

No. 1-16-2210

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

SCOTT D. CLARK,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 15 L 7602
)	
LISA HECKES,)	
)	Honorable
Defendant-Appellee.)	Patrick J. Sherlock,
)	Judge Presiding.
)	

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s dismissal with prejudice of plaintiff’s second amended complaint is affirmed. The plaintiff failed to state a claim of tortious interference with testamentary expectation. The circuit court’s denial of the plaintiff’s request to file a third amended complaint was not an abuse of discretion.

¶ 2 This action results from the dismissal of *pro se* plaintiff Scott Douglas Clark’s second amended complaint for tortious interference with testamentary expectation against his step-sister Lisa Heckes. Scott Douglas alleged that his anticipated equal portion of the estates of Stanley Clark and Betty Clark was significantly reduced due to Lisa’s tortious conduct. On appeal, Scott

Douglas argues that the circuit court erred by (1) dismissing his second amended complaint with prejudice because his complaint adequately stated a claim for tortious interference with testamentary expectation, and (2) not allowing him to amend his complaint. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4

A. The Parties

¶ 5 Plaintiff Scott Douglas Clark (Scott Douglas) and his brother Jeffrey Clark are the only children of decedent Stanley Clark and his first wife, Mildred Clark. After Mildred died, Stanley married decedent Betty Clark (collectively, decedents), who had two children from her first marriage: defendant Lisa Heckes and Scott Alan Clark (Scott Alan). Stanley died in July 2013 and Betty died in June 2014. As detailed below, according to the terms of decedents' trust documents, Scott Douglas received \$10,000 from Betty's estate and the remainder of the estate was split equally between Jeffrey, Lisa, and Scott Alan, resulting in gifts of approximately \$75,000 for each.

¶ 6

B. Trust & Estate Documents of the Decedents

¶ 7

1. The Stanley Clark Revocable Trust

¶ 8 On March 26, 2001, Stanley created the Stanley Clark Revocable Trust (the "Stanley Trust"). The Stanley Trust stated that Stanley's spouse was Betty, and that he had four children: Jeffrey, Scott Douglas, Lisa, and Scott Alan. In article 3, titled "Gifts at My Death," the Stanley Trust provided:

"3.3 Gifts if Spouse Survives. If my spouse survives me, then I make the following gifts:

(a) Family Trust. I give the tax-sheltered gift to the trustee to hold

as the Family Trust.

(b) Marital Trust. I give the balance of the trust estate to the trustee to hold as the marital trust.

3.4 Balance of Trust Estate if Spouse Does Not Survive. If my spouse does not survive me, then I give the balance of the trust estate to the trustee to allocate in shares as follows:

A. Ten thousand dollars (\$10,000) or five percent (5%) of the balance of the trust estate, *whichever is less*, to my son Scott Douglas, whom I love as much as my other children, but has chosen to distance himself from me and the rest of the family.

B. The balance of the trust of substantially equal value for my surviving children (other than Scott Douglas), subject to the provisions of the Children's Separate Trust ***." (Emphasis in original).

¶ 9 Article 4 of the Stanley Trust was titled "Marital Trust" and section 4.6 provided: "On the death of my spouse, the trustee shall distribute any principal not required for payment of the Marital Trust death taxes and not effectively appointed to the trustee of the Family Trust for further allocation under Section 5.5." Section 5.5 provided: "On the death of my spouse, the trustee shall distribute the Family Trust not effectively appointed to the trustee to allocate in shares of substantially equal value for my surviving children (other than Scott Douglas), subject to the provision of the Children's Separate Trust ***."

¶ 10 2. The Betty L. Clark Revocable Trust

¶ 11 The provisions of the Betty Trust were substantially the same as those of the Stanley Trust, including section 3.4, which provided that if Betty's spouse did not survive her, the

No. 1-16-2210

balance of the trust estate would be allocated as follows: “Ten thousand dollars (\$10,000) or five percent (5%) of the balance of my trust estate, *whichever is less*, to Scott Douglas, whom I love as much as my other children, but has chosen to distance himself from me and the rest of my family”; and the “balance of the trust of substantially equal value for my surviving children (including Jeffrey but excluding Scott Douglas).” (Emphasis in original.)

¶ 12 C. Proceedings in the Circuit Court of Cook County

¶ 13 Scott Douglas filed three complaints in the circuit court of Cook County. The only claim at issue in the present appeal is his claim for tortious interference with testamentary expectation against Lisa in his second amended complaint. We discuss the first two complaints only to the extent necessary to understand the issues on appeal.

¶ 14 1. Initial Complaints

¶ 15 Scott Douglas filed his initial *pro se* complaint on July 27, 2015, alleging a breach of fiduciary duty against Lisa and Matlin & Associates, P.C. (Matlin), the law firm “responsible for the preparation, drafting and execution” of the Stanley Trust. Matlin filed a motion to dismiss the complaint pursuant to section 2-615 of the Code.

¶ 16 Scott Douglas did not respond to the motion to dismiss, but instead filed a first amended complaint, again asserting claims for breach of fiduciary duty against both Lisa and Matlin, and for the first time asserting a claim of tortious interference with testamentary expectation against Lisa.

¶ 17 In support of his claim for tortious interference against Lisa, Scott Douglas made a host of factual allegations, finally concluding that decedents revised their revocable trusts in March 2001 to Scott Douglas’s detriment because of Lisa’s “ongoing, willful, intentional and malicious comments and communications.”

No. 1-16-2210

¶ 18 Matlin again moved to dismiss pursuant to section 2-615 and Lisa also filed a motion to dismiss, pursuant to both sections 2-615 and 2-619 of the Code (see 735 ILCS 5/2-619 (West 2015); (735 ILCS 5/2-619.1 (West 2014)). On March 23, 2016, the circuit court granted both motions to dismiss. It dismissed the claims against Lisa with prejudice, finding that Scott Douglas did not “allege a single fact which could possibly permit the finder of fact to conclude that [Lisa] could ever be found liable to [Scott Douglas] for his reduced share.”

¶ 19 On April 22, 2016, Scott Douglas filed a motion to reconsider the dismissal only with respect to his claim of tortious interference against Lisa. In the alternative, he sought leave to file a second amended complaint. The circuit court granted the motion in part and allowed the amendment. In his second amended complaint, Scott Douglas alleged a single claim of tortious interference with testamentary expectation against Lisa.

¶ 20 2. Second Amended Complaint

¶ 21 Scott Douglas’s second amended complaint alleged that all four children of the decedents’ blended family “were repeatedly told that they would be treated equally” and, after decedents married, they raised the children as a single nuclear family. He further alleged that he had a “reasonable expectation of receiving an equal share” of decedents’ estate, an expectation that was reinforced “between 1973 and 2014 by repeated statements” by decedents that all of the children were “treated equally” and that each “would receive an equal share” of the estates. Based on these repeated statements, Scott Douglas alleged that he “expected he would receive an equal, *per stirpes*, one-quarter share of any remaining estate” after decedents passed away. Scott Douglas further alleged that on “at least one occasion during the mid- 1980s” Stanley stated “‘[w]e both treat all four of you equally,’ in regard to both the wills” of decedents. Scott Douglas also alleged that at some unspecified time, prior to March 2001, decedents had prepared

No. 1-16-2210

wills or trust agreements that gave each of the four children, including him, “an equal share of any remaining estate assets.”

¶ 22 Scott Douglas alleged that the reason he did not receive an equal share of decedents’ estates in their March 2001 trusts was because of Lisa’s “intentional, misleading and over-reaching conduct over several years.” According to Scott Douglas, starting in 1997, Lisa began communicating with Betty “in a manner designed to undermine the relationship” between Scott Douglas and decedents, “and to intentionally and falsely convince decedents *** to change their wills” to his detriment.

¶ 23 Scott Douglas alleged that Lisa “exercised a controlling and confidential relationship” over decedents “at all times relevant” and “specifically from 1997 through 2001.” Scott Douglas alleged that Lisa was able to exercise this control because she knew that Betty was “mentally unstable and addicted to alcohol” or other controlled substances, and Lisa “used *** the threat of revealing this information to others *** to influence and control” Betty and, vicariously through Betty, Stanley, “from 1997 through 2001 and continuing until their deaths.” Scott Douglas alleged that Lisa knew of “extra-marital affairs and other indiscretions committed [by Betty] at various times from 1980 through 1998” and “used the threat of revealing th[at] information” to coerce decedents into changing their wills to “exclude or reduce” Scott Douglas’s inheritance from any estate assets. According to Scott Douglas, Lisa essentially controlled any decisions made by Betty “[b]eginning at some point prior to 1997 and continuing from 1997 to 2001 and beyond.” Scott Douglas also stated that Lisa used her influence over Betty to influence Stanley, “by directing Betty to threaten to ‘leave’ or divorce Stanley if Stanley did not speak or act as [Lisa] directed.” This “manipulative control” that Lisa exerted over decedents allowed her “to dictate and control” decedents’ actions to her “every whim and wish.”

¶ 24 According to Scott Douglas, “[o]ver several months from 1997 through March 2001,” Lisa “intentionally and deliberately made repeated false and fraudulent statements” to decedents. These included statements about Scott Douglas’s wife like that she only married Scott Douglas for the family’s money, she was “materialistic,” and she was “too old to have children.” They also included lies about Scott Douglas like that he had destroyed personal property of Lisa’s when he had not, that he was not interested in reconciling with the family and “wished to have no further communication with” decedents, that he hated decedents and said decedents “could go to hell.” These alleged statements by Lisa also included threats to expose Betty’s addictions, to cause decedents physical harm, and to terminate visitation with Lisa’s children if they did not comply with Lisa’s demands and cut Scott Douglas out of the will. Scott Douglas also alleged that Lisa made “other similar, yet undiscovered false and misleading statements about [Scott Douglas] to [decedents] at various times from 1997 through 2003 and until the time of Betty’s death in 2014.”

¶ 25 According to Scott Douglas, Lisa knew the above statements were false and made them “intentionally to harm” Scott Douglas and affect his share of decedents’ estates, and that through her statements, fraud, duress, and coercion, Lisa “directed [decedents] to change their estate plan in March 2001,” leaving Scott Douglas with “a disproportionately smaller share of their estates than the original wills.”

¶ 26 In the section titled “Reasonable Certainty That The Expectancy Would Have Been Realized But For The Interference,” Scott Douglas alleged:

“But for the deliberate, intentional and willful acts and omissions and the false and misleading statements of [Lisa], there would have been no reasonable basis for [decedents] to have changed their estate plans and treated [Scott

Douglas] differently than the other three children. It was [Lisa's] misleading statements and actions that caused [decedents] to believe that [Scott Douglas] 'had chosen to distance himself from the rest of the family.' And [Lisa] further deliberately interfered with every attempt [Scott Douglas] made to reach out and have a relationship with [decedents]. Absent the deliberate false statements, coercive actions and threatening behavior of [Lisa], [Scott Douglas] would have received his expected equal, one-quarter share of [decedents'] estate."

¶ 27 For relief, Scott Douglas requested \$65,000 in damages from Lisa, as he alleged he would have been entitled to \$75,000, of decedents' \$300,000 estate, but for Lisa's actions.

¶ 28 On May 19, 2016, Lisa filed a section 2-615 motion to dismiss the claim against her with prejudice, arguing that it still failed to state a claim of tortious interference with testamentary expectation. Lisa also argued that Scott Douglas should not be granted leave to amend his complaint because he failed "to identify any circumstances giving rise to his tortious interference claim notwithstanding repeated attempts to do so." In response, Scott Douglas argued that he had stated sufficient facts to meet each element for a claim of tortious interference. In the alternative, he sought leave to amend "to clarify or address any factual or technical deficiencies in his complaint." No proposed amended complaint was attached to his motion.

¶ 29 On July 11, 2016, the circuit court granted Lisa's motion to dismiss with prejudice. In a written order, the court recounted the procedural history, noting that it had dismissed Scott Douglas's prior complaint with prejudice, but partially reversed itself upon his motion to reconsider and gave him "one last attempt to state a cause of action against [Lisa] for tortious interference with testamentary interest." Noting that Scott Douglas's complaint included "numerous conclusory and generalized statements of fact that [were] not supported by specifics,"

the court concluded that the complaint failed to allege tortious behavior. The court stated that none of Lisa's alleged statements were fraudulent because they were either immaterial, consisted of mere opinion, or were not alleged with "anywhere close to sufficient particularity; the complaint did not properly allege duress and the claim could not be based on undue influence because there were no allegations to suggest that Lisa's actions were "directly connected" with the parent's execution of the estate plans. The court also noted that the complaint failed to allege that decedents "relied on Lisa's statements (rather than the fact that [Scott Douglas] had 'chosen to distance himself' from the family) in changing their estate plans in 2001."

¶ 30 The circuit court observed that this was Scott Douglas's "third attempt to state a cause of action" against Lisa, that his second amended complaint, "like the others, consist[ed] mainly of unsupported conclusions of [Lisa's] conduct," and that his complaint "f[e]ll far short" of alleging tortious interference. The court denied Scott Douglas's request for another opportunity to amend and dismissed his second amended complaint with prejudice.

¶ 31 JURISDICTION

¶ 32 Scott Douglas timely filed his *pro se* notice of appeal on August 8, 2016. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 33 ANALYSIS

¶ 34 On appeal, Scott Douglas argues that the circuit court erroneously granted Lisa's motion to dismiss because he sufficiently stated a claim for tortious interference with testamentary expectation and that the circuit court abused its discretion in denying him leave to file an amended complaint. We find no error in the court's ruling dismissing this claim and no abuse of

discretion in refusing to give Scott Douglas a fourth opportunity to state a viable claim.

¶ 35 A motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) “challenges the legal sufficiency of a complaint based on defects apparent on its face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). “In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts,” and we “construe the allegations in the complaint in the light most favorable to the plaintiff.” *Id.* “Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recover.” *Id.* A plaintiff is “not required to set forth evidence in the complaint.” *Id.* However, “conclusions of law or conclusions of fact unsupported by allegations of specific facts *** are not taken as true and are not to be considered by the court in ruling on the motion.” *In re Estate of DiMatteo*, 2013 IL App (1st) 122948, ¶ 58. A complaint should only be dismissed where “there is no possible set of facts in support of the allegations in the complaint that would entitle the plaintiff to relief based on the pleadings themselves.” (Emphasis omitted.) *Id.* We review *de novo* a circuit court’s dismissal of a complaint pursuant to section 2-615 (*id.* ¶ 52), and may affirm on any basis on the record (*Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 586 (2005)).

¶ 36 A claim for tortious interference with testamentary expectation is different than a will contest:

“One who by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that she otherwise would have received is subject to liability to the other for loss of the inheritance or gift. [Citations.] This widely recognized cause of action does not contest the validity of the will. Rather, the tort is a personal action directed at an individual tortfeasor.”

Bjork v. O'Meara, 2013 IL 114044, ¶ 24.

To prove tortious interference with testamentary interest, a plaintiff must show “(1) the existence of an expectancy; (2) defendant’s intentional interference with the expectancy; (3) conduct that is tortious in itself, such as fraud, duress, or undue influence; (4) a reasonable certainty that the expectancy would have been realized but for the interference; and (5) damages.” *Id.*

¶ 37 In this case, the complaint did not contain sufficient allegations that Scott Douglas had a protected expectancy in his inheritance that, but for Lisa’s actions, would have been realized. The only allegation that he even had an expectancy was a very vague contention that other wills or trusts existed, executed at some unspecified date prior to the March 2001 trusts, in which he received the same inheritance as his brother and step-siblings. Even if we accept this as sufficient to allege an expectancy, however, Scott Douglas failed to properly alleged a causal connection between Lisa’s conduct and the March 2001 trusts.

¶ 38 The complaint had no specific timeline for Lisa’s conduct, except that it occurred repeatedly from 1997 to 2001, and sometimes from 1997 until the deaths of decedents. Thus, the factual allegations span a time period of four years before the March 2001 trusts were executed and also a period of thirteen years after they were executed. The trusts themselves recite that, at some point prior to 2001, Scott Douglas had “chosen to distance himself” from the family. This suggests one reason for the lesser inheritance. None of the allegations in Scott Douglas’s complaint specifically point to Lisa’s conduct as the reason, or even *a* reason, that the trusts were changed. The allegations lack any suggestion of temporal proximity or causal connection between Lisa’s conduct and the change in the trusts.

¶ 39 Scott Douglas’s complaint was required to include allegations that demonstrated “to a reasonable degree of certainty that the bequest or devise would have been in effect at the time of

No. 1-16-2210

the death of the testator or that the gift would have been made *inter vivos* if there had been no such interference.” Restatement (Second) of Torts § 774B (1979). This case stands in sharp contrast to those cases in which this causal connection has been established. In *DeHart v. DeHart*, 2013 IL 114137, ¶¶ 28, 39-40, the supreme court specifically noted that the plaintiff had sufficiently alleged facts to show that he “once had a close father-son relationship” with the testator, and that the defendant made “a series of misrepresentations concerning [the] plaintiff’s character that occurred shortly before the execution of the will.” And in *DiMatteo*, 2013 IL App (1st) 122948, ¶¶ 18-27, 80, the petitioner alleged that, in response to the several misrepresentations made by the respondent to the testator about the petitioner—which occurred near the time a new will was executed in favor of the respondent—the testator became very angry with the petitioner and said he would “‘write-out’ ” the petitioner.

¶ 40 Here, Scott Douglas’s allegations simply claim that, between 1997 and 2014, Lisa attempted to have Scott Douglas cut out of decedents’ estate, and that in March 2001 decedents altered their trusts to give Scott Douglas a reduced share of the estate. They do not, however, link Lisa’s conduct with the March 2001 change to decedents’ trusts in any supported way. Aside from Scott Douglas’s conclusory statements that, but for Lisa’s conduct he would have received an equal share of decedents’ estate, he has alleged nothing to suggest why decedents altered their estate plans when they did. Such conclusory allegations unsupported by fact “are not taken as true and are not to be considered by the court in ruling on” a section 2-615 motion. *DiMatteo*, 2013 IL App (1st) 122948, ¶ 58. Under these circumstances, Scott Douglas has failed to state a claim of tortious interference with testamentary expectation and the circuit court properly granted Lisa’s section 2-615 motion to dismiss.

¶ 41 Scott Douglas also argues that the circuit court abused its discretion when it did not grant

No. 1-16-2210

his request to amend his complaint. “Despite Illinois[’s] liberal policy of permitting amendment of pleadings, parties do not have an absolute right to so amend, but may do so only at the trial court’s discretion” and a court’s ruling on a request to amend will only be reversed based on a “clear abuse of discretion.” (Internal quotation marks omitted.) *In re Estate of Sutera*, 199 Ill. App. 3d 531, 540-41 (1990). A circuit court abuses its discretion when its ruling is “arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.” *People v. Robertson*, 312 Ill. App. 3d 467, 469 (2000).

¶ 42 When determining whether to allow an amendment, a court should consider the factors set forth by our supreme court in *Loyola Academy v. S&S Room Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992): “(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified.”

¶ 43 It is apparent that, under the *Loyola* factors, the circuit court did not abuse its discretion in denying Scott Douglas leave to file another amended complaint. Scott Douglas did not attach a proposed amended complaint to his answer to the motion to dismiss, and has not explained how he would amend his second amended complaint to cure it of its deficiencies. Having had two attempts with respect to this claim, it is far from clear that he *could* cure those deficiencies. Thus, the first, third, and fourth *Loyola* factors all weigh against him.

¶ 44 **CONCLUSION**

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 46 Affirmed.