

2016 IL App (2d) 160331-U
No. 2-16-0331
Order filed November 21, 2016

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
SECOND DISTRICT

ELAINE THEOBALD,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	No. 15-L-128
)	
MICHAEL AMANS,)	Honorable
)	J. Edward Prochaska,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed plaintiff’s suit as untimely: as defendant was an employee of a local public entity, plaintiff’s suit was subject to the Tort Immunity Act’s one-year limitations period, even though she alleged an intentional tort.

¶ 2 Plaintiff, Elaine Theobald, appeals from the dismissal of her third amended complaint against defendant, Michael Amans. She contends that the trial court erred in dismissing her second amended complaint by imposing a “heightened pleading requirement” on her battery claim and in dismissing her third amended complaint based on the one-year statute of limitations in the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/8-101(a) (West 2014)). We affirm.

¶ 3 Plaintiff filed her original complaint, *pro se*, against Amans and the Rockford Mass Transit District (RMTD) on May 11, 2015, and, 10 days later, she filed a first amended complaint. She alleged that she was an employee of RMTD and that Amans was her supervisor. She further alleged that, on May 11, 2013, he injured her in the course of her employment. An affidavit attached to the complaint averred that Amans was an “employee/agent” of RMTD. After the defendants moved to dismiss the complaint, plaintiff retained an attorney, who filed a second amended complaint solely against Amans. Amans moved to dismiss this complaint. After briefing, the trial court dismissed the complaint without prejudice.

¶ 4 Plaintiff then filed a third amended complaint, which alleged as follows. Plaintiff was a bus driver for RMTD. Amans was her supervisor. On or about May 11, 2013, plaintiff was training with Amans when he grabbed her right wrist and wrenched her arm backward toward the seat-adjustment knob. This aggravated a preexisting injury of which Amans was aware. The complaint further alleged that Amans “was at all times relevant to this complaint a Supervisor for the RMTD.” The third amended complaint also alleged that plaintiff “restates and realleges her second amended complaint as though fully set forth here for appellate purposes.”

¶ 5 Amans moved to dismiss the third amended complaint on the ground that it was barred by the statute of limitations. Plaintiff did not respond to this motion, and her attorney did not appear at the hearing.

¶ 6 The trial court granted the motion to dismiss with prejudice, and plaintiff filed a timely notice of appeal that referenced only the third amended complaint. On appeal, plaintiff argues that the court improperly dismissed both the second and third amended complaints. She argues that the second amended complaint properly stated a cause of action for battery and that the third amended complaint did not involve the Act and thus was not subject to its one-year limitations

period. Amans does not address the second amended complaint. Regarding the third amended complaint, Amans argues that (1) plaintiff forfeited the issue by failing to file a response to the motion to dismiss and by failing to argue against the motion at the hearing, and (2) the Act's statute of limitations applies to claims against governmental employees for intentional torts.

¶ 7 We first note that we need not consider plaintiff's arguments concerning the second amended complaint. A party desiring to preserve for review the dismissal of claims contained in a former complaint must either stand on the dismissed count and challenge the ruling on appeal or reallege the dismissed counts in the subsequent complaint. *Doe v. Roe*, 289 Ill. App. 3d 116, 119-20 (1997). Here, plaintiff incorporated the allegations of her second amended complaint into the third amended complaint; however, both are barred by the applicable statute of limitations.

¶ 8 The Act provides that, with an exception not relevant here, no action "may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101(a) (West 2014). A "local public entity" includes any "municipal corporation." 745 ILCS 10/1-206 (West 2014).

¶ 9 Amans correctly argues that plaintiff forfeited the statute-of-limitations issue. The failure to oppose a motion to dismiss either orally or in writing forfeits the issue on appeal. *Redelmann v. K.A. Steel Chemicals, Inc.*, 377 Ill. App. 3d 971, 975-76 (2007). Plaintiff offers the excuse that her counsel diaried the wrong court date, but, significantly, plaintiff did not move to vacate the dismissal in the trial court on that basis. Moreover, plaintiff did not file a reply brief in this court responding to the forfeiture argument.

¶ 10 Forfeiture aside, plaintiff does not dispute that RMTD is a local public entity for purposes of the Act. See 70 ILCS 3610/3 (West 2014) (providing that any district created pursuant to the Local Mass Transit District Act (70 ILCS 3610/1 *et seq.* (West 2014)) shall be a municipal corporation); *LeSanche v. North Suburban Mass Transit District*, 142 Ill. App. 3d 394, 395 (1985). Further, plaintiff's pleadings establish that Amans was an employee of RMTD, that he was plaintiff's supervisor, and that he was acting in the course of his employment by training plaintiff when the incident occurred. Thus, the complaint against Amans was subject to the Act's one-year limitations period for employees of local public entities.

¶ 11 Plaintiff nevertheless argues that Amans "acted beyond any capacity as a Mass Transit employee" by committing an intentional tort and that this conduct was not required or authorized by any RMTD policy. Plaintiff does not further develop this argument or cite any authority in support of it. It is therefore forfeited. See *People v. Olsson*, 2016 IL App (2d) 150874, ¶ 22 (defendant forfeited contentions by failing to cite authority or present a developed argument).

¶ 12 In any event, nothing in the Act exempts employees' intentional torts from its one-year limitations period. Courts have routinely applied the Act's one-year limitations period to claims of intentional or willful and wanton conduct. In *McKinnon v. Thompson*, 325 Ill. App. 3d 241, 244 (2001), the complaint alleged that the defendant physically assaulted the plaintiff in a middle school technology center. The complaint included counts for negligence, willful and wanton conduct, assault and battery, and intentional infliction of emotional distress. *Id.* at 242-43. The trial court dismissed the complaint based on the Act's one-year limitations period. On appeal, the plaintiff argued that the trial court should have applied the limitations period applicable to actions brought by minors. We disagreed, finding that the Act's one-year limitations period applied to all of the plaintiff's causes of action, including those based on intentional conduct. *Id.*

at 243-44. However, we held that the limitations period was tolled until the plaintiff reached adulthood. *Id.* at 244. Other cases have also applied the Act's limitations period to allegations of intentional torts. See *Luciano v. Waubensee Community College*, 245 Ill. App. 3d 1077, 1086-87 (1993) (Act's limitations period barred claims of malicious prosecution and false imprisonment); *Bridewell v. Eberle*, 730 F.3d 672, 678 (7th Cir. 2013) (Act's limitations period barred claim of intentional infliction of emotional distress). Moreover, plaintiff's argument contradicts the complaint's allegation that, at *all* relevant times, Amans was acting as a supervisor for RMTD. Therefore, the trial court correctly held that plaintiff's suit, filed May 11, 2015, exactly two years after the incident in question, was barred by the one-year statute of limitations.

¶ 13 The judgment of the circuit court of Winnebago County is affirmed.

¶ 14 Affirmed.