

No. 1-15-3128

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 DISTRICT

ANGELA M. HENDERSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 2014 L 007630
)	
LON S. KAUFMAN, an individual; KAREN J.)	
COLLEY, an individual; and WILLIAM S. BURTON,)	
an individual,)	Honorable
)	Moira Susan Johnson,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendants' application for leave to appeal pursuant to Illinois Supreme Court Rule 308 was improvidently granted. We vacated our order granting the application for leave to appeal, denied the application and dismissed the appeal.
- ¶ 2 The plaintiff, Angela M. Henderson, filed the instant action against the Board of Trustees of the University of Illinois at Chicago (UIC); Lon S. Kaufman, UIC's Vice-Chancellor for Academic Affairs and Provost, individually; and Karen J. Colley, the Dean of the Graduate College at UIC, individually, seeking damages by reason of the disclosure to a newspaper

reporter of a complaint received by UIC accusing the plaintiff of having plagiarized her doctoral dissertation. The Board of Trustees, Kaufman and Colley, arguing sovereign immunity, moved to dismiss the original complaint based upon the circuit court's lack of subject-matter jurisdiction. Thereafter, the plaintiff filed an amended complaint which did not assert any claims against UIC's Board of Trustees but added William S. Burton, the Senior Director of UIC's Office of Public Affairs, as a defendant in his individual capacity. Kaufman, Colley and Burton moved to dismiss the amended complaint, again arguing the circuit court's lack of subject-matter jurisdiction. The circuit court granted the motion. Thereafter, the plaintiff sought leave to file a two-count second amended complaint against Kaufman, Colley and Burton (hereinafter referred to as the defendants), seeking: money damages in count I for their public disclosure, in violation of the Family Educational and Privacy Rights Act (20 U.S.C. § 1232g (2006)), of the complaint received by UIC accusing the plaintiff of plagiarism and money damages in count II for false-light invasion of privacy. The circuit court granted the motion, and the defendants thereafter moved pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2014)) to dismiss the second amended complaint, arguing the circuit court's lack of subject-matter jurisdiction. The defendants' jurisdictional challenge was again based upon the principles of sovereign immunity. The circuit court denied the defendants' motion to dismiss, relying upon the supreme court's decision in *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485. In response to the circuit court's invitation, the defendants moved the court to certify a question of law for permissive interlocutory appeal pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2015). Over the plaintiff's objection, the circuit court certified the following question:

"Whether the Illinois Supreme Court's decision in *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485—which recognized an

exception to sovereign immunity in suits seeking solely prospective injunctive relief for agents who violate statutory or constitutional law or exceed their authority—also creates an exception to sovereign immunity where, as here, the plaintiff seeks money damages for state agents' past misconduct."

¶ 3 On November 10, 2015, the defendants filed their application for leave to appeal pursuant to Rule 308 which this court granted on December 21, 2015. However, after having considered the parties' briefs and the *amicus* brief filed by the Illinois Attorney General, we find that leave to appeal was improvidently granted as our answer to the certified question will not materially advance the ultimate termination of this litigation. Consequently, we vacate our order of December 21, 2015, and dismiss this appeal.

¶ 4 Rule 308(a) provides, in relevant part, as follows:

"When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2015).

¶ 5 Rule 308 should be strictly construed and sparingly exercised, and appeals thereunder should be limited to exceptional circumstances. *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 258 (2002). The scope of our review in an interlocutory appeal brought pursuant to Rule 308 is limited to the certified question. *Spears v. Association of Illinois Electric Cooperatives*, 2013 IL App (4th) 120289 ¶ 15. Except in the rarest case, we do not expand the question under review and answer other, unasked questions. *Giangiulio v. Ingalls Memorial Hospital*, 365 Ill. App. 3d 823, 829 (2006).

¶ 6 Although the certified question asks us to determine whether the supreme court's decision in *Leetaru* created "an exception to sovereign immunity where, as here, the plaintiff seeks money damages for state agents past misconduct", the arguments presented are, in the main, directed to the propriety of the trial court's denial of the defendants' motion to dismiss this action for want of subject-matter jurisdiction and the principles of sovereign immunity. As the parties' briefs make clear, an application of the doctrine of sovereign immunity to claims brought against state employees in their individual capacity requires a fact-intensive inquiry. Whether sovereign immunity affords a state employee protection from suits brought in the circuit court against him or her in an individual capacity depends upon a number of factors, including: the relief sought (*Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990)); the source of the duty the employee is alleged to have breached (*Fritz v. Johnston*, 209 Ill. 2d 302, 310-11 (2004)); whether the statutory duty that the state employee is alleged to have breached proscribes his or her conduct as a state employee as opposed to as a member of the general public (*Fritz*, 209 Ill. 2d at 314); whether, in committing the actions giving rise to the litigation, the state employee acted beyond the scope of his or her authority (*Healy*, 133 Ill. 2d at 309); and whether the complained-of-action involves matters ordinarily within the employee's normal and official functions for the State (*Healy*, 133 Ill. 2d at 309). These issues must be addressed before a determination could ever be made as to whether, under a given set of circumstances, an action brought against a state employee in an individual capacity could be maintained in the circuit court or must be brought in the Court of Claims (see 705 ILCS 505/8(d) (West 2012)).

¶ 7 In light of the fact-intensive inquiry necessary to a resolution of the ultimate question of whether the circuit court has subject-matter jurisdiction over this case, we do not believe that our answer to the certified question would materially advance the termination of this litigation. Our answer would be advisory at best. Whether we answered in the affirmative or the negative, the

trial court would still be faced with the factual inquiry necessary to resolve the jurisdictional question.

¶ 8 Based upon the foregoing analysis, we now vacate our order of December 21, 2015, granting the defendants' application for leave to appeal pursuant to Rule 308; deny the application for leave to appeal; and dismiss this appeal.

¶ 9 Appeal dismissed.