

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).

THIRD DIVISION
November 14, 2018

No. 1-17-3160

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

TONY CHANEY,)	
)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 2017 M1 128988
)	
ILLINOIS DEPARTMENT OF HUMAN SERVICES,)	The Honorable
)	Leon Wool,
Defendant-Appellee.)	Judge Presiding.
)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff sued Illinois Department of Human Services in circuit court for breach of an alleged agreement to reimburse plaintiff for deductions taken from his social security check, the trial court’s dismissal for lack of subject matter jurisdiction is affirmed.

¶ 2 The plaintiff, Tony Chaney, filed a *pro se* action on a small claim against the defendant, the Illinois Department of Human Services (“Department”), seeking to recover \$400 under an agreement in which, he alleged, the Department had agreed to reimburse him for Medicaid premiums that had been improperly deducted from his social security check after he moved to

Illinois from Louisiana in 2015. The Department filed a motion to dismiss the plaintiff's action, arguing that, because it was a department of the State of Illinois, the State Lawsuit Immunity Act deprived the circuit court of subject matter jurisdiction to adjudicate the dispute. 745 ILCS 5/0.01 *et seq.* (West 2016). The trial court agreed and dismissed the case without prejudice under section 2-619(a)(1) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(1) (West 2016). On appeal, the plaintiff argues that sovereign immunity principles do not bar the circuit court from resolving his claim. For the following reasons, we affirm the order of the circuit court.

¶ 3

BACKGROUND

¶ 4

The plaintiff commenced this action on a small claim by filing a complaint, using a form provided by the court, in which he set forth his claim against the Department as follows:

“Pursuant to an agreement reached on 6/21/2017 the Department of Human Services agreed to reimburse claimant for premiums deducted from his social security check. The premiums were for Medicaid insurance that were deducted from his check when he moved from Louisiana to Illinois in 2015. The deductions cover several months and were made without notice to claimant. (See attach[ed] copy of agreement.) Claimant has made many attempts to contact and achieve a favorable response in this matter.”

The complaint stated the amount being claimed was \$400.

¶ 5

The agreement attached to the complaint was an Illinois Department of Human Services form titled “Appeal Withdrawal Agreement.” It listed the plaintiff as the appellant in an appeal involving the medical assistance program. It appears to have been filled out by a representative of a Family Community Resource Center (“FCRC”), which is part of the Department’s Division of Family and Community Services. Section 1 of the agreement indicated that the plaintiff had filed an appeal with the Department requesting a hearing “due to non-reimbursement of medical

premium payments.” Section 2 of the agreement then indicated that the plaintiff was agreeing to withdraw his appeal and request for a hearing. A box was checked next to a preprinted line indicating the reason the plaintiff’s appeal was being withdrawn was because “IDHS has agreed to reopen my assistance benefits, make a new decision, and send a new notice.” Below that in section 2 was a handwritten sentence stating, “L.O. resubmitted the 1925 form to the SSA for reimbursement.” The agreement went on to state, “I understand that by withdrawing my appeal, I will not be able to have a fair hearing on this appeal. I also understand that, except for any promises written down in Section (2) above, this form is the complete agreement and I will not be able to appeal this same issue again.” The agreement was signed by both the plaintiff and an FCRC representative.

¶ 6 The Department filed a motion to dismiss the plaintiff’s action for lack of subject matter jurisdiction under section 2-619(a)(1) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(1). The Department argued that it was a department of the State of Illinois and, as such, under section 1 of the State Lawsuit Immunity Act, it could not be sued in the circuit court in a breach of contract action seeking money damages. 745 ILCS 5/1 (West 2016).

¶ 7 The Department’s motion was scheduled for hearing, and no briefing schedule was entered. However, on the same day as that hearing, the plaintiff filed a motion for summary judgment. In that filing, the plaintiff set forth the factual basis of his claim, cited Illinois case law concerning sovereign immunity principles, and concluded by stating that the circuit court had jurisdiction over his claim. It further requested that the court “vacate the defendant’s motion to dismiss under 735 ILCS 5/2-619(a)(1) and render judgment and such other relief as the court finds just under the circumstances.”

¶ 8 The trial court entered an order dismissing the plaintiff’s action without prejudice for lack

of subject matter jurisdiction. The plaintiff now appeals from that order.

¶ 9

ANALYSIS

¶ 10

As this appeal involves a trial court's order granting a motion to dismiss under section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1)) on the basis that the circuit court lacked subject matter jurisdiction over the action, this court applies *de novo* review. *Leetaru v. Bd. of Trustees of Univ. of Ill.*, 2015 IL 117485, ¶ 41. A motion under section 2-619(a)(1) does not challenge the legal sufficiency of the plaintiff's complaint. *Id.* at ¶ 40. In reviewing the granting of such a motion, this court interprets the pleadings and supporting materials in the light most favorable to the plaintiff. *R.L. Vollintine Const., Inc. v. Ill. Capital Development Bd.*, 2014 IL App (4th) 130824, ¶ 23. Further, the court is mindful that this case is an action on a small claim. The supreme court has established relaxed pleading standards for small claims, on the principle that litigants with minimal legal experience should be allowed to present their grievances to the trial court through an expeditious, simplified, and inexpensive procedure for resolving disputes over small amounts. *Tannenbaum v. Fleming*, 234 Ill. App. 3d 1041, 1043 (1992). However, the doctrine of sovereign immunity applies in actions involving small claims just as it does in other cases. *Toth v. England*, 348 Ill. App. 3d 378, 385 (2004).

¶ 11

In his appeal to this court, the plaintiff argues that the circuit court has subject matter jurisdiction over the action he filed. He primarily relies on the principle of sovereign immunity that, when a state officer acts illegally or acts under authority which he or she does not have, the officer's conduct is not regarded as an action of the State, and a suit premised on that action may be maintained against a state officer in the circuit court. See *Leetaru*, 2015 IL 117485, ¶ 46.

¶ 12

Sovereign immunity exists in Illinois pursuant to statute and provides that a State or a department of the State cannot be a defendant in an action brought directly in the circuit court.

Westshire Retirement & Healthcare Ctr. v. Dept. of Public Aid, 276 Ill. App. 3d 514, 519 (1995). That statute, the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.*), mandates that, except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2016)) and several other statutes not applicable to this case, “the State of Illinois shall not be made a defendant or party in any court.” 745 ILCS 5/1 (West 2016). The Court of Claims Act, in turn, provides that the Court of Claims “shall have exclusive jurisdiction” over “[a]ll claims against the State founded upon any contract entered into with the State of Illinois.” 705 ILCS 505/8(b) (West 2016). Together these statutory provisions make clear that claims against the State that are founded upon a contract with the State must be filed in the Court of Claims, not in the circuit court. *State Bldg. Venture v. O’Donnell*, 239 Ill. 2d 151, 161 (2010).

¶ 13 For sovereign immunity purposes, a suit against a department of the State is considered to be a suit against the State. *Swope v. Northern Ill. Gas Co.*, 221 Ill. App. 3d 241, 242 (1991). The defendant in this case, the Department of Human Services, is a department of the State. 20 ILCS 5/5-15 (West 2016). However, the fact that the named defendant is a department of the State does not mean the bar of sovereign immunity automatically applies. *Leetaru*, 2015 IL 117485, ¶ 44. Whether an action is in fact one against the State and therefore one that must be filed only in the Court of Claims depends on the issues involved and the relief sought. *Id.* at ¶ 45.

¶ 14 We first address the issue, raised in the Department’s motion to dismiss, of whether the plaintiff’s claim is one “founded upon any contract entered into with the State of Illinois.” 705 ILCS 505/8(b); see *State Bldg. Venture*, 239 Ill. 2d at 161. The plaintiff does not appear to dispute this contention on appeal. In explaining the basis of his claim in his complaint, he alleged that, “[p]ursuant to an agreement reached on 6/21/2017 the Department of Human Services agreed to reimburse claimant for premiums deducted from his social security check.” The exhibit

attached to his complaint is clearly a contract between the plaintiff and the Department. Liberally construed, the complaint alleges the Department has breached this contract and caused plaintiff damages of \$400. Thus, we conclude that the plaintiff's action is a claim founded upon a contract entered into with the State of Illinois. 705 ILCS 505/8(b).

¶ 15 Having done so, we next address whether the plaintiff's claim is "against the State." *Id.*; see *State Bldg. Venture*, 239 Ill. 2d at 161-62. If it is, it is subject to sovereign immunity and must be filed in the Court of Claims instead of in the circuit court. *Id.* (citing 705 ILCS 505/8(b)). The plaintiff argues on appeal that his claim is not one against the State. As mentioned above, he relies on the sovereign immunity principle that, although legal acts of state officers are regarded as acts of the State itself, illegal acts performed by such officers are not. *Leetaru*, 2015 IL 117485, ¶ 46. In other words, actions of a state officer that are taken without legal authority strip the officer of his official status. *Id.* When a state officer performs illegally or purports to act under an unconstitutional act or under authority which he does not have, such conduct by the officer is not regarded as conduct of the State. *Id.* In such circumstances, an action may be maintained against the officer in the circuit court without violating sovereign immunity principles. *Id.*

¶ 16 The plaintiff argues that his claim involves several illegal actions committed by the Department that, according to the principles set forth above, cannot be considered actions of the State. He contends that these include making illegal deductions from his social security checks, failing to provide him with notice either before or after the deductions occurred, and refusing to reimburse him for the deductions in a timely manner. However, we reject the plaintiff's argument that these actions bring his case within the exception to the sovereign immunity doctrine and thereby vest the circuit court with jurisdiction over his claim.

¶ 17 We note first that the plaintiff's complaint does not name a state officer as defendant, but

rather it names the Department itself. *Westshire Retirement & Healthcare Ctr.*, 276 Ill. App. 3d at 521. Even if we were to overlook that, however, “not every legal wrong committed by an officer of the State will trigger this exception.” *Leetaru*, 2015 IL 117485, ¶ 47. The exception is aimed “at situations where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids.” *Id.* It is not aimed at situations where an official has exercised the authority delegated to him or her erroneously. *Id.* Further, and significant to this case, it is well-established that the exception does not apply if the action alleged to be illegal or taken in excess of authority is merely the breaching of a contract. *Id.*; *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 262 (2005); *Smith v. Jones*, 113 Ill. 2d 126, 132-33 (1986).

¶ 18 Thus, the plaintiff’s argument that the Department refused to reimburse him for the improper deductions in a timely manner is nothing more than a claim that the Department breached the contract with him that he attached to his complaint. Under the precedent set forth above, this cannot be the illegal act or the act taken in excess of authority which overcomes sovereign immunity. Furthermore, the other acts of which the plaintiff complains, such as making the improper deductions from his social security checks and doing so without giving him notice, must be considered facts giving rise to his alleged contractual right of reimbursement. As such, they are aspects of his breach of contract claim, and they similarly cannot be considered illegal or unauthorized acts that could overcome sovereign immunity.

¶ 19 Also, in evaluating whether an action is one against the State, the court considers the relief that the plaintiff is seeking. *Westshire Retirement & Healthcare Ctr.*, 276 Ill. App. 3d at 520. If a judgment for the plaintiff could operate to control the actions of the State or subject the State to liability, the action is considered to be against the State. *Id.* Even where the plaintiff is claiming

that a statute is violated, sovereign immunity applies when a judgment for the plaintiff would subject the State to direct liability to the plaintiff for money damages. *Id.* (citing *Ellis v. Bd. of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 395 (1984)). Here, the plaintiff is plainly seeking to be paid money damages from the Department in the amount of \$400. For this reason, his claim must be considered one against the State such that sovereign immunity applies.

¶ 20 In addition to the argument addressed above, the plaintiff also argues on appeal that he was entitled to an evidentiary hearing before the suspension, termination, or deduction of his social security benefits. He argues that this was a violation of the due process clauses of the fourteenth amendment to the United States Constitution and of the Illinois Constitution. (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2.) The Department argues that the plaintiff has forfeited this argument by not raising it before the trial court. “In civil cases, constitutional issues not presented to the trial court are deemed forfeited and may not be raised for the first time on appeal.” *Sherman v. Indian Trails Public Library Dist.*, 2012 IL App (1st) 112771, ¶ 21. “The mere fact that arguments offered for the first time on appeal raise constitutional questions does not prevent the otherwise proper application of the forfeiture rule.” *Id.* We agree with the Department that the plaintiff never presented this argument to the trial court for any purpose, and we decline to consider it for the first time on appeal. Moreover, the plaintiff does articulate any reason why this argument that he was denied due process by the Department would overcome sovereign immunity.

¶ 21 The plaintiff’s final argument on appeal is that he should be allowed to pursue his claim as a class action. As with his due process argument, however, this argument was never presented to the trial court for any purpose, and we find it forfeited for purposes of appeal. In any event, we again fail to see how it would affect the applicability of the sovereign immunity doctrine here.

¶ 22

CONCLUSION

¶ 23

In conclusion, the court affirms the judgment of the circuit court dismissing this action for lack of subject matter jurisdiction.

¶ 24

Affirmed.