2016 IL App (3d) 150635-U

Order filed July 1, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

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| ERIC BERGE,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>FRANKFORT FIRE PROTECTION DISTRICT, THE BOARD OF TRUSTEES OF THE FRANKFORT FIRE PROTECTION DISTRICT, ROBERT TUTKO, WILLIAM HOFFMEISTER, MICHAEL KAVANAUGH, DONALD LORENZ, and LARRY NICE,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,<br><br>Appeal No. 3-15-0635<br>Circuit No. 11-MR-857<br><br>The Honorable Barbara Petrungaro and John Anderson, Judges, presiding. |

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JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held*: In a case involving the termination of a fire fighter and the filing of a complaint seeking declaratory judgment, the circuit court did not err when it granted summary judgment on several counts of the complaint and when it dismissed the other counts of the complaint.

¶ 2 The plaintiff, Eric Berge, was employed by the defendant Frankfort Fire Protection District (the District). After he was terminated, he filed a civil complaint seeking a declaratory judgment against the District and several other defendants, namely, the Board of Trustees of the Frankfort Fire Protection District, Robert Tutko, William Hoffmeister, Michael Kavanaugh, Donald Lorenz, and Larry Nice. After several amendments to the complaint, the circuit court granted summary judgment in favor of the defendants on several of the counts and dismissed the remaining counts with prejudice. On appeal, the plaintiff argues that the circuit court erred when it: (1) granted summary judgment to the defendants on counts I-IV; (2) granted the defendants' motion to dismiss counts V, VII, and VIII of the second amended complaint; and (3) granted the defendants' motion to dismiss counts V, VIII, and IX of the fourth amended complaint. We affirm.

¶ 3 FACTS

¶ 4 Prior to 2010, the plaintiff had worked as a firefighter and paramedic at four different fire departments. In 2009, while working for the Oak Lawn fire department, the plaintiff injured his left shoulder. He had surgery to repair a torn labrum and returned to full, unrestricted duties in June 2010.

¶ 5 The District hired the plaintiff as a probationary firefighter and paramedic on September 20, 2010. He passed a preemployment physical and was hired with no restrictions.

¶ 6 On January 11, 2011, the plaintiff was on duty and was driving an ambulance when he slid off the road in icy conditions. The plaintiff hit his face on the steering wheel, hit his knee on the dashboard or steering column, and "jarred" his left shoulder. He was able to get the ambulance back on the road, and he drove it back to the station. He refused medical treatment and completed his shift, and he continued to work his regular shifts until February 23, 2011. On

that day, he told a superior that his left shoulder pain was hindering his ability to work. The plaintiff saw the District's physician, who examined the plaintiff and opined that he was not fit for duty. Accordingly, the plaintiff was placed on administrative leave. He continued to be paid, but he did not know the source of the funds.

¶ 7 On May 25, 2011, the District terminated the plaintiff's employment. The firing occurred after the workers' compensation insurer sent the plaintiff to see another doctor, who examined the plaintiff and opined that he had a torn left labrum and that the injury stemmed from the 2009 injury, not the 2011 accident. The doctor based his opinion on complaints the plaintiff had made about the shoulder before and after the 2011 accident and because the plaintiff was able to work for over a month after the accident.

¶ 8 The union representing the plaintiff filed a grievance on his behalf in connection with the firing. After negotiations, on July 5, 2011, the plaintiff entered into an agreement with the District and the union representing the plaintiff. The agreement noted that the plaintiff had presented the District with information that he anticipated receiving a full release to return to work without restriction no later than September 10, 2011. Accordingly, the District agreed to rescind the plaintiff's termination and place him on unpaid administrative leave between May 25 and September 10, 2011. If the plaintiff received a full release from his doctor, he agreed to be examined by the District's doctor. If the District's doctor agreed with the plaintiff's doctor, the District agreed to return the plaintiff to work as a probationary firefighter/paramedic. If the doctors disagreed, then an independent third doctor would be consulted by agreement of the parties, whose opinion would be binding. The agreement further provided that if the plaintiff did not receive a full release by September 10, 2011, then he would be terminated, effective on that date, and he waived his right to appeal the decision. Further, the agreement stated that if the

plaintiff was reinstated, his probationary employment would be extended by the lesser of six months or the amount of time he was off work due to his medical condition. The union also agreed to withdraw the grievance it had filed on the plaintiff's behalf.

¶ 9 On August 9, 2011, the plaintiff filed an application for disability pension benefits. The application alleged that the plaintiff suffered a shoulder injury during the January 11, 2011, accident and sought an in-the-line-of-duty disability pension.

¶ 10 On September 9, 2011, the plaintiff filed a declaratory judgment action against the defendants, which alleged that the District had failed to pay his wages since May 25, 2011, in violation of section 1 of the Public Employee Disability Act (5 ILCS 345/1 (West 2010)). The plaintiff requested a ruling that the District pay his wages, including back pay to May 25, 2011.

¶ 11 The plaintiff did not secure the release from his doctor by September 10, 2011. The District sent a letter to the plaintiff, dated October 9, 2011, that informed him of the termination. During the time between September 10 and October 9, the plaintiff had been receiving pay via donated shifts and sick time from his coworkers. The plaintiff claimed he was given a raise on September 20, 2011, which was one year after he had been hired by the District. The union representing the plaintiff also filed another grievance on behalf of the plaintiff, but that grievance was denied.

¶ 12 The plaintiff filed his first amended complaint on January 18, 2012, which increased the number of counts from one to six. Count I sought a declaratory judgment that the defendants violated section 16.13b of the Fire Protection District Act (70 ILCS 705/16.13b (West 2012)) by failing to hold a hearing to determine the reasons why the plaintiff was terminated. The plaintiff alleged that he had not been terminated until October 6, 2011, which meant that he had been employed by the District for over one year and could not be terminated without just cause.

Count II sought a declaratory judgment that the defendants violated the Illinois Pension Code in that terminating the plaintiff prior to the determination of his line-of-duty pension claim improperly interfered with his pension rights. Count III sought a declaratory judgment that the defendants violated the plaintiff's due process rights under the Illinois Constitution by terminating him without a just-cause hearing. Count IV sought a declaratory judgment that the defendants violated his rights under the Public Employee Disability Act by failing to pay him despite his line-of-duty injury. Count V sought a declaratory judgment that the settlement agreement violated the plaintiff's rights under the Public Employee Disability Act and the Illinois Pension Code, thereby violating public policy. Count VI sought a declaratory judgment that the District's board president, who was also the Oak Lawn deputy fire chief, violated his fiduciary duty to the plaintiff because he allegedly sent information from the plaintiff's Oak Lawn personnel file to the District's fire chief. Count VI also sought a declaratory judgment that but for the dissemination of this information, the plaintiff would not have been terminated.

¶ 13 Count VI of the plaintiff's first amended complaint was dismissed by the circuit court on the defendants' motion, but the other five counts survived. The defendants filed a motion for summary judgment, which the circuit court granted in part on December 10, 2013. The court granted summary judgment in favor of the defendants on counts I-IV and denied the motion with regard to count V. With regard to counts I-IV, the court found that because the plaintiff sought determinations of liability for past conduct, declaratory judgment was not available. With regard to count II, the court further found that the Illinois Pension Code did not create a private cause of action. With regard to count IV, the court further found that the plaintiff had not suffered a compensable injury. With regard to count V, the court found that declaratory judgment was an appropriate method of challenging the settlement agreement as pled such that the count survived

the summary judgment motion. The plaintiff's motion to reconsider was denied, but the circuit court granted leave to file an amended complaint.

¶ 14 On April 25, 2014, the plaintiff filed a second amended complaint. The plaintiff included counts I-IV, but only their titles[1] and the statements "Dismiss on Summary Judgment." Count VI was included by title only[2] and the statement "Dismiss on Motion to Dismiss."

¶ 15 Count V was titled "Violation of Illinois Laws and Public Policy" and sought a judgment (the term "declaratory" was omitted from the request for relief) that the settlement agreement violated the plaintiff's rights under the Public Employee Disability Act and the Illinois Pension Code, thereby violating public policy. The plaintiff stated in the alternative that the settlement agreement expired on September 10, 2011.

¶ 16 Count VII sought a petition for writ of *certiorari* to require the defendants to produce the record of the termination proceedings and decision for the circuit court to review. Count VII also requested that the plaintiff be reinstated with back pay.

¶ 17 Count VIII was titled "Workers' Compensation Retaliatory Discharge," included some factual allegations, and sought a writ of *certiorari* (in paragraph A of the prayer for relief) as in the previous count. Count VIII also included several other paragraphs in the prayer for relief in which the plaintiff sought rulings that the District's findings and decision be set aside, that he be reinstated with back pay, and that he receive lost earnings and incidental expenses.

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[1] Count I was titled "Violation of the Illinois Fire Protection Act 70 ILCS 705/16/13b [*sic*]." Count II was titled "Violation of the Illinois Pension Code." Count III was titled "Violation of Due Process." Count IV was titled "Violation of Public Employee Disability Act."

[2] Count VI was titled "Violation of Personal Information and Protection Act, 815 ILCS 530/1, Common Law Rights to Privacy and Illinois Constitutions [*sic*] Privacy Clause (Ill Const. 1970, Art. I Section 6)."

¶ 18 On October 15, 2014, the circuit court granted the defendants' motion to dismiss pursuant to section 2-615. With regard to count V, the court found that the plaintiff failed to set forth a plain and concise statement of the cause of action. The court dismissed count V without prejudice and with leave to replead. With regard to count VII, the court found that *certiorari* was not available to the plaintiff as a remedy because he had a pending administrative review case that involved the same parties and substantially the same or similar issues. The court then dismissed count VII with prejudice. With regard to count VIII, the court found that paragraph A of the prayer for relief failed due to the pending administrative review case. The court dismissed paragraph A of the prayer for relief of count VIII with prejudice, but left the remainder of count VIII.

¶ 19 On November 12, 2014, the plaintiff filed a third amended complaint. Like the previous complaint, the third amended complaint included counts I-IV, but only their titles and the statements "Dismiss on Summary Judgment." Count V was repled with the title "Declaratory Judgment-Unconscionable Contract." It contained some factual allegations and sought a declaratory judgment that: (1) the settlement agreement was unconscionable and that it violated the Public Employee Disability Act; (2) the settlement agreement expired on September 10, 2011; (3) the District "violated Illinois laws including Pension and Illinois Constitution"; and (4) the District was obligated to pay the plaintiff under the Public Employee Disability Act.

¶ 20 The plaintiff repeated count VI, but only included its title and the statement "Dismiss on Motion to Dismiss." The plaintiff repeated count VII, including its title and another short statement that it had sought reinstatement, as well as the statement "Dismiss on Motion to Dismiss with prejudice."

¶ 21 Count VIII set forth some factual allegations and sought the plaintiff's reinstatement with back pay.

¶ 22 The defendants filed a motion to dismiss the plaintiff's third amended complaint, which the circuit court granted on February 25, 2015. The court dismissed the complaint without prejudice and granted the plaintiff leave to file an amended complaint.

¶ 23 On April 15, 2015, the plaintiff filed his fourth amended complaint. The plaintiff repeated counts I-IV, but only included their titles and the statements "Dismiss on Summary Judgment." The plaintiff repeated count VI, but only included its title and the statement "Dismiss on Motion to Dismiss." The plaintiff repeated count VII, including its title and another short statement on it seeking reinstatement, as well as the statement "Dismiss on Motion to Dismiss with prejudice."

¶ 24 Count V sought a declaratory judgment based on the alleged unconscionability of the settlement agreement. The plaintiff cited section 1 of the Public Employee Disability Act, which stated, in part, that an eligible employee who was injured in the line of duty, and who therefore was unable to perform his or her duties, was entitled to be paid for up to one year. The plaintiff then alleged that the settlement agreement stripped him of his rights to benefits under the Public Employee Disability Act in that he was placed on unpaid leave.

¶ 25 Count VIII claimed that the plaintiff was denied workers' compensation benefits between May and October 2011, that he was terminated in October 2011 without cause, and that his termination was due to his demand for workers' compensation benefits. Count VIII sought a ruling that the plaintiff was subjected to retaliatory discharge by the defendants and requested that he be reinstated with back pay and lost earnings.

¶ 26 Count IX sought a declaratory judgment that the settlement agreement constituted an unconscionable contract in that it expired on September 10, 2011, and therefore was no longer valid such that the District lacked the authority to terminate the plaintiff without cause.

¶ 27 On April 15, 2015, the defendants filed a section 2-619.1 motion to dismiss the plaintiff's fourth amended complaint. With regard to counts V and IX, the defendants alleged that, pursuant to section 2-615 of the Code of Civil Procedure, the plaintiff failed to properly plead any elements of a declaratory judgment claim and failed to include any factual basis to support an allegation of an unconscionable contract. Further, the defendants alleged that count V improperly combined claims for an unconscionable contract and for invalidity based on a violation of public policy and failed to allege what law and/or public policy that the settlement agreement violated. The defendants also alleged that count IX failed to identify under what type of unconscionable contract theory the plaintiff was attempting to proceed. With regard to count VIII, the defendants alleged, pursuant to section 2-615, that reinstatement was not a proper remedy for a retaliatory discharge claim. With regard to count IX, the defendants also alleged, pursuant to section 2-619, that the plaintiff had merely rephrased a previous claim on which the court had granted summary judgment in favor of the defendants—namely, that he had been denied due process by being fired without cause.

¶ 28 The circuit court held a hearing on the defendants' section 2-619.1 motion to dismiss on August 4, 2015. On August 10, 2015, the court granted the motion and dismissed the case with prejudice. The court found that dismissal was proper on the grounds asserted in both the section 2-615 and section 2-619 portions of the defendants' motion.

¶ 29 The plaintiff appealed.

¶ 30 ANALYSIS

¶ 31 Initially, we note that the defendants argue that the plaintiff has forfeited appellate review of the circuit court's rulings on all complaints other than the fourth amended complaint.

¶ 32 There are three methods in which a plaintiff may preserve a challenge to a circuit court's order that dismisses with prejudice less than all of the counts in a complaint: (1) stand on the dismissed counts, voluntarily dismiss the remaining counts, and file an appeal; (2) "file an amended pleading that realleges, incorporates by reference, or refers to the dismissed counts"; or (3) appeal from the dismissal order prior to filing an amended pleading that neither refers to nor adopts the dismissed counts. *Gaylor v. Campion, Surran, Rausch, Gummerson and Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 35. At issue here is whether the plaintiff complied with the second method—namely, whether the plaintiff realleged, incorporated by reference, or referred to the dismissed counts in his amended pleadings.

¶ 33 We are not persuaded by the defendants' claim that the plaintiff's references to the dismissed counts and the counts on which summary judgment were granted were insufficient to avoid the forfeiture rule. In fact, the defendants present no case law to support their claim that the plaintiff's references were insufficient. It has been held that "[a] simple paragraph or footnote in the amended pleadings notifying defendants and the court that plaintiff was preserving the dismissed portions of his former complaints for appeal would have been sufficient to avoid the consequences of the [forfeiture] rule." *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 114 (1996). There is no requirement that the plaintiff include the full counts from the previous complaints. Here, he included the counts and their titles. While it would have been better to include a clearer statement indicating preservation, we disagree with the defendants that they lacked notice that the plaintiff intended to preserve those counts for appeal. Under these circumstances, we reject the defendants' forfeiture argument.

¶ 34 The plaintiff's first argument on appeal is that the circuit court erred when it granted the defendants' motion for summary judgment on counts I-IV. The plaintiff contends that the court misconstrued the counts when it ruled that the plaintiff sought a declaration for past acts.

¶ 35 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). We review a circuit court's summary judgment decision *de novo*. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 19.

¶ 36 The declaratory judgment statute gives the circuit court the authority to, "in cases of actual controversy, make binding declarations of rights, having the force of final judgments." 735 ILCS 5/2-701 (West 2012). Its purpose "is to allow the court to address a controversy one step sooner than normal after a dispute has arisen, but before the parties take steps that would give rise to a claim for damages or other relief." *Universal Underwriters Ins. Co. v. Judge & James, Ltd.*, 372 Ill. App. 3d 372, 379 (2007). A declaratory judgment complaint must show that: (1) the plaintiff has a tangible legal interest; (2) the defendant has an opposing interest; and (3) an actual controversy exists between the parties regarding those interests. *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003). "An 'actual controversy' exists if there is a legitimate dispute admitting of an immediate and definite determination of the parties' rights, the resolution of which would help terminate all or part of the dispute." *First of America Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 173 (1995). A complainant must strictly comply with the statute's provisions, but the statute must also be liberally construed. *Beahringer*, 204 Ill. 2d at 373.

¶ 37 "The declaratory judgment procedure was designed to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective

claims of right. [Citation.] The remedy is used to afford security and relief against uncertainty so as to avoid potential litigation." *First of America Bank*, 166 Ill. 2d at 174. A circuit court may dismiss a declaratory judgment action if the filing party seeks to enforce its rights after the fact. *Senese v. Climatemp, Inc.*, 222 Ill. App. 3d 302, 314 (1991); see also *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 10. In this case, the circuit court found that counts I-IV were not appropriate for a declaratory judgment action because they sought determinations of liability for past conduct. We agree. Counts I and III involved the plaintiff being terminated without a just-cause hearing. Count II involved the plaintiff being terminated before his line-of-duty disability pension claim had been adjudicated. Count IV involved the alleged dissemination of the plaintiff's personal information from his Oak Lawn employment to the District. All of these counts involved past conduct such that no "actual controversy" exists. See *id.* (holding that "[t]he declaratory judgment process allows a court to address a controversy after a dispute arises but before steps are taken that give rise to a claim for damages or other relief").

¶ 38 The sole case that the plaintiff cites in support of its claim that a declaratory judgment action was appropriate is *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012; the plaintiff claims he "looked at a Declaratory Judgment as being a correct action for a Fire Fighter when dealing with termination and a right of a Firefighter verses [*sic*] the duties and responsibilities of a Fire Protection District and a Board of Trustees." The plaintiff's oversimplification of *Gaffney* is unpersuasive. In *Gaffney*, our supreme court addressed questions regarding whether two firefighters were eligible to receive health insurance coverage for their on-duty injuries. *Id.* ¶¶ 5-26. *Gaffney* provides no support for the instant plaintiff's attempt to obtain declaratory relief.

¶ 39 Moreover, we note that the settlement agreement's terms clearly support the circuit court's grant of summary judgment. The settlement agreement provided that the plaintiff was to be placed on unpaid leave as of May 25, 2011. In addition, under the clear terms of the settlement agreement, the plaintiff was terminated as a result of his failure to produce a full release from his doctor by September 10, 2011. It is of no consequence that the District did not send a letter to the plaintiff until October 9, 2011. The settlement agreement further provided that the plaintiff waived his right to appeal his termination. The plaintiff cannot avoid these unequivocal terms, which operate to defeat his claims. For the foregoing reasons, we hold that the circuit court properly granted summary judgment in favor of the defendants on counts I-IV. See *Senese*, 222 Ill. App. 3d at 314; *Karimi*, 2011 IL App (1st) 102670, ¶ 10.

¶ 40 The plaintiff's second argument on appeal is that the circuit court erred when it granted the defendants' motion to dismiss counts V, VII, and VIII of his second amended complaint.

¶ 41 A motion to dismiss brought under section 2-615 of the Code of Civil Procedure attacks the legal sufficiency of a complaint by alleging facial defects. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). We are to take all well-pled facts and reasonable inferences from those facts as true, and we construe the complaint's allegations in the light most favorable to the plaintiff. *Id.* at 58. A section 2-615 motion is properly granted when it is clear that no factual scenario could be proven that would entitle the plaintiff to relief on his or her claims. *Id.* We review a circuit court's decision on a section 2-615 motion *de novo*. *Id.* at 57.

¶ 42 Count V was titled "Violation of Illinois Laws and Public Policy" and requested a judgment—not a declaratory judgment—that the settlement agreement violated the plaintiff's rights under the Public Employee Disability Act and the Illinois Pension Code, thereby violating public policy. Count V also stated, alternatively, that the settlement agreement expired on

September 10, 2011. The circuit court dismissed count V on the basis that it did not set forth a plain and concise statement of the cause of action. We agree. It was in fact unclear under what cause of action the plaintiff was attempting to proceed in Count V. The plaintiff's allegations were conclusory and there were no apparent elements to any legal claims. Under these circumstances, we hold that the circuit court did not err when it granted the defendants' section 2-615 motion to dismiss count V. See *id.* at 58 (holding that it is the plaintiff's burden to allege facts that are sufficient to fit a claim within a legally cognizable cause of action).

¶ 43 With regard to count VII, the plaintiff sought a writ of *certiorari* to require the defendants to produce the record of the proceedings that resulted in his termination for the circuit court to review. The circuit court dismissed count VII on the basis that *certiorari* was not available to the plaintiff because he had a pending administrative review case. We agree. Our supreme court has stated:

> "Where the Administrative Review Law [citation] has not been expressly adopted, the writ of common law *certiorari* survives as an available method of reviewing the actions of agencies and tribunals exercising administrative functions. [Citation.] Where a final administrative decision has been rendered and the circuit court may grant the relief which a party seeks *within the context of reviewing that decision,* the circuit court has no authority to entertain independent actions regarding the actions of an administrative agency." (Emphasis in original.) *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427-28 (1990).

Here, the plaintiff provides no support for a claim that the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2012) does not apply to his situation. In fact, as the circuit court noted, the plaintiff had filed an administrative review case that was pending at the time of the court's decision on the defendants' section 2-615 motion to dismiss. Under these circumstances, we hold that the circuit court did not err when it dismissed count VII on the basis that *certiorari* was not available to the plaintiff.

¶ 44 Further, we again note the settlement agreement here because it clearly provided that the plaintiff was terminated on September 10, 2011. Because he had not been employed by the District for one year, he was not entitled to a just-cause hearing.[3] See 70 ILCS 705/16.13b (West 2012).

¶ 45 With regard to count VIII, which was titled "Workers' Compensation Retaliatory Discharge," the only portion of that count that the circuit court dismissed was the first paragraph of the prayer for relief. That paragraph requested a writ of *certiorari* in the same manner as count VII. The court dismissed that paragraph for the same reasons that it dismissed the *certiorari* request in count VII. As we have already held above that *certiorari* was not available to the plaintiff in count VII, we likewise hold for the same reasons that it was not available to the plaintiff in count VIII. Accordingly, we hold that the circuit court did not err when it dismissed count VIII in part.

¶ 46 The plaintiff's third argument on appeal is that the circuit court erred when it granted the defendants' motion to dismiss counts V, VIII, and IX of his fourth amended complaint.

[3] We also note that Section 5.4 of the collective bargaining agreement between the District and the fire fighters union provided that "[a]ny employee may be discharged during their probationary period without cause at the sole discretion of the District."

¶ 47 The circuit court dismissed counts V, VIII, and IX pursuant to section 2-615 of the Code of Civil Procedure for the reasons set forth in the defendants' motion. As previously noted, a motion to dismiss brought under section 2-615 of the Code of Civil Procedure attacks the legal sufficiency of a complaint by alleging facial defects. *Beacham*, 231 Ill. 2d at 57. We review a circuit court's decision on a section 2-615 motion *de novo*. *Id.*

¶ 48 Count V was titled "Declaratory Judgment-Unconscionable Contract" and requested a declaratory judgment that the settlement agreement violated the Public Employee Disability Act because it placed the plaintiff on unpaid leave and was therefore voidable for violating public policy. Count IX was titled "Declaratory Judgment-Unconscionable Contract" and alleged that the settlement agreement expired on September 10, 2011, and therefore was no longer valid such that the District lacked the authority to terminate the plaintiff without cause.

¶ 49 Our review of the plaintiff's fourth amended complaint reveals that counts V and IX were subject to dismissal under section 2-615. First, count V combined claims for an unconscionable contract and for invalidity based on a violation of public policy. "Although related, a finding that a contract provision is unenforceable because it is unconscionable is distinct from a finding that a contract provision is invalid because it violates public policy." *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011). Section 2-603(b) of the Code of Civil Procedure requires that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation." 735 ILCS 5/2-603(b) (West 2012). The plaintiff's combination in count V of an unconscionable contract claim and a claim of a public policy violation rendered that count

subject to dismissal. See *People ex rel. Skinner v, Graham*, 170 Ill. App. 3d 417, 438 (1988) (holding that under section 2-603, "it is improper to intermingle theories or causes of action in a single count"); *Brainerd v. First Lake County National Bank of Libertyville*, 109 Ill. App. 2d 251, 257-58 (1969) (holding that two causes of action pled in a single count without alternative allegations was improper).

¶ 50 Second, neither count V or IX identified under what type of unconscionable contract theory the plaintiff was attempting to proceed. Contractual unconscionability can exist either in procedure or in substance. *Phoenix Insurance Co.*, 242 Ill. 2d at 60. The former refers to impropriety that occurred in the formation of the contract that deprived a party of some meaningful choice. *Id.* The latter involves the terms of the contract and an examination of whether, in light of the relative fairness of the obligations each party has assumed, the terms are so one-sided that an innocent party has been oppressed or unfairly surprised. *Id.* In both counts V and IX, the plaintiff neither identified a type of unconscionability nor pled facts attempting to bring the claim within one of those theories. See *Beacham*, 231 Ill. 2d at 58 (holding that it is the plaintiff's burden to allege facts that are sufficient to fit a claim within a legally cognizable cause of action).

¶ 51 Third, while count IX was titled "Declaratory Judgment-Unconscionable Contract," the prayer for relief did not seek an unconscionability ruling. Rather, count IX requested a declaratory judgment that the settlement agreement expired on September 10, 2011, and that the defendants lacked the authority to terminate the plaintiff without cause. Not only did count IX fail to plead facts to bring it within a legally cognizable cause of action (See *Beacham*, 231 Ill. 2d at 58), the settlement agreement clearly provided that the plaintiff was terminated on September 10, 2011, when he failed to provide a full release from his doctor. That termination

occurred before his probationary period ended, which meant that he was not entitled to a just-cause hearing before he could be terminated.

¶ 52 For the foregoing reasons, we hold that the circuit court did not err when it dismissed counts V and IX of the fourth amended complaint pursuant to section 2-615. [4]

¶ 53 With regard to count VIII, which was titled "Workers' Compensation Retaliatory Discharge," it claimed that the plaintiff was denied workers' compensation benefits between May and October 2011, that he was terminated in October 2011 without cause, and that his termination was due to his demand for workers' compensation benefits. It sought the reinstatement of the plaintiff with back pay and lost earnings. The defendants alleged that dismissal was appropriate because reinstatement was not a valid remedy for retaliatory discharge.

¶ 54 We take issue with the defendants' claim that reinstatement is not an appropriate remedy. The cases largely relied upon by the defendants in support of this claim involved private employers. *Zannis v. Lake Shore Radiologists, Ltd.*, 73 Ill. App. 3d 901, 905 (1979); *Kurle v. Evangelical Hospital Ass'n*, 89 Ill. App. 3d 45, 54 (1980); *Witt v. Forest Hospital, Inc.*, 115 Ill. App. 3d 481, 487-88 (1983); *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 452-53 (1992). Case law exists to support the proposition that reinstatement can in fact be a proper remedy when a public body or public official wrongfully terminates a public employee. *People ex rel. Jacobs v. Coffin*, 282 Ill 599, 611 (1918); *People ex rel. Byrnes v. Stanard*, 9 Ill. 2d 372, 377-78 (1956);

[4] We note that the circuit court also dismissed count IX pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012). Because we have held that the court properly dismissed count IX pursuant to section 2-615, we decline to address the plaintiff's claim that the section 2-619 dismissal of count IX was erroneous.

*Sola v. Clifford*, 29 Ill. App. 3d 233, 237-38 (1975); *People ex rel. Jaworksi v. Jenkins*, 56 Ill. App. 3d 1028, 1031-32 (1978); *Glenn v. City of Chicago*, 256 Ill. App. 3d 825, 840-41 (1993).

¶ 55 Nevertheless, our review of count VIII reveals that it was indeed subject to dismissal pursuant to section 2-615. A retaliatory discharge claim requires a plaintiff to establish that his or her discharge was causally connected to an attempt to exercise workers' compensation rights. *Hess*, 237 Ill. App. 3d at 449. "Causality is lacking if the basis for the discharge is valid and nonpretextual." *Id.* Here, as previously stated, the settlement agreement provided that the plaintiff would be terminated on September 10, 2011, if he failed to produce a full release from his doctor. He was a probationary employee at that point and, as previously noted, was subject to termination without cause at the District's discretion. *Supra* ¶ 44, n.3. He failed to produce the full release and was therefore terminated as of September 10, 2011. Thus, the basis for his termination—the settlement agreement—was valid and nonpretextual. Under these circumstances, we hold that the circuit court did not err when it dismissed count VIII of the plaintiff's fourth amended complaint pursuant to section 2-615. See *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007) (holding that a reviewing court may affirm the circuit court's judgment on any basis supported by the record).

¶ 56 CONCLUSION

¶ 57 The judgment of the circuit court of Will County is affirmed.

¶ 58 Affirmed.