UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

QUINTIN SCOTT,	)	
	)	
Plaintiff,	)	No. 17 C 7135
	)	
v.	)	Judge Martha Pacold
	)	
COOK COUNTY, et al,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1)

Defendants, Thomas J. Dart, Sheriff of Cook County, and Cook County, Illinois ("Defendants"), through undersigned counsel, move to dismiss Plaintiff, Quintin Scott's ("Scott") Amended Complaint, Dkt. 30, for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1)[1].

INTRODUCTION & PROCEDURAL HISTORY

Scott filed a putative class action under 42 U.S.C. § 1983, claiming that his Fourteenth Amendment rights were violated due to a delay in dental care when he was detained at the Cook County Department of Corrections. Dkt. 30. After discovery, this Court denied Scott's motion for

[1] Because this motion goes to this Court's jurisdiction -- specifically, its power to provide a remedy that redresses Scott's supposed injuries – Defendants' motion should be resolved before reaching the merits of Scott's pending Opposed Motion to Add Additional Plaintiffs, Dkt. 202. *See Scott Air Force Base Properties, LLC v. Cty. of St. Clair, Ill.*, 548 F.3d 516, 520 (7th Cir. 2008) ("It is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action."); *see also Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) (rejecting the proposition that a court may proceed to the merits question before resolving whether it has Article III jurisdiction); *Cook v. Winfrey,* 141 F.3d 322, 325 (7th Cir. 1998) (holding district court erred by dismissing case pursuant to Rule 12(b)(6) without reaching jurisdictional challenge asserted under Rule 12(b)(1)); *Crawford v. United States,* 796 F.2d 924, 929 (7th Cir. 1986) ("once the district judge has reason to believe that there is a serious jurisdictional issue, [s]he is obliged to resolve it before proceeding to the merits even if the defendant, whether as a matter of indolence or strategy, does not press the issue").

class certification. Dkt. 164. Scott then accepted a conditional offer of judgment of $7,500[2], reserving his right to appeal the denial of class certification in order to seek an additional "incentive award[3]" as a class representative if class certification was later granted. Dkt. 182. This Court entered final judgment, and Scott appealed. Dkt. 187. At the appellate level, Defendants argued that Scott lacked Article III standing based solely on a prospective incentive award, requiring dismissal of his appeal for lack of jurisdiction.

On April 29, 2024, the Seventh Circuit reversed this Court's denial of class certification, finding that Scott had Article III standing, over the dissent of Circuit Judge Kirsch. *Scott v. Dart*, 99 F.4th 1076 (7th Cir. Apr. 29, 2024). Defendants petitioned for rehearing en banc, which was denied on July 23, 2024. However, Judge Easterbrook, joined by Chief Judge Sykes, issued a statement noting that the panel majority's broad understanding of Article III means "everyone would have standing to litigate about anything." *Scott v. Dart*, 108 F.4th 931, 932 (7th Cir. July 23, 2024) (Easterbrook, J., statement regarding rehearing). More troubling, Judge Easterbrook pointed out that the panel majority's ruling allowed judges to unilaterally increase the damages awarded to plaintiffs beyond what was allowed by statute. *Id.* at 933 ("The Sherman Act authorizes treble damages, not treble damages plus a kicker that the judge thinks warranted on public-policy grounds."); *id.* ("A judge can't say 'good judicial administration requires quintuple damages for the representative, even though the rest of the workers must accept double damages.' A legislature might say that, but a judge can't."); *id.* at 934 ("[A] judge cannot order the defendant to pay more

[2] Scott is currently the only named class representative in this matter. Former Plaintiff Montrell Carr accepted an offer of judgment with no appellate carve-out reserving his right to appeal, and this Court subsequently entered judgment. Dkt. 183, 187.

[3] An incentive award in the class action context is generally understood as an award to compensate named plaintiffs for costs incurred in performing their role as class representatives—costs above and beyond what they would bear as ordinary class members. *See Espenschied v. DirectSat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012).

than the legally permissible level of damages, plus attorneys' fees and costs authorized by statute."). On February 24, 2025, the United States Supreme Court denied Defendants' petition for writ of certiorari.

As explained more fully below, no case or controversy currently exists under Article III for this Court's determination. It is well settled that Article III requires redressability, which is not satisfied when the court lacks authority to grant the relief the plaintiff requests. *See Goldhamer v. Nagode*, 621 F.3d 581, 55 (7th Cir. 2010); *see also Buschemi v. Bell*, 964 F.d 252, 259 (4th Cir. 2020); *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018). This case should be dismissed because Scott lacks standing to seek an incentive award under Rule 23(e) based on the Seventh Circuit's interpretation of the rule, which forces defendants to pay class representatives' incentive awards in addition to the damages and attorney's fees/costs allowed by statute. Because the Seventh Circuit has interpreted Rule 23(e) to allow for substantive relief, it has placed that rule in direction violation of the express terms of the Rules Enabling Act. As a result, Rule 23(e) as interpreted by the Seventh Circuit is invalid as a matter of law, and it cannot afford this Court any power to grant Scott an incentive award. Absent that authority, Scott's desire for such an award – the sole basis for his continued litigation of this suit – is not redressable, depriving him of Article III standing and requiring dismissal for lack of jurisdiction.

LEGAL STANDARD

A Rule 12(b)(1) motion tests whether the Court has subject matter jurisdiction. *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). When evaluating a motion to dismiss under Rule 12(b)(1), if there are no factual disputes, the Court accepts the allegations in the complaint as true and draws all reasonable inferences in the plaintiff's favor. *Bultasa Buddhist Temple of Chi. v. Nielsen*, 878 F.3d 570, 573 (7th Cir. 2017). But "a plaintiff

faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met." *Ctr. for Dermatology and Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588-89 (7th Cir. 2014). This Court may properly look beyond the jurisdictional allegations of the Complaint and view whatever evidence has been submitted on the issue to determine whether subject matter jurisdiction exits. *Capitol Leasing Co. v. F.D.I.C.*, 999 F.2d 188, 191 (7th Cir. 1993). Courts have held that Fed. R. Civ. P. 12(h)(3) allows filing of a motion to dismiss for lack of subject matter jurisdiction at any time. *See 24 Hour Fitness USA, Inc. v. Bally Total Fitness Holding Corp.*, No. 08 CV 3853, 2008 U.S. Dist. LEXIS 84374, at *2 (N.D. Ill. Oct. 21, 2008).

ARGUMENT

I. Under Article III, This Court Lacks Subject Matter Jurisdiction.

The jurisdiction of the federal judiciary is constitutionally limited to "cases" and "controversies." U.S. Const. Art III § 2. Courts have interpreted this limitation to "demand that litigants demonstrate a 'personal stake' in the suit." *Camreta v. Greene*, 563 U.S. 692, 701 (2011). To meet the case-or-controversy requirement, "it is not enough that a dispute was very much alive when suit was filed," and instead "[t]he parties must continue to have a personal stake in the outcome of the lawsuit." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477-78 (1990) (internal quotation omitted). When this "personal stake" ceases to exist, "the action can no longer proceed and must be dismissed." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013).

The Supreme Court has made clear that "absent a plaintiff with a live individual case . . . the suit cannot be maintained." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016) (citing *Genesis*, 569 U.S. at 72). This is because "a class lacks independent status until certified," and only "a would-be class representative *with a live claim*" is entitled to proceed towards class certification. *Id*. at 165 (emphasis added). Conversely, a "would-be class representative" with a

moot claim is not. *Id*.; *see also id.* at 178 n.1 (Roberts, Chief J., dissenting) ("Gomez does not have standing to seek relief based solely on the alleged injuries of others"). Accordingly, where a plaintiff in a putative class action has been offered and tendered complete relief, the entire action must be dismissed.

The Supreme Court has also made clear that standing is not dispensed in gross, *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), so the fact that *other* potential plaintiffs might have had standing to carry on this class litigation had they intervened years ago cannot confer personal standing. Two Supreme Court Justices have even recognized that a desire for an "incentive award does not create article III standing,". *Gomez*, 577 U.S. at 178 n.1. (Roberts, Chief J. dissenting).

Here, according to the panel majority, incentive awards are authorized by the 2018 amendment to Rule 23(e) allowing approval of "equitable" class settlements. Fed. R. Civ. P. 23(e). When called on to name the legal authority for incentive awards, as required to show redressability under Article III, the panel majority identified only Fed. R. Civ. P. 23(e). *Scott*, 99 F.4th at 1085-86. More specifically, the panel majority concluded that, while Rule 23 "does not use the phrase 'incentive award,'" it permits class representatives to "receive compensation for shouldering the time-consuming burdens of litigation and assuming risks of financial, and potentially reputational, harm." *Id*. at 1085. The 2018 amendment to Rule 23(e) requiring that class settlements be "equitable," the majority concluded, suffices to permit incentive awards because they are "consistent with [that] mandate." *Id*. at 1086. The panel majority also concluded that Rule 23(e) repudiated previous Supreme Court precedent prohibiting incentive awards. *Id*. at 1085. As Judge Easterbrook subsequently explained in his statement regarding rehearing, this interpretation of Rule 23(e) reads that rule to authorize district courts to award class representatives incentive

awards in addition to the remedies authorized by statute. *Scott*, 108 F.4th at 932-33 (Easterbrook, J., statement).

This interpretation of Rule 23(e) makes Rule 23(e) invalid as a matter of law under the Rules Enabling Act, by giving it substantive effect rather than the purely procedural scope allowed by the Act.[4] It is well settled that rules of civil procedure are valid only to the extent that they concern procedure and do not regulate "the available remedies" for legal violations. *Shady Grove Orthopedic Assocs, P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). And the Supreme Court has expressed particular concern about giving Rule 23 impermissible substantive effect, having long "counsel[ed] against adventurous application" of Rule 23 specifically to avoid conflicts with the Rules Enabling Act. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845 (1999). But that is precisely how the Seventh Circuit has now interpreted Rule 23, to effectively amend *every* substantive statute governing damages to allow in class actions a new remedy neither authorized by statute nor previously recognized at common law or equity: namely, awards of "damages plus a kicker that the judge thinks warranted on public-policy grounds." *Scott*, 108 F. 4th at 933 (Easterbrook, J., statement).

Because Rule 23(e), as now interpreted by the Seventh Circuit, has the substantive effect of creating a new remedy that did not previously exist in statute, equity, or at common law, in direct violation of the Rules Enabling Act, Rule 23(e) is thus invalid as a matter of law as applied to this case because Rule 23(e) cannot have a substantive effect.[5] Because Rule 23(e) is thus invalid

[4] This interpretation of Rule 23(e) is also in stark contrast with Fed. R. Civ. P. 54 regarding litigation costs – as the Supreme Court has explained, Rule 54 does *not* permit awards of costs that are not already specifically authorized by federal statutes, but rather only grants courts discretion to deny the costs those statutes allow. *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 441-42 (1987).

[5] To be clear, we do not contend that Rule 23(e) is facially invalid – specifically, we do not claim that it has an impermissible substantive effect in the ordinary case in which that rule is invoked merely to require judicial approval of a class settlement. After all, in such circumstances, the legal source of the incentive-

under the Rules Enabling Act as applied here, it cannot afford this Court the power to award Scott an incentive award. Absent such power, this Court cannot redress Scott's supposed injury in being denied an incentive award. That lack of redressability in turn deprives Scott of the Article III standing necessary to show a cognizable case or controversy.

Even assuming, for sake of argument, that Rule 23(e) is not invalid as applied to this case, this Court would still lack jurisdiction because, as the panel majority's decision here makes clear, incentive awards are properly understood as awards of litigation costs particular to class representatives. *Scott*, 99 F.4th at 1082-83. But the Supreme Court has been clear that litigation byproducts such as costs are not injuries in fact for purposes of Article III. *Vt. Agency of Natural Res. v. United States*, 529 U.S. 765 (2000); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 108 (1998). Thus, a desire for an incentive award still cannot give rise to Article III standing because it reimburses only litigation costs that do not constitute injuries-in-fact. That independently forecloses jurisdiction, even if this Court concludes that Rule 23(e) is not invalid as applied here.

Nothing in the Seventh Circuit's opinion forecloses a ruling by this Court that it lacks jurisdiction. The Seventh Circuit conspicuously failed to address either of these jurisdictional problems in its opinion, so nothing in that opinion can be read to say anything about either. That is significant because the Seventh Circuit has been clear that *implicit*, "drive-by jurisdictional rulings have no precedential effect". *United States v. Ceballos*, 302 F.3d 679, 691 (7th Cir. 2002); *accord Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) ("we have repeatedly held that the existence

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award remedy would not be Rule 23(e), but the terms of the contract giving rise to the settlement. But this case does not involve even a certified class, let alone a settlement of a class claim, so any incentive award as this case currently stands would be forced on the defendants against their will, as Judge Easterbrook observed. *Scott*, 108 F.4th at 934 (Easterbrook, J., statement).

of unaddressed jurisdictional defects has no precedential effect"). This Court is thus free to address the jurisdictional defects identified here in the first instance.

In sum, Rule 23(e) is invalid as applied here, depriving this Court of the power to redress Scott's supposed injuries via an incentive award. Even if Rule 23(e) was valid as applied here, the Seventh Circuit has made clear that incentive awards reimburse class representatives for litigation costs, but the Supreme Court has made clear that litigation costs are not injuries-in-fact for purposes of Article III. Either way, this Court is not presented with a case or controversy under Article III. Absent such a controversy, this Court lacks jurisdiction and must dismiss this case under Fed. R. Civ. P. 12(b)(1).

CONCLUSION

For the foregoing reasons, this Court should grant Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing Motion has been electronically filed on February 24, 2025. I certify that I have caused the foregoing Motion to be served on all counsel of record via CM/ECF electronic notice.

s/ *Christina Faklis Adair*
Christina Faklis Adair