

No. 4-22-0622

IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH JUDICIAL DISTRICT

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STATE OF ILLINOIS <i>ex rel.</i>	)	On Appeal from the Circuit Court
EMILY FOX,	)	for the Seventh Judicial Circuit,
Relator-Appellant,	)	Sangamon County, Illinois
v.	)	
JENNY THORNLEY,	)	No. 2021 L 0053
Defendant,	)	
and	)	
THE STATE OF ILLINOIS,	)	HONORABLE ADAM JIGANTI,
Appellee.	)	Judge Presiding.

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**Appellee’s Motion to Publish July 28, 2023 Order  
Pursuant to Supreme Court Rule 23(f)**

Appellee the State of Illinois, by its counsel, Illinois Attorney General Kwame Raoul, respectfully moves pursuant to Supreme Court Rule 23(f) to have the Court’s July 28, 2023 order in this case published as a precedential decision. In support of this motion, the State states as follows.

1. This appeal involved a *qui tam* action brought by relator Emily Fox in which the circuit court granted the State’s motion to dismiss the action under section 4(c)(2)(A) of the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A) (2020). After briefing and argument, the court on July 28, 2023 issued its decision in this appeal, affirming the circuit court’s judgment, as a Rule 23(b) unpublished order.

2. The court’s decision warrants issuance as a published opinion because it establishes new authority on recurring issues of significant importance concerning the

application of section 4(c)(2)(A). In particular, the court’s decision:

- (a) holds that *de novo* review applies to trial court decisions to dismiss a *qui tam* action “based on the parties’ written submissions in the absence of live testimony.” (Order, ¶ 29.)
- (b) holds that a motion to dismiss a *qui tam* action under section 4(c)(2)(A) is not subject to the standards governing motions to dismiss an action under section 2-619 of the Code of Civil Procedure. (*Id.*, ¶¶ 42-48.)
- (c) rejects the relator’s contention that when the State moves to dismiss a *qui tam* action under section 4(c)(2)(A), it must provide “an appropriate reason (in the court’s judgment) for seeking to dismiss the complaint.” (*Id.*, ¶ 51.)
- (d) represents the first appellate court decision construing section 4(c)(2)(A) after the United States Supreme Court’s opinion in *United States, ex rel. Polansky v. Executive Health Resources, Inc.*, 143 S. Ct. 1720 (2023), which interpreted and applied the federal law counterpart to section 4(c)(2)(A), and holds that the court “agree[s] with the United States Supreme Court that dismissal under the Act should be denied only in ‘the most exceptional cases.’” (Order, ¶ 59, quoting *Polansky*, 143 S. Ct. at 1734.)
- (e) reaffirms Illinois precedent, after *Polansky*, that “the relator bears the burden of persuasion to show in her objection that the State’s motion to dismiss was made in bad faith.” (Order, ¶ 61.)
- (f) holds that “[t]he State does not need to file a formal motion to intervene because in *qui tam* actions the State is the real party in interest to the suit,” and that “[i]f . . . the State moves to dismiss the case during the seal period, responds to the *qui tam* plaintiff’s objection, and shows up at the trial court hearing regarding that motion, there can be no doubt that the State actually intervened in the action.” (*Id.*, ¶ 68.)

3. Each of these holdings will provide valuable precedent for the resolution of future disputed dismissals of *qui tam* action under section 4(c)(2)(A).

WHEREFORE, the State respectfully moves pursuant to Supreme Court Rule 23(f) for publication of the court's July 28, 2023 order.

August 18, 2023

Respectfully submitted,

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**ORDER**

This matter having come before the Court on Appellee's motion under Supreme Court Rule 23(f) to publish the Court's July 28, 2023 Order,

It is hereby Ordered that this motion is GRANTED / DENIED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Justice

## Certificate of Filing and Service

On Auguste 18, 2023, I electronically filed the foregoing Appellee's Motion to Publish July 28, 2023 Order Pursuant to Supreme Court Rule 23(f) with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District, by using the Odyssey eFile IL system.

Counsel for the other participant in this action, listed below, are registered service contacts on the Odyssey eFileIL system and will be served via that system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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