

No. 1-17-2146

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CRAIG GRAFTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 2017 CH 7222
	)	
ILLINOIS DEPARTMENT OF HEALTHCARE AND	)	
FAMILY SERVICES,	)	Honorable
	)	Celia G. Gamrath,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** Plaintiff filed an action for administrative review of a lien placed on his bank account by defendant and for damages that allegedly flowed from the lien. We affirmed the dismissal because the circuit court lacked subject matter jurisdiction as to both claims.
- ¶ 2 Plaintiff-appellant, Craig Grafton, brought this action against defendant-appellee, the Illinois Department of Healthcare and Family Services (Department) seeking administrative review of the administrative lien placed by the Department on plaintiff's bank account for unpaid court-ordered child support payments pursuant to Article X of the Public Aid Code (PAC) (305 ILCS 5/10-1 *et seq.* (West 2016)), and for damages allegedly caused by the lien. The circuit

court granted the Department's motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) (Code), wherein the Department argued that the circuit court lacked subject matter jurisdiction. We affirm.

¶ 3 BACKGROUND

¶ 4 On August 31, 2016, the Department pursuant to Article X of the PAC (305 ILCS 5/10-1 *et seq.* (West 2007)), issued a notice of lien to the Standard Bank and Trust Company (the bank) and, thereby, placed an administrative lien on funds in plaintiff's accounts at the bank for unpaid child support. The notice of lien stated that plaintiff's child support obligation had been established pursuant to an order entered by the circuit court of Cook County (support court), on March 24, 2006, in case number 1994 D 0055207<sup>1</sup> (support order) and that, as of August 31, 2016, the arrearages totaled \$6,839.31. The notice of lien was served on plaintiff.

¶ 5 On September 19, 2016, plaintiff filed a written request for a hearing before an Administrative Law Judge (ALJ) regarding the lien.

¶ 6 On May 10, 2017, Eric Williams, a child support specialist for the Department, who had been assigned to plaintiff's administrative appeal, conducted a prehearing conference (conference). Prior to the conference, plaintiff had been given an opportunity to present written evidence of any hardship resulting from the lien, but plaintiff failed to do so. Mr. Williams explained to plaintiff that the Department was required to follow the terms of the support order and that only the support court had the authority to modify its requirements.

¶ 7 After further discussions with Mr. Williams, plaintiff, on that date, signed a form entitled: "Request to Withdraw Appeal" (request). The request, in preprinted language, provided that plaintiff was withdrawing both his appeal and request for an administrative hearing of his "own

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<sup>1</sup> The caption of circuit court case number 1994 D 0055207 is not included in the notice of lien or in the record on appeal.

free will,” and that, in doing so, he had not been “improperly or unduly influenced” by any employee of the Department. The request, in typed language added to the form, included an acknowledgment by plaintiff that the Department was enforcing the support order, and that there was “a [child support] balance of \$6,669.24 which qualified for [Administrative] Remedies.” The typed portion of the request also provided that, any issues as to the amount of the arrearages, could be addressed only “by a judge in Circuit Court [support court].” Finally, this section of the request stated that plaintiff was informed that he could obtain “an appointment [with] a judge” at the Daley Center as to the support order.

¶ 8 On May 22, 2017, plaintiff, *pro se*, filed this suit against the Department. In his complaint, plaintiff first sought administrative review of the lien. Plaintiff asserted that the Department had placed the lien on his bank account pursuant to a “falsified document,” and that he, in fact, had not missed his child support payments from March 10, 2006, to August 31, 2016. Additionally, plaintiff requested damages in the amount of \$30,000 to compensate him for his monetary losses and for his pain, suffering and humiliation which were caused by the issuance of the lien.

¶ 9 The Department filed a motion to dismiss the complaint under section 2-619 of the Code. As to plaintiff’s administrative review claim, the Department argued that the circuit court lacked subject matter jurisdiction in that plaintiff had failed to exhaust his administrative remedies and thus the Department had not entered a final decision as to the lien. In the motion, the Department set forth what had occurred during the conference and the information which had been provided to plaintiff prior to his decision to sign the request.

¶ 10 In seeking dismissal of the damages claim, the Department explained that it issued the lien under the child support enforcement procedures of the PAC. The State was required, by

federal law, to enact those procedures as a condition of the State's receipt of federal funds for welfare programs. The PAC authorized the Department to pursue the enforcement measures. Therefore, sovereign immunity divested the circuit court of jurisdiction to hear the damages claim, and that the Illinois Court of Claims had exclusive jurisdiction over the claim.

¶ 11 After reviewing the motion to dismiss, the circuit court entered an order directing the Department "to provide clarification regarding the language used" at the conference with respect to plaintiff's decision to sign the request. Accordingly, the Department subsequently filed the affidavit of Mr. Williams in support of its motion to dismiss.

¶ 12 Mr. Williams averred that during the conference, he told plaintiff that the Department was required to follow the support order and "that only a Judge in the Circuit Court could change or modify the terms of the [support order] under Docket 1994 D 0055207 ." Plaintiff indicated that he "wanted to address his concerns regarding the [support order] before a Judge." Mr. Williams informed plaintiff that he had two options with respect to his administrative appeal of the lien: (1) proceed to a hearing before an ALJ; or (2) withdraw his request for an appeal. Plaintiff expressed his wish to challenge the support order before the support court and chose to withdraw his administrative appeal. Mr. Williams informed plaintiff that he could "make an appointment" to bring the matter before a circuit judge at the Daley Center. Plaintiff voluntarily signed the request in the presence of Mr. Williams, and the request was sent to the ALJ.

¶ 13 Mr. Williams stated he did not inform plaintiff that: a final administrative decision would issue if he withdrew his appeal; he was required to file an action for administrative review after withdrawing his administrative appeal; the lien would be stayed. Instead, Mr. Williams told plaintiff that his unpaid child support balance qualified for continued administrative enforcement and the funds being held by the bank under the lien would be applied toward this arrearage.

¶ 14 On August 11, 2017, the circuit court, after hearing arguments, entered an order granting the Department's motion to dismiss after finding that the affidavit of Mr. Williams was un rebutted and that plaintiff had not proffered a defense to the motion. In its order, the court also stated that although plaintiff had been given the opportunity to respond, in writing, to the motion to dismiss and the affidavit of Mr. Williams, he had chosen instead to respond orally.

¶ 15 Plaintiff has now appealed.

¶ 16 On appeal, plaintiff argues that the circuit court erred by granting the Department's motion to dismiss. He presents only arguments which challenge the propriety of the lien and the basis of the support order. The Department, in response, argues that the circuit court lacked subject matter jurisdiction to review the lien for plaintiff's failure to exhaust his administrative remedies and that sovereign immunity divested the circuit court of jurisdiction to consider plaintiff's claim for damages.

¶ 17 A dismissal under section 2-619 of the Code is proper where a plaintiff's action against a defendant is barred by affirmative matters which defeat the claim. 735 ILCS 5/2-619 (West 2016); *Goldwater v. Greenberg*, 2017 IL App (1st) 163003, ¶ 11. Affirmative matters which may be raised by a section 2-619 motion include both a plaintiff's failure to exhaust his administrative remedies prior to filing an action for administrative review and the bar of sovereign immunity. *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345 (2001); *Burns v. Department of Insurance*, 2013 IL App (1st) 122449, ¶ 9.

¶ 18 We review *de novo* an order of dismissal under section 2-619 of the Code. *Goldwater*, 2017 IL App (1st) 163003, ¶ 13. This court may affirm the dismissal of a complaint on any grounds supported by the record. See *Siena at Old Orchard Condominium Association v. Siena at Old Orchard, L.L.C.*, 2017 IL App (1st) 151846, ¶ 48.

¶ 19 Plaintiff, in his briefs, has not addressed his failure to exhaust his administrative remedies or the bar of sovereign immunity which were the affirmative matters raised by the Department in its motion to dismiss the complaint. Thus, plaintiff has forfeited all challenges to the circuit court's dismissal of his complaint on those grounds. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017); see also *Del Real v. Northeast Illinois Regional Commuter R.R. Corp.*, 404 Ill. App. 3d 65, 74 (2010) (when a party on appeal fails to explain why the circuit court erred in dismissing a claim, the party has forfeited the argument concerning the propriety of the claim's dismissal).

¶ 20 Forfeiture aside, we find the motion to dismiss was properly granted.

¶ 21 We first conclude that the circuit court committed no error in dismissing plaintiff's claim for administrative review of the lien.

¶ 22 Under our state constitution, circuit courts "have such power to review administrative action as provided by law." Ill. Const. art. VI, § 9. "The phrase 'as provided by law' is used '[w]hen our constitution intends that the legislature is to act in governing the activities of the court.'" *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 529 (1998) (quoting *People v. Joseph*, 113 Ill. 2d 36, 43 (1986)). When exercising special statutory jurisdiction, a court's "jurisdiction is limited to the language of the act conferring it and the court has no powers from any other source." *Fredman Brothers Furniture Co., Inc. v. Department of Revenue*, 109 Ill. 2d 202, 210 (1985) (citing *Central Illinois Public Service Co. v. Industrial Commission*, 293 Ill. 62, 65-66 (1920)). The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)) (ARL), as a departure from the common law, must be strictly pursued to confer jurisdiction on the court. *Fredman Brothers Furniture Co., Inc.*, 109 Ill. 2d at 210. The ARL applies to every action to judicially review a final administrative decision where it has been expressly adopted by the statute creating or conferring power on the agency involved. 735 ILCS 5/3-102 (West 2016); see

also *Chicago Title Land Trust Co. v. Board of Trustees of Village of Barrington*, 376 Ill. App. 3d 494, 498-99 (2007).

¶ 23 Beginning in 1974, states, as a condition of receiving Federal Aid to Families with Dependent Children (42 U.S.C. § 601 *et seq.* (1997)), were required to adopt child support enforcement programs which comply with Title IV-D of the federal Social Security Act. *In re Marriage of Lappe*, 176 Ill. 2d 414, 424 (1997). “Illinois' Title IV-D program is contained in article X of the Public Aid Code and part 160 of the Department's regulations.” *Id.* at 426; *Highsmith v. Department of Public Aid*, 345 Ill. App. 3d 774, 777 (2004) (“Under Article X of the [PAC] [citation], the Department is authorized to enforce child support obligations owed to persons receiving financial aid under the Code.”). As part of the enforcement procedures, the PAC provides that “the State shall have a lien on all legal and equitable interests of responsible relatives in their personal property, including any account in a financial institution.” 305 ILCS 5/10-25.5(a) (West 2016).

¶ 24 The Department, a state agency, has been entrusted with operating the child support enforcement program in compliance with Title IV-D. *Marriage of Lappe*, 176 Ill. 2d at 425-26. Specifically, pursuant to section 10-3.1 of the PAC, the Department has the authority to establish, enforce, and collect child support obligations. 305 ILCS 5/10-3.1 (West 2016). The Department is to provide the affected party with an “opportunity to be heard” as to the issuance of an administrative lien. 305 ILCS 5/10-25.5(b) (West 2016).

¶ 25 A party aggrieved by an administrative lien may contest it by filing a written request for a hearing before an ALJ within 15 days after the mailing of the notice of the lien. 89 Ill. Admin. Code § 160.70(f)(2)(F) (eff. Mar. 7, 2017)). Article X of the PAC explicitly provides that “any

final administrative decision rendered by the [Department] shall be reviewed only under and in accordance with the [ARL].” 305 ILCS 5/10-25.5(b) (West 2016).

¶ 26 “Under the doctrine of exhaustion of administrative remedies, ‘a party aggrieved by an administrative decision ordinarily cannot seek judicial review without first pursuing all available administrative remedies.’ ” *Family Amusement of Northern Illinois, Inc. v. Accel Entertainment Gaming, LLC*, 2018 IL App (2d) 170185, ¶ 27 (quoting *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 551 (1999)). Although plaintiff requested an administrative appeal hearing before an ALJ to contest the lien, he later withdrew his request. Plaintiff, therefore, did not pursue the available administrative remedies to contest the lien. As a result, the Department never issued a final administrative decision. Under the ARL, only a final administrative decision rendered by the Department is reviewable in the circuit court under the ARL. *Id.*; 735 ILCS 5/3-102 (West 2002); see, generally, *Margaret Manor v. Lumpkin*, 279 Ill. App. 3d 776, 779-80 (1996). Therefore, the circuit court lacked subject matter jurisdiction to review the lien. See *Family Amusement of Northern Illinois, Inc.*, 2018 IL App (2d) 170185, ¶ 29 (citing *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 330 (1989) (“When the exhaustion requirement applies, the circuit court lacks jurisdiction to hear a challenge to an administrative decision and the complaint must be dismissed.”)); *NDC LLC v. Topinka*, 374 Ill. App. 3d 341, 347 (2007) (circuit court lacks jurisdiction to review a nonfinal administrative decision).

¶ 27 We also find that the dismissal of plaintiff’s claim for an award of damages against the Department, a state agency, was correct.

¶ 28 At common law, sovereign immunity barred suits against the government unless the government had consented to be sued. *Wilson v. Quinn*, 2013 IL App (5th) 120337, ¶ 12 (citing



*Jackson v. Alvarez*, 358 Ill. App. 3d 555, 559 (2005)). The Illinois Constitution abolished sovereign immunity, but gave the General Assembly the power to reestablish that immunity by legislative enactment. Ill. Const. 1970, art. XIII, § 4; see also *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 42. Pursuant to that grant of authority, the legislature enacted the State Lawsuit Immunity Act (745 ILCS 5/1 *et seq.* (West 2012)) (Act). The Act provides that, subject to exceptions not relevant here, “the State of Illinois shall not be made a defendant or party in any court.” *Id.* Additionally, the Court of Claims Act confers exclusive jurisdiction over all claims against the state founded upon any state law or regulation and all claims against the state for damages sounding in tort in the Illinois Court of Claims. 705 ILCS 505/8(a), (d) (West 2016).

¶ 29 Plaintiff did not name the State of Illinois as a party to his action, but did name the Department, an agency of the State. “[T]he prohibition ‘against making the State of Illinois a party to a suit cannot be evaded 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 v. Vaupel*, 133 Ill. 2d 295, 308 (1990) (quoting *Sass v. Kramer* 72 Ill. 2d 485, 491(1978)).

¶ 30 If a judgment for a plaintiff could operate to control the actions of the state or subject it to liability, the action is effectively brought against the state and is barred by sovereign immunity. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). An action seeking damages has the potential to subject the state to liability and, accordingly, must be brought in the court of claims. See *e.g.* *Illinois Collaboration on Youth v. Dimas*, 2017 IL App (1st) 162471, ¶ 46.

¶ 31 In this case, plaintiff seeks damages against the Department, which is the state agency authorized to enforce and collect child support payments under section 10-3.1 (305 ILCS 5/10-

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3.1 (West 2016)). A judgment in his favor would subject the State to liability and, therefore, the circuit court lacked subject matter jurisdiction over plaintiff's damages action. Instead, the court of claims has exclusive jurisdiction over any monetary claim against the Department.

¶ 32 For the reasons stated, we find that the dismissal of plaintiff's complaint was proper, as the circuit court lacked subject matter jurisdiction over plaintiff's claims, and affirm that decision.

¶ 33 Affirmed.