2017 IL App (1st) 160493-U

THIRD DIVISION
May 31, 2017

No. 1-16-0493

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALBERT C. HANNA and CAROL C. MROWKA,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 06 CH 19422
	)	
CITY OF CHICAGO,	)	The Honorable
	)	Sophia H. Hall,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Pucinski concurred in the judgment.

ORDER

HELD: After previously reversing and remanding trial court's section 2-615(a) dismissal of plaintiffs' third amended complaint and holding that the complaint surmounted that procedural standard to move the cause beyond the pleading stage to discovery and further litigation, trial court's subsequent grant of defendant's section 2-615(e) motion to dismiss the same complaint was in direct contrast to our holding and violated the law of the case doctrine.

¶ 1 Following our reversal and remand to the trial court of certain counts in plaintiffs-appellants Albert C. Hanna and Carol C. Mrowka's (plaintiffs or as named) third amended

complaint which we concluded had been improperly dismissed, defendant-appellee City of Chicago (defendant) filed a motion for judgment on the pleadings. The trial court granted defendant's motion. Plaintiffs now appeal–the third appeal before our Court in this matter–contending that the trial court's most recent decision contradicts our prior holding in violation of the law of the case doctrine and, alternatively, that it misapplied the rational basis test applicable to this cause. Plaintiffs ask that we vacate and reverse the trial court's order awarding judgment on the pleadings to defendant and remand for trial and other further proceedings as appropriate. For the following reasons, we reverse and remand, with directions.

¶ 2 BACKGROUND

¶ 3 As noted, this is now the third time this matter is before our Court. See *Hanna v. City of Chicago*, 388 Ill. App. 3d 909 (2009) (*Hanna I*); *Hanna v. City of Chicago*, 2013 IL App (1st) 121701-U (unpublished order pursuant to Illinois Supreme Court Rule 23) (*Hanna II*). It has been in the pretrial litigation stage for well over a decade.

¶ 4 The facts of this case are well established and, once again, we summarize them briefly here. Hanna owns property in the Arlington Deming District of Lincoln Park in Chicago, and Mrowka owns property in the East Village District in Chicago. Pursuant to recommendations issued by the Commission on Chicago Landmarks, and in accordance with the Chicago Landmark Ordinance (Chicago Municipal Code §§ 2-120-580 to 2-120-920) (Ordinance), the Chicago city council designated both these neighborhoods as landmark districts, thereby affecting plaintiffs' ability to construct, demolish or perform any work on their properties. In 2006, shortly after these designations were made, plaintiffs filed an initial 20-count complaint

against defendant and others[1] challenging the Ordinance; counts I-III attacked the Ordinance on its face alleging it was unconstitutionally vague and ambiguous, and the remaining counts claimed it was invalid as applied to their properties in violation of their substantive due process and equal protection rights. Defendant and its codefendants collectively filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2006)), and the trial court granted their motion. Plaintiffs appealed, and we reversed and remanded the cause back to the trial court. Upon review, we held that plaintiffs had "properly stated a cause of action for vagueness" with respect to counts I-III "sufficient to overcome a section 2-615 motion to dismiss." *Hanna I*, 388 Ill. App. 3d at 921. However, we, at this point, chose not to address the trial court's dismissal of plaintiffs' remaining, as-applied, counts of their complaint until that court made a finding on whether the Ordinance was unconstitutionally vague. See *Hanna I*, 388 Ill. App. 3d at 920. We reasoned that this was best because, if the Ordinance was found to be vague and, thus, invalid, then the landmark districts challenged herein would also be invalid and plaintiffs' remaining claims would be moot. See *Hanna I*, 388 Ill. App. 3d at 920.

¶ 5 On remand, plaintiffs eventually filed a third amended complaint against defendant and its codefendants. Counts I-III again challenged the Ordinance as unconstitutionally vague, counts IV and V challenged the particular ordinances that created the landmark designations at issue, and counts VI-XXI raised facial and as-applied equal protection and substantive due

[1]Plaintiffs' suit was also directed against the Commission on Chicago Landmarks, its chairman and several commissioners in its Department of Planning and Development and its Landmarks Division. Solely for purposes of reference herein, we will generically refer to these other parties as "codefendants."

process challenges to the designations. Defendant and its codefendants filed a section 2-615 motion to dismiss counts VI-XXI, alleging that plaintiffs failed to state a cause of action that the landmark designations at issue violated equal protection or substantive due process rights on their face or as applied. The trial court granted their motion, concluding that, under the applicable rational basis test, plaintiffs did not negate any conceivable basis for finding a rational relationship between the formation of these districts and the legitimate state interest of historic preservation. With these counts dismissed, the parties then filed cross motions for summary judgment with respect to counts I-V. The trial court granted defendants' motion and denied plaintiffs' motion.

¶ 6 Plaintiffs appealed from both the trial court's order granting defendants' motion for summary judgment and denying their motion for summary judgment as to counts I-V, and the trial court's order granting defendants' section 2-615 motion to dismiss counts VI-XXI of their third amended complaint. First, in addressing summary judgment, we found that the trial court properly granted defendants' motion since plaintiffs could not show by clear and convincing evidence, as they were required to do, that the Ordinance was arbitrary or capricious. Therefore, we affirmed summary judgment on counts I-V in defendants' favor. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 53.

¶ 7 However, we reversed the trial court's section 2-615 dismissal of counts VI-XXI of plaintiffs' third amended complaint–those counts dealing with their equal protection and substantive due process claims. In our decision, we reiterated the standards and legal principles that accompany the review of section 2-615 dismissals and we noted that we had not been called

upon to determine whether plaintiffs met their burden of proving that the ordinances were unconstitutional but, rather, "something quite short of this, namely, only whether they have alleged sufficient facts to allow this portion of the cause to proceed further." *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 56, ¶ 57. We distinguished this standard from the rational basis test involved in this constitutional claim, as their applications were being confused; accordingly, we clarified that the latter is substantive, as it describes the legal burden plaintiffs must meet in order to ultimately prevail on the merits of their claims, while the former is procedural, as it only determines whether plaintiffs have sufficiently stated a cause of action in order to allow them to move beyond the pleadings stage to discovery and further litigation. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 60. And, from this, we explained that "the procedural standard must precede the substantive standard in the posture of this case." *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 61.

¶ 8 Accordingly, the next step in our review required us to examine the facts alleged in plaintiffs' third amended complaint to determine not whether they could be proven, but only whether they were sufficient to overcome a section 2-615 challenge. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 62. Upon our thorough review of counts VI-XXI, wherein plaintiffs made very specific and detail allegations regarding their properties, the landmarked districts at issue and other comparable neighborhoods in the context of due process and equal protection concerns, we found that they were. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶¶ 62-63. Therefore, although acknowledging the presumption of rationality applied to government classifications such as the landmark districts here, we concluded that, because plaintiffs, via the

allegations in their third amended complaint, had pled sufficient facts, and we were not yet procedurally at the point of determining whether they substantively could defeat the rational basis test, the cause must continue. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 63. Specifically, we held that:

> "What plaintiffs have done *** is surmount the standards of a section 2-615 dismissal via their detailed factual allegations to bring this portion of their cause to the next stage of the procedural process.
>
> Viewing the allegations of counts VI through XXI of the third amended complaint in the light most favorable to plaintiffs, we conclude that they did state a cause of action alleging equal protection and substantive due process violations *** and, therefore, that the trial court erred in granting defendants' section 2-615 motion dismissing these counts." *Hanna II*, 2013 IL App (1st) 121701-U, ¶¶ 63-64.

Accordingly, we reversed and remanded "for further proceedings with respect to these counts." *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 66.

¶ 9 Upon our remand, defendant and its codefendants filed a verified answer and affirmative defenses to plaintiffs' third amended complaint, now addressing counts VI-XXI. They also filed a motion to dismiss all codefendants other than defendant herein. The trial court granted this motion, leaving only defendant in this cause.

¶ 10 Defendant, then, filed a motion for judgment on the pleadings under section 2-615(e) on counts VI-XXI, asserting that they failed to state a cause of action for the alleged constitutional violations. The trial court granted defendant's motion, finding that there were no issues of

material fact and that defendant was entitled to judgment as a matter of law. The trial court stated that it was considering as admitted all well pled facts of plaintiffs' third amended complaint, the attached exhibits, and fair inferences drawn therefrom, even though defendant's answer denied these. It then applied the rational basis test and found that under this, "the well pled facts in plaintiffs' complaint, exhibits and inferences drawn in plaintiffs' favor, fail to negate the conceivable bases that support the land marking" of the districts. Therefore, because it concluded that plaintiffs failed to establish that the ordinances violate substantive due process or equal protection, the trial court awarded judgment on the pleadings in favor of defendant on these remaining counts, thereby disposing of the cause.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiffs make two alternative contentions. First, they contend that the trial court's latest section 2-615 dismissal directly contradicts our Court's previous ruling in *Hanna II* that their third amended complaint adequately pled a cause of action for constitutional violations and, thus, pursuant to the law of the case doctrine, it cannot stand. Plaintiffs then alternatively argue that, this aside, the trial court's dismissal should be reversed because it misapplies the rational basis test in its analysis of their substantive due process and equal protection claims. Because we agree with plaintiffs that the law of the case doctrine governs here, we need not discuss application of the rational basis test; the trial court's dismissal must be reversed because it is in direct contradiction of our prior holding in this matter.

¶ 13 We begin with a discussion of the law of the case doctrine, one which we incidentally had in *Hanna II*, but with respect to our affirmance of the trial court's grant of summary

judgment on counts I-III. Yet, while those counts are no longer at issue, our discussion remains relevant.

¶ 14 There, we began by noting that the doctrine of law of the case bars relitigation of an issue that has already been decided in the same case, such that the resolution of an issue presented in a prior appeal becomes binding and controls on remand to the trial court below, as well as on the appellate court in any subsequent appeal. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 17, citing *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8, *Alwin v Village of Wheeling*, 371 Ill. App. 3d 898, 909 (2007), and *Norton v. City of Chicago*, 293 Ill. App. 3d 620, 624 (1997). See also *American Service Insurance Co. v. China Ocean Shipping Co. (Americas) Inc.*, 2014 IL App (1st) 121895, ¶ 17. The doctrine applies to both a court's explicit decisions and those issues decided by necessary implication, as well as to both questions of law and questions of fact as presented in a cause. See *American Service*,2014 IL App (1st) 121895, ¶ 17; *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 17, citing *Aardvark Art, Inc. v. Lehigh/Steck-Warlick, Inc.*, 284 Ill. App. 3d 627, 632-33 (1996). We also acknowledged in *Hanna II* that when a reviewing court issues specific directions as part of its mandate, the trial court must follow them accordingly so as to ensure that all subsequent orders are in line with the higher court's directives, but when the reviewing court remands a cause with only general instructions, the trial court may exercise its discretion in determining what further proceedings would be consistent with these. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 17, citing *In re Marriage of Blinderman*, 283 Ill. App. 3d 26, 35 (1996). However, as we stated therein, and as we clearly reiterate now, a reviewing court is not required to provide specific directions in an

order reversing judgment and remanding a cause. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 17, citing *Suburban Auto Rebuilders, Inc. v. Associated Title Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81, 95 (2009). Ultimately, and no matter what, the trial court is to examine the higher court's decision and proceed in a manner conforming to it. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 17, citing *Suburban Auto*, 388 Ill. App. 3d at 95 (trial court is to proceed on remand in manner that conforms to views expressed in mandate and opinion).

¶ 15 The issue before us in *Hanna II*, relevant to the instant appeal, was whether the trial court's grant of defendant's section 2-615 motion to dismiss counts VI-XXI of plaintiffs' third amended complaint was proper. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 55. The trial court had granted defendant's motion, finding that plaintiffs did not negate any conceivable basis for finding a rational relationship between the formation of the designated landmark districts and the legitimate state interest of historic preservation. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 55. Upon review, we reversed and remanded.

¶ 16 This was precisely because we wholly disagreed with the trial court that defendant should prevail on its section 2-615 motion. In so holding, we explained, quite clearly, that, with the interplay of the constitutional issues raised in the complaint (namely, equal protection and substantive due process), two legal standards were directly at odds: the rational basis standard on the one hand, and the motion to dismiss standard on the other. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 60. We further acknowledged that confusion between the two has occurred before. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 60, citing *Wroblewski v. City of Washburn*, 965 F. 2d 452, 459-60 (7th Cir. 1992). Taking our time to explain the legal principles surrounding

each, we then noted that the rational basis standard requires defendant to prevail if any set of facts reasonably may be conceived to justify the classification of its legislation (the particular landmark districts at issue), while the motion to dismiss standard requires plaintiffs to prevail if relief could be granted under any set of facts that could be proved consistent with their allegations. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶¶ 57-59, 60. Because both of these standards cannot operate at the same time, one has to take precedence over the other. In determining which should, and would, take precedence, we noted that the former is substantive, since it is the substantive burden plaintiffs have to ultimately meet in order to prevail on their claims, while the latter is procedural, since it determines only whether plaintiffs have sufficiently stated a cause of action to then, in turn, get to the substantive questions of their claims. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 60. And, in light of this difference, we concluded that the procedural standard must prevail. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 61.

¶ 17 This, then, left us with one final consideration, requiring us to determine whether plaintiffs had met this procedural standard. Accordingly, we again noted that under section 2-615, which attacks precisely, and only, the facial sufficiency of a complaint, plaintiffs, to survive dismissal of their suit, had to have alleged sufficient facts, and not merely conclusions, to establish that the landmark ordinances they were challenging were arbitrary and capricious. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 61. That was all they were required to do for, at this point, whether those facts could be proven (*i.e.*, whether they could overcome the substantive rational basis test) was not yet relevant. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 63. In answering this question, we looked at plaintiffs' third amended complaint and, after reviewing

their allegations and attachments, found that they met the section 2-615 procedural standard. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 62. Accordingly, we explicitly held:

> "What plaintiffs have done *** is surmount the standards of a section 2-615 dismissal via their detailed factual allegations to bring this portion of their cause to the next stage of the procedural process."

Hanna II, 2013 IL App (1st) 121701-U, ¶ 63. And, that "next stage of the procedural process" was, as we had just stated in outlining the procedural standards of section 2-615, a move "beyond the pleadings stage to discovery and further litigation." *Hanna II*, 2013 IL App (1st) 121701-U, ¶¶ 60, 64 ("[v]iewing the allegations of counts VI through XXI of the third amended complaint in the light most favorable to plaintiffs, we conclude that they did state a cause of action alleging equal protection and substantive due process violations with respect to the Arlington Deming and East Village district designations and, therefore, that the trial court erred in granting defendant['s] section 2-615 motion dismissing these counts").

¶ 18 However, upon our remand, instead of moving "beyond the pleadings stage to discovery and further litigation," as we ordered (*Hanna II*, 2013 IL App (1st) 121701-U, ¶ 60), defendant moved again under section 2-615 to dismiss plaintiffs' third amended complaint, this time under subsection (e)'s provisions for judgment on the pleadings, and the trial court granted its motion, again dismissing plaintiff's third amended complaint. This was in direct contradiction to our holding, wherein we specifically found that plaintiffs' third amended complaint surmounted the standards of a section 2-615 dismissal and brought that portion dealing with counts VI-XXI to discovery and further litigation.

¶ 19 On appeal, defendant justifies the filing of its motion and the trial court's grant thereof by insisting that a "section 2-615(e) motion for judgment on the pleadings is not a motion to dismiss." Rather, defendant claims that a motion for and grant of a section 2-615(e) dismissal based on judgment on the pleadings is more akin to a motion for and grant of summary judgment, but simply limited to the pleadings and, thus, this cause on remand proceeded via a different procedural posture and was not in contradiction to our mandate so as to involve law of the case. This is incorrect.

¶ 20 While defendant would like to insist with all its might that a motion for judgment on the pleadings "is distinct from" a motion to dismiss, this is not at all true. Yes, some of our courts have noted a similarity between a motion for judgment on the pleadings and a motion for summary judgment, in that both are proper where a court is able to determine that there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. See *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 138 (1999). But, for several reasons, this is where any similarity between the two ends.

¶ 21 First, we would note that in *Hanna II*–even before our remand and defendant's filing of its subsequent 2-615 motion–we had the foresight to take a moment to state that "the legal standard used in reviewing a motion for summary judgment is clearly different from that used in reviewing a motion to dismiss pursuant to section 2-615." *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 56. We explained that this was "only natural," since a cause in the summary judgment stage "is in a completely different procedural posture than one that is in the motion to dismiss stage." *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 56. In the summary judgment stage, a court examines

whether the pleadings, affidavits, depositions and admissions of record, when construed strictly against the movant, show that there is no genuine issue as to any material fact. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 56, citing *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008), and *DeHart v. DeHart*, 2013 IL 114137, ¶ 18. In contrast, in the motion to dismiss stage, a court is to examine only the legal sufficiency of the complaint itself to see if there are any facial defects. See *Hanna II*, 2013 IL App (1st) 121701-U, ¶ 56, citing *Napleton*, 229 Ill. 2d at 305, and *DeHart*, 2013 IL 114137, ¶ 18.

¶ 22 In support of its insistence that a motion for judgment on the pleadings is unlike a motion to dismiss, even though they are both under the umbrella of section 2-615, defendant points to two concepts: the procedural difference that a motion for judgment on the pleadings is appropriate after a defendant has answered the complaint whereas a motion to dismiss is filed in lieu of an answer, and to the different evaluating standard wherein a trial court on a motion for judgment on the pleadings construes the allegations in a complaint strictly against the movant to determine whether there is a genuine issue as to any material fact whereas on a motion to dismiss, it looks to facial sufficiency of the complaint. Neither of these "differences," however, makes these motions "different."

¶ 23 A section 2-615 motion to dismiss attacks only the legal sufficiency of the complaint. See *Barber-Colman Co. v. A&K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1068 (1992). It does not raise affirmative defenses and does not examine the validity or truth of underlying facts. See *Barber-Colman*, 236 Ill. App. 3d at 1068. This is what makes such a motion different from motions for summary judgment; it is limited to only the pleadings, which must be taken as true,

and nothing else may be considered. See *Barber-Colman*, 236 Ill. App. 3d at 1068-69; accord *Allstate Property and Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123491, ¶ 16. There are six bases to attack pleadings on a motion to dismiss: that they be made more definite, that immaterial matter be stricken, that necessary parties be added or misjoined parties be dismissed, that the pleadings fail to allege essential elements of the cause of action, that the pleadings fail to state a claim upon which relief may be granted, or that the pleadings entitle the moving party to judgment. See *Barber-Colman*, 236 Ill. App. 3d at 1069, citing 735 ILCS 5/2-615(a)-(e) (West 2010). None of these bases require the movant to provide any factual matters to the court in order to prevail. See *Barber-Colman*, 236 Ill. App. 3d at 1069. And, all of these bases present the same question: whether sufficient facts are contained in the pleadings which, if proved, would entitle the plaintiff to relief. See *Barber-Colman*, 236 Ill. App. 3d at 1069.

¶ 24 It is this, then, that makes a motion to dismiss "analogous" to a motion for judgment on the pleadings. *Beckham v. Tate*, 61 Ill App. 3d 765, 768 (1978). Indeed, they are both section 2-615 motions to dismiss. Whatever the subsection within section 2-615 under which they are filed, "the standard is the same: the complaint should not be dismissed unless it is clear that plaintiff could prove no set of facts that would entitle her to relief." *Khan v. Serfecz*, 293 Ill. App. 3d 959, 962 (1997) (directly comparing section 2-615 motions to dismiss for failure to state a cause of action with section 2-615 motions to dismiss for judgment on the pleadings); accord *Bennett v. Chicago Title and Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2010) (directly comparing section 2-615(a) motions to dismiss challenging legal sufficiency of complaint by showing defects on face with section 2-615(e) motion to dismiss for judgment on the pleadings and noting

standards are the same under either motion). That is, pursuant to all section 2-615 motions to dismiss, regardless of their designation, a court is to accept as true all well-pled facts in the complaint and determine whether the plaintiff has set forth a cause of action on which relief may be granted. See *Khan*, 293 Ill. App. 3d at 962; *Bennett*, 404 Ill. App. 3d at 1094. Pursuant to all section 2-615 motions to dismiss, a court must draw all fair inferences from the pleadings in the plaintiff's favor. See *Khan*, 293 Ill. App. 3d at 962; *Bennett*, 404 Ill. App. 3d at 1094. Pursuant to all section 2-615 motions to dismiss, a court is limited solely to the pleadings and cannot determine whether there is evidence to support the allegations of the complaint outside of it. See *Khan*, 293 Ill. App. 3d at 962; *Bennett*, 404 Ill. App. 3d at 1094. Ultimately, the scope, premise and result of all section 2-615 motions to dismiss, filed under whatever bases of that statute (*i.e.*, subsection (a), (b), (c), (d) or (e)) are identical: to dismiss a complaint for a facial deficiency.

¶ 25 In *Hanna II*, we held that plaintiffs' third amended complaint was not facially deficient but, rather, surmounted the standards of a motion to dismiss, which defendant brought under subsection (a). Moreover, we specifically held that, because of this, the cause was to continue on beyond this procedural stage to discovery and further litigation. Both explicitly and inherently, then, we made clear that plaintiffs' third amended complaint was facially viable, as they had alleged sufficient facts in their detailed complaint to establish that the landmark ordinances at issue were arbitrary and capricious.

¶ 26 For defendant to, on our specific remand, again file for dismissal under the same statutory section, and for the trial court to again grant dismissal under the same statutory section–which we had just declared plaintiffs surmounted–is in direct violation of law of the

case. We had plainly declared that plaintiffs met the standard of section 2-615 to adequately state a cause of action. Massaging a statutory subsection to circumvent our holding, when that subsection's scope, premise and consequence is the same as another already alleged and defeated, cannot be permitted.

¶ 27 In a last attempt to refute law of the case, defendant points to an exception to that doctrine: the palpably erroneous exception,[2] claiming that we should follow the trial court's dismissal because our decision in *Hanna II* was wrong. Respectfully, we chose not to employ that exception. We do not believe *Hanna II* was mistakenly decided in any form, and defendant presents no real argument, other than its dislike of that decision, demonstrating palpable error. Indeed, "[t]he palpably erroneous exception applies only in the very rarest of situations *** invoked only when a court's prior decision is obviously or plainly wrong," namely, when it is found to be clearly erroneous or would result in a manifest injustice. *Radwill*, 2013 IL App (2d) 120957, ¶ 12. That a court might reach a different conclusion if it had to consider an issue anew does not make its prior decision palpably erroneous. See *Radwill*, 2013 IL App (2d) 120957, ¶ 12. Accordingly, even were we to reconsider our prior holding in *Hanna II* at this point and now find that counts VI-XXI of plaintiffs' third amended complaint should have been dismissed, which presumably the trial did here on remand (but which we certainly do not), this would not allow for the application of the palpably erroneous exception to the law of the case doctrine.

[2]For the record, there are two exceptions to the application of law of the case doctrine: when a higher reviewing court makes a contrary ruling on the same issue subsequent to the lower court's decision and when a reviewing court finds that its prior decision was palpably erroneous. See *American Service*, 2014 IL App (1st) 121895, ¶ 17. Defendant here only raises the latter.

Again, there was no error with our holding in *Hanna II*, nor do we find any manifest injustice. We simply declared that this cause was not yet dead at the motion to dismiss stage.

¶ 28 In sum, the law of the case doctrine protects the settle expectations of the parties, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates the proper administration of justice, brings litigation to an end, and maintains the prestige of the courts. See *American Service*, 2014 IL App (1st) 121895, ¶ 20. To allow defendant's section 2-615(e) motion to dismiss based on judgment on the pleadings after we had just reversed a prior dismissal on its motion to dismiss based on section 2-615(a), and after specifically declaring that plaintiffs' third amended complaint surmounted section 2-615 standards to move it beyond that procedural stage and to discovery and further litigation, threatens the uniformity of our decision and disrupts the course of this cause. It essentially revisited an issue our Court solidified and resulted in a contrary decision in light of our explicit holding and our clear mandate of *Hanna II*. The trial court's action here certainly was not in line with our views expressed. It did not proceed in a manner that conformed with our opinion, and it diminished the prestige of our decision by undermining it. This was not a case where the cause had proceeded to a subsequent stage of litigation where different issues were involved, or where different parties were involved, or where the underlying facts had changed. In such instances, law of the case doctrine would not apply. Here, however, no issue, fact or party had changed. We found that a section 2-615 dismissal was not proper and we remanded the cause to proceed beyond this procedural stage. The trial court disagreed with us and found (again) that it should not. This, according to the protections of the law of the case doctrine, it could not do.

¶ 29 CONCLUSION

¶ 30 Accordingly, for all the foregoing reasons, we reverse and remand again, with the clear and express instructions that this cause move beyond the section 2-615 dismissal stage to discovery and further appropriate litigation and, this time, before a different trial judge, in the interests of justice.

¶ 31 Reverse and remanded, with directions.