

No. 1-15-1621

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VENDETTA NAGASK CECE-JACKOWIAK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 MC1 148061
)	
NOAH PRAETZ, Deputy Director of Elections for Cook)	
County, Illinois,)	Honorable
)	James P. Carroll,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* The circuit court's order dismissing with prejudice plaintiff's complaint is affirmed where plaintiff failed to state a claim upon which relief could be granted.

¶ 2 Plaintiff Vendetta Nagask Cece-Jackowiak appeals from a circuit court order dismissing with prejudice her complaint against defendant Noah Praetz pursuant to the Frauds Act (740 ILCS 80/9 (West 2014)). Plaintiff contends the circuit court erred in granting defendant's motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) (Code) because leave to amend a complaint should be freely given, and her

No. 1-15-1621

pleadings sufficiently alleged violations of the Frauds Act and the Cook County Clerk's Election Judge Manual. For the following reasons, we affirm.

¶ 3 On November 4, 2014, plaintiff filed a *pro se* complaint pursuant to the Frauds Act and Cook County Election Judge Manual (Election Manual) against defendant Noah Praetz, deputy director of elections for Cook County, Illinois, requesting \$9,731.68 plus interest in relief. Plaintiff's complaint is generally incomprehensible, but alleges that on October 29, 2014, she contacted the Office of Cook County Clerk David Orr's election judge department (election judge department) to report "hostilities and malicious acts being made in the Northwest Suburbs ***in regards to the 2014 Governor's Race Election." When the election judge department informed plaintiff that none of the election judges at the Nazarethville Nursing Home location "publicly declared their Republican affiliation," she "declared" the votes cast at that location to be invalid "due to particular violations to the Cook County Election Judge Manual Rules."

¶ 4 On November 1, 2014, plaintiff requested that a sheriff from the Cook County Sheriff's Office "standby" for her election judge assignment on November 4, 2014, at Maine Township Precinct 93 to deter "hostilities" at the voting location. The election judge department subsequently revoked plaintiff's election judge assignment on November 4, 2014. Plaintiff then called the Cook County Republican Election Judge Program to inform them of "complaints and facts surrounding what appears to be Public Corruption within the Northwest Suburbs of Cook County."

¶ 5 The complaint alleges various individuals, none of whom are defendant, violated a "previously enforceable Permanent Iowa Temporary Order of Protection." Plaintiff claims that an "unruly Meineke" employee, working with Des Plaines police officers, engaged in

intimidation, theft, harassment, stalking, and threats. She also claims that she is concerned about numerous women that "have been found dead in various waterways, rivers and lakes."

¶ 6 When defendant failed to file an appearance, the circuit court entered a default judgment against him on December 10, 2014. On January 14, 2015, defendant filed a motion for leave to file an appearance, vacate the default judgment, and for leave to file a motion to dismiss plaintiff's complaint. The circuit court vacated the default, and allowed defendant leave to file both an appearance and a motion to dismiss. Defendant thereafter moved to dismiss plaintiff's complaint with prejudice pursuant to section 2-615 of the Code, alleging that plaintiff failed to allege a violation of the Frauds Act (740 ILCS 80/9 (West 2014)) or the election manual. The circuit court granted defendant's motion to dismiss, noting plaintiff failed to state a cause of action and failed to exhaust administrative remedies, and denied plaintiff leave to amend her complaint. This appeal followed.

¶ 7 On appeal, plaintiff argues that the circuit court erred by dismissing her complaint because she alleged "clear and convincing evidence of [defendant's] violations to the [Illinois Compiled Statutes]." Plaintiff additionally contends that she should have been permitted to amend her complaint to include allegations of unfair labor practices and violations to the Victim's Economic Security and Safety Act (820 ILCS 180/1 *et seq.* (West 2014)) because leave to amend should be freely given when justice requires. Defendant responds that plaintiff failed to state any claims upon which relief may be granted, and that the relief sought by plaintiff is not afforded by either the Frauds Act or the election manual.

¶ 8 We initially note that plaintiff's brief fails to comply with Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016). Rule 341(h) governs the contents of an appellant's opening brief, and

its provisions are requirements, not mere suggestions. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. The purpose of Rule 341(h) is to require the parties on appeal to present clear and cogent arguments so that this court can properly identify and dispose of the issues raised. *Hall*, 2012 IL App (2d) 111151, ¶ 7. Plaintiff's brief is not in compliance with Rule 341(h) as it lacks any citation to the record, applicable authority, or appendix, among other deficiencies. Ill. S. Ct. R. 341(h) (eff. Jan. 1, 2016). An appellate brief that fails to substantially conform to the rules may be stricken. *Hall*, 2012 IL App (2d) 111151, ¶ 7. However, we will only strike a brief when a party's noncompliance with the rules hinders our review. *Hall*, 2012 IL App (2d) 111151, ¶ 15.

¶ 9 Here, the *pro se* plaintiff violated various provisions of Rule 341. While we do not condone plaintiff's failure to comply with the rules, we have the benefit of a cogent brief filed by defendant, and we will therefore consider the merits of plaintiff's contentions. However, we decline to consider any unsupported assertions contained within plaintiff's brief. " Mere contentions, without argument or citation of authority, do not merit consideration on appeal." *Progressive Universal Insurance Co. of Illinois v. Taylor*, 375 Ill. App. 3d 495, 501-02 (2007) (quoting *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001)).

¶ 10 "A motion to dismiss under section 2-615 of the Code challenges the legal sufficiency of a complaint based on defects apparent on its face." *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15; see 735 ILCS 5/2-615 (West 2014). When reviewing a section 2-615 motion, we ask whether, taking all well-pleaded facts as true, the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317

(2004). The circuit court should not grant a motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). "However, a plaintiff must allege sufficient facts to bring his claim within a legally recognized cause of action." *Tedrick*, 235 Ill. 2d at 161. We review an order granting a section 2-615 motion to dismiss *de novo*. *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 14.

¶ 11 Here, we find that the circuit court properly dismissed plaintiff's complaint. The facts plaintiff alleges in her complaint are unclear and do not appear to relate to each other, the named defendant, or the alleged causes of action. Moreover, the record is devoid of any facts that would aid plaintiff's claims and instead contains emails and pictures pertaining to apparently unrelated matters. Critically, plaintiff failed to "allege sufficient facts to bring her claim within a legally recognized cause of action." *Tedrick*, 235 Ill. 2d at 161. The complaint alleges a violation of the Frauds Act and the election manual; however, the Frauds Act does not apply to any of the facts that plaintiff alleges. Section 9 of the Frauds Act provides that, "All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing." 740 ILCS 80/9 (West 2014). Here, the facts do not indicate that any type of trust existed on which to base a cause of action.

¶ 12 Similarly, the election manual, as defendant points out, does not provide a cause of action. Furthermore, plaintiff failed to include the election manual in the record, so we cannot consider it. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009) (noting we cannot consider matters outside of the record); see also *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("Any

doubts which may arise from the incompleteness of the record will be resolved against the appellant.")

¶ 13 Additionally, although plaintiff's complaint is unclear on a particular cause of action, it mentions the statute of frauds and appears to allege that plaintiff was defrauded. To sufficiently plead fraud, a plaintiff must establish: "(1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. Here, however, plaintiff fails to establish any of the elements of fraud.

Neither the complaint nor plaintiff's brief on appeal allege any false statements of material fact, intention to induce plaintiff to act, or reliance on any statements. Further, defendant is mentioned only in the caption of the complaint; none of the facts alleged pertain to defendant or allege that he made any statements to plaintiff, let alone false statements.

¶ 14 We next address the circuit court's denial of plaintiff's request to amend her complaint. Although plaintiff correctly states that leave to amend a complaint should be freely given when justice so requires, the right to amend pleadings is not unlimited or absolute. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992). We review a circuit court's decision to grant or deny leave to amend pleadings for abuse of discretion. *Lee*, 152 Ill. 2d at 467. In deciding whether to allow a plaintiff to amend pleadings, the court may consider whether the amendment would cure a defect in the pleadings, whether the other party would be prejudiced or surprised by the proposed amendment, whether the proposed amendment is timely, and whether there were previous opportunities to amend the pleadings. *Lee*, 152 Ill. 2d at 467-68.

¶ 15 In the present case, the circuit court properly denied plaintiff leave to amend her complaint to include unfair labor practices and violations of the Victim's Economic Security and Safety Act. Although plaintiff contends that the circuit court erred in denying her leave to amend her complaint, there is no indication in the record before us that plaintiff presented the circuit court with a proposed amendment to which it could apply the considerations identified by our supreme court in *Lee*. Similarly, we cannot engage in such an evaluation on appeal because plaintiff has failed to articulate the factual or legal bases of a proposed amendment. Instead, plaintiff merely speculates that she would have been able to successfully plead a cause of action under a new theory of recovery. Because plaintiff has failed to either allege facts in her complaint that state a cause of action, or propose some amendment to the pleadings that would do so, we cannot conclude that the trial court abused its discretion in denying her leave to amend her complaint. Accordingly, we conclude that the circuit court of Cook County did not err when it dismissed plaintiff's complaint with prejudice, and we affirm that judgment.

¶ 16 Affirmed.