2012 IL App (5th) 110240-U

NO. 5-11-0240

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LORI A. ISOM, Individually and as Administratrix of the Estate of JERRY W. ISOM, Deceased, Plaintiff-Appellant, v. WILLIAM R. BARHAM, THE STATE OF ILLINOIS, and JAMES P. SLEDGE, Director of the Department of Central Management Services, Defendants-Appellees (William R. Barham and State Farm Mutual Automobile Insurance Company, Intervening Plaintiffs-Appellants).	)	Appeal from the Circuit Court of Saline County. No. 10-L-12 Honorable Todd D. Lambert, Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly determined that the plaintiff's and intervenors' declaratory and *mandamus* actions against the State, seeking money damages for violating the Department of Central Management Services Law, was barred by the State Lawsuit Immunity Act, the Court of Claims Act, and the Department of Central Management Services Law.

¶ 2 The plaintiff, Lori A. Isom, individually and as administratrix of the estate of Jerry W. Isom, filed an action for declaratory judgment and *mandamus* against the defendants, the State of Illinois and James P. Sledge, director of the Department of Central Management

Services. Isom asserted that the State was obligated to satisfy a previous judgment entered against the defendant and intervenor, William R. Barham, for damages arising from the death of the decedent in a collision involving a State vehicle operated by Barham, a State employee, in the course of his State employment. Barham and State Farm Mutual Automobile Insurance Company (State Farm) intervened in the action and joined Isom's argument that the State and Director Sledge were obligated to satisfy the previous judgment entered against Barham. The circuit court dismissed the action against the State on the basis that the action was barred by sovereign immunity and should be filed in the court of claims.

¶ 3 On appeal, the intervenors argue that the circuit court improperly dismissed the action because, pursuant to the Central Management Services law (20 ILCS 405/405-105(11) (West 2010)), the circuit court retains jurisdiction over the matter. Isom further argues that the circuit court erred in failing to grant her motion to amend her complaint. We affirm.

¶ 4 FACTS

¶ 5 On October 14, 2000, Barham, who was at the time the warden of the Shawnee Correctional Center, in Vienna, Illinois, and the decedent, the dietician at the Shawnee Correctional Center, were returning to the correctional center from Harrisburg. Barham and the decedent were riding in the State of Illinois Chevrolet Impala assigned to Barham as warden. Pursuant to State requirements, Barham carried liability insurance on the vehicle and was thereby personally insured pursuant to a State Farm policy, which contained bodily injury limits of $100,000 per person and $300,000 per occurrence.

¶ 6 Barham had been directed to pick up the director of the Department of Corrections at the airport in Harrisburg, take the director and his entourage to a political event at Southeastern Illinois Community College, and then return them to the airport. After doing so, Barham drove the decedent to the Lakeside Bar and Grill in Harrisburg, and the two left this restaurant around 10 p.m. Barham remembered thereafter giving the car keys to the

decedent, climbing into the back seat of the vehicle, and falling asleep. Sometime around midnight, while traveling from the restaurant to the correctional center in Vienna on a rural two-lane road, the vehicle left the roadway and struck a tree. Barham and the decedent were injured. Within minutes after the accident, the decedent died from his injuries.

¶ 7 In the previous wrongful death and survival action filed on October 25, 2001, the plaintiffs alleged that the decedent was the passenger in the automobile driven by Barham and that Barham was negligent in failing to keep a proper lookout, failing to maintain proper control of the vehicle, driving too fast for conditions, failing to reduce speed to avoid an accident, and failing to keep his vehicle entirely within his lane of travel. In count I, the plaintiffs sought recovery pursuant to the Wrongful Death Act (740 ILCS 180/0.01 to 2.2 (West 2000)). In count II, the plaintiffs alleged negligence under the Survival Act (755 ILCS 5/27-6 (West 2000)). In count III, the plaintiffs sought recovery under the Family Expense Act (750 ILCS 65/15 (West 2000)).

¶ 8 Prior to trial, Barham and State Farm executed letters dated February 22, 2001, January 21, 2003, May 9, 2007, and April 15, 2010, demanding that the State defend, indemnify, and hold Barham harmless from the wrongful death and survival claim filed against him. On November 9, 2000, March 14, 2001, and February 28, 2003, the State denied Barham and State Farm's request to defend Barham, stating that Barham was acting outside the scope of his employment at the time of his occurrence, and therefore the State's self-insured motor vehicle liability plan did not provide coverage for claims arising from the accident.

¶ 9 As a result of the injuries Barham sustained in the collision, he filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (820 ILCS 305/1 to 30 (West 2010)), naming the State of Illinois Department of Corrections as the respondent. On April 18, 2007, the Workers' Compensation Commission (WCC) filed its

decision affirming and adopting the decision of the arbitrator, who found in favor of Barham. In its decision, the WCC concluded that the October 14, 2000, accident "arose out of and in the course of" Barham's employment with the State. Accepting the arbitrator's conclusion that Barham "was a passenger in [the] vehicle," the WCC expressed "some doubt as to whether [Barham] was the driver of the vehicle" because Barham had testified that he had been ill for a few weeks and had asked the decedent to drive while he laid down in the back seat. *Barham v. State of Illinois Department of Corrections*, No. 01-WC-18485 (Apr. 18, 2007).

¶ 10 On June 22, 2007, after the WCC rendered its decision, the State again denied Barham's request to defend, indemnify, and hold him harmless, stating that although the WCC found that Barham was acting in the scope of his employment, the WCC also found that Barham was the passenger in the vehicle engaged in the work-related activity at the time of the accident. Accepting the arbitrator's findings that Barham was not driving the vehicle, the Department of Central Management Services denied the extension of automobile liability coverage, finding that its self-insurance provisions covered the "drivers of motor vehicles" owned by the State (20 ILCS 405/405-105(7)(i) (West 2006)). The State asserted that because its self-insurance policy applied only to drivers, Barham was not within the scope of the State's duty to defend him in the underlying tort claim. On April 30, 2010, the State reaffirmed its position.

¶ 11 On April 15, 2010, Isom's wrongful death and survival action against Barham commenced, and Barham was represented by legal counsel engaged by State Farm. Barham took the position at trial that he was the passenger, and not the driver, of the vehicle at the time of the collision. After trial, the jury returned a verdict of $1 million for the plaintiffs in their wrongful death action (740 ILCS 180/0.01 to 2.2 (West 2000)), a verdict for the defendant pursuant to the survival action (755 ILCS 5/17-6 (West 2000)), and a $12,000

verdict for the plaintiffs under the Family Expense Act (750 ILCS 65/15 (West 2000)). It answered in the affirmative the special interrogatory, "Did the plaintiff meet her burden of proof that [the defendant] was the driver of the automobile at the time of the negligent operation of the automobile?" The court entered judgment on the verdict and added taxable costs for a total verdict of $1,017,574.65. We affirmed the circuit court's judgment on appeal. *Isom v. Barham*, No. 5-10-0359 (Apr. 3, 2012) (unpublished order under Supreme Court Rule 23).

¶ 12 On March 23, 2010, Isom filed this action against Barham and the State. In her complaint, Isom alleged that because Barham was operating a motor vehicle owned by the State, was employed by the State, and was within the scope of his employment at the time of the accident, Barham was entitled to receive indemnification from the State as a result of his negligence. The plaintiff sought a declaratory judgment ordering that Barham be indemnified by the State "pursuant to the rules, regulations[,] and statutes in force pertaining to negligent actions by State employees in the operation of motor vehicles." On June 2, 2010, Isom filed a motion for leave to amend her complaint to add Director Sledge as a defendant and to include a count seeking a writ of *mandamus* compelling him to hold Barham harmless by paying the full amount of the judgment entered against him. On June 16, 2010, the circuit court allowed Isom to amend her complaint.

¶ 13 On April 28, 2010, the State filed a motion to dismiss, arguing that Isom's action was barred by the doctrine of sovereign immunity. The State asserted that the plaintiff's declaratory judgment action sought to control the State's actions and sought monetary relief in the form of the indemnification of Barham for the separate tort action that Isom had filed against him.

¶ 14 On July 6, 2010, Barham and State Farm filed a petition for leave to intervene in the action, which the circuit court granted on August 9 and 23, 2010. In their petition, Barham

and State Farm argued that the State and Director Sledge were obligated to satisfy the judgment entered against Barham. The intervenors alleged that Barham had fulfilled the State's requirements by carrying liability insurance on the State vehicle through a policy with State Farm, which had incurred attorney fees and litigation costs in providing a defense for Barham. The intervenors requested the court to enter a declaratory judgment finding that the State and Director Sledge breached their duty to defend, indemnify, and hold Barham harmless, that the State and Director Sledge were obligated to satisfy the judgment entered against Barham, less the limit of the State Farm policy, and that the State and Director Sledge were obligated to reimburse the intervenors for the costs of Barham's defense in the tort action.

¶ 15 On September 8, 2010, the State filed a second motion to dismiss, arguing again that the action was barred by sovereign immunity. On October 1, 2010, the State also filed a motion to dismiss the complaint for intervention filed by Barham and State Farm. In moving to dismiss the intervenors' complaint, the State argued that the relief the intervenors sought would control the State's actions, was a demand for a money judgment against the State, and was therefore barred by sovereign immunity. The State argued that the circuit court lacked jurisdiction to determine whether the judgment against Barham should be paid through the State's self-insurance plan; instead, that determination was statutorily allocated to the exclusive jurisdiction of the court of claims.

¶ 16 On March 4, 2011, the circuit court granted the State's motions to dismiss Isom's and the intervenors' complaints. The circuit court concluded that pursuant to the article 405 of the Civil Administrative Code of Illinois, *i.e.*, the Department of Central Management Services law (the CMS Law) (20 ILCS 405/405-105 (West 2010)), and the Court of Claims Act (705 ILCS 505/8(a), (d) (West 2010)), Isom, Barham, and State Farm were required to file their claim for money damages in the court of claims. In Isom's motion to reconsider,

she also requested leave to amend count II of her complaint so that the prayer for relief would provide as follows:

> "WHEREFORE, the Plaintiff, Lori Isom, prays that the Court enter a writ of *mandamus* compelling the Director of the Department of Central Management Services, Mr. James P. Sledge, to comply with the law of the State of Illinois and either authorize and pay the Judgment plus costs and accumulated interest entered against William R. Barham, or, in the alternative, to comply with the non-discretionary rights under the statute owed to Barham and thus either settle or defend Barham."

¶ 17 On May 6, 2011, the circuit court denied Isom's motion for leave to amend her complaint. The circuit court further denied motions to reconsider filed by Isom, Barham, and State Farm, and they filed timely notices of appeal.

¶ 18 ANALYSIS

¶ 19 "A motion to dismiss, pursuant to section 2–619 of the Code [of Civil Procedure (the Code)], admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Sovereign immunity is a jurisdictional defect properly raised pursuant to section 2-619(a)(1) of the Code. 735 ILCS 5/2-619(a)(1) (West 2010). When ruling on a section 2-619 motion to dismiss, the court must interpret the pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). "Section 2–619 motions present a question of law, and we review rulings thereon *de novo*." *DeLuna*, 223 Ill. 2d at 59.

¶ 20 "The construction of a statute is also a question of law, which we review *de novo*." *DeLuna*, 223 Ill. 2d at 59. "The primary objective of this court when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature." *DeLuna*, 223 Ill.

2d at 59. "The plain language of a statute is the most reliable indication of the legislature's objectives in enacting that particular law [citation], and when the language of the statute is clear, it must be applied as written without resort to aids or tools of interpretation." *DeLuna*, 223 Ill. 2d at 59.

¶ 21 Article XIII, section 4, of the Illinois Constitution states, "Except as the General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. 1970, art. XIII, § 4. Pursuant to this constitutional grant of authority, the legislature has acted to reinstate sovereign immunity. Section 1 of the State Lawsuit Immunity Act provides, "Except as provided in [an act to create] the Court of Claims ***, the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2010).

¶ 22 The Court of Claims Act established a court of claims to serve as a forum for actions against the State. Section 8 of the Court of Claims Act provides:

> "The court [of claims] 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.
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> * * *
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> (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 ***; provided, that an award for damages in a case sounding in tort, other than certain

cases involving the operation of a State vehicle described in this paragraph, shall not exceed the sum of $100,000 to or for the benefit of any claimant. The $100,000 limit prescribed by this Section does not apply to an award of damages in any case sounding in tort arising out of the operation by a State employee of a vehicle owned, leased or controlled by the State." 705 ILCS 505/8(a), (d) (West 2010).

¶ 23 Here, the State Lawsuit Immunity Act clearly and unambiguously provides that the "State of Illinois shall not be made a defendant or party in any court," except as provided in the Court of Claims Act. 745 ILCS 5/1 (West 2010). The Court of Claims Act, in turn, clearly and unambiguously provides that the court of claims has exclusive jurisdiction over "[a]ll claims against the State founded upon any law of the State of Illinois." 705 ILCS ILCS 505/8(a) (West 2010).

¶ 24 In this case, the plaintiff and the intervenors seek declaratory judgment and *mandamus* relief, based on the State's violation of section 405-105(11) of the CMS Law, which requires the State to defend, indemnify, and hold harmless a State employee, operating a State vehicle within the course of his employment, against whom a tort claim is filed (20 ILCS 405/405-105(11) (West 2010)). Thus, their claims are founded upon a law of the State of Illinois (750 ILCS 505/8(a) (West 2010)), and therefore, the Court of Claims Act clearly and unambiguously provides that the court of claims has exclusive jurisdiction. See also *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 161 (2010).

¶ 25 The intervenors argue that the plain language of the Court of Claims Act exempts claims for expenses in civil litigation (705 ILCS 505/8(a) (West 2010)), which the intervenors specifically request. As such, the intervenors argue, the circuit court must retain subject matter jurisdiction over, at a minimum, that portion of the intervenors' claim.

¶ 26 The courts have construed the "claims for expenses in civil litigation" language of section 8(a) of the Court of Claims Act (705 ILCS 505/8(a) (West 2010)) and have held that

this language and the legislative debates leading to it reveal the legislature's intention to append claims for civil expenses as a third area of exclusive court of claims jurisdiction. See *Morawicz v. Hynes*, 401 Ill. App. 3d 142, 151 (2010) ("expenses in civil litigation against the State must be considered a subject matter in which the Court of Claims is given exclusive jurisdiction"); *Kadlec v. Illinois Department of Public Aid*, 155 Ill. App. 3d 384, 387 (1987) (civil litigation expenses must be considered a subject matter in which the court of claims is given exclusive jurisdiction). Thus, the argument fails.

¶ 27 The intervenors also argue that the circuit court erred when it dismissed this action on the basis of sovereign immunity and the lack of subject matter jurisdiction because the plain language of section 405-105(11) of the CMS Law (20 ILCS 405/405-105(11) (West 2010)), as well as the decisions in *Kaiser v. Emrich*, 84 Ill. App. 3d 775 (1980), and *Bartholomew v. Crockett*, 131 Ill. App. 3d 456 (1985), clearly shows that the instant action falls within the exception carved out in the CMS Law, which anticipates an action against a State employee in circuit court, and therefore by extension further anticipates their action seeking enforcement in the circuit court. The intervenors argue that if the tort claim against Barham was properly before the circuit court, and the State had a statutory duty to defend, indemnify, and hold Barham harmless in that tort claim, an action for enforcement of this statutory duty is properly before the circuit court as well.

¶ 28 The State argues that because Isom's and the intervenors' actions are brought against the State, are founded upon state law, and seek to hold the State liable for the jury verdict and other litigation costs in the separate tort action, they are within the State's sovereign immunity and outside of the circuit court's jurisdiction.

¶ 29 Pursuant to the CMS Law, the Department of Central Management Services is tasked with establishing and implementing "a program to coordinate the handling of all fidelity, surety, property, and casualty insurance exposures of the State and the departments,

divisions, agencies, branches, and universities of the State." 20 ILCS 405/405-105 (West 2010). In performing this responsibility, CMS shall have the power and duty to do the following:

"(11) Any plan for public liability self-insurance implemented under this Section shall provide that (i) the Department shall attempt to settle and may settle any public liability claim filed against the State of Illinois or any public liability claim filed against a State employee on the basis of an occurrence in the course of the employee's State employment; (ii) any settlement of such a claim is not subject to fiscal year limitations and must be approved by the Director and, in cases of settlements exceeding $100,000, by the Governor; and (iii) a settlement of any public liability claim against the State or a State employee shall require an unqualified release of any right of action against the State and the employee for acts within the scope of the employee's employment giving rise to the claim.

Whenever and to the extent that a State employee operates a motor vehicle or engages in other activity covered by self-insurance under this Section, the State of Illinois shall defend, indemnify, and hold harmless the employee against any claim in tort filed against the employee for acts or omissions within the scope of the employee's employment in any proper judicial forum and not settled pursuant to this subdivision (11), provided that this obligation of the State of Illinois shall not exceed a maximum liability of $2,000,000 for any single occurrence in connection with the operation of a motor vehicle or $100,000 per person per occurrence for any other single occurrence, or $500,000 for any single occurrence in connection with the provision of medical care by a licensed physician employee.

Any claims against the State of Illinois under a self-insurance plan that are not settled pursuant to this subdivision (11) shall be heard and determined by the Court

> of Claims and may not be filed or adjudicated in any other forum. The Attorney General of the State of Illinois or the Attorney General's designee shall be the attorney with respect to all public liability self-insurance claims that are not settled pursuant to this subdivision (11) and therefore result in litigation. The payment of any award of the Court of Claims entered against the State relating to any public liability self-insurance claim shall act as a release against any State employee involved in the occurrence." 20 ILCS 405/405-105(11) (West 2010).

This statute was not intended to have a jurisdictional effect and cannot be viewed as substantively modifying the jurisdiction of the court of claims. See *Henderson v. Beckman Texaco*, 213 Ill. App. 3d 1054, 1059 (1991).

¶ 30 In *Kaiser*, after an automobile accident, the injured plaintiff brought a personal injury suit against the defendant, an Illinois state trooper. *Kaiser*, 84 Ill. App. 3d at 776. The defendant moved to dismiss the action, contending that the claim must be heard in the court of claims, and the circuit court denied the defendant's motion to dismiss. *Id.* On appeal, the Second District of the Appellate Court addressed "whether an action against a state employee for negligence occurring in the course of his employment may be brought in circuit court, or must be brought only in the court of claims." *Id*. at 775-76.

¶ 31 Considering the second and third paragraphs of section 405-105(11) of the CMS Law (20 ILCS 405/405-105(11) (West 2010)), the court in *Kaiser* held that when a suit involves a tort against a State employee operating a vehicle covered by State self-insurance provisions, the State shall defend, indemnify, and hold the employee harmless against the tort claim, in any proper judicial forum, which may include the circuit court. *Id.* The court thus concluded that the action against the state trooper had been brought against him individually and was therefore properly filed in the circuit court. *Id.* at 776-78. The court noted, however, that when the suit "expressly involves claims against the State as self-

insurer, *** those claims [must] be brought in the Court of Claims." *Id.* at 776.

¶ 32 Likewise, in *Bartholomew*, the First District Appellate Court addressed whether a suit involving the State's self-insurance plan was a suit against the State and cognizable solely in the court of claims. *Bartholomew*, 131 Ill. App. 3d at 463. Before addressing the issue, the court noted:

> "Illinois courts have held that a government employee cannot use governmental immunity as an affirmative defense or as a shield to preclude circuit court jurisdiction in automobile negligence actions. [Citations.] *** The duty imposed on the defendants was held to be the same duty imposed on all other persons operating motor vehicles on the public highways." *Id.* at 462-63.

The court concluded that because the alleged acts of negligence related not to obligations incurred by virtue of his state employment, but rather to duties automobile drivers owe to one another, the State employee could not use his employment as a shield against suit in the circuit court. *Id.* at 463. Nonetheless, the *Bartholomew* court noted that where the suit expressly involves claims against the State as a self-insurer, "the Court of Claims might have sole jurisdiction." *Id.* at 464.

¶ 33 Thereafter, in *American Family Insurance Co. v. Seeber*, 215 Ill. App. 3d 314, 319, (1991), the Second District Appellate Court noted that "[a]lthough suits against State employees covered under a self-insurance plan may involve the State's interest or exert some control over its conduct, such interest and control are in the State's capacity as insurer, rather than in its sovereign capacity." In *Seeber*, the court held that "*Kaiser* merely explained the clear and unambiguous legislative pronouncement that the mere presence of self-insurance and its possible resultant impact on the nonsovereign interests of the State does not strip such jurisdiction from the circuit court." *Id.* at 320. The court held that "[o]nly when the State is itself sued as an insurer does sovereign immunity strip the circuit court of

subject-matter jurisdiction and instead place jurisdiction in the court of claims." *Id.* at 319-20.

¶ 34 The decisions in *Kaiser, Bartholomew*, and *Seeber* support the circuit court's finding that the original, underlying tort action against Barham in his individual capacity was properly adjudicated in the circuit court. See also *Currie v. Lao*, 148 Ill. 2d 151, 159 (1992) (where State employee is accused of breaching a duty imposed on him independent of his state employment, sovereign immunity will not bar the action, and the claim is properly adjudicated in the circuit court). In the present action, however, Isom and the intervenors assert claims against the State under the State's self-insurance plan and seek payment of a judgment and expenses. By the plain terms of the CMS Law, then, these are "claims against the State of Illinois" brought "under a self-insurance plan" and therefore "shall be heard and determined by the Court of Claims" and "may not be filed or adjudicated" in the circuit court. 20 ILCS 405/405-105(11) (West 2010). Thus, because the State is itself sued as an insurer in the present action, sovereign immunity strips the circuit court of subject matter jurisdiction, and the court of claims retains exclusive jurisdiction. See *Seeber*, 215 Ill. App. 3d at 319-20 (when the State is itself sued as insurer, sovereign immunity strips the circuit court of subject matter jurisdiction); *Bartholomew*, 131 Ill. App. 3d at 464 (where suit expressly involves claims against the State as a self-insurer, the court of claims retains sole jurisdiction); *Kaiser*, 84 Ill. App. 3d at 776 (claims against the State as self-insurer must be brought in the court of claims).

¶ 35 The intervenors assert that the State's argument that a wronged State employee is free to pursue an action against it in the court of claims is disingenuous because the limit of liability in an action in the court of claims is $100,000, while the limit of liability under the second paragraph of section 405-105(11) of the CMS Law (20 ILCS 405/405-105(11) (West 2010)) is $2 million. Thus, the intervenors argue, the State would have "1.9 million reasons

to refuse to defend, indemnify and hold harmless in actions properly brought against their employees in circuit court, and force whatever recourse the wronged state employee may have into the Court of Claims."

¶ 36 We reject the intervenors' assertion. The Court of Claims Act specifically provides:

> "[A]n award for damages in a case sounding in tort, other than certain cases involving the operation of a State vehicle described in this paragraph, shall not exceed the sum of $100,000 to or for the benefit of any claimant. The $100,000 limit prescribed by this Section does not apply to an award of damages in any case sounding in tort arising out of the operation by a State employee of a vehicle owned, leased or controlled by the State." 705 ILCS 505/8(d) (West 2010).

¶ 37 Here, although Isom's and the intervenors' action is premised on the violation of State law, they seek an award of damages to indemnify them for a case sounding in tort arising out of the operation by a State employee of a vehicle owned, leased, or controlled by the State, and therefore, the $100,000 limit does not apply. See 705 ILCS 505/8(d) (West 2010). Isom and the intervenors seek to hold the State liable pursuant to section 405-105(11) of the CMS Law (20 ILCS 405/405-105(11) (West 2010)) for failing to "defend, indemnify, and hold harmless the employee against any claim in tort filed against the employee for acts or omissions within the scope of the employee's employment." This section of the CMS Law provides that the State's obligation to defend, indemnify, and hold Barham harmless, and by extension, that damages for the State's violation of this obligation, "shall not exceed a maximum liability of $2,000,000 for any single occurrence in connection with the operation of a motor vehicle." 20 ILCS 405/405-105(11) (West 2010). Because the more specific self-insurance provisions of the CMS Law must prevail, the maximum liability in this case is $2 million for any single occurrence. See *Tosado v. Miller*, 293 Ill. App. 3d 544, 551 (1997) ("where there are two statutory provisions, one general and the

other more specific, relating only to one particular subject, the particular provision must prevail"), *aff'd*, 188 Ill. 2d 186 (1999).

¶ 38 Isom argues that her request for a writ of *mandamus* requiring Director Sledge to comply with the mandatory terms of section 405-105 of the CMS Law (20 ILCS 405/405-105 (West 2010)) to defend and hold Barham harmless was properly filed in the circuit court.

¶ 39 "*Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464 (2004). "A writ of *mandamus* is issued as an exercise of judicial discretion only in those cases where the plaintiff can demonstrate a clear right to this extraordinary relief." *Walter v. Board of Education of Quincy School District No. 172*, 93 Ill. 2d 101, 105 (1982). "There must also be no other adequate remedy." *Snyder*, 208 Ill. 2d at 465. Where another adequate remedy is available, *mandamus* will not lie. *Patzner v. Baise*, 133 Ill. 2d 540, 545 (1990).

¶ 40 "If public officials have failed to comply with requirements imposed on them by statute, a court may compel them to do so by a writ of *mandamus*, provided the requirements for *mandamus* have been satisfied." *Park Superintendents' Professional Ass'n v. Ryan*, 319 Ill. App. 3d 751, 757-58 (2001). "But *mandamus* is not appropriate to regulate a course of official conduct or enforce the performance of official duties generally." *Id.* at 758.

¶ 41 We agree with the circuit court's conclusion that the *mandamus* claim fails as well. Because the Court of Claims Act provides an adequate remedy for the plaintiff and the intervenors who are seeking money damages from the State for its violation of state law, requiring that the plaintiff's exclusive remedy lie in the court of claims is fully appropriate. See *Patzner*, 133 Ill. 2d at 545 (because Court of Claims Act provides another adequate remedy for the property owner whose property is damaged but not taken, *mandamus* will not

lie).

¶ 42 Isom further argues that the circuit court erred in denying her motion for leave to amend her complaint for *mandamus*. Isom argues that her motion for leave to amend clarified the issue, sought only equitable relief through the issuance of a writ of *mandamus*, and would have cured any possible confusion about her intentions and about the nature of the proceeding.

¶ 43 As we have already noted, however, the plaintiff's *mandamus* claim fails because there is an adequate remedy pursuant to the Court of Claims Act. See *Patzner*, 133 Ill. 2d at 545. Because the defect cannot be cured, we find that the circuit court did not abuse its discretion in denying Isom's motion to amend her complaint for *mandamus*. See *Cantrell v. Wendling*, 249 Ill. App. 3d 1093, 1095 (1993).

¶ 44 The intervenors argue that the circuit court erred in granting the State's motion to dismiss because sovereign immunity does not apply where Director Sledge clearly acted in excess of his statutory authority, and the instant action is therefore not one attempting to control the State.

¶ 45 In *Children's Memorial Hospital v. Mueller*, 141 Ill. App. 3d 951, 952-53 (1986), the plaintiff filed suit to recover charges for facilities, materials, and services rendered to children for whom the Department of Children and Family Services (DCFS) was the legal guardian. The court held that although the claims were stated in terms of indemnification and an action for declaratory judgment, a reading of both complaints indicated that the principle relief sought was a judgment for money against DCFS, a department of the State of Illinois. *Id.* at 955. The court noted that "[a] claim that has the potential to subject the State to liability is one against the State and within the exclusive jurisdiction of the Illinois Court of Claims." *Id.* at 954. The court concluded that because the plaintiff's suit seeking money damages was based upon a present claim, as opposed to a claim enjoining a State

officer from taking future actions in excess of his delegated authority, and had the potential to subject the State to liability, it fell within the exclusive jurisdiction of court of claims. *Id.*

¶ 46 In this case, although Isom's and the intervenors' claims are stated in terms of indemnification and framed as actions for declaratory judgment and *mandamus*, a reading of the complaints indicates that the principle relief sought is a judgment for money against the Department of Central Management Services, a department of the State. See *id.* at 955. Isom's and the intervenors' actions are based upon a present claim, not a future one seeking to enjoin a State officer from taking future actions in excess of his delegated authority, and have the potential to subject the State to liability. See *id.* at 954. Because their claims are present ones that seek to impose an obligation to pay money on a department of State government for violating state law, the court of claims has exclusive jurisdiction. See *id.* at 956. In light of this holding, we need not address the parties' remaining arguments.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court of Saline County is affirmed.

¶ 49 Affirmed.