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2026 IL App (3d) 250200-U

Order filed September 15, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

DANIEL MORRISON for deceased,	)	Appeal from the Circuit Court
KATHERINA MORRISON,	)	of the 18th Judicial Circuit,
	)	Du Page County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-25-0200
v.	)	Circuit No. 24-LA-1079
	)	
	)	Honorable
INTOWN SUITES,	)	Jennifer L. Barron,
	)	Judge, Presiding.
Defendant	)	
	)	
(InTown Lessee Services, LLC, Defendant-	)	
Appellee).	)	

JUSTICE BERTANI delivered the judgment of the court.
Justice Holdridge and Anderson concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in dismissing plaintiff's employment discrimination lawsuit for lack of jurisdiction where the plain language of the Illinois Human Rights Act conferred upon him the right to commence a civil action following administrative dismissal at the investigation stage. Reversed and remanded.

¶ 2 Plaintiff, Daniel Morrison, appeals the circuit court of Du Page County's order dismissing his employment discrimination lawsuit brought on behalf of his deceased spouse, Katherina

Morrison, against Katherina’s former employer, defendant, InTown Lessee Services, LLC. Following her termination, Katherina filed a charge of discrimination with the Department of Human Rights (Department). Plaintiff’s unsuccessful attempt to substitute himself as complainant after Katherina’s passing resulted in the Department issuing a notice of dismissal for failure to proceed.

¶ 3 Rather than pursuing review of the dismissal with the Human Rights Commission (Commission), plaintiff opted to file a two-count complaint in the circuit court. The court granted defendant’s motion to dismiss plaintiff’s amended complaint for want of subject matter jurisdiction based on plaintiff’s failure to exhaust the administrative remedies outlined in the Illinois Human Rights Act (Act). 775 ILCS 5/1-101 *et seq.* (West 2024). We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 In 2014, Katherina started working as an on-site property attendant for InTown Suites, an extended-stay hotel located in Villa Park, Illinois. Defendant terminated her employment on March 27, 2023. Katherina died on September 14, 2023, from lung cancer complications.

¶ 6 On September 4, 2024, plaintiff filed a lawsuit on Katherina’s behalf alleging defendant discriminated against her by wrongfully terminating her employment after she disclosed her terminal cancer diagnosis and requested time off. Plaintiff’s amended two-count complaint asserted disability discrimination (count I) and retaliation (count II) under certain provisions of the Act (775 ILCS 5/1-103(I), 2-102(A), 6-101(A) (West 2024)) and claimed the circuit court was vested with jurisdiction pursuant to that statute. The action sought a determination on the merits regarding whether the decedent’s termination was discriminatory and retaliatory. Plaintiff alleged Katherina was diagnosed with stage IV lung cancer in April 2022 and informed her employer of this diagnosis soon thereafter. Her general manager allowed plaintiff to assist her as property

attendant while she received treatment. She returned to work without restriction in late December 2022. On March 13, 2023, Katherina requested time off for a personal vacation at the end of the month and explained her cancer treatment had been pushed back a week to accommodate this trip. Her general manager approved the vacation. However, on March 27, 2023, days before the scheduled vacation, a newly appointed general manager terminated her employment after her regional manager inquired whether the trip was a personal vacation or for medical leave. Katherina filed a charge of discrimination with the Department on June 1, 2023.

¶ 7 On November 12, 2024, defendant filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code), relying solely on the argument that the circuit court lacked jurisdiction to address plaintiff's claims due to his failure to exhaust administrative remedies. 735 ILCS 5/2-619(a)(1), (9) (West 2024). The motion argued plaintiff failed to establish himself as Katherina's legal representative following her death. Consequently, the Department dismissed the charge for failure to proceed. Defendant asserted dismissal with prejudice was warranted because plaintiff did not seek review of this dismissal with the Commission, as it alleged the Act required.

¶ 8 The motion was supported by an affidavit signed by defendant's attorney, which referenced and incorporated documentary evidence obtained pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1.1 *et seq.* (West 2024)) from the Department pertaining to its file on Katherina's discrimination charge. The documents chronologize plaintiff's failures to establish himself as a representative of Katherina's estate.

¶ 9 A March 19, 2024, letter from the Department to plaintiff's attorney, Mitchell Kline, requested that plaintiff establish his right to proceed on behalf of the estate by either opening a probate estate or utilizing the procedure for a small estate affidavit pursuant to article 25 of the Probate Act. See 755 ILCS 5/25-1(b) (West 2024). A second letter dated March 19, 2024, from

the U.S. Equal Employment Opportunity Commission (EEOC), indicated that the charge filed with the Department had also been filed with the EEOC and encouraged the complainant to cooperate with the Department. It informed counsel that “[t]he [Department] is now requesting some information from you to continue with its investigation (see enclosed letter).” Both letters indicated the failure to comply within 30 days could result in the dismissal of the charge. A May 6, 2024, letter from the Department to counsel indicated that an affidavit Kline provided was “not in compliance with Department procedures,” attached the prior letter, and set a May 21, 2024, deadline for submission.

¶ 10 On May 24, 2024, the Department dismissed the charge for failure to proceed in that the complainant’s next of kin failed to adequately respond to its reasonable requests. 56 Ill. Admin. Code § 2520.430(c) (eff. Oct. 19, 2007); 56 Ill. Admin. Code § 2520.560 (eff. Dec. 14, 2020). The notice of dismissal provided that Kline had informed the Department of Katherina’s death on March 19, 2024. Since that date, and contrary to its requests, no acceptable documentation established any person with a legally recognized interest in Katherina’s estate. The notice provided two avenues of recourse: the complainant’s next of kin could either (1) seek review of the dismissal with the Commission by August 27, 2024, or (2) “[c]ommence a civil action in the appropriate state circuit court within ninety (90) days after receipt of this Notice.” In the paragraph immediately following this language, the notice advised that “the charge will be dismissed with prejudice and with no right to further proceed if a timely request for review is not filed with the Commission.” The Department’s September 11, 2024, response to the FOIA request indicated it had completed its investigation on the date of dismissal. While defendant’s motion to dismiss was pending in the circuit court, the court appointed plaintiff as the special administrator over Katherina’s estate on December 10, 2024.

¶ 11 Plaintiff filed his response to defendant’s motion arguing the Department should investigate “his charges” and asserted he correctly filed his complaint in the circuit court. He attached an affidavit by Kline and numerous additional correspondence between Kline and the Department beyond those attached to the motion to dismiss. The Department’s April 17, 2024, letter to Kline stated that it must complete its investigation within 365 days from the date the charge was perfected, and should it fail to do so, the complainant may file a complaint with the Commission or commence a civil action in the appropriate circuit court within 90 days thereafter. The letter identified the timeline for filing a complaint with the commission or commencing a civil action from June 1, 2024, through August 29, 2024.

¶ 12 The court issued an oral ruling granting the motion to dismiss for lack of subject matter jurisdiction. It stated that there was no dispute “the two counts of the complaint relate only to claims brought under the Illinois Human Rights Act. *** And it’s undisputed here that there is no order from the Commission.” The court concluded that the Act permits an aggrieved party to file a complaint for the enforcement of a valid order by the Commission. 775 ILCS 5/8-111(C)(2) (West 2024). With no valid order and no other applicable provision governing plaintiff’s circumstance, the court held it was deprived of jurisdiction. *Id.* § 8-111(D). The court denied plaintiff’s motion to reconsider its grant of dismissal.

¶ 13 Plaintiff timely appeals.

¶ 14 II. ANALYSIS

¶ 15 Plaintiff argues on appeal that the circuit court incorrectly dismissed his lawsuit by erroneously concluding it lacked subject matter jurisdiction. He cites two subsections of the Act, 7A-102(C)(4) and 7A-102(G)(2), which he argues conferred jurisdiction upon the court. 775 ILCS 5/7A-102(C)(4), (G)(2) (West 2024). We initially note that section 7A-102(G)(2) has no bearing

here given that the Department dismissed the charge at the investigation stage, which obviated the Department's need to issue a report within a year of Katherina filing her charge. *Id.* § 7A-102(G)(2) (permitting a complainant to file a complaint with the Commission or commence a civil action in the circuit court if the Department fails to issue a report within 365 days of the charge being filed).

¶ 16 Regardless, defendant responds that the statutory provisions plaintiff relies upon are inapplicable and section 8-111 of the Act provides the relevant scenarios under which a party may pursue discrimination proceedings in court, none of which apply here. 775 ILCS 5/8-111(A)(1), (B)(1), (C)(1) (West 2024). It also contends that plaintiff was required to request review of the Department's dismissal with the Commission, and the circuit court thus lacked jurisdiction due to his failure to do so.

¶ 17 The circuit court granted defendant's motion to dismiss pursuant to section 2-619 of the Code. 735 ILCS 5/2-619(a)(1) (West 2024). A section 2-619 motion admits the legal sufficiency of a complaint and raises other affirmative matters that appear on the face of the complaint or are established by external submissions which act to defeat the claim. *Burns v. Department of Insurance*, 2013 IL App (1st) 122449, ¶ 9. Relevant here, section 2-619(a)(1) allows the dismissal of actions in which the court does not have subject matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2024). The *de novo* standard of review is applied to an appeal from a section 2-619 dismissal, and under this standard the appellate court performs the same analysis as the circuit court would perform. *Watson v. Legacy Healthcare Financial Services, LLC*, 2021 IL App (1st) 210279, ¶ 29. The circuit court may consider pleadings, depositions, and affidavits when ruling on a 2-619 motion to dismiss. *Krilich v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 570 (2002). Plaintiff's appeal requires construction of the Act, which is also subject to *de novo* review. *Metzler v. Katherine Shaw Bethea Hospital*, 2017 IL App (2d) 170001, ¶ 9. For

statutory construction, we consider the Act’s plain language and review the statute in its entirety while taking into account its component parts. *Id.*

¶ 18 The Illinois state legislature adopted the Act in 1979 with the express intent, among other things, “to secure for all individuals in Illinois freedom from unlawful discrimination in connection with employment.” *Blount v. Stroud*, 232 Ill. 2d 302, 309 (2009). Two distinct state administrative bodies serve as the Act’s arbiters: the Department (see 775 ILCS 5/7-101 (West 2024)) and the Commission (see *id.* § 8-102). The procedure for administrative redress of employment discrimination is outlined in articles 7 and 8 of the Act. *Castaneda v. Illinois Human Rights Comm’n*, 132 Ill. 2d 304, 309 (1989). Section 7A-102 provides for how an aggrieved employee may file a charge against their employer with the Department. 775 ILCS 5/7A-102 (West 2024). The Department, as an investigative body, investigates the charge. *Castaneda*, 132 Ill. 2d at 309; 775 ILCS 5/7-101(B) (West 2024) (explaining the Department’s power with relation to charges is “[t]o issue, receive, investigate, conciliate, settle, and dismiss charges filed in conformity with this Act”).

¶ 19 Alternatively, where a complainant opts to file the charge with the EEOC, that agency investigates the charge. 775 ILCS 5/7A-102(A-1)(1) (West 2024). A charge filed with the EEOC is considered to have been concurrently filed with the Department and if the EEOC is designated as the investigative agency, the Department is required to hold any investigation in abeyance until the EEOC issues its determination. *Id.* Where the Department is timely notified of an EEOC determination that there is reasonable cause to believe there has been a violation of federal law, the Department is required to adopt that finding and notify the complainant of the right to either file a complaint with the Commission or commence a civil action in the appropriate court. *Id.* § 7A-102(A-1)(2). Similarly, where the EEOC does not enter a determination of reasonable cause

and the complainant does not request Department review of that determination, the Department will issue a dismissal for lack of substantial evidence and is required to notify the complainant of the right to file a civil action in the appropriate court. *Id.* § 7A-102(A-1)(3)(a).

¶ 20 The record indicates that the Department was the agency designated to investigate Katherina’s claim based on her charge and the documents attached to defendant’s motion. *Supra* ¶ 9. Upon completion of the investigation, the Department must determine whether there is substantial evidence that an alleged civil rights violation has been committed. 775 ILCS 5/7A-102(D)(2) (West 2024). If it does not find substantial evidence supporting the charge, the Department will dismiss the charge, and petitioner has the right to seek review of the dismissal before the Commission or commence civil action in the appropriate circuit court. *Id.* § 7A-102(D)(3); *Spencer v. Illinois Human Rights Comm’n*, 2021 IL App (1st) 170026, ¶ 30. A complainant who opts to file a complaint in court at this stage is not confined to review of the Department’s dismissal but rather presents a freestanding claim seeking a determination on the merits of his or her claim for discrimination. See *Metzler*, 2017 IL App (2d) 170001, ¶ 11.

¶ 21 The Commission, on the other hand, is an adjudicative body consisting of seven members appointed by the governor. 775 ILCS 5/8-101(A), 8-102(G) (West 2024); *Blount*, 232 Ill. 2d at 310. In its own words, it functions as an administrative court system. Human Rights Commission, <https://hrc.illinois.gov/process/request-for-review.html> (last visited September 15, 2026). The Commission possesses jurisdiction to hear and determine requests for review of “decisions of the Department to dismiss a charge” in panels of three. 775 ILCS 5/8-103(A) (West 2024). Should a complainant opt to have the Department’s initial determination reviewed with the Commission, he or she may not later file an action in the circuit court for a determination on the merits. 775 ILCS 5/7A-102(D)(3) (West 2024). Rather, a complainant’s recourse after the Commission issues a final

order is to obtain judicial review in the appellate court within 35 days of the Commission’s decision (775 ILCS 5/8-111(B)(1) (West 2024)), or should the Commission vacate an adverse decision from the Department, the process may begin “anew” (*Metzler*, 2017 IL App (2d) 170001, ¶ 11).

¶ 22 Prior to 2007, the Act, with few exceptions, mandated that discrimination claims be administered solely through the Department and the Commission. See *id.* ¶ 4. As such, a private right of action for discrimination was not recognized. *Id.*; *Mein v. Masonite Corp.*, 109 Ill. 2d 1, 7 (1985) (explaining that courts had “no jurisdiction to hear independent actions for civil rights violations”). The General Assembly amended the Act in 2007, expanding court redress for discrimination claims in certain scenarios once they have been filed with the Department. See *Metzler*, 2017 IL App (2d) 170001, ¶ 4; Pub. Act 95-243 (eff. Jan. 1, 2008). Notable for our purposes, subsequent amendments expanded the procedural framework of section 7A-102(C)(4) to permit a complainant, upon receiving a notice of dismissal from the Department at the investigation stage, to either seek review of the dismissal before the Commission or commence a freestanding civil action in the appropriate circuit court. See Pub. Act 96-876 (eff. Feb. 2, 2010); see also Pub. Act 103-335 (eff. Jan. 1, 2024).

¶ 23 In relation to the Department’s investigation, the subsection had previously provided that “[a] notice of dismissal or default shall be issued by the Director and shall notify the relevant party that a request for review may be filed in writing” exclusively “with the Commission.” Pub. Act 95-243 (eff. Jan. 1, 2008). A 2009 amendment expanded this language, however, to afford a complainant the option to seek review of a dismissal before the Commission “or commence a civil action in the appropriate circuit court.” Pub. Act 96-876 (eff. Feb. 2, 2010). A complainant who opts to pursue the latter option must commence the civil action “within 90 days after receipt of the Director’s notice.” *Id.*

¶ 24 Based on section 7A-102(C)(4)’s plain language and in light of the General Assembly’s amendments to the Act, plaintiff was entitled to commence a civil action in the appropriate circuit court within 90 days of receiving the dismissal notice from the Department. 775 ILCS 5/7A-102(C)(4) (West 2024). Section 8-111 of the Act does not bar plaintiff’s suit, contrary to defendant’s position and the reasoning behind the circuit court’s dismissal. Section 8-111(D) operates as a general limitation that removes jurisdiction from circuit courts over the subject of alleged civil rights violations unless otherwise provided by law or as set forth in the Act. 775 ILCS 5/8-111(D) (West 2024). Section 7A-102(C)(4)’s plain language operates as an exception to this general limitation. Indeed, section 8-111(A) expressly identifies the civil actions that may be commenced pursuant to section 7A-102 and provides that those lawsuits shall be commenced “in the county in which the civil rights violation was allegedly committed” and filed in a form compliant with the Code. See *id.* § 8-111(A)(1), (2).

¶ 25 Federal courts interpreting the post-amendment language of section 7A-102(C)(4) have reached different conclusions regarding which types of procedural dismissals permit a complainant to commence suit in state circuit court at the investigation stage. One such view is similar to a position defendant advances on appeal and which we reject—that the “notice of dismissal” referenced in section 7A-102(C)(4) is merely associated with the “fact finding conference” mentioned at the beginning of the subsection. See *Demars-Evans v. Mikron Digital Imaging-Midwest, Inc.*, 13-CV-1179, 2013 WL 3224588, at *4 (N.D. Ill. June 25, 2013) (section 7A-102(C)(4) “requires notice of dismissal where a charge is dismissed due to a party’s failure to attend a fact finding conference”). Other courts have pronounced a more flexible construction regarding when a civil action may be commenced under the subsection—merely upon the issuance of a dismissal. *Laurie v. BeDell*, 16-759-DRH-RJD, 2017 WL 1076940, at *3-4 (S.D. Ill. Mar. 22,

2017) (section 7A-102(C)(4) “allows complainants to proceed in court after receiving a Notice of Dismissal,” recognizing district courts interpreting the Act have reached the same conclusion); *Jafri v. Signal Funding, LLC*, 22-2394, 2022 WL 17718429, at *2 (7th Cir. Dec. 15, 2022) (citing section 7A-102(C)(4) and stating “[w]hen the Department dismisses a complaint, a complainant may seek review before the Illinois Human Rights Commission or commence a civil action in Illinois state court”).

¶ 26 While referenced in the same paragraph, nothing in its plain language tethers a notice of dismissal in section 7A-102(C)(4) to the aforementioned fact-finding conference. Rather, any dismissal issued at the investigation stage appears to afford a complainant the opportunity for review of that dismissal by the Commission or to alternatively commence a freestanding civil action. Furthermore, as section 7A-102(C)(4) does not reference the Administrative Review Law, a complainant who commences civil action pursuant to the subsection presents a “freestanding claim” unconstrained from “administrative review of the Director’s” notice of dismissal. *Metzler*, 2017 IL App (2d) 170001, ¶ 11 (observing that because section 7A-102(D)(3) does not refer to the Administrative Review Law, a complainant may commence a freestanding discrimination action in the circuit court).

¶ 27 We reject defendant’s position that the Act affords one avenue of recourse, which is the review of the dismissal by the Commission. Section 7A-102(C)(4)’s language that outlines the complainant’s right is separated by the disjunctive “or”: “[t]he notice of dismissal *** shall give the complainant notice of the complainant’s right *to seek review of the dismissal* before the *** Commission *or* commence a civil action in the appropriate circuit court.” (Emphases added.) 775 ILCS 5/7A-102(C)(4) (West 2024). A disjunctive generally presents alternatives which must be treated separately. *In re E.B.*, 231 Ill. 2d 459, 468 (2008). “[A] clause *following* a disjunctive is

considered inapplicable to the subject matter of the *preceding* clause.” (Emphases in original.) *Id.* Therefore, a complainant is not limited to seeking review of the dismissal through the Commission. Instead, the General Assembly utilized the disjunctive “or” when amending the Act to delineate a complainant’s right to seek review of dismissal with the Commission from a complainant’s right to commence a lawsuit unencumbered by the Department’s dismissal. See *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, ¶ 37. To the extent administrative rules governing the Department’s dismissal conflict with the Act, the rules are invalid. *Klein Construction/Illinois Insurance Guaranty Fund v. Illinois Workers’ Compensation Comm’n*, 384 Ill. App. 3d 233, 237 (2008). Compare 56 Ill. Admin. Code § 2520.560 (eff. Dec. 14, 2020) (stating the complainant “may obtain review by the Commission by filing a request for review” upon receipt of written dismissal), with 775 ILCS 5/7A-102(C)(4) (West 2024) (permitting review of dismissal by the Commission or commencement of a freestanding civil action).

¶ 28 Lastly, we recognize that an administrative agency may act only pursuant to the authority conferred upon it by statute. *Pickering v. Illinois Human Rights Comm’n*, 146 Ill. App. 3d 340, 352 (1986). Therefore, the Department’s notice of dismissal for failure to proceed could not confer upon plaintiff a private right of action that was contrary to the Act; any such notice would be “without legal effect.” See *Donald v. City of Chicago*, 539 F. Supp. 3d 912, 921 (N.D. Ill. 2021). We note, however, that the Department’s notice of dismissal here correctly identified plaintiff’s two avenues of recourse to either (1) seek review of the dismissal with the Commission by August 27, 2024, or to (2) “[c]ommence a civil action in the appropriate state circuit court within ninety (90) days after receipt of this Notice.” This language accurately articulates the right we conclude is granted by statute in this case. See 775 ILCS 5/7A-102(C)(4) (West 2024).

¶ 29

III. CONCLUSION

¶ 30 The judgment of the circuit court of Du Page County is reversed and remanded.

¶ 31 Reversed and remanded.