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2018 IL App (4th) 180039-U

NO. 4-18-0039

FILED
November 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JANE GUCKER,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Piatt County
SUSANA MENDOZA, in Her Capacity as Comptroller	)	No. 17CH6
of the State of Illinois, and THE STATE EMPLOYEES'	)	
RETIREMENT SYSTEM BOARD OF TRUSTEES,	)	Honorable
Defendants-Appellees.	)	Wm. Hugh Finson,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendants' motion to dismiss plaintiff's petition for a writ of *mandamus* and an injunction pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)).

¶ 2 Plaintiff, Jane Gucker, filed a petition for a writ of *mandamus* and an injunction against Susana Mendoza, in her capacity as Illinois Comptroller, and the State Employees' Retirement System Board of Trustees (SERS), alleging defendants improperly recalculated her monthly pension benefit based on an error in the payment of her salary and withheld her pension benefits to refund her former employer, the Illinois Capital Development Board (CDB), for a salary overpayment. The trial court granted defendants' motion to dismiss plaintiff's action, and plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was employed by CDB, a state agency. In May 2014, she retired and began receiving her pension, which was paid through SERS. In December 2014, CDB sent plaintiff a letter notifying her that an external audit discovered "a payroll error involving the calculation of [plaintiff's] specialized skill pay." According to CDB, the error resulted in salary overpayments to plaintiff from January 1, 2012, to April 30, 2014, totaling $30,564. CDB informed plaintiff that it "must *** recoup the full overpayment from [her]" and that it would work with plaintiff to develop a manageable repayment plan. CDB also informed plaintiff that the payroll miscalculation affected her pension and stated it had informed SERS of the error.

¶ 5 Plaintiff did not agree to repay the money, and CDB initiated proceedings with the Comptroller to offset plaintiff's pension benefits to recover the overpayment. In May 2016, the Comptroller began withholding plaintiff's monthly pension benefit to repay CDB. The same month, plaintiff sent a letter of protest to the "Collections Unit" of the State of Illinois. She asserted CDB's underlying claim had no merit and her pension was being unlawfully withheld.

¶ 6 In September 2016, SERS sent plaintiff a letter notifying her that it had been informed of the error in the calculation and payment of her salary. It stated the error also resulted in an overpayment of plaintiff's pension benefits from May 1, 2014, to August 31, 2016, in the amount of $8,193.24. SERS identified plaintiff's "correct" monthly pension benefit as "$3,875.87. Further, it stated as follows:

> "If you wish to appeal this adjustment, you may request an Informal Conference to discuss the decision, review your file and present any new information.
>
> * * *
>
> Your decision to participate in an Informal Conference has no bearing up-

> on your right to pursue a written or personal appeal to the Executive Committee. You may file a Petition of Appeal to the Executive Secretary of the System within 30 days of the date of this letter. In your letter of appeal, please indicate if you desire a personal hearing with the Executive Committee to present your appeal; or, if you wish a written appeal whereby you would submit written documentation to support your appeal. Your file will then be given to the Executive Committee for review. If you request a personal hearing, a letter will be sent to you listing the time and location of the hearing.
>
> If you do not intend to request an Informal Conference or appeal to the Executive Committee, please forward your remittance, made payable to [SERS], within 30 days from the date of this letter."

¶ 7 In January and February 2017, SERS sent additional letters to plaintiff, stating it had received no reply from plaintiff and asking her to repay the $8193.24 overpayment of her pension benefits within 15 days. The letters further informed plaintiff that her failure to repay the pension overpayment would result in the "involuntary withholding" of her pension benefits or "any payment that is issued by the State of Illinois."

¶ 8 In February 2017, plaintiff filed her petition for a writ of *mandamus* and injunction against the Comptroller and SERS. In count I, alleging *mandamus*, plaintiff suggested that the Comptroller's act in "seizing" her pension benefits violated the Illinois Constitution and the Illinois Pension Code (Pension Code), asserting she had "a clear right and vested interest in her pension." She cited the pension protection clause of the Illinois Constitution (Ill. Const. 1970, art. XIII, § 5), which provides that "[m]embership in any pension or retirement system of the

State *** shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Plaintiff also cited section 14-147 of the Pension Code (40 ILCS 5/14-147 (West 2016)), which provides that pension benefits are not "subject to judgment, execution, garnishment, attachment, or other seizure by process." Plaintiff further alleged that SERS lacked "the power to unilaterally recalculate past salary giving rise to [her monthly pension] benefit." She asked the trial court to issue a writ of *mandamus* ordering the following:

> "a. [The Comptroller] to issue a warrant against CDB for the total amount of monies diverted from [plaintiff's] pension in violation of Illinois law payable to the SERS Board;
>
> b. The SERS Board to issue a lump sum payment to [plaintiff] for the total amount of monies diverted from [plaintiff's] pension in violation of Illinois law;
>
> c. The SERS Board to restore [plaintiff's] pension benefit amount to its pre-adjustment amount, and issue a lump sum payment to [plaintiff] for the amount she was underpaid as a result of the SERS Board's unlawful recalculation; [and]
>
> d. All other just and equitable relief as this Court deems appropriate."

¶ 9 In count II of her complaint, plaintiff asked that the trial court issue an injunction, ordering the Comptroller and SERS "to cease all actions against [her] pension." She also asked the court to order that SERS cease all recalculations of her pension benefit amount based on CDB's purported payroll error.

¶ 10 In May 2017, defendants filed a combined motion to dismiss plaintiff's action under section 2-619.1 of Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619.1 (West 2016)).

Specifically, they sought dismissal under section 2-619 of the Civil Code on the bases that (1) plaintiff failed to exhaust administrative remedies relative to her claims against SERS and (2) sovereign immunity barred plaintiff's request for a lump sum payment from the state treasury. *Id.* § 2-619. Defendants also sought dismissal pursuant to section 2-615 of the Civil Code, arguing that plaintiff's claim that the Comptroller lacked authority to offset amounts from her pension failed as a matter of law. *Id.* § 2-615. Defendants argued section 10.05 of the State Comptroller Act (Comptroller Act) (15 ILCS 405/10.05 (West 2016)) gave the Comptroller authority to offset amounts plaintiff owed to a state agency with her monthly pension benefit.

¶ 11 In November 2017, Plaintiff filed a response to defendants' motion. She first argued that she was not required to exhaust administrative remedies with respect to her claims against SERS because an exception to the exhaustion doctrine applied. Specifically, plaintiff maintained that exhaustion is not required when an administrative agency is alleged to have acted without jurisdiction, *i.e.*, outside the scope of its statutory authority. Plaintiff argued her claims against SERS were based upon allegations that it lacked authority to modify her monthly pension after the expiration of 35 days after its original calculation of her monthly benefit in May 2014 unless SERS was correcting an "arithmetical" error.

¶ 12 Second, plaintiff argued that the Comptroller's action in withholding her monthly pension benefit to repay CDB for a salary overpayment was prohibited by both the Pension Code and the pension protection clause of the Illinois Constitution. Further, she argued that she was not given due process prior to the Comptroller's "seizure" of her pension.

¶ 13 Finally, plaintiff argued her claims were not barred by sovereign immunity because that doctrine does not apply to claims for prospective relief that seek to enjoin state offi-

cials from taking actions that are in excess of their delegated authority. Plaintiff maintained she raised such claims against the Comptroller and SERS and thus, they were not barred.

¶ 14 Also in November 2017, defendants filed a reply to plaintiff's response. We note that, relative to the applicability of the exhaustion doctrine, defendants did not dispute that plaintiff's petition challenged the authority of SERS to modify her monthly pension benefit. Rather, they responded that her challenge to SERS's jurisdiction was without merit because the Pension Code grants SERS the authority to correct pension awards that are mistakenly set at an incorrect amount.

¶ 15 In December 2017, the trial court conducted a hearing in the matter. Thereafter, it entered a written order granting defendants' motion to dismiss on the basis that plaintiff failed to exhaust administrative remedies. In reaching that decision, the court found plaintiff had available administrative remedies that she could have pursued relative to her claims against SERS but that she failed to do so. Although it acknowledged that judicial review was permissible "where the agency acts without jurisdiction or authority" and that plaintiff argued the SERS Board "was without authority *** to modify and divert her pension," it ultimately concluded that plaintiff's lack-of-authority argument was without merit. Specifically, the court found that section 14-148.1 of the Pension Code (40 ILCS 5/14-148.1 (West 2016)) gave SERS the authority to recalculate and lower plaintiff's monthly pension benefit. It then concluded as follows:

> "Here SERS had legal authority and jurisdiction to recalculate and lower [plaintiff's] pension. And it had legal authority to divert the pension payments in order to recoup the overpayment. [Plaintiff] did not pursue and exhaust her administrative remedies. As a result, this cause is affirmatively barred."

Based on that determination, the court found that it was unnecessary to address defendants' remaining bases for dismissal and ordered that the case be dismissed.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Standard of Review

¶ 19 On appeal, plaintiff challenges the trial court's grant of defendants' motion to dismiss pursuant to section 2-619 of the Civil Code. "A motion brought pursuant to section 2-619 admits the sufficiency of the complaint, but asserts an affirmative defense or other matter that avoids or defeats that claim." *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29, 28 N.E.3d 727. An affirmative defense or other matter includes a plaintiff's failure to exhaust administrative remedies and the defense of sovereign immunity. *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 15, 996 N.E.2d 1151. "When ruling on a section 2-619 motion to dismiss, a court interprets all pleadings and supporting documents in the light most favorable to the nonmoving party." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 18, 978 N.E.2d 1020.

¶ 20 Further, "[t]he purpose of a motion to dismiss under section 2-619 *** is to afford litigants a means to dispose of issues of law and easily proved issues of fact at the outset of a case." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 178, 874 N.E.2d 1, 7 (2007).

> "An appeal from a section 2-619 dismissal is the same in nature as one following a grant of summary judgment. In both instances, the reviewing court must ascertain whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a

matter of law." *Id.*

Dismissal under section 2-619 is subject to *de novo* review. *Lutkauskas*, 2015 IL 117090, ¶ 29.

¶ 21 Additionally, we note that the issues presented by this appeal also involve matters of statutory construction. "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent." *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶ 12, 104 N.E.3d 1145. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.* Statutory construction issues are also subject to *de novo* review. *Id.*

¶ 22 B. Exhaustion of Administrative Remedies

¶ 23 Plaintiff first argues the trial court erred in granting defendants' motion to dismiss based on her failure to exhaust administrative remedies with respect to her claims against SERS. She maintains that an exception to the exhaustion doctrine applies when an administrative agency lacks jurisdiction because it acted outside of its statutory authority. Plaintiff argues that, in this case, SERS acted without statutory authority when it recalculated her monthly pension benefit more than two years after its initial May 2014 calculation.

¶ 24 Under the exhaustion of administrative remedies doctrine, "a party aggrieved by an administrative decision ordinarily cannot seek judicial review without first pursuing all available administrative remedies." *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 551, 723 N.E.2d 256, 260 (1999). "The purpose of the exhaustion doctrine is to allow administrative bodies to develop a factual record and to permit them to apply the special expertise they possess." *Poindexter v. State of Illinois*, 229 Ill. 2d 194, 207, 890 N.E.2d 410, 419 (2008). "Exhaustion also minimizes interruption of the administrative process. Moreover, the aggrieved

party might succeed before the administrative body, obviating the need for judicial involvement, thereby conserving judicial resources." *Id.*

¶ 25 One exception to the exhaustion doctrine is "where the agency's jurisdiction is attacked because it is not authorized by statute." *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 309, 547 N.E.2d 437, 439 (1989). An administrative agency "only has the authorization given to it by the legislature through the statutes." *Business and Professional People for Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 243, 555 N.E.2d 693, 716 (1989). "Consequently, to the extent an agency acts outside its statutory authority, it acts without jurisdiction." *Id.*

¶ 26 Here, defendants do not dispute that plaintiff's claims against SERS were based on allegations that it lacked the jurisdiction to act as it did in recalculating plaintiff's monthly pension benefit. Rather, they maintain that such allegations are without merit and that section 14-148.1 of the Pension Code clearly gives SERS the authority to act as it did. The trial court essentially made the same determination, effectively reaching the merits of plaintiff's lack-of-jurisdiction claim, and granted defendants' motion to dismiss on that basis. We agree that, contrary to plaintiff's assertions, SERS had the statutory authority to modify her monthly pension benefit. Thus, it did not act without jurisdiction. On that basis, the trial court's dismissal of plaintiff's claims against SERS was proper as a matter of law.

¶ 27 The Pension Code provides that "[t]he provisions of the Administrative Review Law *** shall apply to and govern all proceedings for the judicial review of final administrative decisions of the [SERS] retirement board ***." (40 ILCS 5/14-150 (West 2016)). In turn, section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2016)) provides as follows:

> "Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision[.]"

Like she did before the trial court, plaintiff argues that, pursuant to section 3-103 of the Administrative Review Law, a pension board "lacks jurisdiction to reconsider decisions after the expiration of the 35-day period." *Sola v. Roselle Police Pension Board*, 342 Ill. App. 3d 227, 231, 794 N.E.2d 1055, 1057-58 (2003). In particular, plaintiff argues that, in May 2014, when she retired and began receiving pension benefits, SERS made an administrative decision regarding her entitlement to pension benefits that it could not reconsider or modify after the expiration of 35 days. In fact, plaintiff maintains SERS did not recalculate her monthly pension benefits until September 2016, over two years after its original decision to award benefits.

¶ 28 On appeal, plaintiff cites *Sharp v. Board of Trustees of State Employees' Retirement System*, 2014 IL App (4th) 130125, ¶ 1, 5 N.E.3d 188, wherein the plaintiff initiated administrative review proceedings after SERS decreased his monthly pension benefit on the basis that it had computed the plaintiff's benefit using the wrong formula. The pension modification occurred approximately 10 months after the original approval of benefits by SERS. *Id.* The circuit court reversed the administrative action, finding SERS lacked authority to reconsider its earlier pension calculation. *Id.* ¶ 2. On review, we affirmed the circuit court's decision. *Id.* ¶ 3.

¶ 29 In reaching our decision, we pointed out that, unlike with other pension boards, the legislature did not grant SERS the express authority to fix errors in pension calculations at any time. *Id.* ¶¶ 24-26. We concluded that "[h]ad the legislature intended SERS to have this au-

thority, surely it would have stated as much." *Id.* ¶ 26. We further held as follows:

> "The [SERS] Board is not estopped from fixing errors it makes in its calculation of pension benefits; it must simply correct those mistakes within the 35-day period provided for by the Administrative Review Law. *** Absent statutory authority, the [SERS] Board may not correct the error now. Perhaps the [SERS] Board should have the authority to do so. This is a matter for the legislature. It is not appropriate for the court to imply such authority." *Id.* ¶ 28.

¶ 30 However, following *Sharp*, the legislature did act to change SERS's authority to correct mistakes in benefits. Specifically, it enacted section 14-148.1 of the Pension Code entitled "Mistake in benefit." 40 ILCS 5/14-148.1 (West 2014). That section provides as follows:

> "If the System mistakenly sets any benefit at an incorrect amount, it shall recalculate the benefit as soon as may be practicable after the mistake is discovered.
>
> If the benefit was mistakenly set too low, the System shall make a lump sum payment to the recipient of an amount equal to the difference between the benefits that should have been paid and those actually paid.
>
> If the benefit was mistakenly set too high, the System may recover the amount overpaid from the recipient thereof, either directly or by deducting such amount from the remaining benefits payable to the recipient. However, if (1) the amount of the benefit was mistakenly set too high, and (2) the error was undiscovered for 3 years or longer, and (3) the error was not the result of incorrect information supplied by the affected member or beneficiary, then upon discovery of

the mistake the benefit shall be adjusted to the correct level, but the recipient of the benefit need not repay to the System the excess amounts received in error.

This Section applies to all mistakes in benefit calculations that occur before, on, or after the effective date of this amendatory Act of the 98th General Assembly." *Id.*

¶ 31 Plaintiff acknowledges section 14-148.1 but contends SERS "may only recalculate the pension benefit in a narrow set of circumstances." She suggests that a "mistake" within the meaning of section 14-148.1 is limited to "arithmetical" mistakes. To support that contention, plaintiff relies on *Kosakowski v. Board of Trustees of City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381, 906 N.E.2d 689 (2009), which addressed a section of the Pension Code that permitted modification of police pension benefits when there was an overpayment "due to fraud, misrepresentation[,] or error." *Id.* at 384. In that case, the pension board reduced a police officer's line-of-duty disability pension over three years after it was originally awarded based on a reported miscalculation. *Id.* at 382-83. Ultimately, the First District determined no "error" occurred within the meaning of the Pension Code because the alleged error was based on a change in the way the pension board interpreted the Pension Code. *Id.* at 385.

¶ 32 In so holding, the First District explicitly declined to limit "errors" that would permit modification of an individual's pension benefits under the statutory section at issue to only those involving "arithmetical error in calculating a pension." *Id.* It concluded that to do such would engraft a limitation upon the term "error" that the legislature did not express. *Id.* The court went on to state as follows:

"The Board made no arithmetical error in its calculation. Nor is there any compe-

> tent evidence in the record that the Board erred in its finding as to the salary which attached to the plaintiff's rank on the last day that he worked. Finally, there is no evidence that the plaintiff was paid more than the monthly benefit of $3,208 to which the Board originally found that he was entitled. Rather, the Board's entire claim of error is based upon its reinterpretation of [a section of the Pension] Code following the recommendation of [another state agency]. However, the Board's change in interpretation of the [Pension] Code *** does not qualify as an error within the meaning of [the relevant statute] authorizing it to modify the plaintiff's pension benefits." *Id*. at 386-87.

¶ 33 Here, *Kosakowski* does not stand for the proposition advanced by plaintiff and, in fact, contradicts her argument. Like in *Kosakowski*, we find nothing in the plain statutory language of section 14-148.1 that limits SERS's authority to modify pension benefits to only circumstances involving arithmetical errors. Further, we find that the facts of this case are not similar to those cases, cited by plaintiff, where an individual's pension was originally calculated based on correct information, and the pension board's later modifications were based upon its subsequent reinterpretation of a portion of the Pension Code. Rather, in this case, SERS advised plaintiff that the decrease in her monthly pension benefit was due to an error in the calculation of her salary as discovered and reported by CDB and that directly affected the calculation of plaintiff's pension benefits. We find no exclusion in section 14-148.1 for mistakes of this nature. Thus, section 14-148.1 gave SERS the authority to modify and decrease plaintiff's monthly pension benefit.

¶ 34 We note that in suggesting no mistake occurred that gave SERS the authority to

modify her pension, plaintiff makes factual claims regarding her relationship with CDB in her reply brief. Plaintiff contends:

> "The CDB entered into a contract with [plaintiff] *** which its Executive Director signed on multiple occasions. *** [Plaintiff] accepted the contract according to the terms presented. [Plaintiff] fully performed her duties under the contract and the CDB fulfilled its duty to pay her the amount set forth in the contract."

These assertions by plaintiff are at odds with her contention that her petition challenges only SERS's statutory authority to act. Instead, they amount to a challenge regarding SERS's underlying factual determinations regarding whether plaintiff's salary was miscalculated or whether she was paid as contracted. Accordingly, such contentions would require exhaustion of plaintiff's administrative remedies.

¶ 35 On appeal, the parties agree that their arguments regarding the dismissal of plaintiff's petition pursuant to the exhaustion doctrine applied only to plaintiff's claims against SERS and not to her claims against the Comptroller. We agree and find the trial court erred in dismissing plaintiff's petition in its entirety on only that basis. However, as noted by defendants, they presented alternative bases upon which to support the court's dismissal of plaintiff's remaining claims. *Stoll v. United Way of Champaign County, Illinois, Inc.*, 378 Ill. App. 3d 1048, 1051, 883 N.E.2d 575, 578 (2008) (stating that this court may affirm the trial court's section 2-619 dismissal of a complaint on any basis that is supported by the record). Thus, we also consider whether dismissal was appropriate under an alternative basis alleged by defendants.

¶ 36 C. Sovereign Immunity

¶ 37 Defendants argue that sovereign immunity bars plaintiff's claim that the Comp-

troller improperly withheld her monthly pension to refund CDB for her salary overpayment. Specifically, they contend sovereign immunity applies because plaintiff seeks a judgment in her favor that would subject the State to liability and could serve to control State actions. Defendants further contend that sovereign immunity applies because plaintiff seeks to compel the payment of money from the State treasury for alleged past wrongs.

¶ 38 The Illinois Constitution provides for the abolishment of sovereign immunity, "except as the General Assembly may provide by law[.]" Ill. Const. 1970, art. XIII, § 4. As authorized, the General Assembly reinstituted the doctrine by enacting the State Lawsuit Immunity Act. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 42, 32 N.E.3d 583 (citing 745 ILCS 5/0.01 *et seq.* (West 2012)). "The statute provides that except as provided in the Court of Claims Act [citation] and several other specified statutes, " 'the State of Illinois shall not be made a defendant or party in any court.' " *Id.* (quoting 745 ILCS 5/1 (West 2012)). Pursuant to the Court of Claims Act, the Court of Claims "shall have exclusive jurisdiction to hear and determine *** [a]ll 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[.]" 705 ILCS 505/8(a) (West 2016).

¶ 39 Here, plaintiff argues the "officer suit" exception to the sovereign immunity doctrine applies so that her claims are not barred. Recently, the supreme court has clarified the officer suit exception, stating as follows:

> "This court *** has long held that the determination of whether an action is one against the State depends upon the issues involved and the relief sought and not simply the formal identification of the parties. [Citations.] Where, for exam-

> ple, a plaintiff alleges that the State officer's conduct violates statutory or constitutional law or is in excess of his or her authority, such conduct is not regarded as the conduct of the State. The underlying principle is that conduct taken by a State officer without legal authority strips the officer of his or her official status. [Citation.] Thus, a complaint seeking to prospectively enjoin such unlawful conduct may be brought in the circuit court without offending sovereign immunity principles. [Citations.] This exception to sovereign immunity has been called the 'prospective injunctive relief exception' [citation], but it is most often referred to as the 'officer suit exception' [citation]." *Parmar v. Madigan*, 2018 IL 122265, ¶ 22, 106 N.E.3d 1004.

¶ 40 In *Parmar*, the plaintiff filed a complaint against the Illinois Attorney General and the Treasurer, "challenging the application and constitutionality of an amendment to the Illinois Estate and Generation-Skipping Transfer Tax Act (Estate Tax Act) (35 ILCS 405/1 *et seq.* (West 2014)) and seeking a refund of all moneys paid to the Treasurer pursuant to the Estate Tax Act." *Id.* ¶ 1. The supreme court determined that the officer suit exception to the sovereign immunity doctrine did not apply because although the plaintiff alleged the defendants' conduct was unlawful because they acted pursuant to an unconstitutional statute, the plaintiff sought damages, including a refund of money, for a past wrong. *Id.* ¶ 26. The court clearly expressed that while the officer suit exception applies when a plaintiff seeks to "enjoin future conduct" that is alleged to be contrary to law, it does not apply to "a complaint seeking damages for a past wrong." *Id.*

¶ 41 Here, defendants argue that the officer suit exception is inapplicable because plaintiff does not seek to enjoin future conduct. Instead she seeks to recover money for a past

wrong. We agree. Plaintiff's petition seeks primarily the repayment of her pension benefits, which she contends were unlawfully seized by the Comptroller. Like in *Parmar*, this is an alleged past wrong for which plaintiff seeks the repayment of money.

¶ 42 Arguably, at least one of plaintiff's claims for relief also implicated future conduct. Specifically, plaintiff asked the trial court to enter an injunction that required SERS and the Comptroller to "cease all actions against [her] pension." However, defendants maintain, and plaintiff does not dispute, that "all disputed monies" withheld by the Comptroller from plaintiff's pension were "disbursed to *** CDB" prior to the filing of plaintiff's petition in the circuit court. Thus, there is no future conduct that could have been enjoined by the trial court. Plaintiff simply asked the court to undo what had already been done and to order the repayment of money that had already been diverted to CDB. Accordingly, the officer suit exception does not apply, and plaintiff's claims are barred by sovereign immunity.

¶ 43 We note that defendants have raised an additional basis for dismissal under section 2-615, which the parties address on appeal. However, given our determination that the trial court did not err in granting defendants' motion to dismiss pursuant to section 2-619 of the Civil Code, we find it unnecessary to address that additional basis.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.