2026 IL App (1st) 250452-U

FOURTH DIVISION
September 3, 2026

No. 1-25-0452

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIONDRA JONES, Plaintiff-Appellant, v. HELP AT HOME, LLC, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Cook County. No. 24 CH 2449 Honorable David B. Atkins, Judge Presiding.

PRESIDING JUSTICE LYLE delivered the judgment of the court.
Justices Navarro and Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment granting the defendant's motion to dismiss is affirmed.

¶ 2 On March 24, 2024, plaintiff-appellant, Diondra Jones, filed a complaint in the circuit court against defendant-appellee, Help at Home, LLC (Help at Home), alleging three separate violations of the Biometric Information Privacy Act (BIPA) (740 ILCS 14/1, *et. seq.* (West 2024)). Help at Home filed a motion to dismiss pursuant to 735 ILCS 5/2-619.1 (West 2024) on June 20, 2024, and Ms. Jones filed a response to the motion to dismiss September 4, 2024. On February 11, 2025, the circuit court granted Help at Home's motion to dismiss, finding that Help at Home was exempt

from liability as a government contractor under 740 ILCS 14/25(e) (West 2024). Ms. Jones filed a notice of appeal on March 10, 2025. On appeal, Ms. Jones argues that the circuit court erred in granting Help at Home's motion to dismiss because Help at Home is not exempt from BIPA under the government contractor exception since Help at Home is not a government contractor for all purposes or at all times. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On March 25, 2024, Ms. Jones filed a class action complaint individually, and on behalf of all others similarly situated, against Help at Home pursuant to 735 ILCS 5/2-801, 2-802 (West 2024), and 740 ILCS 14/15 (West 2024). In her complaint, Ms. Jones alleged that Help at Home violated 740 ILCS 14/15(a), (b), (d) by its failures to (1) make publicly available a written retention and destruction policy for biometric data, (2) obtain her informed, written release prior to collecting her purported biometric data, and (3) obtain her consent prior to disseminating her purported biometric data.

¶ 5 The complaint stated that Ms. Jones worked as a health care provider for Help at Home in Cook County, Illinois from approximately 2019 through June 2023. During Ms. Jones' employment, Help at Home required its employees, during the on-boarding process, to provide their fingerprint to a device that captures their biometric information. Ms. Jones further alleged that at no time: (1) was she informed in writing "that her biometric information was being collected or stored or of the specific purpose and length of term for which [her] biometric information was being collected, stored, and used," (2) did she execute a writing releasing or permitting Help at Home to utilize her biometric information, and (3) was she "provided with a publicly available written policy regarding a schedule or guideline for the retention and permanent destruction of her

biometric information."

¶ 6 On June 20, 2024, Help at Home filed a motion to dismiss pursuant to 735 ILCS 5/2-619.1 (West 2024), arguing that that (1) Ms. Jones' claims were precluded by the Fingerprint Vendor Exclusion (740 ILCS 14/25(d) (West 2024)), (2) Ms. Jones' claims were precluded by the Government Contractor Exclusion (740 ILCS 14/25(e) (West 2024)), (3) Ms. Jones' claims were precluded by the HIPAA Exclusion (740 ILCS 14/10 (West 2024)), and (4) Ms. Jones otherwise failed to plead violations of BIPA.

¶ 7 Section 25(e) of BIPA provides that:

> "Nothing in this Act shall be construed to apply to a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government." 740 ILCS 14/25(e) (West 2024).

¶ 8 In its motion to dismiss, Help at Home claimed that it provided home and health care services to the elderly, ill, and disabled as a certified Community Care Program provider pursuant to a contract with the Illinois Department on Aging (DOA).

¶ 9 In support of its motion, Help at Home submitted an affidavit (Evans Affidavit) from its Regional Vice President, Kimberly Evans, attesting to Help at Home's status as a contractor with the DOA since 1979 to provide in-home care services to participants in the DOA's Community Care Program (CCP). In exchange for its services, Help at Home receives payment from the DOA. The Evans Affidavit asserted that Help at Home required prospective employees to receive fingerprint-based criminal history records checks as part of the onboarding process to ensure that the prospective employees do not have past criminal convictions that would disqualify them from registering as healthcare workers with the Illinois Department of Public Health (DOPH) or the DOA. Ms. Jones applied for employment with Help at Home around July 2019 and authorized her

fingerprints to be collected for purposes of a fingerprint-based criminal history records check on July 15, 2019.

¶ 10 Help at Home provided as Exhibit A, its service provider agreement with the DOA, which provided that "[t]he Service Provider shall comply with all federal, state, and local laws for doing business as a Service Provider Agency in Illinois, including, criminal background checks or waivers as required by the Illinois Healthcare Worker Background Check Act (225 ILCS 46)****." Help at Home also included as Exhibit B, the DOA "Division of Home and Community Services" which provided that "[p]rovider agencies will be required to obtain [criminal background checks] **** on each employee with direct [CCP] participant contact as outlined in the Procedures below." The form also provided that "[e]mployees refusing to submit to a background check shall not have contact with CCP participants in any capacity."

¶ 11 Ms. Jones filed her response to Help at Home's motion to dismiss on September 4, 2024. In her response, Ms. Jones claimed that "Help at Home markets itself to prospective employees as a means of being employed as a caregiver for a member [of] their own family" which was Ms. Jones' goal when she began her employment with Help at Home in July 2019. Ms. Jones was solely responsible for caring for her parents during her employment with Help at Home. Additionally, during Ms. Jones' employment with Help at Home, it never directed her to comply with any requests or regulations of the DOA or the CCP, and Ms. Jones was unaware of any affiliation between Help at Home and the DOA or the CCP.

¶ 12 In its February 11, 2025, order, the trial court addressed Help at Home's argument that it is exempt from BIPA as a government contractor. The trial court found that:

> "a private entity can qualify for exemption as a government contractor if the private entity demonstrates that *it*, not the individual whose biometrics were allegedly collected, was

> working for that unit of government at the time it collected or disseminated biometric information. Here, Defendant asserts it was contracted with the Illinois Department of Aging to provide in-home care services to participants in the State's Community Care Program, it was required to comply with state laws pursuant to its contract with the State, and that the Background Check Act requires a health care employer initiate a fingerprint-based criminal history record check when an applicant is given a conditional offer of employment. The court finds Defendant is exempt from BIPA under Section 25(e), and as such, the court need not address other arguments raised by Defendant." (Emphasis in original.)

¶ 13 Concluding that Help at Home is exempt from BIPA under section 25(e), the trial court did not address any of Help at Home's other arguments and granted its motion to dismiss. Ms. Jones filed her notice of appeal on March 10, 2025.

¶ 14 ANALYSIS

¶ 15 We note that we have jurisdiction to consider these matters, as Ms. Jones filed a timely notice of appeal following the trial court's judgment. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 16 On appeal, Ms. Jones argues that the trial court erred in granting Help at Home's motion to dismiss because Help at Home is not exempt from BIPA under the government contractor exception since Help at Home is not a government contractor for all purposes or for all time.

¶ 17 We review a trial's court grant of a section 2-619 motion to dismiss *de novo*. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App (1st) 200798, ¶ 22. *De novo* review is also applicable because this appeal involves a question of statutory interpretation. *Thomas v.*

Cornerstone Services, Inc., 2026 IL App (3d) 240568, ¶ 14.

¶ 18 A defendant may file a motion for dismissal of the action based on the claim being barred by an affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9). In a section 2-619 motion to dismiss, a defendant admits the legal sufficiency of the plaintiff's claim but raises defects, defenses, or other affirmative matters, that appear on the face of the complaint or that are established by external submissions which act to defeat the claim." *Scheinblum*, 2021 IL App (1st) 200798, ¶ 22.

¶ 19 The parties "may file affidavits, counteraffidavits, interrogatories, documents and deposition transcripts, and may call witnesses at a hearing before the trial judge." *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 12 (1989). The defendant has the burden of proving the affirmative defense relied upon in the motion to dismiss." *Id.* at 12. An affirmative defense includes "any defense other than a negation of the essential allegations of the plaintiff's cause of action" and must be supported by affidavit if it is not apparent on the face of the complaint. *Kedzie & 103rd Currency Exch., Inc. v. Hodge*, 156 Ill. 2d 112, 115-16 (1993).

¶ 20 Once a defendant satisfies the initial burden of adequately supporting the asserted defense, the burden shifts to the plaintiff to establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven. *Id.* at 116. "If, after considering the pleadings and affidavits, the trial judge finds that the plaintiff has failed to carry the shifted burden of going forward, the motion may be granted and the cause of action dismissed." *Id.* Generally, the trial court should grant the motion to dismiss where it is established by the record that there is no genuine and material question of fact. *Kirby*, 190 Ill. App. 3d at 13.

¶ 21 The trial court granted Help at Home's motion to dismiss based exclusively on its conclusion that Help at Home is exempt from BIPA as a government contractor. Ms. Jones argues

that the trial court incorrectly interpreted 740 ILCS 14/25(e) and that neither Help at Home nor Ms. Jones were working for the government when Ms. Jones' biometric data was collected.

¶ 22 Our primary objective when interpreting a statute is ascertaining the legislature's intent. *Tillman v. Pritzker*, 2021 IL 126387, ¶ 17. Looking to the language of the statute—given its plain, ordinary meaning—is the best indicator of legislative intent. *Tillman*, 2021 IL 126387, ¶ 17. To determine the plain meaning of statutory words, we consider the whole statute, its subject matter, and the apparent intent of legislature in enacting it. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). If the statutory language is clear and unambiguous, it should be given effect as written without resorting to extrinsic aids of statutory interpretation. *Tillman*, 2021 IL 126387, ¶ 17. Additionally, if the language is unambiguous, a court may not infer exceptions or conditions that the legislature did not set forth. *Grady v. Illinois Department of Healthcare & Family Services*, 2016 IL App (1st) 152402, ¶ 10.

¶ 23 The Illinois Legislature enacted BIPA in 2008 to protect the public's "welfare, security, and safety" from the private entities collecting biometric data by regulating "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g) (West 2024); *Thomas*, 2026 IL App (3d) 240568, ¶ 16. However, it also included a provision that states, "[n]othing in this Act shall be construed to apply to a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government." 740 ILCS 14/25(e).

¶ 24 Very few Illinois courts have addressed the meaning of 740 ILCS 14/25(e). In *Thomas v. Cornerstone Services, Inc.*, 2026 IL App (3d) 240568, ¶ 4, the court concluded that "the government contractor exemption applies only to exempt a contractor from liability when acting within the scope of its government contract."

¶ 25 We are in accord with this understanding of the exemption. We find that the language of section 25(e) is clear and unambiguous. See *id.* Therefore, when conducting a plain reading of the statutory language, we conclude section 25(e) only exempts a private entity from liability under BIPA when that entity is acting within the scope of the private entity's government contract.

¶ 26 Ms. Jones argues that "when" her biometrics were collected, neither she nor Help at Home were "working for" the government. Help at Home argues that it is exempt under BIPA since it adequately demonstrated that it had continuously contracted with the Illinois DOA since 1979, that it was subject to the Provider Agreement during the period when Plaintiff worked there (2019-2023), and that the Provider Agreement required it to comply with the Illinois Health Care Worker Background Check Act (225 ILCS 46 (West 2024)).

¶ 27 The Background Check Act applies "to all individuals employed or retained by a health care employer as home health care aides, nurse aides, *** or an individual working in any similar health-related occupation where he or she provides direct care or has access to long-term care residents or the living quarters or financial, medical, or personal records of long-term care residents." 225 ILCS 46/10. Under this act, "a health care employer who makes a conditional offer of employment to an applicant for a position as an employee shall initiate a fingerprint-based criminal history record check, requested by the Department of Public Health, on the applicant, if such a background check has not been previously conducted." 225 ILCS 46/33(d).

¶ 28 Help at Home cites *Enriquez v. Navy Pier, Inc.*, 2022 IL App (1st) 211414-U, to support its reading of 740 ILCS 14/25(e). In *Enriquez*, the plaintiff asserted violations of BIPA due to biometric information that was obtained pursuant to her employment with the defendant, who had contracted with a government agency to run the operations of Navy Pier. The court found that the plaintiff was employed as part of defendant's contractual obligations to operate and manage Navy

Pier in place of the government agency. The court held that under those circumstances, the defendant was exempt under BIPA.

¶ 29 Ms. Jones does not dispute that Help at Home would qualify as a health care employer under the Background Check Act, and she in fact admits that she was hired to provide direct care to her parents. As such, both Ms. Jones and Help at Home were subject to the Background Check Act. The Provider Agreement between Help at Home and the Illinois DOA explicitly required Help at Home to comply with state law, including the Background Check Act. Ms. Jones' fingerprints were acquired pursuant to the Provider Agreement, which is a government contract. Under these facts, we find that Help at Home was exempt from BIPA when it collected Ms. Jones' fingerprints.

¶ 30 Therefore, we find the circuit court did not err in granting Help at Home's motion to dismiss on the basis that Help at Home was exempt from liability under 740 ILCS 14/25(e). We affirm the circuit court's judgment.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.