

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120356-U

NO. 4-12-0356

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 20, 2013
Carla Bender
4th District Appellate
Court, IL

KELLY L. KUBLY,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
STATE FARM MUTUAL AUTOMOBILE)	No. 11L252
INSURANCE COMPANY and CAIN AND)	
COMPANY, INC.,)	Honorable
Defendants-Appellees.)	Jeffrey B. Ford,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.

Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying plaintiff's application to sue as an indigent person where the application stated she had no assets but her complaint, filed with her application, stated she had received \$20,000 in insurance settlement funds.

¶ 2 In December 2011, plaintiff, Kelly L. Kubly, filed a complaint for declaratory judgment against defendants, State Farm Mutual Automobile Insurance Company (State Farm) and Cain and Company, Inc. (Cain), alleging she was a passenger in a vehicle owned by Cain and insured by State Farm when an underinsured motorist struck the vehicle. Plaintiff also filed an application to sue as an indigent person pursuant to Illinois Supreme Court Rule 298 (eff. Nov. 1, 2003) (Rule 298 application), seeking leave to sue without having to pay fees associated with filing her complaint. In December 2012, the trial court denied plaintiff's Rule 298 application, finding she had received \$20,000 in settlement funds from the at-fault driver's insurance

company. Thereafter, plaintiff did not pay the filing fee and the court dismissed her complaint.

¶ 3 Plaintiff appeals, arguing the trial court erred in denying her Rule 298 application and dismissing her complaint. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On December 30, 2011, plaintiff filed a complaint for declaratory judgment against defendants, alleging she was injured while a passenger in a vehicle owned by Cain and insured by State Farm when an underinsured motorist struck the vehicle. The accident took place in Rockford, Illinois. Plaintiff's complaint stated the at-fault driver's insurance company had paid her its \$20,000 policy limit. Plaintiff stated she was seeking additional money from defendants because the \$20,000 was not enough to cover the damages sustained as a result of the collision. Plaintiff attached to her complaint a Rule 298 application to sue as an indigent person. See Ill. S. Ct. R. 298 (eff. Nov. 1, 2003); 735 ILCS 5/5-105 (West 2010). In her application, plaintiff stated she "had no assets."

¶ 6 On January 4, 2012, the trial court denied plaintiff's Rule 298 application, finding plaintiff (1) had available insurance settlement funds and (2) made no affirmative showing jurisdiction existed in Champaign County.

¶ 7 On February 22, 2012, the trial court referenced its January 4, 2012, ruling and ordered the case dismissed if the filing fee was not paid by March 23, 2012.

¶ 8 On March 5, 2012, plaintiff filed a motion for substitution of judge, which was granted.

¶ 9 On March 20, 2012, plaintiff filed a motion to vacate the trial court's January 4, 2012, and February 22, 2012, orders, which the court denied that same day, finding plaintiff did

not address the reasons for the court's denial of her Rule 298 application.

¶ 10 On March 21, 2012, plaintiff filed a motion to vacate the trial court's January 4, 2012, February 22, 2012, and March 20, 2012, orders. That same day, defendants filed a "Notice of Filing," which stated plaintiff's attorney, Morton A. Segall, was not currently authorized to practice law in Illinois. According to defendants' filing, the Attorney Registration and Disciplinary Committee informed defendants "Segall was removed from the Master Rolls of Illinois authorized and registered attorneys on February 27, 2012." Defendants pointed out plaintiff's March 5, 2012, motion for substitution of judge and plaintiff's March 21, 2012, motion seeking reconsideration and vacation of prior orders were all undertaken after February 27, 2012.

¶ 11 On March 26, 2012, the trial court dismissed the cause for plaintiff's failure to pay the filing fee. The court also found Segall had not been authorized to practice law in Illinois since 2011.

¶ 12 On March 27, 2012, plaintiff filed another motion to vacate the trial court's January 4, 2012, February 22, 2012, March 20, 2012, and March 26, 2012, orders. The motion stated Segall was licensed to practice law as of March 27, 2012.

¶ 13 On April 2, 2012, the trial court denied plaintiff's March 27, 2012, motion to vacate and reaffirmed its March 20, 2012, ruling. The court also found the March 20, 2012, order was prepared in response to a void motion as Segall was not authorized to practice law at that time. See *Fruin v. Northwestern Medical Faculty Foundation, Inc.*, 194 Ill. App. 3d 1061, 1063, 551 N.E.2d 1010, 1011 (1990) (pleading signed by a person not licensed to practice in Illinois is a nullity). The court also found plaintiff's March 21, 2012, motion was void for the same reason.

¶ 14 This appeal followed.

¶ 15

II. ANALYSIS

¶ 16 On May 22, 2013, following the completion of the briefing schedule in this appeal, Segall was disbarred from the practice of law in Illinois by the Illinois Supreme Court. See *In re Morton Allan Segall*, 2013 M.R. 25997 (May 22, 2013). That same day, we gave plaintiff 30 days, until June 21, 2013, to notify the parties and this court as to new counsel. As of June 21, 2013, plaintiff had not done so. Because the briefing schedule was completed and oral argument was waived in this case prior to Segall's disbarment, we will address the issues as presented.

¶ 17 On appeal, plaintiff argues the trial court erred in denying her Rule 298 application and dismissing her complaint. While plaintiff focuses her argument on the trial court's dismissal of her Rule 298 application based on her failure to show "jurisdiction" (the parties agree the court likely meant "venue"), we can affirm the trial court on any basis appearing in the record on appeal. *Bowers v. State Farm Mutual Automobile Insurance Co.*, 403 Ill. App. 3d 173, 176, 932 N.E.2d 607, 610 (2010).

¶ 18 Illinois Supreme Court Rule 298 provides, if an application to sue or defend as an indigent person is allowed, the trial court shall enter an order permitting the applicant to sue or defend without payment of fees, costs, or charges. Ill. S. Ct. R. 298(b) (eff. Nov. 1, 2003). The grant or denial of an application for leave to sue or defend as an indigent person is within the sound discretion of the trial court and subject to reversal only upon abuse of that discretion. *Dear v. Locke*, 128 Ill. App. 2d 356, 362, 262 N.E.2d 27, 30 (1970).

¶ 19 In this case, plaintiff's Rule 298 application stated she "had no assets." However, her complaint, filed with her application, stated she had received \$20,000 from the at-fault driver's insurance company. The cost for plaintiff to file her complaint in Champaign County is

§215. See Sixth Judicial Circuit of Illinois, Fee Schedule, <http://www.cccircuitclerk.com/feesched.pdf> (last visited July 25, 2013)). Plaintiff never explained to the trial court why she could not pay this filing fee out of her settlement funds. Like the trial court, we fail to see, absent an explanation, why plaintiff could not have done so. While plaintiff's complaint stated she experienced expenses in excess of the settlement, plaintiff never made such an argument before the trial court to justify her inability to pay the filing fee. The court did not abuse its discretion in denying plaintiff's Rule 298 application.

¶ 20 We note this is not a situation where plaintiff was represented by a legal services provider. See 735 ILCS 5/5-105.5(b) (West 2010) (when a civil legal services provider represents an indigent party in a civil action "all fees and costs relating to filing *** shall be waived"). Instead, plaintiff was represented by private counsel, who could have advanced her the filing fee or paid it for her. See Ill. R. Prof'l Conduct 1.8(e)(1) (eff. Jan. 1, 2010) ("lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter"); Ill. R. Prof'l Conduct 1.8(e) (2) (eff. Jan. 1, 2010) ("lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client"). We also point out plaintiff either personally paid the costs associated with filing this appeal or had her attorney, who also represented her in the trial court, pay those costs on her behalf.

¶ 21 In sum, the trial court did not err in denying plaintiff's Rule 298 application. The court gave plaintiff until March 23, 2012, to pay the filing fee to avoid having her complaint dismissed. Plaintiff did not do so. Accordingly, the court did not err in dismissing plaintiff's complaint.

¶ 22

III. CONCLUSION

¶ 23 For the foregoing reasons, we affirm the trial court's judgment.

¶ 24 Affirmed.