

2013 IL App (2d) 110737-U  
No. 2-11-0737  
Order filed June 17, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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LUSVEY MORALES, Indiv. and as Mother and Next Friend of Sandra Ramirez-Morales and Javier Ramirez-Morales, Minors, and as Special Adm'x of the Estate of Diana Ramirez-Morales, Deceased,	)	Appeal from the Circuit Court of McHenry County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 09-LA-18
	)	09-LA-21
	)	
FRANCISCO JAVIER RAMIREZ, CAFFERO TRUCKING, INC. and JAMES CASTLE	)	Honorable
	)	Michael T. Caldwell,
Defendants.	)	Judge, Presiding.

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JAMES CASTLE and CAFFERO TRUCKING, INC.	)	Appeal from the Circuit Court of McHenry County.
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	Nos. 09-LA-18
	)	09-LA-21
	)	
MOHAMMED I. QUIRESHI,	)	Honorable
	)	Michael T. Caldwell,
Third-Party Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Burke and Justice Hudson concurred in the judgment.

### ORDER

¶ 1 *Held:* The circuit court properly dismissed plaintiffs' complaint for lack of subject matter jurisdiction based on sovereign immunity, relying on *Shirley v. Harmon*, 405 Ill. App. 3d 86 (2010), which held that sovereign immunity applied to an IDOT snowplow driver; circuit court affirmed.

*Res judicata* and collateral estoppel did not bar defendant's motion to dismiss plaintiffs' complaint because the prior order plaintiffs relied on, the denial of a motion to dismiss, was not a final judgment.

Defendant's affidavit was sufficient to establish a lack of material facts where the affidavit supported claim of sovereign immunity and plaintiffs failed to tender any counteraffidavits to refute the facts presented by defendant.

¶ 2 Plaintiffs, Lusvey Morales, Andres Valdivia-Morales and Marisela Gallardo appeal from a circuit court's order dismissing their complaints against third-party defendant, Mohammed Quireshi, an Illinois Department of Transportation (IDOT) snowplow truck driver. On appeal, plaintiffs argue that the circuit court erred by granting Quireshi's motion to dismiss because (1) the circuit court relied on this court's erroneous decision, *Shirley v. Harmon*, 405 Ill. App. 3d 86 (2010), which held that sovereign immunity applied to an IDOT "highway maintainer"; (2) the doctrine of *res judicata* applied to bar Quireshi from asserting that he was protected by sovereign immunity; (3) the doctrine of collateral estoppel barred Quireshi's claim that sovereign immunity applied; and (4) there remains an issue of material fact as to the affirmative matter claimed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the pleadings and attached documents. At about 2 p.m. on December 19, 2008, during a snowstorm, Francisco Javier Ramirez, drove the following passengers in a Ford minivan on a shopping trip, his wife, Lusvey Morales, their three children,

Javier Ramirez-Morales, Sandra Ramirez-Morales and Diana Ramirez-Morales, and two other passengers, Andres Valdavia-Morales and Marisela Gallardo. Francisco drove the minivan north on Route 47, a road that had one lane in each direction. At the same time, a snowplow truck was traveling south on the same road. The driver of the snowplow truck was Mohammed Quireshi who was working for IDOT at the time. The snowplow truck and its 11-foot blade were in both the northbound and southbound lanes. To avoid contact with the snowplow, Francisco drove the minivan toward the right-side shoulder of the road. When Francisco attempted to steer the minivan left, back to the road, he lost control of the vehicle. The minivan swivelled and veered left into oncoming traffic. The minivan crossed the center of Route 47 and collided with a Peterbilt semi-truck driven by James Castle who was traveling southbound. The impact with the semi-truck caused the minivan to spin. Six-year-old Diana was ejected from her seat onto the side of the road and died as a result of her injuries. The other five passengers were taken to local hospitals.

¶ 5 On January 12, 2009, Lusvey filed a complaint against Francisco and Castle individually and as mother and next of friend of Sandra and Javier and as special administrator of Diana's estate.<sup>1</sup> Andres and Marisela filed a separate complaint against Francisco and Castle.<sup>2</sup> Lusvey amended her complaint, adding as defendant, Caffero Trucking, Inc., the owner of the Peterbilt truck.<sup>3</sup> Castle filed cross-claims for contribution against Francisco. In the Lusvey case, Francisco filed a counterclaim against Castle and Caffero Trucking. Andres and Marisela filed an amended complaint naming Caffero Trucking as a defendant, and Francisco filed a counterclaim against Castle in that case.

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<sup>1</sup>Case no. 09-LA-18

<sup>2</sup>Case no. 09-LA-21

<sup>3</sup>The circuit court consolidated the two cases.

Caffero Trucking filed counterclaims in both cases against Francisco. Lusvey filed a second amended complaint against Francisco, Castle and Caffero Trucking.

¶ 6 On January 6, 2010, Castle and Caffero Trucking filed a third-party complaint for contribution against Quireshi. Quireshi filed a motion to dismiss the third-party complaint for contribution pursuant to section 2-619(a)(1) of the Code of Civil Procedure (Code), claiming sovereign immunity because Quireshi was “operating a motor vehicle in a manner unique to his State employment.” Quireshi attached to his motion an affidavit stating that when the accident occurred he was employed by IDOT and his snowplow blade was in the down position. On June 22, 2010, the circuit court denied Quireshi’s motion to dismiss Castle and Caffero Trucking’s third-party complaint for contribution. Quireshi filed a motion to reconsider on July 20, 2010.

¶ 7 On August 11, 2010, while Quireshi’s motion to reconsider was pending, this court decided *Shirley v. Harmon*, 405 Ill. App. 3d 86 (2010). In *Shirley* we that held that sovereign immunity barred the plaintiff’s negligence action against an IDOT snowplow driver who veered across the center lane of the road and collided with the plaintiff while plowing snow. *Id.* at 97-97.

¶ 8 On November 12, 2010, plaintiffs Lusvey and Marisela<sup>4</sup> filed separate third-amended complaints, naming, for the first time, Quireshi as a defendant. Plaintiffs alleged that Quireshi:

- a. “Carelessly and negligently operated and controlled said motor vehicle at a speed greater than reasonable with regard for traffic conditions and the use of the highway, in violation of 625 ILCS 5/11-601;

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<sup>4</sup>Andres had reached a settlement with Francisco on May 27, 2010 and was not included as a plaintiff in the count against Quireshi.

- b. Carelessly and negligently failed to keep an adequate lookout during the operation of said motor vehicle;
- c. Carelessly and negligently operated and controlled said motor vehicle;
- d. Carelessly and negligently failed to exercise that degree of care and caution that a reasonable person under similar circumstances would have exercised in the operation of said motor vehicle.
- e. Carelessly and negligently crossed the center yellow line and proceeded into oncoming traffic.

5. As a direct and proximate result of one or more of the foregoing act of misconduct or omission on the part of the Defendant, MOHAMMAD QUIRESHI, said snow plow did cross the center yellow line causing the vehicle in which the Plaintiffs were riding to lose control and the Plaintiffs were caused to sustain the serious and permanent injuries as hereinafter set forth.”

¶ 9 On January 7, 2011, Quireshi filed a section 2-619(a)(1) motion to dismiss plaintiffs’ complaints claiming that plaintiffs lacked subject matter jurisdiction on the basis of sovereign immunity. Quireshi attached an affidavit to his motion stating that, when the accident occurred, he was employed by IDOT as a highway maintainer to do snow removal, he was performing his responsibilities as an IDOT employee, he was plowing snow, and his snowplow blade was in the down position. Quireshi cited *Shirley*, 405 Ill. App. 3d 86, as well as other cases.

¶ 10 Also on January 7, 2011, the circuit court denied Quireshi’s motion to reconsider its denial of Quireshi’s motion to dismiss the complaint for contribution. The circuit court order stated “pursuant to rule 304(a) there is no just reason for delay of enforcement or appeal of this order.” As

of the filing of this appeal, the third-party complaint for contribution remained pending in the circuit court.

¶ 11 On June 10, 2011, plaintiffs filed their response to Quireshi's motion to dismiss. Plaintiffs argued that Quireshi's motion to dismiss must be denied based on the doctrine of *res judicata* because Quireshi failed to appeal the denial of his motion to dismiss the third-party contribution complaint. Quireshi argued in his reply that *res judicata* did not apply because the denial of his motion to dismiss the contribution complaint was not a final judgment on the merits. Quireshi also argued that plaintiffs failed to distinguish *Shirley*.

¶ 12 During the hearing on Quireshi's motion to dismiss plaintiffs' complaints, Quireshi argued that *res judicata* did not apply because there was no identity of parties, that, in denying his motion in the third-party contribution case, the circuit court did not consider *Shirley*. Plaintiffs added to their arguments that when the circuit court ruled on Quireshi's motion to reconsider, *Shirley* had not yet been published and was, therefore, not precedential. On reply, Quireshi argued that the denial of a motion to dismiss is not final under Supreme Court Rule 307 (Ill. S. Ct. R. 307 (eff. Feb.26, 2010)).

¶ 13 On June 28, 2011, the circuit court granted Quireshi's motion to dismiss plaintiffs' complaints. On July 26, 2011, plaintiffs filed their combined notice of appeal.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiffs argue that the circuit court erred by dismissing their complaints pursuant to section 2-619(a)(1) of the Code. Section 2-619(a)(1) provides for the involuntary dismissal of an action based on lack of subject matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2010). In reviewing the grant of a section 2-619 motion, we interpret the pleadings and supporting documents

in the light most favorable to the nonmoving party. See *Snyder v. Heidelberger*, 2011 IL 111052,

¶ 8. We review *de novo* the grant or denial of a section 2-619 motion to dismiss. *Id.*

¶ 16 Section 4 of article XIII of the Illinois Constitution provides, “[e]xcept as the General Assembly may provide by law, sovereign immunity in this State is abolished.” Ill. Const. 1970, art. XIII, § 4. The legislature restored sovereign immunity by enacting the State Lawsuit Immunity Act, which provides that the State cannot be made a defendant or other party in court except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2012)). 745 ILCS 5/1 (West 2010). Section 8(d) of the Court of Claims Act grants the court of claims exclusive jurisdiction to hear and determine all tort claims for damages against the State. 705 ILCS 505/8(d) (West 2010).

¶ 17 To determine whether an action is against the State courts consider the issues involved and the relief sought rather than the formal designation of the parties. *Carmody v. Thompson*, 2012 IL App (4th) 120202, ¶ 21. An action will be considered against the State, and thus, within the exclusive jurisdiction of the court of claims, where:

“(1) [T]here are no allegations that a state employee acted beyond the scope of his authority through wrongful acts; (2) the employee did not allegedly breach a duty owed to the public generally independent of his state employment; and (3) the complained-of actions involve matters ordinarily within the employee’s normal and official functions with the State.”

*Shirley*, 405 Ill. App. 3d at 91.

¶ 18 Regarding the second prong, courts analyze the source of the duty the employee was alleged to have breached. *Currie v. Lao*, 148 Ill. 2d 151, 159 (1992). Sovereign immunity will bar a claim in the circuit court where a plaintiff alleges that a state employee breached a duty imposed on him solely due to his state employment. *Id.* However, a claim will not be barred by sovereign immunity

where the plaintiff alleges that the employee breached a duty imposed on him independently of his state employment. *Id.*

¶ 19 This case is controlled by *Shirley*, 405 Ill. App. 3d 86. In *Shirley*, the plaintiff, a driver, filed a complaint alleging negligence against an IDOT snowplow operator after the snowplow blade, which was lowered, veered across the center lane and collided with the driver's vehicle. *Shirley*, 405, Ill. App. 3d at 88. The plaintiff alleged, in part, that the defendant, a snowplow operator, drove too fast for conditions, failed to obey traffic laws, and drove in an unsafe manner. *Id.* The circuit court granted the defendant's motion to dismiss based on lack of subject matter jurisdiction due to sovereign immunity. *Id.* This court affirmed, holding that sovereign immunity applied to bar the plaintiff's complaint because the allegations were based on a breach of duty that arose out of the defendant's state employment. *Id.* at 97. We reasoned that the defendant was plowing snow at the time of the accident and, therefore, the duty that he allegedly breached was to plow roads in a reasonably safe manner which was a unique duty imposed on him by virtue of his state employment. *Id.* We further considered the relief sought, stating that, "a judgment for plaintiff could operate to control the State's actions, specifically IDOT's policies and procedures related to plowing snow, such as the speed or manner in which snow is plowed." Therefore, we held that sovereign immunity barred the plaintiff's cause of action. *Id.*

¶ 20 Plaintiffs do not dispute that this case is factually indistinguishable from *Shirley*. Rather, plaintiffs argue that *Shirley* was wrongly decided. Plaintiffs argue that in *Shirley*, we erred by determining that the defendant, "a highway maintainer" acted within the scope of his duties as an employee of the State. Plaintiffs contend that, although the duty to remove snow from the road by operating a snowplow was a duty imposed upon the defendant in *Shirley* and *Quireshi* by virtue of

their State employment, operating a snowplow or any motor vehicle in a safe and reasonable manner was a duty imposed not just upon them, but by every other motorist. Plaintiffs argue that, therefore, the duty to operate a motor vehicle in a safe and reasonable manner could have been easily divorced from the defendants' duties as state employees. Essentially, plaintiffs argue that, because Quireshi and the defendant in *Shirley* were operating motor vehicles, they had duties that arose independently of their state-imposed duties.

¶ 21 The plaintiff in *Shirley* made essentially the same argument as plaintiffs in this case. *Id.* at 96 (the plaintiff argued that the defendant's duty to plow snow was separate from his duty to drive with due care and therefore, his conduct breached a duty imposed on him independently of his State employment). We rejected this argument in *Shirley*, and we reject it again in this case. Plaintiffs ignore that Quireshi, in this case, and the defendant in *Shirley* were plowing snow when the accidents occurred, in contrast to *American Family Insurance Co. v. Seeber*, 215 Ill. App. 3d 314 (1991). In *Seeber*, this court held that sovereign immunity did not apply where the defendant IDOT employee ceased his plowing duties to attempt to assist with a disabled car. *Id.* at 316, 320. Similarly, in *Lorenz v. Siano*, 248 Ill. App. 3d 946, 952-53 (1993), the appellate court held that sovereign immunity did not apply where the defendant IDOT employee was driving a front-end loader to a work site and had not yet engaged in work. In contrast to *Seeber* and *Lorenz*, Quireshi, in this case, and the defendant in *Shirley* "were plowing snow, and the act of plowing snow is intertwined with, and cannot be divorced from, the act of navigating the snowplow." *Shirley*, 405 Ill. App. 3d at 97. See also *Landon v. Jarvis*, 255 Ill. App. 3d 439, 446 (1993) (the appellate court held that sovereign immunity applied where the "defendant's actions [could not] be divorced from his State employment"). Accordingly, we determine that plaintiffs alleged that Quireshi breached duties

imposed on him solely due to and not independently of his State employment. See *Shirley*, 405 Ill. App. 3d at 97. Therefore, the circuit court properly dismissed plaintiffs' complaints due to lack of subject matter jurisdiction based on sovereign immunity.

¶ 22 We also reject plaintiffs' argument that we reconsider and essentially overrule *Shirley* based on the doctrine of *stare decisis*. The doctrine of *stare decisis* reflects the policy of the courts " 'to stand by precedents and not to disturb settled points.' " *People v. Clemons*, 2012 IL 107821, ¶ 9, quoting *Neff v. George*, 364 Ill. 306, 308-09 (1936). In other words, once a question has been deliberately examined and decided, it should be considered settled and closed to further argument to ensure that the law will develop in a principled and intelligent fashion, immune from erratic changes. *Id.* While the doctrine of *stare decisis* does not constitute an "inexorable command" (*Chicago Bar Association v. Illinois State Board of Elections*, 161 Ill. 2d 502, 510 (1994)), a departure from the doctrine is justified only upon a showing of "good cause." *People v. Williams*, 235 Ill. 2d 286, 294 (2009). "Good cause to depart from *stare decisis* also exists when governing decisions are unworkable or badly reasoned." *People v. Colon*, 225 Ill. 2d 125, 146 (2007). Plaintiffs in the instant case have failed to make a showing of good cause. Indeed, the grounds advanced by plaintiffs for the rejection of sovereign immunity are identical to the grounds we considered and rejected in *Shirley*. Further, plaintiffs failed to establish that *Shirley* is unworkable or badly reasoned. Therefore, we reject plaintiffs' request to reconsider or overrule *Shirley* and hold that the circuit court in this case properly relied on *Shirley* in dismissing plaintiffs' complaint against Quireshi.

¶ 23 Although the lack of subject matter jurisdiction would normally suffice to dispose of the appeal, we will address the other issues raised. Next, plaintiffs argue that the doctrine of *res judicata*

applied to bar Quireshi from asserting that he was protected by sovereign immunity. Plaintiffs rely on the circuit court's denial of Quireshi's motion to dismiss Castle and Caffero's third-party complaint for contribution, arguing sovereign immunity.

¶ 24 One of the three requirements that must be met for *res judicata* to apply is a final judgment on the merits. *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18. An order denying a motion to dismiss is not a final and appealable judgment, rather, it is an interlocutory order. *State Farm Mutual Automobile Insurance Co. v. Illinois Farmers Insurance Co.*, 226 Ill. 2d 395, 415 (2007) (The holding superseded by 215 ILCS 5/143.13a (West 2008)). *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 396, (2010)).

¶ 25 In this case the circuit court's orders denying Quireshi's motions to dismiss and reconsider were not final judgments. See *id.* at 415. Further, these orders did not dispose of the case on the its merits. Indeed, the orders continued the cause for a future adjudication on the merits. The fact that the circuit court may have entered a 304(a) finding does not alter the fact that a disposition on the merits had not yet occurred. Accordingly, plaintiffs cannot establish that *res judicata* applied to bar Quireshi's motion to dismiss.

¶ 26 Plaintiffs note that the order denying Quireshi's motion to reconsider included Supreme Court 304(a) language finding, "no just reason for delay of enforcement of appeal" of the order and that Quireshi did not file a notice of appeal of those orders. However, such a finding by a circuit court is not effective to transform a disposition that is not final in its own right into a final judgment. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 506 (2009). There, the 304(a) language in the circuit court's order is of no consequence. See *id.*

¶ 27 Plaintiffs cite *Bushue Corp. v. First National Bank of Effingham*, 261 Ill. App. 3d 797 (1994), to support their argument. However, in *Bushue*, there was a final order; *i.e.*, the grant of a motion to dismiss. *Id.* at 801. In this case, Quireshi's motion to dismiss was denied. Thus, *Bushue* is distinguishable from this case.

¶ 28 Plaintiff also notes that Quireshi failed to appeal the denial of his motion to reconsider. We note that Illinois Supreme Court Rule 307(a) (eff. Feb. 26, 2010) lists the specific instances in which an interlocutory order is appealable as of right. The order denying Quireshi's motion to reconsider did not fall under any of the specific Rule 307 instances that would allow an interlocutory appeal as of right. See Ill. S. Ct. R. 307. Thus, Quireshi's failure to appeal the denial of his motion to reconsider is of no consequence.

¶ 29 Even if we were to assume that circuit court's orders denying Quireshi's motion to dismiss Castle and Caffero's complaint for contribution and its order denying Quireshi's motion for reconsideration were final orders, we would determine that *res judicata* did not bar Quireshi's motion to dismiss plaintiffs' complaints under the current facts. Normally, *res judicata* works to prevent repetitious lawsuits over decided matters. *Statler v. Catalano*, 293 Ill. App. 3d 483, 486-87(1997). Thus, the doctrine extends only to the facts and conditions that existed at the time the original judgment was entered and a change in circumstances can create a new basis for a claim and thus obviates the danger of repetitive litigation. See *id.* at 487. For those reasons, "[a] change in law occurring between two successive causes of action on the same subject matter renders *res judicata* inapplicable." *Bernstein v. Department of Human Services*, 392 Ill. App.3d 875, 895 (2009).

¶ 30 In this case, at the time the circuit court denied Quireshi's motion to dismiss and motion to reconsider Castle and Caffero's third-party complaint for contribution, *Shirley* had not yet been

published. Accordingly, the circuit court's orders reflected its understanding of the law as it existed at the time it rendered its decisions. Thus, even if we accepted plaintiffs' argument that the circuit court's orders denying Quireshi's motion to dismiss Castle and Caffero's third-party complaint and motion to reconsider were final orders on the merits, *res judicata* would not apply to bar Quireshi's motion to dismiss against plaintiffs complaints.

¶ 31 Next, plaintiffs argue that the doctrine of collateral estoppel bars Quireshi's claim that sovereign immunity applied. Quireshi argues that this argument appears for the first time on appeal and is, thus, waived. Plaintiffs urge us to address the issue of collateral estoppel because, "even though [their] proponent in the circuit court argued *res judicata*, [he] meant collateral estoppel." Plaintiffs do not cite to the record to support their argument.

¶ 32 Even if we accept plaintiffs' contention that they did not waive the issue of collateral estoppel, they could not prevail with this argument. Like *res judicata*, one of the requirements of the application of collateral estoppel is a final judgment on the merits in the former proceeding. *Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 13. Because there was no final judgment in a former proceeding, plaintiffs' argument regarding collateral estoppel fails.

¶ 33 Plaintiffs also argue that we should reverse the circuit court decision because there remains an issue of material fact as to the affirmative matter claimed. More specifically, plaintiffs contend that issues of material fact exist as to whether or not Quireshi was actually employed by the State and was acting within the scope of his duty at the time the alleged negligence occurred. Plaintiffs argue that the affidavit Quireshi attached to his motion to dismiss was insufficient. We disagree.

¶ 34 For purposes of a motion a section 2-619(a)(9) motion defendant bears the initial burden to prove the affirmative matter defeating the plaintiff's claim. *Lawson v. Schmitt Boulder Hill, Inc.*,

398 Ill. App. 3d 127, 130 (2010). Unless the grounds for the motion appear on the face of the complaint being challenged, the section 2-619 motion must be supported by affidavit. 735 ILCS 5/2-619(a) (West 2012). If the defendant meets his burden, “the burden then shifts to the plaintiff to establish that the defense is ‘unfounded or requires the resolution of an essential element of material fact before it is proven.’ ” *Reilly v. Wyeth*, 377 Ill. App. 3d 20, 36 (2007), quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Affidavits in support of motions under section 2-619 are controlled by Illinois Supreme Court Rule 191 (eff. Aug. 1, 1992). Rule 191(a) provides that affidavits submitted in connection with a motion for involuntary dismissal shall be made on the personal knowledge of the affiant; set forth with particularity the facts upon which the claim, counterclaim, or defense is based; have attached thereto sworn or certified copies of all papers upon which the affiant relies; not consist of conclusions but of facts admissible in evidence; and affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. Ill. S. Ct. R. 191(a) (eff. Aug. 1, 1992).

¶ 35 Quireshi’s affidavit satisfies the requirements of Rule 191. In his affidavit Quireshi averred that “[I]f called as [a] witness [I] would depose and state the following [and] [t]he facts of this affidavit are true and correct to the best of my knowledge and belief.” Further, Quireshi averred that on December 19, 2008, the day that plaintiffs alleged the accident occurred, he “was employed with [IDOT] as a Highway Maintainer[, and] was assigned to do snow removal on Route 47 \*\*\* in McHenry County.” Quireshi averred, as plaintiffs also alleged in their complaints, that as he was traveling south on Route 47, an accident occurred “while I was performing my job responsibilities for [IDOT].” Quireshi also averred that [i]mmediately prior to and at the time of the accident I was plowing snow from the southbound lanes of Route 47 [and] [m]y plow was in the down position.”

We determine that Quireshi's affidavit submitted in support of his motion to dismiss plaintiffs' complaints complied with Rule 191(a). Further, it established that Quireshi was employed by the State as an IDOT snowplow operator and was performing his duties, plowing snow, at the time of the accident.

¶ 36 Plaintiffs argue that Quireshi's affidavit is self-serving and contains "impossible factual and legal conclusions" because he averred that an accident occurred on Route 47, and that at the time of the accident he was performing his official duties and his snowplow was down, but he did not witness the accident. Plaintiffs ignore that they alleged, and there is no dispute, that there was an accident on December 19, 2008 and that the vehicle plaintiffs were passengers in collided with the truck being driven by Castle. Further, plaintiffs did not allege that the vehicle they were passengers in collided with Quireshi's snowplow. Further, plaintiffs also alleged that they were traveling in the opposite direction as Quireshi just prior to the accident. Accordingly, Quireshi's averments that an accident occurred but he did not witness it, were not self-serving, factually impossible or legally conclusory.

¶ 37 Plaintiff also argue that Quireshi was required to attach an affidavit from the State establishing that he was a State employee acting within the scope of his official duties at the time the accident. We have determined that Quireshi's affidavit properly established these material facts. Therefore, Quireshi was not required to produce an affidavit from the State.

¶ 38 Quireshi's affidavit supported his claim of sovereign immunity and shifted the burden to plaintiffs. See *Kedzie*, 156 Ill. 2d at 116. Plaintiffs failed to tender any counteraffidavits to refute the facts presented by Quireshi. Thus, the circuit court properly granted Quireshi's section 2-619 motions to dismiss.

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, we affirm the circuit court's dismissal of plaintiffs' complaints against Quireshi.

¶ 41 Affirmed.