2026 IL App (1st) 250301
No. 1-25-0301

FIFTH DIVISION
September 25, 2026

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MACOMB POST ACUTE CARE CENTER, LLC; CARMI MANOR REHAB AND NURSING CENTER; and MARSHALL REHABILITATION AND NURSING, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 24 CH 02488
ILLINOIS DEPARTMENT OF PUBLIC HEALTH,	)	The Honorable David B. Atkins Judge, presiding.
Defendant-Appellee.	)	

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Justices C. A. Walker and Wilson concurred in the judgment and opinion

OPINION

¶ 1 Plaintiffs Macomb Post Acute Care Center, LLC (Macomb), Carmi Manor Rehab and Nursing Center (Carmi), and Marshall Rehabilitation and Nursing, LLC (Marshall), appeal the trial court's grant on January 23, 2025, of defendant Illinois Department of Public Health (Department)'s motion to dismiss their complaint. Although defendant filed a combined section 2-619.1 motion (735 ILCS 5/2-619.1 (West 2024)) seeking relief pursuant to both sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, -619 (West 2024)), the trial court granted defendant's motion solely on the ground that plaintiffs' complaint failed to state a cause of action (735 ILCS 5/2-615 (West 2024)) and the court declined to consider whether there was other affirmative matter (735 ILCS 5/2-619(9) (West 2024)), namely, sovereign immunity, that would also defeat plaintiffs' claims. On appeal, defendant raises an additional defense that it did not raise in the court below, namely, a lack of subject matter jurisdiction. For the following reasons, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 I. Plaintiffs' Complaint

¶ 4 A. Allegations Common to All Plaintiffs

¶ 5 On March 25, 2024, plaintiffs filed a complaint seeking mandamus relief. Plaintiffs, who are all nursing facilities, alleged that they had asked the Department for a mandatory offset and the Department had refused their demand. Plaintiffs had paid both state and federal fines for the same alleged deficiencies, and an Illinois statute requires an offset against state fines, for federal fines paid for the same deficiencies. 210 ILCS 45/3-305 (10) (West 2024). In addition, the statute specifies that it is "the Department" that "shall offset." 210 ILCS 45/3-305 (10) (West 2024). After the Department refused the mandatory offset despite the statutory directive, plaintiffs filed this action.

¶ 6 Plaintiffs' complaint alleged generally that the court had jurisdiction pursuant to section 2-209 (735 ILCS 5/2-209 (West 2024)) of the Code, without specifying a subsection or paragraph that applied. Section 2-209 specifies when a court has personal jurisdiction, which is not an issue in this case. 735 ILCS 5/2-209 (West 2024).

¶ 7 As to their cause of action, plaintiffs quoted section 3-305(1) of the Illinois Nursing Home Act which provides that "[i]f a licensee has paid" a federal civil monetary penalty, "the Department shall offset the [state] fine by the amount of the [federal] civil monetary penalty." 210 ILCS 45/3-305(10) (West 2024). Plaintiffs also quoted a section of the Illinois Administrative Code (77 IL Admin Code § 300.282(k) (eff. June 29, 2011)) which similarly provides that "[i]f a licensee has paid" a federal civil monetary penalty, "the Department shall offset the [state] fine by the amount of the [federal] civil monetary penalty." The regulation also requires the offset if the licensee provides the Department with a copy of a letter to the federal agency indicating a binding intent to waive a federal hearing and pay the federal fine. 77 IL Admin Code § 300.282(k) (eff. June 29, 2011).

¶ 8 Plaintiffs alleged that they were all licensees and that they all received an "IDPH Notice" from the Department citing them for alleged state violations, with corresponding state civil monetary penalties. ("State CMP"). The deficiencies were found by the Department during surveys of plaintiffs' facilities ("IDPH Surveys"). Also based on the same IDPH Surveys, each plaintiff was alleged not to be in compliance with corresponding federal requirements; and the federal Center for Medicare and Medicaid Services ("CMS") cited each plaintiff with a CMS penalty notice citing the alleged federal violations and stating the corresponding federal civil monetary penalties ("Federal CMP").

¶ 9 Each IDPH Notice stated, that pursuant to sections 3-309 and 3-310 of the Nursing Home Act (210 ILCS 45/3-309, 310 (West 2024)), a facility may send a written waiver of the right to a hearing, along with a payment of 65% of the original fine within ten business days of receipt of the notice. Plaintiffs alleged that "[e]ach Plaintiff settled or waived appealing the underlying matter" with the Department and provided the payment required by the IDPH

Notice. Plaintiffs also alleged that they provided the Department with proof of their "settlement of the Federal CMP." However, plaintiffs alleged that the Department failed to provide the statutorily required offset "despite diligent follow-up by each Plaintiff."

¶ 10 B. Carmi Allegations

¶ 11 1. September 9, 2019, Survey

¶ 12 Specifically, plaintiffs alleged that, based on a September 9, 2019, survey of Carmi, Carmi received an IDPH Notice, dated November 14, 2019, alleging state violations. Carmi later received on December 16, 2019, a CMS notice for federal violations based on the same September 9, 2019, survey. Carmi timely challenged the State CMP and reached a settlement which included withdrawal of a request for a hearing. Carmi also timely challenged the Federal CMP and reached a settlement which included withdrawal of a request for a hearing.

¶ 13 On December 6, 2023, Carmi emailed Jason Boltz, defendant's Assistant General Counsel, requesting a "refund' based on the statutory offset that was now due. Carmi sent a follow-up email to Boltz on December 19, 2023. However, Carmi received no refund to date.

¶ 14 2. December 14, 2022, Survey

¶ 15 Plaintiffs alleged that, based on a December 14, 2022, survey of Carmi, Carmi received an IDPH Notice, dated February 16, 2023, alleging state violations. On March 6, 2023, Carmi waived its right to a hearing and indicated it would pay 65% of the State CMP, as the law permitted it to do, thereby generating a 35% reduction in fines. Subsequently, on March 22, 2023, Carmi received a CMS notice alleging federal violations based on the same December 14, 2022, survey. On May 25, 2023, Carmi waived its right to a hearing and indicated it would pay 65% of the Federal CMP, as also permitted, which also generated a 35% reduction. After paying both CMPs, Carmi sent an email on December 6, 2023, to Boltz, defendant's Assistant

General Counsel, requesting the offset, with another follow-up email on December 19, 2023. Plaintiffs alleged: "Defendant has not provided any material response to Carmi's request since, and, indeed, Carmi has received no refund to date."

¶ 16 C. Marshall Allegations

¶ 17 Plaintiffs alleged that, based on a September 9, 2021, survey of Marshall, Marshall received an IDPH Notice, dated December 14, 2021, alleging state violations. On December 16, 2021, Marshall waived its right to a hearing and indicated it would pay 65% of the State CMP, as permitted. On May 23, 2022, Marshall received a CMS notice alleging federal violations based on the same September 9, 2021, survey. On May 23, 2022, Marshall waived its right to a hearing and indicated it would pay 65% of the Federal CMP. After paying both CMPs, Carmi sent an email to Boltz, defendant's Assistant General Counsel, seeking the statutory offset, with a follow-up email on December 19, 2023. Like Carmi, Marshall received no refund to date.

¶ 18 D. Macomb Allegations

¶ 19 Plaintiffs alleged that, based on a November 10, 2022, survey of Macomb, Macomb received an IDPH Notice, dated January 26, 2023, alleging state violations. On February 7, 2023, Macomb waived its right to a hearing and indicated that it would pay 65% of the State CMP. Three days later, on February 10, 2023, Macomb received a CMS notice alleging federal violations based on the same November 10, 2022, survey. Macomb timely challenged the Federal CMP and reached a settlement which included withdrawal of a request for a hearing.

¶ 20 After paying both CMPs, Macomb sent an email on February 10, 2023, to Boltz, defendant's Assistant General Counsel, seeking the statutory offset. Macomb also stated: "At this time the [S]tate has not cashed the initial check we have sent in; we request that the [S]tate either does not cash this or permission to put a stop payment on this check so we can issue a new check for the corrected fine amount[.]" On August 31, 2023, Macomb sent a follow-up email "requesting a refund." On August 31, 2023, Boltz replied: "Thank you. I will confer internally and get back to you." On October 20, 2023, Macomb sent a follow-up email. On October 23, 2023, Boltz replied: "I am (again) internally requesting a follow-up on this issue." Macomb sent further follow-up emails on December 6 and December 19, 2023. On December 19, 2023, Boltz asked why he was being sent so many emails and stated: "I will follow up on my end." Plaintiffs alleged that, like the other two plaintiffs, Macomb received no refund to date.

¶ 21 E. Single Cause of Action

¶ 22 Plaintiffs' complaint for mandamus was brought on behalf of themselves, as well as all similarly situated licensees. In their one and only count, which was for a writ of mandamus, plaintiffs alleged that both the relevant statute and administrative regulation made the offset mandatory and that the Department was the party named by the statute and regulation as the party required to make the offset.

¶ 23 Plaintiffs alleged that the sequence of events is always the same, in that the state fine is imposed first, requiring payment within ten days; and then the corresponding federal fine is imposed. See 210 ILCS 45/3-301(a) (West 2024) (a notice of violation and fine must be served by the Department within 10 days of its inspection report); 210 ILCS 45/3-212(c) (West 2024) (the inspection report must be submitted by Department personnel to the licensee "upon [their] exiting the facility"); 210 ILCS 45/3-310 (West 2024) ("[a]ll penalties shall be paid to the Department within 10 days of receipt of notice"). Compare with 42 U.S.C. §1395i-3(h)(2)(B)(ii)(I) (the federal statute authorizes CMS to impose a civil monetary penalty without stating when it shall be imposed); 42 U.S. C. §1396r(h)(2)(A)(ii) (same); 42 C.F.R. § 488.434 (the federal regulation requires a facility to be notified in writing of a penalty, but without specifying a time limit). Plaintiffs cited the exhibits attached to their complaint as evidence of the alleged sequence of events.

¶ 24 Plaintiffs claimed that defendant's argument that plaintiffs should pay the federal fine first would make the application of the offset a legal impossibility, which could not be the intent of the Illinois legislature. As relief, plaintiffs asked the court to enter a writ of mandamus against defendant ordering it to comply with their mandatory statutory duty to offset for plaintiffs and others similarly situated. At the end of the complaint, plaintiffs attached related documents as exhibits, including the IDPH Notices, proof of payments, and email correspondence with the Department. On appeal, the Department does not dispute the authenticity or accuracy of any of the exhibits.

¶ 25 II. Defendant's Motion to Dismiss

¶ 26 After receiving several extensions of time to answer or otherwise plead, defendant filed on October 18, 2024, a combined motion to dismiss pursuant to Section 2-619.1 (735 ILCS 5/2-619.1 (West 2024)). Defendant argued that plaintiffs' action must be dismissed for two reasons. First, pursuant to section 2-619 (735 ILCS 5/2-619 (West 2024), defendant argued that plaintiffs' claim, which sought money from the State, was barred by the doctrine of sovereign immunity. Second, pursuant to section 2-615 (735 ILCS 2-615 (West 2024)), defendant argued that plaintiffs had failed to sufficiently state a cause of action for mandamus, (1) where they lacked a clear right to the relief requested, (2) where the Department did not have a clear duty to act, and (3) where the Department did not have clear authority to comply with any writ issued. There were no exhibits or affidavits attached to defendant's motion. In defendant's accompanying brief, the Department acknowledged that plaintiffs had, in fact, satisfied their state fines and subsequently satisfied their federal fines.

¶ 27 In plaintiffs' response, they argued, first, that sovereign immunity does not apply to mandamus actions, even if the ultimate relief will be the payment of state funds. In support, plaintiffs quoted the Illinois Supreme Court who found that "[a] suit to compel state officials to act in accordance with the law is not regarded as an action against the State and is not barred by sovereign immunity even though the payment of state funds may be involved." *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 135 (1997). Second, plaintiffs argued that they had established the three elements needed to maintain a mandamus action.

¶ 28 III. The Trial Court's Order

¶ 29 On January 23, 2025, the trial court issued an order granting defendant's motion on section 2-615 grounds, namely that plaintiffs had failed to state a cause of action. As a result, the trial court stated that it was not addressing defendant's section 2-619 argument, which was that plaintiffs' claim was barred by sovereign immunity.

¶ 30 The trial court found, first, that "the statute at issue is mandatory." Next, the trial court found that the statute was triggered only after the licensee had paid the related federal fines. The trial court concluded that, since plaintiffs paid the state fines first, there were no federal fines to offset at that time.

¶ 31 The trial court rejected plaintiffs' argument that this interpretation would lead to absurd and unjust results, where the deadline for state payments was always earlier than the federal demand for payment. The trial court reasoned that plaintiffs could have forgone the discount and invoked their right to a hearing and that, by the time the hearing was held, "they could have made" the federal payments.

¶ 32 On February 18, 2025, plaintiffs filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 303 (eff. July 1, 2017), which permits appeals from final judgments of the trial court in civil cases. After a full briefing and oral argument, this decision follows.

¶ 33 ANALYSIS

¶ 34 On this appeal, what is unusual is how little is disputed. Both sides agree that plaintiffs first satisfied their state fines, *then* satisfied their federal fines, and *lastly* sought an offset that the Department did not provide. Both the parties and the trial court agreed that the word "shall" in the statute and regulation means "must." 210 ILCS 45/3-305(10) (West 2024); 77 IL Admin Code § 300.282(k) (eff. June 29, 2011). For example, in its brief to the trial court, the Department noted that, once a licensee had paid a federal fine, the Department, "upon being notified, *must* *** provide an offset for that Federal CMP." (Emphasis added.) However, the Department argued that the offset was subject to some discretion because the Department may deny an offset if it determines that the federal and state violations were not equivalent. Yet, the Department has never argued in this case that the federal and state violations were not equivalent, therefore that argument fails.

¶ 35 Both the parties and the trial court agreed that the federal fines had to be imposed before the statutory offset was triggered. The statute states that an offset occurs only once "a licensee has paid" the federal fine. 210 ILCS 45/3-305 (10) (West 2024).[1] However, the Department argued that the federal fines had to be paid before the total amount of the state fines was assessed. In response, plaintiffs argued that, in practice, such a requirement would render the statute a nullity. Plaintiffs alleged that the 10-day payment window to waive a state hearing

[1] An administrative regulation imposes an additional duty on the Department to pay the offset if a licensee has provided a copy of a letter to CMC indicating its binding intent to waive the federal hearing and pay the federal fine.(77 IL Admin Code § 300.282(k) (eff. June 29, 2011).

and pay 65% would always, in practice, expire before the federal fine was imposed, and they cite the facts of their own cases, as well as statutes and regulations, to support their allegation. *Supra* ¶ 23. In response, defendant has not argued as much that the allegation is false, as it has asserted that plaintiffs' proof is insufficient.

¶ 36 While subject matter jurisdiction is contested, the parties agree that this court has appellate jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303(a)(1) (eff. July 1, 2017), where the trial court entered a final order dismissing the case with prejudice and plaintiffs filed a notice of appeal within 30 days. Defendant concedes in its appellate brief that plaintiffs' notice of appeal was timely filed within 30 days.

¶ 37 I. Standard of Review

¶ 38 Defendant moved to dismiss in the trial court pursuant to both section 2-615 and section 2-619. On appeal, defendant added a new claim regarding a lack of subject matter jurisdiction. All these claims are considered *de novo* on appeal. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 568, 579 (2006) ("Under either section [2-615 or 2-619], our standard of review is *de novo*."); *Giovenco-Pappas v. Berauer*, 2020 IL App (1st) 190904, ¶ 24 (on appeal, we consider *de novo* whether subject matter jurisdiction is lacking). *De novo* review means that we perform the same analysis a trial court would perform and that we owe no deference to the trial court. *In re Miller*, 2023 IL App (1st) 210774, ¶ 22.

¶ 39 A motion to dismiss under section 2-615 challenges the legal sufficiency of a plaintiff's claim, while a motion to dismiss under 2-619 admits the legal sufficiency of the plaintiff's claim but asserts a defect or defense arising outside of the pleading that defeats the claim. *Solaia.*, 221 Ill. 2d at 578-79. With both a 2-615 motion and a 2-619 motion, a court must accept as true all well-pled facts in the plaintiffs' complaint, as well as any reasonable inferences that may be drawn from those facts. *Barnett v. Apple Inc.*, 2022 IL App (1st) 220187, ¶ 31 (2-615 motion); *In re Miller*, 2023 IL App (1st) 210774, ¶ 23 (2-619 motion).

¶ 40 With a 2-615 motion, a court must decide whether the complaint alleges sufficient well-pled facts that, if proved, would entitle the plaintiffs to relief. *Barnett*, 2022 IL App (1st) 220187, ¶ 31. By contrast, with a 2-619 motion, "the movant is essentially saying ' "Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim." ' " *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120138, ¶ 31 (quoting *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008)). In ruling on a section 2-619 motion to dismiss, a court must interpret the pleadings, as well as any supporting materials, in the light most favorable to the nonmoving party. *In re Miller*, 2023 IL App (1st) 210774, ¶ 23. With a 2-619 motion, the defendant, who is seeking an involuntary dismissal, has the burden of proof. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 37. The affirmative matter asserted by the defendant must be apparent on the face of the complaint; otherwise, the defendant must support its motion with affidavits or other evidentiary materials. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. In the case at bar, defendant did not attach any affidavits or other evidentiary materials, thus resting its motion on the argument that the alleged defects were apparent on the face of the complaint. A lack of subject matter jurisdiction is the first ground listed in section 2-619 as a reason for a 2-619 dismissal. 735 ILCS 5/2-619(a)(1) (West 2024); *Colatorti v. Republican Legislative Committee for Twenty-Sixth Legislative District*, 2026 IL App. (2d) 250230, ¶ 48.

¶ 41 To the extent that the issues before us require statutory interpretation, we observe that our primary goal with statutory interpretation is to give effect to the legislators' intent. *In re Miller*, 2023 IL App (1st) 210774, ¶ 39. The most reliable indicator of their intent is the language that they chose to use in the statute itself. *In re Miller*, 2023 IL App (1st) 210774, ¶ 39. When reading the language of the statute, we give the words their plain and ordinary meaning. *In re Miller*, 2023 IL App (1st) 210774, ¶ 39.

¶ 42 II. Subject Matter Jurisdiction

¶ 43 As noted, defendant's first argument on appeal is that this court lacks subject matter jurisdiction over plaintiffs' claims based on the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2024)). Although the Department did not raise this issue before the trial court, a lack of subject matter jurisdiction may be raised at any time. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 67, n. 3 ("a lack of subject matter jurisdiction may be raised at any time, in any court, either directly or collaterally").

¶ 44 Our state constitution provides that circuit courts "have original jurisdiction of all justiciable matters." Ill. Const. 1970, art VI, § 9. However, in the same section, the constitution further provides: "Circuit courts shall have such power to review administrative action as provided by law." Ill. Const. 1970, art VI, § 9. Similarly, our constitution provides that appeals from final judgments of a circuit court to the appellate court are a matter of right, but also provides that the "Appellate Court shall have such powers of direct review of administrative action as provided by law." Ill. Const. 1970, art VI, § 6. Thus, pursuant to the express words of our constitution, the power of the circuit court to hear administrative actions, and the power of this court to review, are circumscribed "by law." Ill. Const. 1970, art VI, §§ 6, 9; *Ameren Transmission Co. of Illinois v. Hutchings*, 2018 IL 122973, ¶ 12 (although Illinois courts generally enjoy a presumption of subject matter jurisdiction, they may review administrative actions only as provided by law). As a result of these express constitutional limits, when the legislature has prescribed procedures for obtaining judicial review of an administrative decision, a party seeking to invoke this special statutory jurisdiction must strictly comply with the procedures set forth by the statute. *Ameren*, 2018 IL 122973, ¶ 12.

¶ 45 Defendant argues that we lack subject matter jurisdiction because plaintiffs were required to seek review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2024)). The Administrative Review Law applies to judicial review of any "*final* decision of any administrative decision." (Emphasis added.) 735 ILCS 5/3-102 (West 2024); 210 ILCS 45/3-320 (West 2024) ("final administrative decisions of the Department" are subject to review under the Administrative Review Law). The law provides: "Unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." 735 ILCS 5/3-102 (West 2024). "Put differently, if the Administrative Review Law provides a remedy, the circuit court lacks jurisdiction to hear an aggrieved party's claim via other remedies such as injunction, *certiorari*, or *mandamus*." *Coduto v. County of Cook*, 2024 IL App (1st) 221837, ¶ 13.

¶ 46 The question then is whether the Department's *de facto* decision to deny the offset was a final decision to which the Administrative Review Law applied. On appeal, the Department does not argue that its *de facto* decision was a final decision. One would think that might end the matter.

¶ 47 On the facts as alleged in plaintiff's complaint, there were two separate decisions. First there was the decision to find violations, with the corresponding fines noted. That decision is not challenged on appeal. Second, there was the subsequent *de facto* decision not to issue an offset. That is the decision challenged on appeal.

¶ 48 On appeal, the Department attempts to conflate the two decisions, although the two decisions did not occur at the same time. The Department acknowledges that the two decisions occurred at different times, but argues, in essence, that the fact that the decisions occurred at different times was the fault of plaintiffs. The Department argues that plaintiffs should not have waived the hearing, even though there was nothing to offset at the time that plaintiffs waived it. The Department argues that they should not have waived it anyway, presumably because they should have known what was coming.

¶ 49 The Department's position, in essence, is that a licensee can receive the 35% reduction or the offset, but it cannot have both, even though the statute does not say that anywhere.[2] Sections 3-309 and 3-310 of the Nursing Home Act provide that a facility may contest the assessment of a penalty by requesting a hearing within 10 days after receipt of an IDPH Notice. 210 ILCS 45/3-309 (West 2024). However, a facility would have no right to contest a penalty on this basis, at the time the notice was received or even 10 days later. That right, per state statute, comes only later. Section 3-305(10) of the Nursing Home Act says that the Department shall offset "the fine," indicating that a state fine has already been imposed. 210 ILCS 45/3-305(10) (West 2024). Similarly, section 3-305(10) states, regarding the federal fine, that the licensee "has paid" it. 210 ILCS 45/3-305(10) (West 2024). Thus, the plain language contemplates that both the state and federal fines have already been imposed, when the mandatory offset occurs.

¶ 50 While the Nursing Home Act states that actions of the Department arising out of a particular violation shall be contested at a single hearing, this admonition is not an absolute. It

[2] In addition, the Department's position rests on the assumption that the right to ask for the offset, namely, after the federal fine is paid, will occur before any requested state hearing is held. However, there is no statutory or factual support for this assumption on the record before us.

is required only "[w]henever possible." 210 ILCS 45/303(e) (West 2024).[3] Further, this section contemplates that there will be additional "[i]ssues decided after a hearing." 210 ILCS 45/303(e) (West 2024). The Department could have promulgated regulations to deal with the situation that plaintiffs here faced, but it did not.[4]

¶ 51 The bottom line is that the *de facto* denial was not part of the Department's initial decision, nor could it have been, since the federal fines had not yet been imposed or paid, and the Department does not claim that its later *de facto* denial was a "final" administrative decision that was subject to the Administrative Review Law. The Department has provided no information to plaintiffs, the trial court, or this court explaining how this decision was made or who made it.

¶ 52 As the movant behind a 2-619 motion, it is defendant's burden to show the facts needed to defeat plaintiff's claim. Without that, we cannot grant the motion.

¶ 53 III. Sovereign Immunity

¶ 54 Next, defendant argues that it has sovereign immunity, which also divests judicial courts of jurisdiction. Our state constitution provides: "Except as the General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. 1970, art XIII, § 4. Pursuant to that provision, the General Assembly passed the State Lawsuit Immunity Act

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[3] If a facility desires to contest a Department action, it must send a written request, and no such request was sent here regarding the Department's *de facto* denial. 210 ILCS 45/303(e) (West 2024). However, the Department does not challenge jurisdiction on this ground, and the reason is clear. The request must be sent "within 10 days of receipt of [the Department's] notice of the contested action," and no such notice was sent by the Department. 210 ILCS 45/303(e) (West 2024).

[4] In its appellate brief, defendant argues that, "even if the administrative hearing process ended before the federal civil monetary process was imposed, plaintiffs could have pursued judicial review through the Administrative Review Law, raising the offset of any federal civil monetary penalties in the circuit court once those penalties were imposed." This makes no sense. According to this argument, plaintiffs were supposed to seek a hearing, at which they had *nothing* to contest regarding violations or penalties, simply so that they could *later* raise in a circuit court the federal fines that would *later* be imposed.

which provides: “Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court.” 745 ILCS 5/1 (West 2024). Defendant claims that the Court of Claims Act (705 ILCS 505/1 *et seq*. (West 2024)) bars plaintiffs’ suit.

¶ 55 The Court of Claims Act (705 ILCS 505/1 *et seq*. (West 2024)) created a forum for actions against the State, namely, the Illinois Court of Claims. *Parmar v. Madigan*, 2018 IL 122265, ¶ 20. “The Court of Claims is not a court within the meaning of the judicial article of our state constitution.” *Walker v. Chasteen*, 2025 IL 130288, ¶ 19 see Ill. Const. 1970, art. VI. With some limited exceptions, the Illinois Court of Claims has exclusive jurisdiction to hear and determine claims against the State based upon state law. *Parmar*, 2018 IL 122265, ¶ 20; 705 ILCS 505/8(a) (West 2024) (Court of Claims has exclusive jurisdiction over claims against the State based on state law).

¶ 56 Plaintiffs’ complaint asserts a claim against the Department, which is a part of the State. Thus, on its face, the complaint appears to be barred from judicial courts, such as the circuit court and this court. *Walker*, 2025 IL 130288, ¶ 20; *Parmar*, 2018 IL 122265, ¶ 21. In a footnote in its appellate reply brief, plaintiffs address this issue, arguing:

> “Plaintiffs recognize that the Defendant named here is technically the ‘Illinois Department of Public Health’ rather than ‘Sameer Vohra in his official capacity as Director of Public Health,’ as intended. This technicality was correctly not the basis for the Circuit Court’s dismissal, nor should it be used as a basis for dismissal, and indeed, can be rectified at any time. See 735 ILCS 5/2-401(b) [(West 2024)]; *Strauss v. City of*

> *Chicago*, 2022 IL 127149, ¶ 46 ('A misnomer is not a basis for a dismissal, as it may be corrected anytime.')."

Plaintiffs are correct that the formal identification of the adverse party does not decide the issue here. As our supreme court recently observed, "in determining whether sovereign immunity applies to a particular action, substance takes precedence over form and a plaintiff may obtain relief in the circuit court even when the named defendant is a state board, agency, or department." *Walker*, 2025 IL 130288, ¶ 21; *Parmar*, 2018 IL 122265, ¶ 22. In *Walker*, for example, the complaint named a state official, as plaintiffs' footnote asserts that they should have done in the instant case. *Walker*, 2025 IL 130288, ¶ 21. However, our supreme court found that this had no effect on the outcome. The supreme court explained: "[t[his court has held consistently that deciding whether an action is one against the State depends on the issues involved and the relief sought and not simply the formal identification of the parties." *Walker*, 2025 IL 130288, ¶ 21; *Parmar*, 2018 IL 122265, ¶ 22; *Noyola v. Board of Education*, 179 Ill. 2d 121, 134-35 (1997). Thus, plaintiffs' naming of the Department as the adverse party is not dispositive.

¶ 57 The supreme court drew a distinction between suing for prospective injunctive relief and suing to right a past wrong, with the former suit permitted and the latter suit barred. *Walker*, 2025 IL 130288, ¶¶ 21-24. The supreme court explained that, where a state official's conduct violates statutory law, such conduct is not regarded as conduct of the State and, thus, a suit to enjoin that conduct is permitted outside of the Court of Claims. *Walker*, 2025 IL 130288, ¶ 21. "The purpose of the doctrine of sovereign immunity, after all, is to protect the State from interference in its performance of government functions and preserve its control over State coffers." *Walker*, 2025 IL 130288, ¶ 22. However, the State "cannot justifiably claim interference" when the challenged action was not authorized or legal. *Walker*, 2025 IL 130288, ¶ 22. This exception to sovereign immunity is sometimes referred to as the 'officer suit exception' and sometimes as the 'prospective injunctive relief' exception. *Walker*, 2025 IL 130288, ¶ 24. In short, when a plaintiff seeks to enjoin a state defendant from actions in violation of both the defendant's delegated authority and the plaintiff's protectable legal interests, the exception applies. *Walker*, 2025 IL 130288, ¶ 24.

¶ 58 That exception applies here, as the facts of *Walker* illustrate. In *Walker*, plaintiffs paid fees pursuant to a statute that was later found to be unconstitutional. *Walker*, 2025 IL 130288, ¶ 2. The *Walker* plaintiffs then sought a refund of the wrongful fees that they had paid. *Walker*, 2025 IL 130288, ¶ 3. The supreme court found that, while the plaintiffs' suit to enjoin the collection of future fees was permitted, the return of the previously paid, wrongful fees was a claim against the State that could be pursued only in the Court of Claims. *Walker*, 2025 IL 130288, ¶ 4; *Parmar*, 2018 IL 122265, ¶ 22 (suit for fees paid pursuant to an unconstitutional statute was barred). By contrast, in the case at bar, plaintiffs' payment of fines was not wrongful when paid, and nobody claims that it was. However, subsequent events triggered the need for an offset. Those subsequent events did not indicate that the prior payment was wrongful, but rather new facts required new action. However, when the offset was requested, the Department did virtually nothing. It did not issue a letter or decision denying an offset; it did not find that the state and federal violations were not equivalent. What happened here was, in essence, a non-action. Plaintiffs then sued to force the Department to act, as statutorily required, to honor the offset. Honoring that offset may require a future payment. However, unlike *Walker*, this is not a refund of wrongly paid fees, but rather a suit to force the Department to take future action. As our supreme court found, "where the official is not doing the business that the sovereign has empowered him or her to do," the exception applies. *Walker*, 2025 IL 130288, ¶ 22. "A suit to compel state officials to act in accordance with the law is not regarded as an action against the state and is not barred by sovereign immunity, even though the payment of state funds may be involved." *Noyola*, 179 Ill. 2d at 135; *Parmar*, 2018 IL 122265, ¶ 33 (a complaint for a writ of mandamus to compel a public official to perform a required act is not barred by sovereign immunity). Thus, the suit here is not barred by the Court of Claims Act (705 ILCS 505/1 *et seq*. (West 2024)).

¶ 59 III. Mandamus

¶ 60 The trial court found that plaintiffs failed to satisfy the pleading requirements for mandamus. Mandamus is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public officer. *Noyola*, 179 Ill. 2d at 133 However, "[w]here, as alleged here, public officials have failed or refused to comply with requirements imposed by statute, the courts may compel them to do so by means of a writ of *mandamus*." *Noyola*, 179 Ill. 2d at 132 *Dumas v. Pappas*, 2014 IL App (1st) 121966, ¶ 15.

¶ 61 In the case at bar, the trial court dismissed plaintiffs' action pursuant to section 2-615 (735 ILCS 5/2-615 (West 2024)) for failure to state a claim. Despite the remedy's extraordinary nature, mandamus proceedings are governed by the same pleading rules applicable to actions at law. *Dumas*, 2014 IL App (1st) 121966, ¶ 15; *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 32. *Noyola*, 179 Ill. 2d at 133. As we noted above, when ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint, as well as any reasonable inferences that may be drawn from them. *Tyrka v. Glenview Ridge Condominium Association*, 2014 IL App (1st) 130762, ¶ 33. In addition, we must construe the allegations of the complaint in the light most favorable to the plaintiffs.

Tyrka, 2014 IL App (1st) 130762, ¶ 33. As a result, the question for the court with a 2-615 motion is whether the allegations of the complaint, when construed in the light most favorable to the plaintiffs, are sufficient to allege the cause of action. *Tyrka*, 2014 IL App (1st) 130762, ¶ 33.

¶ 62 For a complaint seeking mandamus to withstand a challenge to its legal sufficiency, the complaint must allege a clear right to the relief requested, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ. *Dumas*, 2014 IL App (1st) 121966, ¶ 15; *Dratewska-Zator*, 2013 IL App (1st) 122699, ¶ 32; *Noyola*, 179 Ill. 2d at 133. However, mandamus cannot be used to compel a public official to perform a discretionary act. *Dumas*, 2014 IL App (1st) 121966, ¶ 15; *Noyola*, 179 Ill. 2d at 133. For example, mandamus could not be used to compel the Attorney General to prosecute, when the decision to prosecute was up to his discretion. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301-02 (2003).

¶ 63 Section 3-305(1) of the Illinois Nursing Home Act provides that "[i]f a licensee has paid" a federal civil monetary penalty, "the Department *shall* offset the [state] fine by the amount of the [federal] civil monetary penalty." 210 ILCS 45/3-305(10) (West 2024); *accord*. 77 IL Admin Code § 300.282(k) (eff. June 29, 2011). In the case at bar, the parties and the trial court agree that the statutory offset is mandatory, and that the "shall" in the operative sentence is the equivalent of "must." *Jones v. State Property Tax Appeal Board*, 2017 IL App (5th) 160199, ¶ 37 ("must" and "shall" are often used interchangeably and are considered mandatory language); *In re H.L.*, 2015 IL 118529, ¶ 19 (using "must" and "shall" interchangeably). We agree that there is nothing in this sentence that appears to make the offset optional. In addition, the statute is crystal clear as to who has the duty to take the action: "the Department." 210 ILCS 45/3-305(10) (West 2024); *accord*. 77 IL Admin Code § 300.282(k) (eff. June 29, 2011).

¶ 64 The Department argues that discretion enters the equation, because the Department may deny an offset if it determines that the federal and state violations were not equivalent. The offset applies only for an "equivalent federal violation." 210 ILCS 45/3-305(10) (West 2024); 77 IL Admin Code § 300.282(k) (eff. June 29, 2011). However, the Department has never argued in this case that the federal and state violations were not equivalent, so that drops out as an issue here. Further, with a 2-615 allegation, we must accept plaintiffs' well-pleaded allegations as true and, in the case at bar, plaintiffs not only pleaded that the violations were equivalent but also explained why: because the federal and state violations were all based on the same exact survey. This is not surprising since federal regulations dictate how the state surveys must be conducted. *E.g.* 42 C.F.R. § 488.305(a) ("the State survey agency must conduct standard surveys that include all of the following [criteria]"). See also 42 C.F. R. § 488.308(a) (the state agency must conduct a survey "not later than 15 months after" the last survey); 42 C.F. R. § 488.314(a)(3) (the state survey must be conducted by a team of professionals, which the State determines "subject to CMS approval"); 42 C.F. R. § 488.307(b)(1) ("CMS reviews on an annual basis each State survey agency's scheduling and surveying procedures and policies"); 42 C.F. R. § 488.303(a) ("A State plan must provide that the requirements of this subpart and subpart F of this part are met"). These regulations support plaintiffs' allegation that the same survey team conducts the same survey on behalf of both the Department and the federal agency, which then give rise to equivalent violations. Last but not least, while mandamus may not be used to direct or alter a decision that is discretionary, "it may be used to compel a public official to in fact exercise the discretion that he possesses." *Howell v. Snyder*, 326 Ill. App. 3d 450, 452 (2001). Thus, for the purposes of a section 2-615 motion, plaintiffs have sufficiently alleged both their clear right to the relief and defendant's clear duty to act.

¶ 65 Lastly, plaintiffs have sufficiently alleged defendant's authority to comply. Both the parties and the trial court agree that the offset is prospective, in that it occurs only after the licensee "has paid" the federal fines. 210 ILCS 45/3-305(10) (West 2024); 77 IL Admin Code § 300.282(k) (eff. June 29, 2011). In the case at bar, plaintiffs have alleged that they have paid and, thus, the offset is triggered, and "the Department shall offset." 210 ILCS 45/3-305(10) (West 2024); 77 IL Admin Code § 300.282(k) (eff. June 29, 2011). As a result, plaintiffs have sufficiently alleged the third element of a mandamus action, namely, the Department's clear authority to comply with any writ issued.

¶ 66 Asserting that plaintiffs failed to plead mandamus, defendant argues, among other things, that "plaintiffs cite no authority to support their speculation that the Department's fine 'always precedes' a federal civil monetary penalty." However, this argument misstates the burden of proof for a section 2-615 motion, as well as a 2-619 motion. For a section 2-615 motion, we must accept all well-pleaded allegations as true, and plaintiffs did plead this fact, with the details of their own cases in support. See *Tyrka*, 2014 IL App (1st) 130762, ¶ 33. In addition, with a 2-619 motion, it is defendant who bears the burden of proof, not plaintiffs. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. Further, citations to the relevant statutes and regulations establish that the Department is on a strict timeline, while the federal agency is not. See 210 ILCS 45/3-301(a) (West 2024) (a notice of violation and fine must be served by the Department within 10 days of its inspection report); 210 ILCS 45/3-212(c) (West 2024) (the inspection report must be submitted by Department personnel to the licensee "upon [their] exiting the facility"); 210 ILCS 45/3-310 (West 2024) ("[a]ll penalties shall be paid to the

Department within 10 days of receipt of notice”). Compare with 42 U.S. C. §1395i-3(h)(2)(B)(ii)(I) (the federal statute authorizes CMS to impose a civil monetary penalty without stating when it shall be imposed); 42 U.S. C. §1396r(h)(2)(A)(ii) (same); 42 C.F.R. § 488.434 (the federal regulation requires a facility to be notified in writing of a penalty, but without specifying a time limit).

¶ 67 The Department argues that it must deposit the penalties it collects “into the Long Term Care Monitor Receiver Fund” (210 ILCS 45/3-310 (West 2026)) and, thus, the monies are not available to pay out to plaintiffs. However, this argument overlooks the fact that reimbursement can take many forms, including as a credit against future fines, which has been done in prior cases. *E.g. Walker*, 2025 IL 130288, ¶¶ 43-45 (discussing approvingly the relief fashioned by the circuit court in *City of Springfield v. Allphin*, 74 Ill. 2d 117 (1978)). Unlike the plaintiffs in *Walker*, plaintiffs here have specifically asked for prospective injunctive relief in addition to a refund. *Walker*, 2025 IL 130288, ¶ 45.

¶ 68 Having found all three elements of a mandamus action well-pleaded, we must reverse the trial court’s finding that plaintiffs’ failed to state a claim and subsequent dismissal.

¶ 69 CONCLUSION

¶ 70 For the foregoing reasons, we find that plaintiffs’ action is not precluded by either the Administrative Review Law or sovereign immunity and that plaintiffs have sufficiently pled their cause of action to withstand both, sections 2-615 and 2-619, motions to dismiss. Thus, we reverse and remand for further proceedings regarding the equivalency of state and federal fines, and the amount, if any, of offset that the plaintiffs are entitled to based thereon.

¶ 71 Reversed and remanded.