2013 IL App (5th) 120264-U

NO. 5-12-0264

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

BELINDA SCOGGINS, Individually and on Behalf of All Others Similarly Situated, Plaintiff-Appellant, v. MICHELLE R. B. SADDLER, in Her Official Capacity as Secretary of the Illinois Department of Human Services, and ILLINOIS DEPARTMENT OF HUMAN SERVICES, Defendants-Appellees.	)	Appeal from the Circuit Court of Madison County. No. 12-L-285 Honorable A. A. Matoesian, Judge, presiding.

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

ORDER

¶ 1 *Held*: The plaintiff's class action suit, asserting that the defendants were improperly subjecting recipients of childcare benefits to a distant forum, was premature where the plaintiff's underlying action was dismissed before she had been properly served or had appeared before the distant forum.

¶ 2 The plaintiff, Belinda Scoggins, a Madison County resident, brought her action in the Madison County circuit court against the defendants, Michelle R. B. Saddler, in her official capacity as Secretary of the Illinois Department of Human Services, and the Illinois Department of Human Services, alleging that she and the members of her proposed class were being unlawfully subjected to lawsuits in an inconvenient Cook County forum. After the plaintiff filed this action, the defendants voluntarily dismissed their Cook County action against the plaintiff. The circuit court below thereafter dismissed the plaintiff's Madison

County action. The plaintiff appeals, arguing that her claim is nevertheless actionable. We affirm.

¶ 3 BACKGROUND

¶ 4 From December 2008 through November 2009, the plaintiff applied for and received in Madison County childcare benefits through the defendants. In August 2010, the defendants filed suit against the plaintiff in the circuit court of Cook County to collect $22,247.74, an alleged overpayment of benefits. The plaintiff was not properly served, she did not appear, and a judgment was not entered against her.

¶ 5 On March 5, 2012, while the Cook County action was pending, the plaintiff filed her class-action complaint in the circuit court of Madison County, challenging the defendants' practice of filing the collection actions in Cook County, without regard to where a recipient resided or received benefits. The plaintiff alleged that she did not apply for benefits in Cook County, nor did she receive benefits in Cook County. The plaintiff alleged that the defendants' practice of filing an action in a forum approximately 295 miles from her home violated her fundamental right of access to the courts, right to due process, and public policy. The plaintiff sought an order requiring the defendants to prosecute actions only in the recipient's county of residence or the county in which the benefits were paid, and she sought an award of costs and attorney fees. The plaintiff moved to certify a class consisting of the recipients of childcare benefits who applied for such benefits outside of Cook County and against whom the defendants had sued or threatened suit in Cook County. After the plaintiff's case was filed, and after the plaintiff had moved for certification, the defendants voluntarily dismissed, without prejudice, their Cook County action against the plaintiff.

¶ 6 On April 30, 2012, the defendants filed a motion to dismiss the plaintiff's complaint, arguing that the plaintiff had not pled sufficient facts to support a claim that her due process rights had been violated and that she had no standing because she was no longer a party to

the litigation in Cook County. On June 15, 2012, the circuit court granted the defendants' motion to dismiss and denied the plaintiff leave to replead or amend. On the same date, the plaintiff filed a notice of appeal.

¶ 7 ANALYSIS

¶ 8 We begin our review with the question of whether the dispute between the plaintiff and the defendants presents a justiciable controversy subject to resolution by the circuit court. See *Ferguson v. Patton*, 2013 IL 112488, ¶ 21. "The reason we must begin there is that the existence of a 'justiciable matter' is a prerequisite to the circuit court's subject matter jurisdiction under article VI, section 9, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, § 9)." *Id.* "Absent a justiciable matter, the circuit court had no authority to proceed." *Id.*

¶ 9 "Whether a cause of action should be dismissed based on a lack of justiciability presents a question of law, which we review *de novo*." *Id.* ¶ 22. "The constitution itself does not define the term 'justiciable matters,' nor did our former constitution, where the term first appeared (see Ill. Const. 1970, art. VI, § 9; Ill. Const. 1870, art. VI (amended 1964), § 9)." *Id.* "Instead, courts are left to define the term on a case-by-case basis." *Id.*

¶ 10 "The courts have held that justiciability encompasses a range of concepts, 'such as advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions.' " *Id.* ¶ 23 (quoting *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008)). "The overarching purpose of the doctrine is to reserve the exercise of judicial authority for situations where an actual controversy exists." *Id.* ¶ 23. "Actual" in this context

> "does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions

> of law, render an advisory opinion, or give legal advice as to future events. [Citations.] The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof." (Internal quotation marks omitted.) *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill. 2d 381, 390 (1994).

See also *Ferguson*, 2013 IL 112488, ¶ 23.

¶ 11 The basic rationale of the ripeness doctrine as it relates to challenges against unlawful administrative action is to " 'prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' " *Morr-Fitz, Inc.*, 231 Ill. 2d at 490 (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967)). Ripeness involves an evaluation of whether the issues are fit for judicial decision and whether the parties would suffer hardship if judicial consideration were withheld. *Morr-Fitz, Inc.*, 231 Ill. 2d at 490; *Illinois Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Board v. Illinois Institute of Technology*, 409 Ill. App. 3d 228, 232-33 (2011); *Peoples Energy Corp. v. Illinois Commerce Comm'n*, 142 Ill. App. 3d 917, 933-34 (1986). "[I]f the harm that a plaintiff claims is merely speculative or contingent, the claim is unripe and a court should not decide it." *Smart Growth Sugar Grove, LLC v. Village of Sugar Grove*, 375 Ill. App. 3d 780, 789 (2007).

¶ 12 In this case, the plaintiff alleges that the defendants' systematic conduct, in filing a Cook County action to recover benefits paid to her, regardless of her residence or application location, is unconstitutional. However, the plaintiff here had not been properly served in the Cook County action and had not appeared in Cook County prior to the case's dismissal. See

White v. Ratcliffe, 285 Ill. App. 3d 758, 763-64 (1996) ("[p]roper service of summons is a prerequisite for obtaining *in personam* jurisdiction over a party," and "a judgment entered without proper service of process is void even if the party against whom a judgment is entered had notice of the proceedings"). Absent proper service of process, the plaintiff has never been required to appear in the now-dismissed Cook County case. See *Charter Bank & Trust of Illinois v. Novak*, 218 Ill. App. 3d 548, 552 (1991) (the objectives of service of process include the notification of the defendant of pending litigation to enable her to appear and defend). The plaintiff alleges no sanction to which she is currently exposed. *Cf. Morr-Fitz, Inc.*, 231 Ill. 2d at 492 (supreme court allowed preenforcement challenge to administrative rule that affected the plaintiff's business operations on a day-to-day basis and exposed plaintiff to strong sanctions); *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 569 (2010) (court allowed preenforcement challenge to administrative rules that affected the plaintiffs' business goodwill, relationships, and operation). We cannot predict the future course of action which the defendants will take and whether or not they will refile and properly serve the plaintiff, thereby subjecting her to the distant Cook County forum. Under circumstances of this kind, we hold that the controversy between these parties is not presently ripe for adjudication. See *National Marine, Inc.*, 159 Ill. 2d at 385, 390-91 (although agency had issued a notice informing the plaintiff that it could be potentially liable for release of hazardous substance, the plaintiff's complaint was premature because the agency had yet to initiate enforcement proceedings against the plaintiff).

¶ 13 Citing *Puritt v. Allstate Insurance Co.*, 284 Ill. App. 3d 442 (1996), the plaintiff argues that she does not have to wait until a lawsuit is filed against her to establish the justiciability of her claim. However, in *Puritt*, the insureds alleged that the insurer's systematic, arbitrary determination of "unreasonable or unnecessary" medical expenses placed them in imminent danger of suffering economic loss, namely the underpayment of

their legitimate medical expenses. *Id.* at 446. Noting that allowing the insurer to stand aside while the doctors or their collection agencies press the patient for payment of bills threatened irreparable injury to the doctor-patient relationship, the court in *Puritt* held that the insureds did not have to wait until lawsuits against them were filed or collection agents began harassing them or their credit files were red-flagged. *Id.* The court in *Puritt* held that the insureds had standing in that they had shown that they had sustained, or were in imminent danger of sustaining, an injury. *Id.*

¶ 14 Here, the plaintiff alleges injury upon subjection to an inconvenient and faraway Cook County forum to defend against the defendants' claims. However, the plaintiff had yet to be properly served with a complaint and had yet to appear before the distant forum prior to the case's dismissal in Cook County. Until the plaintiff is faced with having to appear before a Cook County forum, consideration of the propriety of the defendants' choice of Cook County forum is merely "an abstract disagreement over an administrative policy," the resolution of which will not affect the challenging parties in a "concrete way." See *Big River Zinc Corp. v. Illinois Commerce Comm'n*, 232 Ill. App. 3d 34, 39-40 (1992). Pursuant to the authorities cited above, the issue is therefore not yet ripe for our consideration. This court's refusal to act will not prevent the parties from raising the issue at a more appropriate time, if necessary. Accordingly, we conclude that the circuit court properly dismissed the plaintiff's action.

¶ 15 Because the plaintiff's claim is not yet ripe for consideration, the circuit court also properly denied the plaintiff's request to amend her complaint. See *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 234 (2010) (where the plaintiffs lacked standing to sue the defendants, circuit court did not err in denying their request to amend complaint).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we hereby affirm the order of the circuit court of Madison

County.

¶ 18 Affirmed.