

No. 1-12-0685

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 JUDICIAL DISTRICT

CAROL WISE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
COOK COUNTY SHERIFF’S DEPUTIES)	No. 11 M 4320
JAMES McARDLE, FLOYD VICK,)	
SCOTT HUNTER, ROY PERRY,)	
KYLE TRYBA, and DAVID SOTO,)	
)	Honorable
)	James Gavin,
Defendants-Appellees.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where trial court granted defendants' motion for judgment on the pleadings, we affirm when the claimed wrongful acts were perpetrated by the Cook County Sheriff's Department because their actions are under the exclusive jurisdiction of the Illinois Court of Claims (705 ILCS 505/8(a), (d) (West 2010)).
- ¶ 2 Plaintiff Carol Wise, age 74, alleges in her *pro se* complaint for damages that defendants entered her apartment unannounced and physically abused her during an eviction process.

Plaintiff alleges facts that could constitute a battery. Defendants are six Cook County sheriff's deputies who entered plaintiff's apartment for the purpose of executing a valid eviction order. Under section 2-619(1) of the Code of Civil Procedure (735 ILCS 5/2-619(1) (West 2010)), the circuit court granted defendants' motion for judgment on the pleadings on the basis that the court did not have subject matter jurisdiction. The complaint was against state actors acting in their official capacity, and state law requires such suits to be brought in the Illinois Court of Claims. 705 ILCS 505/8(d) (West 2010). Plaintiff presented a motion to reconsider, which the trial court denied.

¶ 3 On this appeal, plaintiff argues that the trial court erred in denying her motion to reconsider. For the following reasons, we affirm the trial court's ruling that the circuit court does not have subject matter jurisdiction.

¶ 4 BACKGROUND

¶ 5 Plaintiff alleges that, on April 1, 2010, at 8 a.m., defendants, six Cook County sheriff's deputies, entered her residence. Defendants are Cook County Sheriff's Deputies James McAardle, Floyd Vick, Scott Hunter, Roy Perry, Kyle Tryba, and David Soto. Defendants claim that they entered plaintiff's apartment, in a Chicago Housing Authority building, to evict plaintiff based on a valid order of eviction.

¶ 6 Plaintiff alleges that she was terrified and attempted to call the police when defendants arrived at her apartment, and claims that one of the defendants instructed her to not call the police and pulled the receiver cord out of the receiver. Plaintiff alleges that one of the defendants

grabbed her arm and that all defendants shouted at her and pushed her. Plaintiff claims that defendants pushed her out of her apartment while she was still in her pajamas.

¶ 7

ANALYSIS

¶ 8 On appeal, plaintiff argues that the trial court erred in denying her motion to reconsider.

¶ 9

I. Standard of Review

¶ 10 When a plaintiff challenges the subject matter jurisdiction of the circuit court, this challenge presents a question of law that we will review *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶ 26. “The determination of whether an action is in fact a suit against the State turns upon an analysis of the issues involved and the relief sought, rather than the formal designation of the parties.” *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992).

¶ 11 In addition, judgment on the pleadings will be granted only where the pleadings fail to raise a genuine issue of material fact and the movant is entitled to a judgment as a matter of law. *Gillen v. State Farm Mutual Insurance Co.*, 215 Ill. 2d 381, 385 (2005). On appeal, the court will consider the facts apparent from the face of the pleadings, judicial admissions in the record, and facts subject to judicial notice. *Gillen*, 215 Ill. 2d at 385. This court reviews a grant of judgment on the pleadings *de novo* to determine whether any issues of material fact exist. *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 157 (2010). Furthermore, when a plaintiff challenges the subject matter jurisdiction of the circuit court, the issue presents a question of law

that we will review *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010).

¶ 12 In Illinois, in order to state a claim upon which relief may be granted, the plaintiff must allege sufficient facts to bring her claim within the scope of a legally recognized cause of action. *Teter v. Clemens*, 112 Ill. 2d 252, 256 (1984). For the purposes of a section 2-619.1 motion for judgment on the pleadings, the moving party concedes the facts of plaintiff's well-pleaded complaint, and the court construes all reasonable inferences in favor of the nonmoving party and strictly against the moving party. *Gillen*, 215 Ill. 2d at 385. The court will not admit conclusory allegations or legal conclusions that are unsupported by the facts pled. See *Iseberg v. Gross*, 227 Ill. 2d 78, 86 (2007). It is well established that courts should liberally construe pleadings with a view to doing substantial justice between the parties. 735 ILCS 5/2-603(c) (West 2010); *Haas v. Westlake Community Hospital*, 82 Ill. App. 3d 347, 349 (1980). Moreover, *pro se* civil rights complaints, such as plaintiff's, "are to be accorded a liberal construction." *Murillo v. Page*, 294 Ill. App. 3d 860, 864 (1998). Accord *Webb v. Lane*, 222 Ill. App. 3d 322, 327 (1991).

¶ 13 As a preliminary matter, we address defendants' contention that plaintiff waived review of the dismissal of her complaint because she failed to articulate specific legal grounds in her appellate briefs as to why the trial court's decision was erroneous. "[O]ur jurisdiction to entertain the appeal of a *pro se* plaintiff is unaffected by the insufficiency of his brief,' so long as we understand the issue the plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001) (quoting *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d

344, 354 (1994)). See also *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983), *cert. denied*, 466 U.S. 591 (1984) (deciding to hear a plaintiff's *pro se* appeal even though his brief failed "to state informatively the errors relied upon for reversal and to present an organized and cohesive argument" and was "flagrantly deficient *** and violative of [Illinois Supreme Court Rule 341 (eff. July 1, 1982)]"). Although plaintiff does not cite cases to support her argument that the trial court's order was in error, her appellate brief, as well as her petition for rehearing to this court, make clear on their face that she alleged that "assault" and "willful or wanton conduct [was] perpetrated by the [d]efendants." In addition, waiver is a limitation on the parties, not the courts. Since "we understand the issue the plaintiff intends to raise" (*Twardowski*, 321 Ill. App. 3d at 511), we will review it.

¶ 14

II. Illinois Court of Claims

¶ 15 Under the Illinois Court of Claims Act, all complaints against the State, or its officials acting under state authority, must be filed before the Illinois Court of Claims. 705 ILCS 505/8(a), (d) (West 2010). The statute provides in relevant part that the Illinois Court of Claims "shall have exclusive jurisdiction to hear and determine ***:

(a) All claims against the State founded upon any law of the State of Illinois, or upon any regulation there under by an executive or administrative officer or agency ***

(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.” 705 ILCS 505/8(a), (d) (West 2010).

¶ 16 For tort claims, deputy sheriffs, acting under a court order, are state officials. *Alencastro v. Sheahan*, 297 Ill. App. 3d 478, 482 (1998). A complaint against specific state officials acting under the State’s authority is, in effect, a complaint against the State, when a ruling in favor of the plaintiff would control the actions of the State. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992).

¶ 17 The *Alencastro* case is instructive. In *Alencastro*, we held that a negligence claim that stemmed from deputy sheriffs’ actions during their execution of an eviction order was under the exclusive jurisdiction of the Illinois Court of Claims. *Alencastro*, 297 Ill. App. 3d at 487. In *Alencastro*, a woman filed a complaint against the Cook County Sheriff and two deputy sheriffs after she was evicted from her home. *Alencastro*, 297 Ill. App. 3d at 479. The woman was a tenant and was unaware of the foreclosure action against the owner. *Alencastro*, 297 Ill. App. 3d at 480. The sheriff and the deputy sheriffs acted under a state court order to evict all tenants from the home. *Alencastro*, 297 Ill. App. 3d at 480. We held that, because the complaint was filed against state employees acting under a lawful state court order, the Illinois Court of Claims had exclusive jurisdiction. *Alencastro*, 297 Ill. App. 3d at 486-87.

¶ 18 Similar to *Alencastro*, plaintiff in the present case filed a tort complaint against sheriff’s deputies because of their alleged actions during the execution of a court order of eviction. As

sheriff's deputies, defendants are obligated to execute lawful state court orders. Thus, plaintiff's complaint falls under the exclusive jurisdiction of the Illinois Court of Claims.

¶ 19 By contrast, in *Currie*, the Illinois Supreme Court held that, where a complaint against an Illinois state trooper alleged that the trooper operated a state vehicle in a negligent manner causing the vehicle to collide with the plaintiff's vehicle, the suit did not arise out of action by a state actor acting under state authority. As a result, the complaint was not a complaint against the State. *Currie*, 148 Ill. 2d at 154, 159. The court reasoned that the negligent actions listed in the complaint arose out of a breach of duty imposed independently of the trooper's employment – his duty as a “driver of an automobile on a public roadway” – and not out of his responsibilities as a state trooper. *Currie*, 148 Ill. 2d at 159. The trooper did not show that his alleged negligent operation of the state vehicle was in response to a call for assistance or required by his state trooper responsibilities. *Currie*, 148 Ill. 2d at 162. Therefore, the court concluded that a ruling in favor of the plaintiff would not control the actions of the State and, thus the complaint was not a complaint against the State. *Currie*, 148 Ill. 2d at 158.

¶ 20 Unlike the defendant in *Currie*, defendants in the present case were acting under state authority in the execution of the valid order of eviction; and the actions alleged in the complaint arose out of defendants' actions as deputy sheriffs.

¶ 21 Whether a claim rests against the State or against state officials in their individual capacity depends upon the particular facts of each case, and “turns upon an analysis of the issues involved and the relief sought rather than the formal designation of the parties.” *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992); *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990). Thus, the plaintiff

cannot avoid the Court of Claims Act's prohibition on making the State a party to a suit "by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested."

Healy, 133 Ill. 2d at 308. An action brought against a state officer in his individual capacity will be found to be a claim against the State "where a judgment for the plaintiff could operate to control the actions of the state or subject it to liability." Currie, 148 Ill. 2d at 158.

¶ 22 One exception is the "officer suit" exception, and it applies where a state officer undertakes an action without legal authority or in excess of his legal authority. PHL, Inc. v. Pullman Bank & Trust Co., 216 Ill. 2d 250, 261 (2005). See also Moline Tool Co. v. Department of Revenue, 410 Ill. 35, 37 (1951); Schwing v. Miles, 367 Ill. 436 (1937). The officer suit exception protects the rights of plaintiffs because "where a defendant officer acts in excess of his statutory authority, the rights of the plaintiffs to be free from the consequences of his action outweigh the interest of the State which is served by the sovereign immunity doctrine." Senn Park Nursing Center v. Miller, 104 Ill. 2d 169, 188 (1984). Thus, where a state officer "violates or invades the personal or property rights of the plaintiff under an unconstitutional act, or an assumption of authority which he does not have, such suit is not against the State." PHL, Inc., 216 Ill. 2d at 261 (quoting Schwing, 367 Ill. at 441-42).

¶ 23 Plaintiff in the case at bar claims that the sheriff's deputies exceeded their authority when they did not make an announcement before they broke into her apartment and pushed her physically, causing bruises. Although this type of conduct cannot be condoned, the concept of

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exceeding authority pertains to the validity of the eviction order, not the conduct of the deputies.

Alencastro, 297 Ill. App. 3d at 485.

¶ 24 In sum, defendants are state employees and plaintiff's complaint arises out of defendants' execution of a court order of eviction. The claimed actions occurred from the conduct of the defendants in their capacity as state officials. The complaint is, in effect, a complaint against the State. Therefore, the circuit court of Cook County does not have subject matter jurisdiction over plaintiff's complaint. The Illinois Court of Claims is the only court where this complaint may be brought. 705 ILCS 505/8(a), (d) (West 2010).

¶ 25 **CONCLUSION**

¶ 26 For the foregoing reasons, we affirm the circuit court's denial of plaintiff's motion to reconsider and the granting of defendants' motion for judgment on the pleadings.

¶ 27 Affirmed.