THIRD DIVISION
April 22, 2011

No. 1-10-3400

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EMMA K.W.,	)	APPEAL FROM THE
Plaintiff-Appellant,	)	CIRCUIT COURT OF
	)	COOK COUNTY
v.	)	
	)	No. 10 M1 166866
	)	
THE DEPARTMENT OF CHILDREN	)	HONORABLE
AND FAMILY SERVICES,	)	DENNIS M. McGUIRE,
Defendant-Appellee.	)	JUDGE PRESIDING.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Neville concurred in the judgment.

O R D E R

HELD: The circuit court did not err in dismissing Emma K.W.'s complaint against the Illinois Department of Children and Family Services, as the suit is barred by the doctrine of sovereign immunity. Accordingly, Illinois courts lack subject matter jurisdiction over Emma K.W.'s claims.

Plaintiff Emma K.W. appeals an order of the circuit court of Cook County dismissing her complaint against the defendant Illinois Department of Children and Family Services (DCFS). We conclude the complaint is barred by the doctrine of sovereign immunity and affirm the circuit court's order based on a lack of subject matter jurisdiction. Emma K.W. must, if she chooses to, pursue her complaint in the legislatively-created Illinois Court of Claims.

BACKGROUND

The record on appeal discloses the following facts. On July 23, 2010, Emma K.W. filed a *pro se* complaint against "DCFS Cook County" in the small claims division of the circuit court. The complaint, labeled "breach of contract," alleged in its entirety:

> "[DCFS] - put my daughter in dcfs custody as a foster child, never contacted me, nothing in her file so she could call me. [N]ever questioned me to ask if [I] wanted her custody or to find out what happened. [E]very child has biological parents. [T]hey never tried to see who her parents were. [I] would like to sue in the amount of $5,000."

On September 3, 2010, the circuit court dismissed the complaint without prejudice.

On September 20, 2010, Emma K.W. filed a *pro se* motion to reconsider, alleging that DCFS placed her child for adoption without her consent. In the motion, Emma K.W. alleged that DCFS falsely documented the adoption, as well as deceived, misled and interfered with her regarding the adoption. The motion also alleged that DCFS kidnaped Emma K.W.'s baby. The motion further alleged that the DCFS committed slander by calling Emma K.W.'s baby a "foster child" and defamed Emma K.W. by stating that she did not want her baby. In addition, Emma K.W. alleged that DCFS endangered her child by giving the child to strangers.

According to Emma K.W., a 2007 investigation concluded her child was taken from her at birth. However, she claimed the illegal adoption was not reversed and her child was not returned to her. Emma K.W. also alleged that DCFS had failed to cooperate with her by providing proof of her claims against the agency. Emma K.W. further claimed that DCFS failed to forward a photograph, address and cellphone to the child. Moreover, Emma K.W. claimed

that DCFS had engaged in false advertising about the benefits of the foster child program. While noting that 14 or 15 years had passed since she gave birth, Emma K.W. asked the court to reverse the illegal adoption and return the child to her. Emma K.W. also sought $3,000 for expenses incurred in traveling to Springfield, Illinois, and sending facsimile transmissions, and for other costs.[1]

On September 29, 2010, the circuit court gave DCFS leave to file a motion to dismiss in lieu of a response to the motion for reconsideration. That same day, DCFS filed a combined motion to dismiss pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2010)). DCFS argued the complaint should be dismissed for failing to state a claim against DCFS or its employees, pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). DCFS also argued that the suit was barred by sovereign immunity and thus should be dismissed under section 2-619(a)(1) of the Code for lack of subject matter jurisdiction (735 ILCS 5/2-619(a)(1) (West 2010)).

On November 9, 2010, the circuit court granted DCFS' motion to dismiss. The next day, Emma K.W. filed a timely notice of appeal to this court.

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[1] Although not included in her complaint or motion for reconsideration, Emma K.W. asserts in her appellate brief that in May 1995, she traveled from Rockford, Illinois, to a clinic in Chicago, Illinois, where she gave birth to a child. Emma K.W. asserts that her pregnancy could not be terminated because she was in her third trimester of pregnancy.

DISCUSSION

The sole issue for review is whether the circuit court erred in dismissing Emma K.W.'s complaint. In this case, DCFS filed a combined motion to dismiss. Section 2-619.1 of the Code allows a party to combine a motion to dismiss for substantially insufficient pleadings under section 2-615 of the Code with a motion for involuntary dismissal based upon defects or defenses under section 2-619 of the Code. 735 ILCS 5/2-619.1 (West 2010). A motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) tests the legal sufficiency of a plaintiff's claim; a motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) admits the legal sufficiency of a plaintiff's claim, but asserts certain defects or defenses outside the pleading that defeat the claim. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). "The purpose of a section 2-619 motion to dismiss is to dispose of a case on the basis of issues of law or easily proved issues of fact." *Hertel v. Sullivan*, 261 Ill. App. 3d 156, 160 (1994). Our standard of review under either section is *de novo*. *Solaia*, 221 Ill. 2d at 579.

In the circuit court, DCFS sought to dismiss the case on the ground that the court lacked subject matter jurisdiction due to sovereign immunity. Although DCFS did not argue the point on appeal, we must assure ourselves of our subject matter jurisdiction. See, *e.g.*, *People ex rel. Hansen v. Phelan*, 158 Ill. 2d 445, 449-50 (1994). The Illinois Constitution of 1970 abolished sovereign immunity but gave the legislature the power to restore it. Ill. Const.1970, art. XIII, §4; see *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 249 (1998) ("[T]he legislature – only the legislature – can determine when and where claims against the state will be allowed."). The

legislature restored sovereign immunity by enacting the State Lawsuit Immunity Act, which generally provides:

> "Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, Section 1.5 of this Act, and, except as provided in and to the extent provided in the Clean Coal FutureGen for Illinois Act, the State of Illinois shall not be made a defendant or party in any court." (Footnotes omitted) 745 ILCS 5/1 (West 2010).

The Court of Claims Act establishes a special court, consisting of seven judges appointed by the governor, with the advice and consent of the state Senate. 705 ILCS 505/1 (West 2010). The Court of Claims Act also provides in relevant part:

> "The court shall have exclusive jurisdiction to hear and determine the following matters:
>
> > (a) All claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency; provided, however, the court shall not have jurisdiction (i) to hear or determine claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for expenses in civil litigation, or (ii) to review administrative decisions for which a statute provides that review shall be in the circuit or appellate court.
> >
> > (b) All claims against the State founded upon any contract entered into with the State of Illinois.
> >
> > ***

> (d) All claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit ***." 705 ILCS 505/8(a), (b), (d) (West 2010).

Sovereign immunity of the State extends to suits against a state agency or department. When immunity applies, the circuit court lacks jurisdiction to hear the claim. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34-35 (2009). "The determination of whether an action is a suit against the State, and thus one that must be brought in the Court of Claims, turns upon an analysis of the issues involved and the relief sought, rather than the formal designation of the parties." *Id*. at 35. An action is against the State when a "judgment for the plaintiff could operate to control the actions of the State or subject it to liability." *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). A party seeking a monetary judgment against an agency payable out of state funds must bring its action in the Court of Claims. *James v. Mims*, 316 Ill. App. 3d 1179, 1181 (2000).

In this case, Emma K.W. filed suit against DCFS, a department of the State to which sovereign immunity is applicable. See *Children's Memorial Hospital v. Mueller*, 141 Ill. App. 3d 951, 956 (1986). Emma K.W. raised claims sounding not only in contract, but also in tort (*e.g.*, defamation, false advertising), which clearly fall within the jurisdiction of the Court of Claims. 705 ILCS 505/8(b), (d) (West 2010). Her claims also suggest that DCFS acted in violation of its governing statutes and regulations. However, sovereign immunity applies, despite the claim that a statute or regulation was violated, where a judgment for the plaintiff would subject the State to direct liability to plaintiff for money damages. *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 394-95 (1984); see also *Mueller*, 141 Ill. App. 3d at 955 (dismissing

a claim alleging DCFS failed to comply with its regulations). Here, the relief Emma K.W. seeks would both control the actions of the State and subject it to liability for monetary damages.

In short, Emma K.W.'s complaint is subject to the doctrine of sovereign immunity. Accordingly, neither the circuit court nor this court has jurisdiction over her claims.

CONCLUSION

In sum, Illinois courts lack subject matter jurisdiction over Emma K.W.'s complaint, because it asserts claims sounding in contract, tort or other illegality brought against a state department and seeks monetary damages from and to control the actions of the State. For all of the aforementioned reasons, we affirm the order of the circuit court of Cook County dismissing the complaint.

Affirmed.