

No. 1-12-0815

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

NICOLE BRYANT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	2011 L 001711
)	
LEVANTINA USA, INC. d/b/a)	
INTERNATIONAL STONE DESIGN,)	Honorable
)	Ronald F. Bartkowicz,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

HELD: The circuit court did not err in dismissing plaintiff's verified complaint pursuant to section 2-619(a)(1) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2010)).

¶ 1 This action arises from plaintiff Nicole Bryant's termination from employment with defendant Levantina USA Inc., d/b/a International Stone Design. Plaintiff was employed by

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defendant from October 2008 until her termination on November 13, 2009. Plaintiff worked for defendant as an administrative assistant. Her work duties included typing invoices, ordering office supplies, filing documents, preparing bank deposits, and answering telephones. Plaintiff claimed she was terminated shortly after notifying her supervisor she was pregnant and would require a day off from work. In January 2010, plaintiff filed a charge of pregnancy discrimination with the Illinois Department of Human Rights and shortly thereafter received notice of a right to sue in circuit court.

¶2 On February 15, 2011, plaintiff filed a one-count verified complaint against defendant in the circuit court of Cook County alleging defendant discriminated against her by unlawfully terminating her employment on the basis of her pregnancy in violation of section 2-102(A) of the Illinois Human Rights Act (Act) (775 ILCS 5/2-102(A) (West 2006))¹. This section of the Act prohibits an

¹ Effective August 26, 2011, section 2-102 of the Act was amended by Public Act 97-596, § 5, which added subsection (I), a pregnancy provision. This subsection provides that it is a civil rights violation for an employer to:

"refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work." 775 ILCS 5/2-102(A) (West 2012).

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employer from discharging an employee on the basis of unlawful discrimination.

¶ 3 Defendant filed a motion to dismiss and a subsequent amended motion to dismiss the verified complaint pursuant to section 2-619(a)(1) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2010)), alleging that the circuit court lacked subject matter jurisdiction over plaintiff's claims. Defendant argued it was not an "employer" as that term is defined in section 2-101(B)(1)(a) of the Act (775 ILCS 5/2-101(B)(1)(a) (West 2006)), because during the time it employed plaintiff, it did not employ the requisite number of employees (15 or more) in its Illinois office to be considered an "employer" under the Act and therefore the circuit court lacked subject matter jurisdiction over plaintiff's claims.

¶ 4 Section 2-101(B)(1)(a) of the Act defines an "employer" as "[a]ny person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation." 775 ILCS 5/2-101(B)(1)(a) (West 2006). Defendant contended that the Act's fifteen-employee requirement was a jurisdictional prerequisite to bringing suit under the Act. The circuit court agreed with defendant and dismissed the verified complaint with prejudice on February 22, 2012. For the reasons that follow, we affirm.

¶ 5 ANALYSIS

¶ 6 Our review of a dismissal under section 2-619 of the Code is *de novo*. *American National Bank & Trust Co. v. Thomas*, 288 Ill. App. 3d 343, 346 (1997). In reviewing the grant of a section 2-619 motion, we interpret the pleadings and supporting materials in a light most favorable to the plaintiff. *Shirley v. Harmon*, 405 Ill. App. 3d 86, 90 (2010).

¶ 7 The purpose of a section 2-619 motion to dismiss is to provide a means of disposing of issues

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of law or easily proved issues of fact. *Draper v. Frontier Insurance Co.*, 265 Ill. App. 3d 739, 742 (1994). A section 2-619 motion admits all well-pleaded facts in the complaint and all reasonable inferences that may be drawn therefrom, but does not admit conclusions of law or fact unsupported by specific allegations. *Jackson v. Moreno*, 278 Ill. App. 3d 503, 505 (1996); *Rajcan v. Donald Garvey & Associates, Ltd.*, 347 Ill. App. 3d 403, 407 (2004).

¶ 8 Review of an appeal from a section 2-619 dismissal is similar to review of an order granting summary judgment in that we must determine whether a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal was proper as a matter of law. *Westmeyer v. Flynn*, 382 Ill. App. 3d 952, 954-55 (2008); see also *Advocate Health and Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004) ("[a] section 2-619 motion is similar to a motion for summary judgment, although it is usually presented early in a case, before there is an opportunity for discovery.").

¶ 9 In this case, the circuit court dismissed plaintiff's verified complaint upon defendant's motion to dismiss brought pursuant to section 2-619(a)(1) of the Code, which provides for the involuntary dismissal of an action based on lack of subject matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2010). Here, there are no disputed issues of material fact so our review is confined to whether dismissal was proper as a matter of law. *Consolidated Freightways Corp. of Delaware v. Human Rights Comm'n*, 305 Ill. App. 3d 934, 938 (1999); *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010) ("[a]n argument challenging the subject matter jurisdiction of the circuit court presents a question of law").

¶ 10 "Subject matter jurisdiction refers to a court's power to adjudicate the general question

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involved and to grant the relief requested." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1064 (2009). A circuit court's subject matter jurisdiction is conferred by our state constitution. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

¶ 11 Article VI, section 9, of the Illinois Constitution of 1970 provides that "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. As the language of article VI, section 9, indicates, circuit courts have original jurisdiction over all justiciable matters except those explicitly assigned to the supreme court and those arising out of administrative proceedings.

¶ 12 The Act provides an administrative procedure by which parties alleging employment discrimination may pursue claims against an employer. *Village of Maywood Board of Fire & Police Commissioners v. Department of Human Rights*, 296 Ill. App. 3d 570, 576 (1998). Where a tribunal's power to act is dependent upon statutory authority, its jurisdiction is limited by that statute. *Aero Services International, Inc. v. Human Rights Comm'n*, 291 Ill. App. 3d 740, 752 (1997).

¶ 13 Section 8-111(D) of the Act provides that "[e]xcept as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." 775 ILCS 5/8-111(D) (West 2008). As mentioned, the Act includes within the definition of "employer" "[a]ny person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation." 775 ILCS 5/2-101(B)(1)(a) (West 2006).

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¶ 14 Our courts have determined that the Act's fifteen-employee numerosity requirement is a jurisdictional prerequisite to bringing suit under the Act. *Aero Services International, Inc.*, 291 Ill. App. 3d at 752; *Baker v. Miller*, 242 Ill. App. 3d 44, 49-50 (1993), *aff'd on other grounds*, 152 Ill. 2d 249 (1994). Moreover, the determination of whether a particular employer qualifies as an "employer" within the meaning of section 2-101(B)(1)(a) of the Act is not only jurisdictional, but also is an essential element of the cause of action. See *Aero Services International, Inc.*, 291 Ill. App. 3d at 752 (holding that an employer's status as an "employer" within the definition of section 2-101(B)(1)(a) of the Act, is an essential element of the cause of action which must be pleaded and proved by the complainant).

¶ 15 Defendant argues, and plaintiff concedes, that during the relevant time period, defendant did not employ the requisite number of employees within Illinois to qualify as an "employer" under section 2-101(B)(1)(a) of the Act. Therefore, we find the circuit court did not err in dismissing plaintiff's verified complaint for lack of subject matter jurisdiction pursuant to section 2-619(a)(1) of the Code.

¶ 16 In an effort to satisfy the jurisdictional requirement of fifteen employees, plaintiff suggests that employees from defendant's out-of-state subsidiaries be counted toward the requirement. We must disagree.

¶ 17 The statute provides that in order to qualify as an employer for jurisdictional purposes under the Act, the employer must employ 15 or more employees *within Illinois* during the relevant time period. The italicized language is inconsistent with plaintiff's suggested approach of counting employees from out-of-state subsidiaries. As a general rule, courts should not construe a statute in

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a way that renders words or phrases meaningless or superfluous. *In re Application of County Collector of Kane County*, 132 Ill. 2d 64, 72 (1989); *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 16.

¶ 18 Finally, plaintiff cites to federal case law interpreting provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.* (West 2006)), in support of her contention that the Act's fifteen-employee numerosity requirement is not a jurisdictional prerequisite to bringing suit under the Act. Under Title VII, the term "employer" is defined as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person ***." 42 U.S.C. § 2000e(b). The United States Supreme Court held that Title VII's definition of "employer" as defined in section 2000e(b) of the statute, "is an element of a plaintiff's claim for relief, not a jurisdictional issue." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 509, 515-16 (2006).

¶ 19 *Arbaugh* does not apply here because it deals solely with Title VII's employee numerosity requirement and not employer status under the Act. In addition, the subject matter jurisdiction of Illinois state courts and the federal courts are entirely independent of one another and based on different principles.² Therefore, federal court decisions concerning federal jurisdiction have little or no bearing on the jurisdiction of Illinois state circuit courts.

¶ 20 Accordingly, for the reasons set forth above, we affirm the circuit court's order dismissing

² Federal subject matter jurisdiction is generally based on either diversity of citizenship, requiring more than \$75,000 in dispute between citizens of different states (28 U.S.C. § 1332), or on a claim involving the Constitution, laws, or treaties of the United States (28 U.S.C. § 1331).

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plaintiff's verified complaint for lack of subject matter jurisdiction pursuant to section 2-619(a)(1)
of the Code.

¶ 21 Affirmed.