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2012 IL App (4th) 110865-U

Filed 7/5/12

NO. 4-11-0865

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SUSAN WADE BARR,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Pike County
MIMI CHUNMEI HU, MICHAEL WADE, COURTNEY	)	No. 07P40
WADE, WILMA WADE, and WILLIAM KELLER,	)	
Defendants-Appellees.	)	Honorable
	)	Diane M. Lagoski,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Turner and Justice McCullough concurred in the judgment.

### ORDER

- ¶ 1 *Held:* (1) The trial court properly dismissed plaintiff's claim of tortious interference with an expectancy.
- (2) The same doctrine that prohibits a claim of tortious interference with an expectancy when a petitioner may obtain adequate relief through a will contest applies when adequate relief may be obtained in a trust contest in probate, involving an *inter vivos* revocable trust to which a legacy is provided in the settlor's will.
- (3) The allegations as to damages did not establish recovery under the will contest and trust contest would be inadequate, so as to support a claim for tortious interference with an expectancy.
- (4) The dismissal of plaintiff's tortious-interference-with-an-expectancy claim, which occurred before a will was deemed valid and admitted to probate, was not premature because plaintiff's allegations only established one expectancy for purposes of her claim.
- (5) Plaintiff's argument regarding the trial court's decision to strike an allegation of her complaint is moot, because the complaint was properly dismissed for

failure to sufficiently allege damages.

¶ 2 In December 2007, plaintiff, Susan Wade Barr, filed a three-count complaint challenging testamentary instruments signed by her elderly father, the decedent. Barr initiated a will contest, a trust contest, and a claim for tortious interference with an expectancy in count III. While the defendants answered the allegations in the will contest and the trust contest, they moved to dismiss count III. In May 2011, the trial court ultimately dismissed Barr's "Third Amendment" to count III and later entered a Rule 304(a) finding (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)). Barr appeals, arguing (1) her tortious-interference claim is not barred because she will not obtain adequate relief in her will and trust contests; (2) Illinois law does not permit the extension of the adequate-relief bar to cases involving trust contests; (3) she sufficiently pled allegations establishing damages that occurred during decedent's lifetime that could not be recovered adequately in the will or trust contest; (4) the trial court erroneously and prematurely dismissed her tortious-interference claim before a determination could be made on the validity of the 1996 and 2001 wills and before an expectancy could be determined; and (5) the court erred in striking from her petition an allegation her father was found mentally incompetent. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Decedent, Jesse L. Wade, at age 94, died on June 9, 2007. Later that month, an officer of Mercantile Trust & Savings Bank, the purported successor trustee of the J.L. Wade Trust, petitioned the trial court to admit into probate a March 22, 2001, will (2001 Will) and the May 4, 2004, first codicil (2004 Codicil) and for letters testamentary.

¶ 5 In December 2007, Barr filed a three-count petition contesting the 2001 Will and the 2004 Codicil, in addition to contesting two amendments to those instruments: one dated May

21, 2002 (First Amendment) and the other dated January 29, 2004 (Second Amendment). The three counts of Barr's petition include a will contest, a trust contest, and a claim for tortious interference with an expectancy. According to the allegations in Barr's petition, Jesse left one surviving heir at law, his daughter, Barr.

¶ 6 In her petition, Barr further alleged the gifts and devises in the 2001 Will and the 2004 Codicil were not a result of Jesse's intent, because Jesse was infirm, as he was "elderly and of advanced age and feeble," and suffered dementia or senility. Barr alleged Jesse lacked the ability to know the nature and extent of his property or the manner in which the challenged instruments disposed of his property. Barr alleged Jesse had been found to be a disabled person in May 2001. Barr alleged a number of individuals, upon whom Jesse had become dependent, were involved in preparing the 2001 Will and 2004 Codicil.

¶ 7 Under the terms of the 2001 Will attached to Barr's 2007 petition, the residue of Jesse's estate was to be added to the trust estate created by a trust agreement, entered on March 22, 2001 (2001 Trust Agreement). The 2001 Will designated Bank of America as executor. Under the terms of the 2001 Will, all Jesse's property transferred over into the trust created by the 2001 Trust Agreement. Under the 2001 Trust Agreement, the J.L. Wade Trust was created. Jesse was the lifetime beneficiary of the trust and its trustee. The trustee was directed to employ Jesse's housekeeper, Mimi Hu, during Jesse's lifetime. The 2001 Trust Agreement designated Dr. Michael Wade, Jesse's personal physician and nephew, to determine whether Jesse was unable to manage his own personal affairs. The 2001 Trust Agreement specified gifts, upon Jesse's death, from the J.L. Wade Trust. Hu, if she remained employed by Jesse at the time of his death, was to receive real estate located at 7767 East Via Del Futuro, Scottsdale, Arizona, and

\$100,000; Barr was to receive \$1 million. The balance of the trust property was to be distributed to the J.L. Wade Foundation or, if it was not in existence, to the University of Illinois Foundation. The 2001 Trust Agreement specifies if Barr took any action to challenge the 2001 Will or 2001 Trust Agreement's validity, she would receive nothing.

¶ 8 Under the First Amendment, Jesse resigned as trustee and appointed Bank of America as trustee. The First Amendment also revoked the \$1 million gift to Barr and substituted a gift of \$300,000. The Second Amendment acknowledged Bank of America resigned as trustee and appointed Mercantile Trust & Savings Bank as trustee of the J.L. Wade Trust. The 2004 Codicil appointed Mercantile Trust & Savings Bank as the executor of the 2001 Will.

¶ 9 Barr further alleged in her petition, Jesse, on August 22, 1996, when he was competent and not under improper influence, executed a valid will (1996 Will) and irrevocable trust agreement (1996 Trust Agreement). Under these documents, all of Jesse's "household furniture and furnishings, automobiles and personal effects" were willed to Barr. Under the 1996 Will, the residue of the estate was transferred into the trust created by the 1996 Trust Agreement. Barr was named executor of the 1996 Will. Under the 1996 Trust Agreement, upon Jesse's death, Barr was to receive all of the net income of the trust "with the understanding that she shall also be entitled to a reasonable salary as an officer from the operation of" Jesse's company, Nature House, Inc. At Barr's death, the annual payments that would have gone to Barr would go to her husband if he survived her. If he did not survive her, the remaining principal and interest would go to the Wade Nature Foundation Trust. Jesse was named trustee. Barr was named first successor trustee.

¶ 10 In count III of her petition, Barr alleged a cause of action of tortious interference

with an expectancy against defendants Mimi Chunmei Hu, Michael Wade, Courtney Wade, Wilma Wade, and William Keller. In paragraph seven, Barr alleged "diverse persons including" Hu, Michael, Courtney, and Wilma, with Keller's assistance, obtained fiduciary and confidential relationships with Jesse, assisted him and advised him in business matters and household affairs, and used their influence over Jesse to induce him to execute the 2001 Will, the 2001 Trust Agreement, the 2004 Codicil, and the First and Second Amendments. Barr alleged, in the years before Jesse's death, these defendants held Jesse "as a virtual prisoner, refusing to allow [Barr] to see him or have any society with him." Barr alleged had these defendants not interfered, she would have inherited Jesse's property. Count III of the petition also contained, in paragraph 5(i), the allegation decedent "was found to be a disabled person \*\*\*\* pursuant to a petition filed May 17, 2001."

¶ 11 In July 2008, the Wade defendants filed a motion to dismiss count III under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)). In August 2008, Keller filed an answer to count III. Hu, in September 2008, did the same.

¶ 12 In March 2009, the trial court denied the Wade defendants' motion. That same month, the trial court struck paragraph 5(i) of count III, which alleged decedent was found by a trial court to be disabled, as immaterial.

¶ 13 In April 2009, Barr filed the first amendment to her petition, adding new allegations Jesse suffered delusions. Barr also asked the trial court to reconsider its decision striking paragraph 5(i).

¶ 14 In July 2009, Keller moved to dismiss the First Amendment and count III under section 2-615 of the Code. Keller maintained the new allegations were immaterial and irrelevant.

Keller further argued the tort action was not permitted under Illinois law when the remedy of a will contest is available and would provide adequate relief to the injured party. Later that same month, Courtney and Michael moved to dismiss Barr's tortious-interference claim against them under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2008)), making the same arguments as Keller.

¶ 15 In January 2010, the trial court denied the defendants' motions to dismiss. The court, after referencing the rule that a tortious-interference claim is impermissible if the will contest will provide adequate relief, found Barr "indicates in [her] response that other damages are being claimed, such as events that occurred during the administration of the guardianship, *inter vivos* transfers and gifts or transfers to defendant." The trial court also concluded it would not reverse its decision finding paragraph 5(i) immaterial. The court found the following: "While the guardianship order of Judge Ortbal actually contains wording that would appear to be beneficial to both sides, the probative value of the actual order and finding does not outweigh the prejudicial effect of such an order."

¶ 16 In February 2010, the Wade defendants, which included the estate of Wilma (who died in December 2008), moved the trial court to reconsider the denial of its motion to dismiss. At the hearing on the motion, Keller joined in the motion.

¶ 17 In May 2010, the trial court dismissed count III of Barr's complaint and her first amendment to the petition as to the Wade defendants and Keller. The court also, however, granted Barr leave to file an amendment to her petition.

¶ 18 Later that month, Barr filed her "Second Amendment to Petition." In this amendment, Barr added allegations Jesse's estate "was diminished and was substantially reduced

by the time of his death," the value of Jesse's property and businesses was "diminished due to mismanagement and other factors from and after the execution of the instruments," and "[t]he defendants obtained and received certain properties and income from [Jesse] by payments and other transfers." Barr further alleged she and her husband lost the benefit of annual gifts and she lost the benefit of being a beneficiary under life-insurance policies, her future employment at Nature House, Inc., and "her Illinois location for her residence and recreation, her ancestor's home, and certain personal, unique and irreplaceable family personal property and mementos." Barr further maintained she lost the benefit of the property Jesse transferred to the J. L. Wade Foundation before and after his death. Barr alleged she "may suffer adverse federal and state estate[-]tax consequences" if she prevails in her will and trust contests.

¶ 19 In June 2010, Keller and the Wade defendants moved to dismiss the Second Amendment.

¶ 20 On November 1, 2010, the trial court, Judge William O. Mays, Jr., entered an order striking "14 statements dealing with pleading a valid cause of action." Leave was granted to "plead facts which substantiate a claim \*\*\* in such a manner that each of the defendants will be able to determine whether to admit or deny such allegation." In this order, the court concluded the issue "still appears to be damages and adequate relief." The court found "[i]f the will contest will provide adequate relief, then the [tortious-interference] claim will not lie." The court observed Barr was relying on events from the administration of the guardianship, such as *inter vivos* transfers and gifts, but concluded "[t]he only items of damages which the court would deem appropriate and compensable in a cause of action such as this are amounts that are no longer in the estate or any of the various trusts that exist and that these amounts were transferred out of the

ownership of the decedent in some tortious manner, such as fraud, duress or undue influence." The court further found the "diminution in value of the estate is not compensable in this cause of action." The court concluded the operation of Jesse's business and "possible reduction in value" was not sufficient for a cause of action. The court further found "[a]ny allegation regarding specific property which plaintiff would receive should she prevail on her will and trust contest, is not an appropriate allegation for this Court."

¶ 21 In December 2010, Barr filed her third amendment (Third Amendment) to her petition. In this amendment, Barr set forth allegations specific to each defendant.

¶ 22 Regarding Keller, Barr alleged Keller was Jesse's attorney from 2000 until Jesse's 2007 death. Keller was also the attorney for Nature House, Inc., from May 2001 until, at least, the date of the filing of her Third Amendment, and the attorney for the trustee, beginning in 2004. Keller was also the attorney for Courtney, as she acted as guardian of Jesse.

¶ 23 Barr alleged Keller engaged in "intentional tortious conduct," which caused her damage. The alleged damage "to the estate and to" herself, included the following:

- a. Reduction in the value of Nature House, Inc., as an asset of the trust.
- b. Sale of Nature House, Inc., at a depressed price, reducing its value to the Trust.
- c. Plaintiff, even if successful in Counts I and II may suffer adverse federal and state estate[-] tax consequences and loss of favorable elections."

¶ 24 Barr further alleged Keller's conduct led to the transfer of "[v]irtually all of



[Jesse's] property" to the trust, resulting in Barr's not inheriting any of it. Barr maintained the estate's wealth, property, and business were substantially reduced by the time of Jesse's death due to excess legal and trustee fees and mismanagement of the Nature House business. Barr alleged the gift of \$1 million to her was reduced to \$300,000, she lost the benefit of annual gifts to herself and her husband, she lost the benefit of being an officer and employee of Nature House, Inc., since 2002 to the present, and she lost "her Illinois location for her residence and recreation, her ancestor's home and certain personal, unique and irreplaceable family personal property and mementos." Plaintiff also maintained she was deprived of access to her father and the benefit of all property that was transferred to the J. L. Wade Foundation before and after Jesse's death. Barr concluded had "Keller not engaged in such conduct, [she] would have inherited [Jesse's] property." The allegations in this paragraph were also made against the Wade defendants.

¶ 25           Regarding Michael, according to the Third Amendment, Michael was Jesse's nephew and Jesse's physician. Barr alleged Michael, from 1999 until Jesse's death, acted with Hu, Courtney, and Wilma to keep Jesse a "virtual prisoner" by secluding him from Barr, insisting Jesse reside in Arizona from "long parts of each year," moving to Scottsdale, Arizona, persuading Jesse to purchase three homes there, falsely disparaging Barr, and indoctrinating Jesse to false beliefs about Barr.

¶ 26           Barr alleged this conduct was the proximate cause of the following damage to Barr and the estate: Michael received property and income from Jesse, including (1) a certain joint bank account, (2) \$10,000 for an all-terrain vehicle, (3) Nature House art and prints, (4) \$10,000 from Bank of America, and "other property and gifts." Barr alleged she lost the benefit of being the beneficiary of two or more life-insurance policies and "may suffer adverse federal

and state estate[-]tax consequences and loss of favorable elections."

¶ 27 Regarding Courtney, Barr alleged he was Jesse's nephew. Barr maintained Courtney, through tortious conduct received "[r]eal estate commissions reducing the estate for unnecessary sales of property," Nature House prints and art, reimbursement for travel expenses, and other property and gifts. As she alleged against Michael, Barr lost the benefit of being a beneficiary on two or more life-insurance policies and may suffer estate-tax consequences.

¶ 28 As to Wilma, Barr alleged she was Jesse's sister-in-law and the mother of Michael and Courtney. Barr alleged Wilma's conduct assisted her sons in obtaining the following: a "certain joint bank account," "\$10,000 for an ATV," real-estate commissions, art and prints, \$10,000 from Bank of America, and reimbursement for travel expenses.

¶ 29 In January 2011, defendants moved to dismiss the Third Amendment to the petition. This was Hu's first motion to dismiss. A hearing was held in March 2011. By order dated March 31, 2011, Judge Mays recused himself. On April 1, 2011, Judge Diane Lagoski was assigned to the case. Judge Lagoski heard arguments on May 24, 2011. That same date, the trial court dismissed with prejudice count III as to all parties. Pursuant to Illinois Supreme Court Rule 304 (eff. Feb. 26, 2010), the court found no just reason for delaying either enforcement or appeal of the dismissals.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 A. Standard of Review

¶ 33 Keller's January 2011 motion to dismiss was filed under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). The Wade defendants' motion to dismiss and Hu's motion was

filed under section 2-619.1 (735 ILCS 5/2-619.1 (West 2010)). Section 2-619.1 motions encompass both claims the complaint fails to state a claim under section 2-615 (735 ILCS 5/2-615 (West 2010)) or is subject to dismissal based upon certain defects or defenses under section 2-619 (735 ILCS 5/2-619 (West 2010)).

¶ 34 A section 2-615 motion to dismiss "tests the legal sufficiency of the plaintiff's claim." *Wallace v. Smyth*, 203 Ill. 2d 441, 447, 786 N.E.2d 980, 984 (2002). A court must determine whether the complaint's allegations, " 'when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted.' " *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App. 3d 325, 335, 943 N.E.2d 646, 654-55 (2010) (quoting *Canel v. Topinka*, 212 Ill. 2d 311, 317, 818 N.E.2d 311, 317 (2004)). Only when it is clearly apparent no set of facts can be proved entitling the plaintiff to relief, should a court grant a section 2-615 motion to dismiss. *Crossroads Ford Truck Sales*, 406 Ill. App. 3d at 335-36, 943 N.E.2d at 655.

¶ 35 In contrast, "a motion to dismiss under section 2-619(a) \*\*\* admits the legal sufficiency of the plaintiff's claim, but asserts certain defects or defenses outside the pleading which defeat the claim." *Wallace*, 203 Ill. 2d at 447, 786 N.E.2d at 984. The adequate-relief doctrine, asserted by defendants, is a bar to tortious-interference claims and thus would be an affirmative matter raised under section 2-619. See 735 ILCS 5/2-619 (West 2010). Defendants not only assert this affirmative matter precludes Barr's claim but also contend the allegations Barr makes to circumvent its applicability are insufficient to avoid its application. Thus, defendants' arguments are properly considered both a section 2-615 motion and a section 2-619 motion. See generally *Lawson v. City of Chicago*, 278 Ill. App. 3d 628, 636, 662 N.E.2d 1377, 1384 (1996).

When a dismissal under either section is appealed, we review the dismissal *de novo*. See *Malcome v. Toledo, Peoria & Western Ry. Corp.*, 349 Ill. App. 3d 1005, 1006, 811 N.E.2d 1199, 1201 (2004) (section 2-615); *Saichek v. Lupa*, 204 Ill. 2d 127, 134, 787 N.E.2d 827, 832 (2003) (section 2-619).

¶ 36                    B. Introduction to Tortious Interference With an Expectancy

¶ 37                    A plaintiff filing a claim for tortious interference with an expectancy must establish the following elements: "(1) the existence of an expectancy; (2) defendant's intentional interference with the expectancy; (3) conduct that is tortious in itself, such as fraud, duress, or undue influence; (4) a reasonable certainty that the expectancy would have been realized but for the interference; and (5) damages." *In re Estate of Ellis*, 236 Ill. 2d 45, 52, 923 N.E.2d 237, 241 (2009).

¶ 38                    The tortious-interference-with-an-expectancy claim differs from a will contest. In a will contest, the sole issue "is whether the writing produced is the will of the testator." *Ellis*, 236 Ill. 2d at 51, 923 N.E.2d at 240. Any basis for invalidating the will, including fraud, incapacity, revocation, or undue influence, "may state a cause of action." *Ellis*, 236 Ill. 2d at 51, 923 N.E.2d at 240. It is a *quasi in rem* proceeding to set aside the will; it is not a proceeding to secure a personal judgment against a defendant. *Ellis*, 236 Ill. 2d at 51, 923 N.E.2d at 240. In contrast, the intentional-interference-with-an-expectancy claim is a tort claim against a person " 'who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received.' " *Ellis*, 236 Ill. 2d at 52, 923 N.E.2d at 241 (quoting Restatement (Second) of Torts § 774B (1979)).

¶ 39                    C. Doctrine of Adequate Relief

¶ 40 In this case, defendants contend and the trial court found Barr's cause of action for tortious interference with an expectancy was barred because Barr would obtain adequate relief if she prevails on her will- and trust-contest counts. Under Illinois law, " [i]f a will contest is available and would provide an adequate remedy to the petitioner, no tort action will lie." *Ellis*, 236 Ill. 2d at 53, 923 N.E.2d at 242 (quoting *In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1021, 679 N.E.2d 393, 406 (1997)). The parties refer to this conclusion as the adequate-relief doctrine or adequate-relief theory.

¶ 41 On appeal, Barr initially challenges the trial court's decision the adequate-relief doctrine supports dismissal of her claims. Barr contends the following: (1) the doctrine does not apply because Illinois law has only applied it when will contests, not trust contests, were involved; (2) the doctrine does not apply because she is seeking assets outside the probate estate that will not be recovered in her will or trust contest; and (3) the trial court prematurely decided the adequate-relief doctrine applies, because no will has been admitted to probate.

¶ 42 1. *The Adequate-Relief Doctrine Applies to Barr's Trust Contest*

¶ 43 Barr maintains the doctrine does not bar her tortious-interference claim because Illinois courts have only found the doctrine applies only in the context of will contests. Barr emphasizes her case involves an *inter vivos* trust agreement and a trust contest and Illinois law does not extend to trust contests. Barr, however, cites no authority showing an Illinois court has refused to apply the doctrine to a trust contest filed in probate court.

¶ 44 Defendants maintain the doctrine applies when adequate relief may be found in a trust contest. In support, Keller cites a Missouri decision, *Brandin v. Brandin*, 918 S.W.2d 835, 840-41 (Mo. App. E.D. 1996), in which the court applied the doctrine to an action involving both

a will and a trust, to show that the doctrine extends to trust claims.

¶ 45 We find no reason not to apply the doctrine in situations like these, where an *inter vivos* trust referred to in a will makes testamentary gifts upon the decedent's death. Such a trust is similar to a will, which both contain a decedent's wishes and directions. In addition, like a will contest, a trust contest may be pursued under the Probate Act of 1975 (Probate Act). See 755 ILCS 5/8-1(f) (West 2010) ("An action to set aside or contest the validity of a revocable *inter vivos* trust agreement or declaration of trust to which a legacy is provided by the settlor's will which is admitted to probate shall be commenced within and not after the time to contest the validity of a will[.]"). Applying the doctrine to trust contests furthers the goal of having will and trust disputes resolved under the Probate Act, whereas a contrary decision would not.

¶ 46 *2. Barr Has Not Sufficiently Pled Facts That, if Proved, Would Show She Would Not Obtain Adequate Relief if She Prevails in Her Will and Trust Contests*

¶ 47 a. Barr's Expectancy

¶ 48 To determine whether Barr's expectancy was tortiously interfered with, we begin by examining the pleadings to ascertain what Barr's expectancy is. Defendants maintain Barr's expectancy stems from the allegation in count III in which Barr asserts the 1996 Will and 1996 Trust Agreement should be admitted to probate: "That on August 22, 1996, at a time when [Jesse] was competent and not the subject of improper influence, or other improper conduct, he executed a valid will and irrevocable trust agreement, \*\*\* which should be admitted to probate."

¶ 49 Barr contends her expectancy should not be so limited. First, Barr maintains her allegation is a legal conclusion, her factual allegation carries no weight, and the trial court could thus refuse to probate the 1996 Will, thereby changing her expectancy. Second, Barr contends defendants' attempt to limit her expectancy to this allegation is belied by their repeated denials of

the same allegation in Barr's trust-contest and will-contest counts.

¶ 50 We find Barr's inheritance expectations are defined by her allegation the 1996 Will and 1996 Trust Agreement should be admitted. Any other expectancy Barr wishes to purport based on her contention the 1996 Will and 1996 Trust Agreement *should* be admitted *but may not be* is not sufficiently pled. From the allegations and the reasonable inferences, this court cannot ascertain what expectancy Barr would have if the probate court refused to probate the 1996 instruments. In 1996, Jesse was in his early 80s. Given Jesse's age and the size of his estate, other wills and trusts were likely created during his lifetime. We cannot simply presume what Barr's expectancy would be if the 1996 Will is not entered into probate. That leaves only one expectancy sufficiently pled in count III—the one based on what she would receive if the 1996 Will and 1996 Trust Agreement are deemed valid.

¶ 51 Barr's reliance on *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475, 939 N.E.2d 487, 499 (2010), in her reply brief, as establishing her admission regarding a conclusion has no legal effect, is misplaced. The *JPMorgan Chase Bank* case is distinguishable as it involved an appeal from summary judgment and not an appeal from a dismissal following a section 2-615 motion to dismiss for failure to state a claim. See *JPMorgan Chase Bank*, 238 Ill. 2d at 458, 939 N.E.2d at 489.

¶ 52 In addition, we find the fact defendants denied a similar allegation not compelling. By denying the aforementioned allegations, defendants denied the will should be admitted to probate over the latter testamentary documents and any implication the latter documents were subject to improper influence or improper conduct. They also denied the 1996 Trust Agreement is irrevocable.

¶ 53 We thus turn to the 1996 Will and 1996 Trust Agreement to ascertain Barr's expectancies. In the 1996 Will, Barr was to inherit the following: all of Jesse's "household furniture and furnishings, automobiles and personal effects." In the 1996 Trust Agreement, Barr was to receive upon Jesse's death "all of the net income of the trust, with the understanding that she shall also be entitled to a reasonable salary as an officer from the operation of my company, Nature House, Inc." In addition, if Barr were to become severely ill, she was entitled to have all of her medical and other expenses paid out of the income and principal of the trust. Barr also had the ability to disclaim portions of the residue to pass into a charitable foundation. In her briefs, Barr asserts the latter entitlement was included for tax-relief purposes.

¶ 54 b. Damages to Expectancy

¶ 55 Barr maintains she has adequately pled damages to her expectancy, damages that would not be recovered if she prevails on her will contest and trust contest, and thus damages sufficient to avoid the adequate-relief rule. Barr also asserts the trial court improperly found she could not recover for the diminution of the trust estate.

¶ 56 Defendants contend Barr has not pled allegations sufficient to establish they caused damage to Barr's expectancy. Defendants maintain Barr's damages allegations are vague and speculative. Defendants argue Barr repeatedly seeks damages for alleged injuries to the decedent's estate, when she is entitled to only damages to her individual expectancy. Defendants maintain the trial court properly found diminution of the trust estate was not recoverable.

¶ 57 We begin by examining Barr's general allegations toward all of the defendants. The common allegations are that the defendants' conduct "caused and was a proximate cause of the following to the estate and to" Barr:



"a. Virtually all of [Jesse's] property was transferred to the trust prior to his death and [Barr] did not inherit the property so transferred.

b. The total of the wealth, property, business and estate of [Jesse] was diminished and was substantially reduced by the time of his death in that:

1. Excess and unnecessary legal, professional and trustee fees were incurred.

2. Due to mismanagement[,] the Nature House business was debilitated and sold for a *de minimis* value by the Trustee.

c. The value of the property of [Jesse] and his businesses were diminished due to mismanagement and other factors from and after the execution of the instruments in that:

1. The art collection was mismanaged and diminished in value.

2. The Nature House business was mismanaged and diminished in value.

3. The tillable acres of the Perry Springs property were sold off making the wildlife refuge unsustainable on its own, facilitated through improper and fraudulent transfers instigated by Courtney Wade.

- d. The provisions for the plaintiff in the instruments operative at the death of [Jesse] were reduced from a gift of \$1,000,000.00 to a gift of \$300,000.00.
- e. The provisions of the will and trust were made subject to the requirement that [Barr] loses all interest if she contests the will or trust.
- f. [Barr] lost the benefit of annual gifts for herself and her husband.
- g. [Barr] lost the benefit of being an officer, director and employee of Nature House, Inc., since 2002 to the present.
- h. [Barr] lost her Illinois location for her residence and recreation, her ancestor's home and certain personal, unique and irreplaceable family personal property and mementos.
- i. [Barr] lost her future employment at Nature House, Inc., during the balance of her work life.
- j. [Barr] was deprived of her natural, usual and customary access to her father during his lifetime.
- k. [Barr] lost the benefit of all property of [Jesse], transferred to the J. L. Wade Foundation, an Illinois Not for Profit Corporation, both before and after his death."

¶ 58 As we consider these allegations, we are mindful of the fact Barr must plead allegations showing her expectancy under the 1996 testamentary documents was damaged. As to

the first allegation above, we fail to see how this affects Barr's *expectancy*. Under the 1996 documents, Barr was to receive some personal property, but the bulk of the estate went into the trust.

¶ 59           The damages sought in paragraphs b and c are insufficient, as they do not sufficiently allege damages to Barr. The trial court, in November 2010, determined "[t]he only items of damages which the court would deem appropriate and compensable in a cause of action such as this are amounts that are no longer in the estate or any of the various trusts that exist and that these amounts were transferred out of the ownership of the decedent in some tortious manner, such as fraud, duress or undue influence." The court also concluded the "diminution in value of the estate is not compensable in this cause of action."

¶ 60           Barr maintains diminution in value is an appropriate consideration and the trial court erred in finding otherwise. Barr cites no Illinois law to support her claim, but points to a Texas decision and argues it shows "consequential losses" for tortious interference with an inheritance are recoverable. See *King v. Acker*, 725 S.W.2d 750, 754 (Ct. App. Tex. 1987) (quoting Restatement (Second) of Torts, § 774A (1979)).

¶ 61           We agree with the trial court. In these allegations, Barr is complaining of mismanagement. No tortious activity is linked to this alleged mismanagement. In addition, no facts are provided from which the court could determine mismanagement occurred. Barr also makes no specific allegations of how the alleged mismanagement affects her expectancy. In Illinois, a fact-pleading jurisdiction, a plaintiff must assert facts that are sufficient to bring his or her claim within the asserted cause of action. *Crossroads Ford Truck Sales*, 406 Ill. App. 3d at 337, 943 N.E.2d at 656. She has failed to do so.

¶ 62 As to Barr's allegations in paragraph d, h, and k, Barr's 1996 expectancy did not include these gifts. The \$1 million and the \$300,000 devises occurred in the very instruments Barr contests. Barr was not expected to inherit Jesse's residence, and has not sufficiently alleged she suffered a lost expectancy as a result of tortious conduct in the property transferred to the J. L. Wade Foundation. Barr also is vague in her description of expected "unique and irreplaceable family personal property and mementos."

¶ 63 Regarding paragraphs e, g, and i, these allegations fall within the adequate-recovery doctrine. If she prevails on her contests of the testamentary instruments, the provision in the latter trust revoking all gifts to Barr if she challenges the will or trust has no bite. In addition, if Barr prevails on her will-contest and trust-contest claims, she will be able to recoup a "reasonable salary" as an officer of Nature House, Inc. Barr has alleged no tortious conduct in the mismanagement of the trust that may prevent her from being paid from the principal.

¶ 64 As to paragraphs f and j, the loss of annual gifts for Barr and her husband and the loss of time with Jesse were not expectancies for purposes of Barr's tortious-interference-with-an-inheritance claim.

¶ 65 We turn to the allegations alleged against Keller specifically. Barr alleged Keller's tortious conduct in the formation of the latter testamentary instruments "was a proximate cause" of the reduction of the value of Nature House, Inc.; the sale of Nature House, Inc., at a depressed price; and the fact Barr, even if successful in her will contest, "may suffer adverse federal and state estate[-]tax consequences and loss of favorable elections."

¶ 66 We find the allegations regarding the loss of value of Nature House, Inc., and its depressed sale price to be too speculative as to alleging Barr suffered any damage from such

reduction. In addition, these same allegations are the same speculative and vague allegations of mismanagement we found insufficient above. As to the last allegation, the fact Barr "may" suffer such consequences is too speculative to establish damage.

¶ 67 Barr also made allegations specific to the Wade defendants. Barr alleged Michael "obtained and received certain properties and income from" Jesse, including "a certain joint bank account," "\$10,000.00 for an ATV," "Nature House art and prints," "\$10,000.00 from Bank of America," and other property and gifts. Barr also alleged she lost the benefit as a beneficiary to two or more life-insurance policies. As to Courtney, Barr alleged some of the same, but also that Courtney acquired real-estate commissions and reimbursement for travel expenses. As to Wilma, Barr alleged Wilma assisted her sons in wrongfully acquiring the above property.

¶ 68 These allegations fail for lack of specificity, both in when these acquisitions occurred, in the description of the alleged acquisitions, and in the absence of establishing damage to Barr *personally* for such acquisitions. Regarding the lost designation as a beneficiary, Barr has failed to establish how this reduced her expectancy in her tortious-interference-with-an-inheritance claim. The life-insurance policies were not part of the 1996 testamentary instruments.

¶ 69 Many of Barr's allegations regarding damages are properly dismissed for lack of specificity. Barr has sufficiently alleged no facts to show damages other than what she may recover in her will contest or trust contest.

¶ 70 3. *A Decision the Adequate-Relief Doctrine Applies is Not Premature*

¶ 71 Barr maintains her tortious-interference claim should not be dismissed because the dismissal, she contends, is premature. In support, Barr relies on *In re Estate of Knowlson*, 204 Ill. App. 3d 454, 562 N.E.2d 277 (1990). In *Knowlson*, the petitioners filed a will contest as well

as a tortious-interference claim. See *Knowlson*, 204 Ill. App. 3d at 455, 562 N.E.2d at 278. The decedent executed wills in 1966, 1967, 1971, 1974, and 1981. *Knowlson*, 204 Ill. App. 3d at 455-56, 562 N.E.2d at 279. In their tort claim, the petitioners argued the respondent used fraud and duress to cause the decedent "to make numerous *inter vivos* transfers of property to [the respondent] and leave [the respondent] all her property" and all property in a fund specified in the 1981 will. *Knowlson*, 204 Ill. App. 3d at 456, 562 N.E.2d at 279. The court ruled the entry of summary judgment before a ruling on the will contest and a decision on which will to admit to probate would be premature because, if none of the wills were admitted to probate, the petitioners would lack an adequate remedy. *Knowlson*, 204 Ill. App. 3d at 458-59, 562 N.E.2d at 280-81.

¶ 72 *Knowlson* is distinguishable. The decision in *Knowlson* followed an appeal from a motion for summary judgment, when expectancies were known and damages could be ascertained. See *Knowlson*, 204 Ill. App. 3d at 455-59, 562 N.E.2d at 280. In this case, only one expectancy has been sufficiently pled and, from that pleading, a decision of whether adequate relief can be provided is ascertainable.

¶ 73 *Roeseler*, cited in Barr's reply brief, is similarly distinguishable. Like in *Knowlson*, the appeal followed a summary-judgment order and the facts showed multiple wills were drafted by the decedent. *Roeseler*, 287 Ill. App. 3d at 1005-06, 679 N.E.2d at 396. The availability of probate relief was found to be speculative because, if one of the earlier wills was not admitted, the facts showed petitioner's relief in probate would be inadequate. *Roeseler*, 287 Ill. App. 3d at 1022, 679 N.E.2d at 407. ("[A]dequate relief is not certain absent a tort action pending the admission of the decedent's prior wills to probate.").

¶ 74 D. The Appeal of the Trial Court's Decision to Strike an Allegation is Moot

¶ 75 On appeal, Barr contends the trial court improperly struck her allegation Jesse was found disabled by the trial court in May 2001, "almost three years before the first codicil and less than two months after the will and before the trust amendments." Keller contends this court lacks jurisdiction over the matter. Both Keller and the Wade defendants maintains the trial court's decision was proper.

¶ 76 We find the issue moot. Because we affirm the trial court's dismissal on the ground Barr has not set forth sufficient allegations showing both her expectancy was damaged and her claims cannot be adequately recovered in her will and trust contests, a decision whether an allegation as to Jesse's mental capacity should be allowed will have no bearing on the case. See *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471, 777 N.E.2d 924, 927-28 (2002) ("[W]hen the resolution of a question of law cannot affect the result of a case as to the parties \*\*\* a case is rendered moot.").

¶ 77 E. Allegations Regarding Defendant Hu

¶ 78 Although Hu moved to dismiss Count III and that motion was granted, Hu did not file an appellee brief in this action. Because the record is simple as to Hu and the issues overlap, we can easily decide the claimed errors without the assistance of Hu's appellee brief and will consider the merits of the appeal. See *In re Marriage of Case*, 351 Ill. App. 3d 907, 910-11, 815 N.E.2d 67, 70 (2004).

¶ 79 Our findings above apply equally to Hu. The allegations made of *inter vivos* gifts specific to Hu include "[a] certain joint bank account," rental income, living expenses, art and prints, "payment of personal income tax," property transfers to Hu's family, and "[o]ther property

and gifts." Like the allegations against the Wade defendants, these allegations are non-specific and vague. They do not prevent application of the adequate-relief doctrine.

¶ 80

### III. CONCLUSION

¶ 81

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

¶ 82

Affirmed.