

¶ 3 In July 2014, the AG moved to dismiss the complaint for failure to state a cause of action pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2014)).

¶ 4 Following a November 2014 hearing, the trial court granted the AG's motion to dismiss.

¶ 5 Plaintiff, proceeding *pro se*, appeals, arguing the trial court erred in dismissing his complaint. We affirm.

¶ 6 I. BACKGROUND

¶ 7 At the time of the filing of the complaint, the State, represented by the AG, was seeking to have plaintiff declared an SVP under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2014)). According to plaintiff, he was "being actively prosecuted" by the AG's office in the SVP proceedings. Plaintiff alleged during the course of his prosecution he "experienced multiple violations of both procedural and substantive Constitutional [r]ights." As a result, he filed a federal civil rights lawsuit pursuant to 42 U.S.C. § 1983.

¶ 8 Plaintiff's lawsuit named state employees as the defendants. Pursuant to the Indemnification Act, the AG entered an appearance to represent those employees. See 5 ILCS 350/2(a) (West 2010) ("In the event that any civil proceeding is commenced against any State employee arising out of any act or omission occurring within the scope of the employee's State employment, the [AG] shall, upon timely and appropriate notice to him by such employee, appear on behalf of such employee and defend the action.").

¶ 9 On June 9, 2014, plaintiff filed a complaint seeking an order declaring the

Indemnification Act unconstitutional as applied to him. Plaintiff alleged his due process rights were violated because the AG's office represented both the State in the SVP proceedings and the state employees in his federal lawsuit. By participating in both proceedings, plaintiff maintained the AG improperly gained a strategic advantage over him. According to the complaint:

"The [erroneous] reports manufactured and generated by the [d]efendants in plaintiff's 42 U.S.C. 1983, are not only being defended by the [AG, t]hey are and have been turned over to the [AG's] personally paid lead testifying witness, Barry M. Levitt Psy. D. *** who is being hired, and personally paid \$250.00 an hour by the [AG] to do so, and simultaneously being used by the AG in the active prosecution [of a separate legal matter against the plaintiff]." (Emphases omitted.)

¶ 10 According to plaintiff, the use of the reports "by the very [o]ffice, that is both defending the perpetrators that violated [his] constitutional rights, and then simultaneously seeking to preserve and utilize those same reports that were generated in acts of a substantiated meritorious claim of retaliation for use in a separate legal matter smacks of impropriety."

¶ 11 On July 21, 2014, the AG filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2014)), arguing plaintiff's complaint failed to state a cause of action. Specifically, the AG argued plaintiff's allegations were unsupported by any well-pleaded facts and amounted to mere assertions his due process rights were being violated.

¶ 12 On July 29, 2014, plaintiff filed a response to the AG's motion to dismiss, arguing his complaint stated a legally cognizable claim and reiterating the AG unconstitutionally applied

the Indemnification Act in violation of his due process rights by simultaneously representing the State in the SVP proceedings and the State employees in his federal lawsuit.

¶ 13 On November 14, 2014, the trial court held a hearing on the AG's motion to dismiss. Plaintiff appeared in person and argued *pro se* against the AG's motion. At the conclusion of the hearing, the court granted the motion to dismiss. The court's written order stated, "Plaintiff is not given leave to refile."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff's principal argument is the trial court erred in dismissing his complaint without leave to refile. In making that argument, he raises the following collateral contentions: (1) he has standing to make "an as[-]applied[-]due-process challenge to the constitutionality of a statute as it [i]s being applied to him"; (2) it is improper for the AG to engage in a conflict of interest as an interested party to an action; (3) the AG exceeded her statutory authority; (4) the trial court was bound by the decisions of the Illinois and United States Supreme Courts; and (5) the constitutionality of a statute can be challenged at anytime. We will address these collateral issues only to the extent necessary to resolve plaintiff's principal argument.

¶ 17 A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.'" *Green*

v. Rogers, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review a dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 18 The due process clause of the United States Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1. Similarly, the due process clause of the Illinois Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Ill. Const. 1970, art. I, § 2. " 'Under substantive due process ***, a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest.' " *People v. Johnson*, 225 Ill. 2d 573, 584, 870 N.E.2d 415, 421 (2007) (quoting *People v. R.G.*, 131 Ill. 2d 328, 342 546 N.E.2d 533, 540 (1989)).

¶ 19 "[S]tatutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." *People v. Wilson*, 214 Ill. 2d 394, 398-99, 827 N.E.2d 416, 419-20 (2005). In an as-applied challenge, "the party challenging the statute contends that the application of the statute in the particular context in which the challenger has acted, or in which he proposes to act, would be unconstitutional." *People v. Brady*, 369 Ill. App. 3d 836, 847, 861 N.E.2d 687, 697 (2007). "An 'as-applied' challenge requires a party to show that the statute

violates the constitution as the statute applies to him." *Brady*, 369 Ill. App. 3d at 847, 861 N.E.2d at 697 (citing *People v. Garvin*, 219 Ill. 2d 104, 117, 847 N.E.2d 82, 87 (2006)).

¶ 20 Plaintiff's complaint alleged his due process rights were violated because the AG's office represented both the State in the SVP proceedings and state employees in the federal lawsuit. The first step in determining whether a challenged statute violates the constitutional guarantee of due process involves identifying the right alleged to be infringed by the government's action. See *In re R.C.*, 195 Ill. 2d 291, 303 745 N.E.2d 1233, 1241 (2001). To successfully claim a due process violation, a plaintiff must show a deprivation of life, liberty, or a property interest. See *Webb v. Lane*, 222 Ill. App. 3d 322, 326-27, 583 N.E.2d 677, 681 (1991).

¶ 21 Here, however, the complaint failed to plead facts identifying the specific interest which would be infringed upon or threatened by the Indemnification Act. Indeed, the Indemnification Act does not govern plaintiff's behavior in any manner or otherwise operate in a way as to take anything away from him. It simply provides for the AG's representation of state employees in certain proceedings unless the AG determines a conflict exists. See 5 ILCS 350/2(a), (b) (West 2014).

¶ 22 To the extent plaintiff argues the AG was involved in a conflict of interest, the facts alleged do not suggest either an actual or apparent conflict arose through the AG's representation. Indeed, it is well-settled no conflict exists as long as the AG is not an actual party to the action even where the AG represents opposing state agencies in the same dispute. *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 401, 372 N.E.2d 50, 53 (1977). Here, the AG was not an actual party in the SVP case or the federal lawsuit. Instead, the office

of the AG, in its official capacity, represented the State in the SVP proceedings and state employees in the federal lawsuit. In doing so, the AG represented the interests of the people of the State of Illinois. See *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303, 803 N.E.2d 48, 54 (2003).

¶ 23 Following our review of the record in this case, we fail to see how the AG's representation of state employees in the federal case denied plaintiff any due process. While plaintiff alleges "erroneous" reports were generated and being used by the AG, several avenues exist, short of an as-applied constitutional challenge, within the context of each individual proceeding to challenge such evidence. The trial court did not err in dismissing plaintiff's complaint.

¶ 24 Plaintiff also argues the trial court erred by not allowing him leave to refile his complaint, thereby denying him the opportunity to amend it. In support of his argument, plaintiff cites the proposition a constitutional challenge to a statute may be raised at anytime. While generally true, that proposition pertains to the forfeiture of issues raised on appeal which were not first presented to the trial court. See *In re J.W.*, 204 Ill. 2d 50, 61-62, 787 N.E.2d 747, 755 (2003) (citing *People v. Bryant*, 128 Ill. 2d 448, 454, 539 N.E.2d 1221, 1123-24 (1989)). In this case, the court entertained plaintiff's constitutional challenge. Thus, plaintiff's cited proposition is inapplicable under the circumstances.

¶ 25 The decision whether to grant leave to amend a complaint is within the sound discretion of the trial court. *McCastle v. Sheinkop*, 121 Ill. 2d 188, 193, 520 N.E.2d 293, 296 (1987); *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1046, 904 N.E.2d 1183, 1191 (2009). As stated, the Indemnification Act has no bearing on plaintiff's due process rights. It is intended to provide for legal representation and indemnification of state employees for acts occurring within

the scope of their employment. 5 ILCS 350/2(a) (West 2014). We cannot conceive of any set of facts which would enable a successful as-applied constitutional challenge of the Indemnification Act by plaintiff. See *Platinum Partners Value Arbitrage Fund, Ltd. Partnership v. Chicago Board Options Exchange*, 2012 IL App (1st) 112903, ¶ 30, 976 N.E.2d 415 (leave to amend should be granted unless it is apparent, even after an amendment, no cause of action could be stated). Accordingly, the trial court did not abuse its discretion in denying plaintiff an opportunity to refile the complaint.

¶ 26 In sum, the trial court did not err in dismissing plaintiff's complaint where it lacked any well-pleaded facts to support the claim the Indemnification Act was unconstitutional as applied to him.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment.

¶ 29 Affirmed.