. 2014), this statement of the case construes the allegations in McDonald's complaint in the light most favorable to him.

² Grievances are decided by the Chief Administrative Officer, following review by a grievance officer. 20 Ill. Admin. Code § 504.830. The Director of the Department of Corrections decides any appeals from those decisions upon a recommendation by the Administrative Review Board. 20 Ill. Admin. Code § 504.850.

³ The Court of Claims is a statutorily created body that has exclusive jurisdiction to decide "[a]ll claims against the State for damages in cases sounding in tort." 705 ILCS 505/8(d) (2014).

respondents. R88-92 (A28-32). McDonald did not identify Chaplain Adamson as a respondent, but asserted that he was suing Chaplain Adamson in his individual and official capacities. R88 (A28). McDonald alleged violations of his free exercise and equal protection rights and cited to the United States Constitution, the Illinois Constitution, and the Illinois Administrative Code for support. R88, R90 (A28, A30). He specifically claimed that (1) inmates could attend Friday prayer services only every other week; (2) three Christian cable channels, but no Muslim channels, were available on the facility's televisions; (3) a traditional Eid meal was not provided at the end of Ramadan while a Christmas dinner was provided every year; (4) multiple Christian study classes were conducted, but only one Muslim class; (5) numerous Christian volunteers were allowed in the facility, compared to only two or three Muslim volunteers; (6) Muslim religious tape recordings were confiscated; (7) Muslim prayer rugs were lost; and (8) Muslim inmates were prevented from reciting the call to prayer in their units. R89-90 (A29-30).

McDonald also asserted that he had exhausted all available administrative remedies because his two previous grievances had been denied. R91 (A31); *see* R17-25 (A18-26). He asked the Court of Claims for a \$5,000 judgment and to enter an order requiring the respondents to allow all Muslim inmates to attend Friday services every week, let additional Muslim volunteers conduct religious services and classes, serve lunch and dinner together during Ramadan, and give Muslim inmates a choice as to which meals are served during religious feasts. R91 (A31).

On July 24, 2013, following a hearing (R11 (A12)), the Court of Claims denied

McDonald's claim. R103-04 (A33-34). It found that McDonald "failed to present any credible evidence in support of his claim that his rights had been denied, or that his property had been wrongfully withheld." R103-04 (A33-34). It also found that the evidence showed that Stateville provided Friday prayer services every week, subject to cancellation when the facility was on lockdown, and "allow[ed] for dietary options consistent with the Muslim faith." R104 (A34).

District Court Proceeding

Meanwhile, on March 25, 2013, McDonald filed a complaint in federal district court under section 1983, alleging that Chaplain Adamson, Assistant Warden Edwards, and Warden Hardy violated his First and Fourteenth Amendment rights. R1-12 (A2-13). McDonald alleged that Chaplain Adamson 1) allowed him to attend Friday prayer only every other week; 2) did not prevent non-Muslim inmates and staff from stealing food donated for fasting Muslim inmates; 3) refused to provide halal meals to Muslim inmates; 4) allowed Muslim prayer rugs to be stolen and walked upon; 5) let only Christian inmates work in the chapel department; 6) failed to provide a clean area for Friday prayer; and 7) often cancelled Muslim services for Christian events. R8-9 (A9-10). As to Assistant Warden Edwards, McDonald alleged that he 1) gave food that was donated for the Eid feast to non-Muslim kitchen staff; 2) prevented Muslim inmates from cleaning the floor before Friday prayer; 3) ordered the confiscation of religious cassette tapes; and 4) ignored complaints about Muslim services being cancelled for Christian events. R9-10 (A10-11). McDonald claimed that Warden Hardy failed to address his complaints about Assistant Warden

Edwards. R10-11 (A11-12).

McDonald also asserted that “he originally filed these claims to the Illinois Court of Claims” and received a hearing, but had not yet obtained a decision. R11 (A12). He asked the court for an order requiring Stateville to allow Muslim inmates to attend Friday prayer every week, hire a Muslim inmate as a clerk for Islamic affairs, prevent staff and non-Muslims from taking food donated for Muslim events, and provide meals that comply with a halal diet. R12 (A13).

Defendants moved to dismiss under Rule 12(b)(6), contending that McDonald’s claims were barred by res judicata because he had already raised them and lost in the Illinois Court of Claims, which had since denied his claim. R76-85. McDonald responded that his claims were not barred because his action in the Court of Claims was against the Department and the State, while he was now suing defendants in their individual capacities under section 1983. R154-57. McDonald also asserted that Warden Hardy and Assistant Warden Edwards did not work at Stateville when he filed his 2009 grievances, the Court of Claims did not have jurisdiction to resolve section 1983 claims, Court of Claims decisions are not entitled to any preclusive effect, equity dictated that his claims should not be barred, and his federal claims did not arise out of the same transaction as those brought in the Court of Claims. R154-55, R160-64.

The district court granted defendants’ motion to dismiss, concluding that it was required to apply Illinois preclusion law and that McDonald’s claims were barred under those principles. R183-87 (A35-39). The court determined that although

McDonald asserted in his response to the motion to dismiss that his federal claims were unrelated to those he brought in the Court of Claims, he was bound by the admission in his complaint that he “originally filed these claims to the Illinois Court of Claims.” R185 (A37). The court also stated that the Court of Claims had resolved the factual issues presented in McDonald’s action and that it was not inequitable to preclude McDonald from relitigating those issues in federal court. R185-87 (A37-39).

McDonald filed a post-judgment motion, asserting that claim preclusion did not apply because the Court of Claims did not have jurisdiction over his federal claim. R190-94. The court denied the motion, stating that the Court of Claims addressed the issues presented in this case within the context of the Illinois Administrative Code and that McDonald conceded in his complaint that the claims in this case were identical to those before the Court of Claims. R197-98 (A40-41).

On February 12, 2015, McDonald filed a notice of appeal. R199. Since at least January 2016, McDonald has been allowed to attend Friday prayer on a weekly basis, subject to cancellation when the facility is on lockdown. SA1-2.

SUMMARY OF ARGUMENT

This Court should affirm the dismissal of McDonald's claims as to Friday prayer, confiscated cassette tapes, and stolen prayer rugs. First, the Friday prayer claim is moot because a court cannot grant McDonald effectual relief; he is seeking only an injunction but since at least January 2016 has been allowed to attend weekly prayer services.

In addition, issue preclusion bars McDonald from litigating his claims as to Friday prayer, confiscated cassette tapes, and stolen prayer rugs because the Court of Claims already has resolved the factual issues giving rise to those claims. Issue preclusion is applicable because the Friday prayer, cassette tapes, and prayer rugs issues decided by the Court of Claims are identical to factual issues presented by McDonald's federal action. Illinois law governs whether issue preclusion applies because the Court of Claims acted in a judicial capacity and resolved disputed issues of fact that were properly before it when it denied McDonald's claim and because McDonald was given an adequate opportunity to litigate those issues. Further, Illinois authority indicates that Illinois courts would give preclusive effect to a Court of Claims decision.

ARGUMENT

I. The Dismissal of McDonald's Claim Regarding Friday Prayer Should Be Affirmed Because That Claim Is Now Moot.

A case is moot when it no longer presents a case or controversy under Article III of the United States Constitution. *Eichwedel v. Curry*, 700 F.3d 275, 278 (7th Cir. 2012). Courts lack jurisdiction over moot cases. *DJL Farm LLC v. U.S. Envtl. Prot. Agency*, 813 F.3d 1048, 1050 (7th Cir. 2016). A case must be dismissed as moot “if the outcome will no longer settle an active dispute about the parties’ legal rights,” *Aljabri v. Holder*, 745 F.3d 816, 820 (7th Cir. 2014), and the court cannot grant effectual relief to the prevailing party, *Pakovich v. Verizon LTD Plan*, 653 F.3d 488, 492 (7th Cir. 2011).

In his complaint, McDonald alleged that Chaplain Adamson allowed him to attend Friday prayer only every other week and asked the court to issue an order requiring Stateville to allow all Muslim inmates to attend Friday prayer each week. R8, R12 (A9, A13)). But since then, on January 11, 2016, McDonald sent a letter to the current warden thanking him “for returning Jumu’ah Friday prayer back to the Muslim community.” SA1. Consistent with McDonald’s letter, Chaplain Adamson has confirmed that Friday prayer services have been offered to all Muslim inmates every week since that date, subject to cancellation during lockdown. SA2. As McDonald is seeking only injunctive relief on his Friday prayer claim and has been allowed to attend weekly prayer services since at least January 2016, there currently is no dispute about his access to Friday prayer and a court cannot grant him effectual relief. Thus, the dismissal of this claim should be affirmed, but without prejudice, for

lack of jurisdiction because that claim is moot.

II. McDonald Is Precluded From Relitigating His Claims About Friday Prayer, Confiscated Cassette Tapes, And Stolen Prayer Rugs By The Court Of Claims Decision.

A. Claim and issue preclusion warrant dismissal under Rule 12(b)(6) when it is apparent from the complaint that they apply.

The district court may grant a Rule 12(b)(6) motion to dismiss if the complaint “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Although claim and issue preclusion are not among the defenses listed in Rule 12(b), dismissal is nonetheless proper when it is apparent from the complaint that they apply. *See Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008) (claim preclusion provides proper basis for Rule 12(b)(6) motion). This Court reviews the dismissal of a claim under Rule 12(b)(6) *de novo*, construing all well-pleaded facts and reasonable inferences therefrom in the light most favorable to the plaintiff. *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 829 (7th Cir. 2015).

B. McDonald is precluded under Illinois law from relitigating factual issues that were resolved by the Court of Claims.

A judgment’s preclusive effect is defined by claim and issue preclusion, which are sometimes collectively referred to as “res judicata.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). McDonald argues that the district court erred by determining that his claims were barred by claim preclusion because the Court of Claims did not and could not have decided his federal claims as it does not have jurisdiction over section 1983 actions. AT Br. 11-12. McDonald is correct that claim preclusion does not bar his section 1983 action because claim preclusion does not apply “if a court would not

have had subject matter jurisdiction to decide that claim in the first suit involving the same cause of action,” *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 317 (1998), and the Court of Claims does not have subject matter jurisdiction over federal claims, *Michaelis v. Ill. Dep’t of Mental Health & Developmental Disabilities*, 61 Ill. Ct. Cl. 270, 272 (2008). But issue preclusion still bars any claims that are based on factual issues that were decided by the Court of Claims, and McDonald is therefore precluded from litigating his claims as to Friday prayer, confiscated cassette tapes, and prayer rugs because the underlying factual issues as to those claims already have been resolved by the Court of Claims.

Under Illinois law, issue preclusion bars relitigation when the issue decided in the prior adjudication is identical to the one presented in the current action, the prior proceeding resulted in a final judgment on the merits, and the party subject to preclusion was a party to, or in privity with a party to, the prior adjudication. *Du Page Forklift Serv., Inc. v. Material Handling Servs., Inc.*, 195 Ill. 2d 71, 77 (2001). The doctrine “promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions,” *Bank of Am. v. WS Mgmt., Inc.*, 2015 IL App (1st) 132551, ¶ 76, and is applicable here because all three elements are satisfied.

Initially, there can be no dispute that the Court of Claims proceeding resulted in a final judgment on the merits, as the Court of Claims issued a decision denying McDonald’s claim (R103-04 (A33-34)), or that McDonald was a party to that action, as he was the claimant who initiated the proceeding and against whom the decision

was entered (R88-92, R103-04 (A28-34)). Thus, the applicability of issue preclusion turns on whether the factual issues presented in McDonald's section 1983 action are identical with those decided by the Court of Claims.

McDonald's section 1983 claims regarding Friday prayer, confiscated cassette tapes, and stolen prayer rugs present factual issues that are identical to those that already have been decided by the Court of Claims. McDonald alleged in his Court of Claims complaint that Muslim inmates were allowed to attend Friday prayer services only every other week and that their tape recordings and prayer rugs were stolen or lost. R89-90 (A29-30). The Court of Claims addressed each of those allegations in its decision by finding that McDonald did not meet his burden of proof on any of them. R103-04 (A33-34). In fact, it specified that the evidence showed that services were offered every Friday and that there was no evidence that McDonald's property "had been wrongfully withheld." R104 (A34). Then, McDonald again alleged in his federal complaint that he was allowed to attend Friday prayer only every other week, that prayer rugs were stolen, and that prayer cassette tapes were confiscated. R8-10 (A9-11). Thus, the factual issues presented by McDonald's section 1983 action regarding Friday prayer, prayer rugs, and prayer cassette tapes are identical to the issues that were resolved by the Court of Claims.

McDonald does not dispute that the stolen prayer rug issue decided by the Court of Claims is identical to his federal claim that Chaplain Adamson allowed prayer rugs to be stolen. But, he maintains that the Friday prayer issue alleged in his federal complaint was not actually decided by the Court of Claims (AT Br. 14-15)

and that his allegation that Assistant Warden Edwards ordered the confiscation of prayer cassette tapes was based on events that occurred after he filed his Court of Claims complaint (AT Br. 18-19; R161). He is mistaken.

McDonald argues that the Court of Claims did not resolve the Friday prayer issue raised in his federal complaint because it focused on how often services were conducted, rather than how often inmates could attend them, and its finding that services were available every week was unsubstantiated. AT Br. 15. But the Court of Claims explained that its finding that McDonald did not meet his burden of proof on this issue was based not only on the State's evidence showing that services were offered every week but also on the absence of evidence indicating that McDonald could not attend those weekly services. R103-04 (A33-34). Thus, the Court of Claims resolved the Friday prayer issue presented by McDonald's Court of Claims complaint, which is identical to the Friday prayer issue alleged in his federal complaint, when it found that he had not met his burden of proof on that issue. And to the extent McDonald is suggesting that finding was erroneous, issue preclusion would be meaningless if its application depended upon a judicial determination that the prior decision was correct.

McDonald also argues that the prayer cassette tape issue decided by the Court of Claims cannot be identical to the one presented by his federal complaint because Assistant Warden Edwards did not begin working at Stateville until after the events giving rise to his Court of Claims action already had occurred. AT Br. 17-19. But while McDonald alleged in his federal complaint that he is suing Assistant Warden

Edwards in his “individual capacity” (R9 (A10)), he must be suing Assistant Warden Edwards in his official capacity because he is seeking only injunctive relief and “section 1983 does not permit injunctive relief against state officials sued in their individual as distinct from their official capacity,” *Greenawalt v. Ind. Dep’t of Corr.*, 397 F.3d 587, 589 (7th Cir. 2005). *See Williams v. Wisconsin*, 336 F.3d 576, 580-81 (7th Cir. 2003) (section 1983 permits official-capacity suits against state officials for injunctive relief against ongoing violations).⁴ As McDonald cannot sue Assistant Warden Edwards in his individual capacity for injunctive relief, the date on which he began working at Stateville is not relevant to McDonald’s section 1983 claim. And although McDonald now argues that his federal claims are unrelated to his Court of Claims action (AT Br. 19-21), that assertion is contradicted by the admission in his complaint that he “originally filed these claims to the Illinois Court of Claims” (R11 (A12))⁵ and his apparent belief that the denials of his prior grievances satisfy exhaustion requirements as to all his claims under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (R90-91, 161 (A30-31)). Thus, the prayer cassette tape issues resolved by the Court of Claims and alleged in McDonald’s federal complaint are

⁴ In fact, McDonald must be suing all three defendants in their official capacities because he is seeking only injunctive relief as to all his claims. Therefore, Assistant Warden Walter Nicholson should be substituted for Assistant Warden Edwards and Warden Randy Pfister should be substituted for Warden Hardy, *see* Fed. R. Civ. P. 25(d), because those individuals now hold the positions previously held by Edwards and Hardy.

⁵ Although McDonald argues that he should be granted leave to amend his complaint to omit this admission (AT Br. 20, n.3), he could have, but did not, move in the district court to amend his complaint, *see* Fed. R. Civ. P. 15(a)(1)(B). Regardless, issue preclusion applies independent of McDonald’s admission because the Court of Claims resolved the cassette tape issue when it denied his claim, *see supra* pp. 13-14.

identical. Because all three issue preclusion elements are satisfied as to Friday prayer, confiscated cassette tapes, and stolen prayer rugs, McDonald's claims based on those allegations were properly dismissed.

C. This Court applies Illinois law to determine the preclusive effect of a Court of Claims decision.

Although McDonald relies exclusively on federal law to argue that his claims should not have been dismissed (AT Br. 13-20), Illinois law governs the preclusive effect given to the Court of Claims decision because the Court of Claims acted in a judicial capacity and resolved disputed issues of fact that were properly before it when it denied McDonald's claim and because McDonald received an adequate opportunity to litigate those issues. Federal courts are required to give state court judgments the same preclusive effect they would receive in a court of that State. 28 U.S.C. § 1738; *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 466 (1982). Although the Court of Claims is not a "court" within the meaning of Article VI of the Illinois Constitution, it is "a fact-finding body," *Rossetti Contracting Co., Inc. v. Court of Claims*, 109 Ill. 2d 72, 78 (1985), that receives and resolves claims against the State, *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 97-98 (2001). As a result, general preclusion rules apply, and the Court of Claims decision is given the same preclusive effect it would receive in an Illinois court if it acted in a judicial capacity and "resolve[d] disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate." *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 799 (1986) (quoting *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)); *Goodwin v. Bd. of Trs. of Univ. of Ill.*, 442 F.3d 611, 620 (7th Cir. 2006).

First, the Court of Claims acted in a judicial capacity when it heard and decided McDonald's claim because its proceedings were conducted subject to the same rules that govern litigation in a judicial court. Court of Claims proceedings, with minor exceptions, are governed by the Illinois Civil Practice Law, 735 ILCS 5/2-101 *et seq.* (2014), and the corresponding Supreme Court Rules. 74 Ill. Admin. Code §§ 790.20, 790.55. The claimant may be represented by counsel, *see* 74 Ill. Admin. Code § 790.50(a) ("complaint shall be verified by the Claimant or counsel"), and the hearing is conducted by a Commissioner who has authority to issue subpoenas to compel the attendance of witnesses and the production of documentary evidence, 74 Ill. Admin. Code §§ 790.110, 790.155. The evidence presented is transcribed onto a written record, 74 Ill. Admin. Code § 790.120, and a claimant may challenge the final decision by filing a petition for rehearing, 74 Ill. Admin. Code § 790.220. Although the merits of a Court of Claims decision are not subject to judicial review, its proceedings may be reviewed under a common law writ of *certiorari* to ensure they complied with due process. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 260-61 (2003). Thus, the Court of Claims acted in a judicial capacity when it heard and resolved McDonald's claim because it acted subject to the same requirements and restraints as a judicial court.

Although McDonald argues that not all the judicial characteristics listed by this Court in *Buckhalter v. Pepsi-Cola General Bottlers, Inc.*, 820 F.2d 892, 896 (7th Cir. 1987), were present here (AT Br. 14), *Buckhalter* did not purport to establish any minimum requirements to qualify as having acted in a judicial capacity. Instead, this

Court merely concluded that the agency's proceedings in that case were conducted in the same manner as a judicial trial and listed the various facts that supported its conclusion. *Id.* Here, the Court of Claims proceedings were conducted in the same manner as a state court action, as McDonald received a hearing (R11 (A12)), during which he could have been represented by counsel, 74 Ill. Admin. Code § 790.50(a), engaged in prehearing discovery, 74 Ill. Admin. Code § 790.55, presented evidence, 74 Ill. Admin. Code §§ 790.110, 790.120, 790.155, and moved to file a supporting brief, 74 Ill. Admin. Code §§ 790.170, 790.200. Therefore, the Court of Claims acted in the same manner as a state court when it resolved McDonald's claim.

Second, the Court of Claims resolved disputed issues of fact that were properly before it when it decided McDonald's claim. McDonald made numerous factual allegations in his Court of Claims complaint. R89-91 (A29-31). In its decision, the Court of Claims acknowledged McDonald's allegations and found that he had not met his burden of proof as to any of them. R103-04 (A33-34). It also found that the State's evidence showed that Stateville provided weekly prayer services, subject to cancellation when the facility was on lockdown, as well as dietary options consistent with the Muslim faith. R104 (A34). Thus, the Court of Claims resolved disputed issues of fact by addressing all the allegations in McDonald's complaint and making specific findings about his claims as to Friday prayer and dietary issues.

Third, while McDonald maintains that he did not receive an adequate opportunity to litigate his claim because the Court of Claims did not comply with its own rules (AT Br. 14-16), he could have, but did not, file a petition for rehearing, 74

Ill. Admin. Code § 790.200. And those alleged errors, even if true, did not deprive him of an adequate opportunity to litigate his claim because *certiorari* review was available to protect his due process right to be heard, see *Reichert*, 203 Ill. 2d at 261 (*certiorari* review available to address alleged due process violations); see also *Estate of Pessin v. State, Dep't of Transp., Div. of Highways*, 302 Ill. App. 3d 417, 420 (1999) and *Tanner v. Court of Claims*, 256 Ill. App. 3d 1089, 1092-93 (1994) (granting *certiorari* review to address claimant's due process claims). Thus, while McDonald argues that dismissal was improper under Rule 12(b)(6) because it is impossible to determine whether he had an adequate opportunity to litigate the issues before the Court of Claims absent a record of those proceedings (AT Br. 24-25), the adequacy of his opportunity to litigate is apparent from the applicable procedural rules and his ability to obtain judicial review of the fairness of those proceedings. Therefore, the complaint and the Court of Claims decision, which is capable of judicial notice, see *White v. Keely*, 814 F.3d 883, 885 n.2 (7th Cir. 2016), establish that McDonald was given an adequate opportunity to litigate his action before the Court of Claims and the factual issue of whether he took advantage of that opportunity is irrelevant to whether issue preclusion applies.

In sum, the Court of Claims acted in a judicial capacity and resolved disputed issues fact when it denied McDonald's claim, and McDonald was not deprived of an adequate opportunity to litigate those issues. Thus, this Court should give the Court of Claims decision the same preclusive effect it would receive in an Illinois court.

D. Illinois courts would give preclusive effect to a Court of Claims decision.

While defendants have not discovered a case in which an Illinois court has directly passed on whether a Court of Claims decision is given preclusive effect, Illinois courts likely would preclude the relitigation of issues previously decided by the Court of Claims. Under Illinois law, preclusive effect is given not only to judicial judgments, but also to decisions by administrative agencies, *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 56, and arbitration decisions, *Amalgamated Transit Union, Local 241 v. Chi. Transit Auth.*, 2014 IL App (1st) 122526, ¶ 12. Because agency decisions that are “adjudicatory, judicial, or quasi-judicial” are given preclusive effect, *Pedersen v. Vill. of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 42, and the Court of Claims acts in a judicial capacity when it hears and decides a claim, *see supra* pp. 17-18, a Court of Claims decision should be given that same preclusive effect.

Although the merits of a Court of Claims decision are not subject to judicial review, *Reichert*, 203 Ill. 2d at 261, and this Court speculated in *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1020 (7th Cir. 2006), that the Illinois Supreme Court would hold that issue preclusion does not apply when the party against whom preclusion is sought could not appeal the initial judgment, existing Illinois authority indicates that the availability of judicial review is not determinative. While this Court relied on *People v. Mordican*, 64 Ill. 2d 257 (1976), to reach its conclusion in *Sornberger*, 434 F.3d at 1021-23, *Mordican* held only that a criminal defendant is not precluded from litigating an issue that was previously resolved in a decision that he could not appeal,

noting that the extent to which issue preclusion may be applied against a criminal defendant is “extremely limited,” 64 Ill. 2d at 261-62. Indeed, Illinois courts have since applied *Mordican*’s issue preclusion exception to criminal defendants, *see, e.g., People v. Weilmuenster*, 283 Ill. App. 3d 613, 623 (1996), but have not applied it in a civil proceeding. And although this Court noted that extending the reach of the *Mordican* exception to civil proceedings was consistent with Restatement (Second) of Judgments § 28(1), *Sornberger*, 434 F.3d at 1022, n.10, defendants have not found a case in which an Illinois court has adopted that provision as Illinois law.

Arbitration decisions, like Court of Claims decisions, are subject to limited judicial review of the fairness of the proceedings, *Vill. of Posen v. Ill. Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 35-36, yet they still receive the same preclusive effect as court judgments, *see Amalgamated Transit*, 2014 IL App (1st) 122526, ¶ 12. Because Court of Claims proceedings are subject to the same procedural rules as judicial proceedings, *see* 74 Ill. Admin. Code §§ 790.20, 790.55, and the same judicial review as arbitration decisions, *see Vill. of Posen*, 2014 IL App (1st) 133329, ¶ 34-36, its decisions should be entitled to at least the same preclusive effect as arbitration awards and administrative decisions. Thus, this Court should affirm the dismissal of McDonald’s claims as to Friday prayer, confiscated cassette tapes, and stolen prayer rugs because issue preclusion bars the litigation of those claims.

CONCLUSION

For the foregoing reasons, this Court should affirm the dismissal of McDonald's claim about Friday prayer, but without prejudice, because it is moot or, alternatively, affirm the dismissal of that claim with prejudice on preclusion grounds. This Court should also affirm the dismissal of McDonald's claims as to confiscated cassette tapes and stolen prayer rugs.

June 30, 2016

LISA MADIGAN
Attorney General
State of Illinois Attorney General

CAROLYN E. SHAPIRO
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellees.

/s/ Frank H. Bieszczat
FRANK H. BIESZCZAT
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2234
Fbieszczat@atg.state.il.us

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(A) because the brief, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), is no more than 30 pages from the Jurisdictional Statement through the Conclusion.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point Century Schoolbook BT.

/s/ Frank H. Bieszczat
Frank H. Bieszczat

SUPPLEMENTAL APPENDIX

Table of Contents to Supplemental Appendix

McDonald Letter to Warden Pfister (Jan. 11, 2016) 1

Declaration of Chaplain George Adamson (June 28, 2016) 2

Donald Lee McDonald, N2308
Unit C, Cell 457

Warden Randy Pfister
Stateville Correctional Center
P.O. Box 112
Joliet, Ill. 60434

January 11, 2016

RE: Friday Prayer

Dear Warden Pfister,

I would like thank you, for returning Jumu'ah,
Friday prayer, back to the muslim community.

With this opportunity I hope to reward
Stateville with a safer, and God willing less
gang affiliation in the future.

Thank you again, and may Allah (swt) reward
you with the best of this life, and the here-after

Sincerely,

Donald L. McDonald

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.


DECLARATION

I, GEORGE ADAMSON, state the following:

1. I am the Senior Chaplain at Stateville Correctional Center.
2. As the Senior Chaplain, I have knowledge of the facility's policies regarding the accommodation of religious beliefs.
3. Consistent with the letter received from inmate Donald McDonald, N23082, on January 11, 2016, the facility has made Friday prayer services available to all Muslim inmates every week since that date, subject to cancellation during lockdown.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on June 28, 2016.



GEORGE ADAMSON
Senior Chaplain
Stateville Correctional Center
15830 So. Broadway St.
Joliet, IL 60434



CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on June 30, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Frank H. Bieszczat



CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:

address:

s/ _____