2017 IL App (1st) 162454-U

SIXTH DIVISION
Order filed: November 3, 2017

No. 1-16-2454

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 DISTRICT

SHAI BEN MOSHE, f/k/a Douglas Scott Bergart, Plaintiff-Appellant, v. DAVID ORR, in His Official Capacity as Cook County Clerk; NIRAV D. SHAH, M.D., J.D., in His Official Capacity as Director of Public Health; THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH; BRYAN A. SCHNEIDER, in His Official Capacity as Secretary of Financial and Professional Regulation; THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION; and ANY AND ALL UNKNOWN OWNERS OR CLAIMANTS, Defendants, (David Orr, in his official capacity as Cook County Clerk; The Illinois Department of Public Health; The Illinois Department of Financial and Professional Regulation; and Bryan A. Schneider, in his official capacity as Secretary of Financial and Professional Regulation, Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County No. 15 CH 17016 Honorable Diane Joan Larsen, Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order granting the defendants' motions to dismiss with prejudice is affirmed where the plaintiff did not set forth a legally recognized claim and there is no recourse at law. The plaintiff forfeited review of his remaining arguments for failing to comply with Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016).

¶ 2 The *pro se* plaintiff, Shai Ben Moshe, f/k/a Douglas Scott Bergart, appeals from an order of the circuit court of Cook County dismissing his complaint for declaratory relief against the defendants, David Orr, in his official capacity as Cook County Clerk (Orr); the Illinois Department of Public Health (IDPH); Nirav D. Shah, M.D., J.D., in his official capacity as Director of Public Health (Dr. Shah); the Illinois Department of Financial and Professional Regulation (IDFPR); and Bryan A. Schneider, in his official capacity as Secretary of Financial and Professional Regulation (Schneider); and any and all unknown owners or claimants, with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). For the following reasons, we affirm the circuit court's order.

¶ 3 The following facts are adduced from the pleadings and record on file.

¶ 4 In November 1966, the plaintiff—then named Douglas Scott Bergart—was born in Evanston, Illinois. In March 1993, he legally changed his name to Shai Ben Moshe in California, and, in June 2012, he amended his birth certificate to reflect this change with the IDPH.

¶ 5 On November 19, 2015, the plaintiff filed a *pro se* complaint for declaratory relief against the defendants, alleging, *inter alia*, that he possessed "a bundle of rights, entitlements, and duties which derive[d] from his birth," and that those rights afforded him "a 'special' security interest in" any government-issued documents relating to his birth. He sought, *inter alia*: (1) "a discovery and determination of [those] rights *** as to his personal, worldly and corporeal

estate[;]" (2) entry of "a declaratory judgment ***[,] declaring that [his] title claim to his birth records is acknowledged as legal and valid[;]" (3) entry of an order that would require "all actors *** involved in the production of any records *** appurtenant [to his 'birth event'], to produce any and all such records *** in providing a full, complete, and true accounting of [his] interests[;]" and (4) entry of an order that would require the defendants "to accept [his] express trust, and record [the] same in lien [*sic*] of his birth certificate." In support of "his claim of divine right[,]" the plaintiff cited Galatians 4, Philippians 3:20, Genesis 17:8, the Declaration of Independence, and "the US Constitution and Bill of Rights as implied under the Penumbra doctrine[.]" According to the plaintiff, if the circuit court held that he "ha[d] no intrinsic ownership/rights ***, then [his] only estate is an extrinsic legal government created debtor estate, which would render [him a] surety and a debt slave with no hope for redemption or liberty." The plaintiff attached several documents to his complaint, including a "Declaration and Affidavit of Truth" and a "Trust Declaration and Memorandum[.]"

¶ 6 The service list, which was attached to the summons, provided, in relevant part, that the summons and complaint should be served on:

> "Illinois Department of Public Health
> Attention: Nirav D. Shah, M.D., J.D./Director
> 69 W. Washington
> 35th Floor
> Chicago, IL 60602
>
> * * *
>
> ***Illinois Department of Public Health
> 122 S. Michigan Ave
> 7th Floor and 20th Floor
> Chicago, IL 60603[.]"

On December 4, 2015, the Sherriff's Office of Cook County filed an affidavit of service, certifying that the authorized person at IDPH—located on Michigan Avenue—was served the

summons and complaint. On December 15, 2015, the Sheriff's Office filed another affidavit of service, which certified that the authorized person at IDPH—located on Washington Street—was also served.

¶ 7 On December 22, 2015, Orr filed a motion to dismiss the plaintiff's complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) for failure to state a cause of action upon which relief could be granted. On December 31, 2015, IDPH filed an appearance and, on January 20, 2016, IDPH, IDFPR, and Schneider filed a joint section 2-615 motion to dismiss the complaint (735 ILCS 5/2-615 (West 2016)). In both of the motions, Orr and IDPH, IDFPR, and Schneider alleged, *inter alia*, that the complaint did not provide sufficient information, which prevented them from understanding: (1) the exact cause of action; (2) what specific acts they committed; and (3) the relief that the plaintiff sought from them. They further alleged that the plaintiff failed to cite any legal authority to support his claims.

¶ 8 On February 3, 2016, the plaintiff filed an "answer" to Orr's motion to dismiss wherein he clarified that he "claims a right to adjudicate and control all *** documentation relative to his birth[.]" According to the plaintiff, the "demand" in the complaint was "simple"—he sought to "purge all birth records attaching to him, including but not limited to his birth certificate" and to replace them with his "Declaration and Affidavit of Truth" and "Trust Declaration and Memorandum[,]" which he had attached to the complaint.

¶ 9 On June 23, 2016, a hearing on the motions to dismiss was held. In a written order entered on the same date, the circuit court dismissed the complaint with prejudice pursuant to section 2-615 of the Code based upon its finding that the plaintiff did not seek "a recognizable cause of action." In so holding, the court explained that "the law cannot provide the relief that [the p]laintiff hopes to attain in this action" because neither the Counties Code (55 ILCS 5/3 *et*

seq. (West 2014)) nor the Vital Records Act (Act) (410 ILCS 535/1 *et seq.* (West 2014)) "provide[s] the authority to replace vital records with a declaration or affidavit from an individual." Additionally, the court noted that, although Dr. Shah was named as a defendant in the complaint, the electronic docket of the clerk of the circuit court of Cook County did not indicate that he was ever served and he did not file an appearance. Accordingly, the court *sua sponte* dismissed any claims against him.

¶ 10 On July 25, 2016, the plaintiff filed a motion to vacate the circuit court's June 23, 2016, order and for leave to file an amended complaint for declaratory relief. In support thereof, he attached his proposed amended complaint. Also on July 25, 2016, the plaintiff filed a motion to reinstate Dr. Shah as a defendant, alleging that Dr. Shah was, in fact, served. In support thereof, he attached the affidavit of service filed by the Sherriff's Office on December 15, 2015, which certified service on IDPH, located on Washington Street.

¶ 11 On August 5, 2016, the circuit court denied the plaintiff's motion to vacate its order of June 23, 2016, and for leave to file an amended complaint. In so holding, the court explained that, although the proposed amended complaint was "very eloquent[,]" it sought "findings on a very deep philosophical level" and did not state "a cause of action that is cognizable here in a Civil Court." It went on:

> "The government maintains certain records, but I don't think it's a question of ownership of those records by the government. The government has certain obligations to maintain records, but the government allows, under certain rules, dissemination of certain records.
>
> *** [B]irth records are maintained by the government and can be obtained by the individuals whose records they are."

¶ 12 Also on August 5, 2016, the circuit court denied the plaintiff's motion to reinstate Dr. Shah as a defendant because it found that Dr. Shah was improperly served and the plaintiff had forfeited any argument as to the propriety of service by not raising it earlier. The court held that, although the summons' service list stated, "Attention: Nirav D. Shah, M.D., J.D./Director[,]" it was directed to IDPH. It explained, "the attention line is not the same as having the summons directed to somebody"—"if Dr. Shah did not want to accept service in that matter, he's not required to accept service in that manner." In holding that the plaintiff had forfeited any argument as to service, the court reasoned: "[t]here was never an appearance filed for Dr. Shah, and the public record indicates that. *** We all went ahead with the hearing." The plaintiff now appeals.

¶ 13 On appeal, the plaintiff argues that the circuit court erred when it: (1) granted the motions to dismiss the complaint for failure to state a cause of action pursuant to section 2-615 of the Code; (2) *sua sponte* dismissed any claims against Dr. Shah on the basis that he was improperly served; and (3) denied the motion to vacate the June 23, 2016, order and for leave to file an amended complaint.

¶ 14 At the outset, we address IDPH's, IDFPR's, and Schneider's argument that we should dismiss the plaintiff's appeal based on his "flagrant" violations of our supreme court's rules governing appellate briefs. Our supreme court's rules are rules that need to be followed—they are "not mere suggestions[.]" *Venturella v. Dreyfuss*, 2017 IL App (1st) 160565, ¶ 23. "An appellant's *pro se* status does not alleviate the duty to comply with our supreme court's rules[.]" *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 7. "Where a brief has failed to comply with the rules, we may strike portions of the brief or dismiss the appeal[.]" *Estate of Prather v. Sherman Hospital Systems*, 2015 IL App (2d) 140723, ¶ 32. We can also choose to

merely disregard the portions of a brief that fail to comply with the rules. *Country Preferred Insurance Co. v. Groen*, 2017 IL App (4th) 160028, ¶ 12.

¶ 15 According to IDPH, IDFPR, and Schneider, the plaintiff violated Illinois Supreme Court Rules 341(h)(6) and 341(h)(7) (eff. Jan. 1, 2016) by not providing citations to the record on appeal "for numerous factual statements" and by failing to "present any coherent legal arguments" that are supported by "relevant legal authority[.]"

¶ 16 We first address the alleged violation of Rule 341(h)(6), which lays out the requirements for an appellant's statement of facts. Rule 341(h)(6) provides, in pertinent part, that an appellant's statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). This court does not need to consider any statement in the appellant's statement of facts that is argumentative. *Beitner v. Marzahl*, 354 Ill. App. 3d 142, 146 (2004) (where the court disregarded a portion of the appellants' statement of facts because it was "blatantly argumentative").

¶ 17 In this case, while it is true that the plaintiff violated Rule 341(h)(6) by not citing to the record for every factual statement presented; he did provide some citations in his statement of facts. We, therefore, do not believe it is appropriate to strike this portion of his brief in its entirety. However, we take issue with the plaintiff's various arguments and comments. His statement of facts, in pertinent part, provides:

> "[The plaintiff's] claim is this: [The p]laintiff claims his equitable rights run with the land, and as such, reason dictates that if [the p]laintiff has no intrinsic ownership/rights to a collateral interest/use of the land, then [the p]laintiff's only estate is an extrinsic legal government created debtor estate, which would render

> [the p]laintiff as surety and a debt slave with no hope for redemption or liberty. Slavery and involuntary servitude have been banned in every state and the United States. ***.
>
> This is [the plaintiff's] conviction and he challenges anyone to tender a superior claim. His unalienable rights were bequeathed to him by his heavenly father, and he will never turn his back on his father. In God he Trusts. That is a fact."

The plaintiff also summarizes what was allegedly said during an off-the-record conversation that he had with the circuit court at the June 23, 2016, hearing on the motions to dismiss and the implications of said conversation. In discussing the June 23, 2016, order, the plaintiff argues that the circuit court "violated the Clerk of Courts [*sic*] policy" when it relied upon the electronic docket to *sua sponte* dismiss any claims against Dr. Shah and that "the record showed good service" on Dr. Shah. He also asserts that he made a "mistake" when he filed the motion to reinstate Dr. Shah as a defendant; instead, he should have filed a motion for a default judgment. We hold that all of these statements are arguments that are not appropriate for an appellant's statement of facts under Rule 341(h)(6); as such, we strike them. See *Beitner*, 354 Ill. App. 3d at 146; *Groen*, 2017 IL App (4th) 160028, ¶ 12.

¶ 18 We next address the plaintiff's alleged violation of Rule 341(h)(7), which sets forth the requirements for the argument portion of an appellant's brief. Under Rule 341(h)(7), an appellant's argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). "Citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7)."

Robinson v. Point One Toyota, Evanston, 2012 IL App (1st) 111889, ¶ 54. "[A] reviewing court is not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56; see also *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6 (holding that appellate courts are not required to "complete legal research to find support for" an appellant's arguments). "Issues that are ill-defined and insufficiently presented do not satisfy" Rule 341(h)(7) and are considered forfeited. *Walters*, 2011 IL App (1st) 103488, ¶ 6.

¶ 19 We find that the plaintiff has forfeited two of his issues on appeal for his failure to comply with Rule 341(h)(7); namely, whether the circuit court erred when it: (1) *sua sponte* dismissed any claims against Dr. Shah on the basis that he was improperly served; and (2) denied the motion to vacate the June 23, 2016, order and for leave to file an amended complaint. In both of these arguments, the plaintiff fails to cite to any *relevant* legal authority.[*] See *Robinson*, 2012 IL App (1st) 111889, ¶ 54. Also, as to his argument regarding leave to file an amended complaint, the plaintiff does not cite to the record on appeal and he fails to provide any explanation as to how his proposed amended complaint cured the defects in his original complaint, *i.e.*, how any changes he made brought his claim within a recognizable cause of action. Accordingly, the plaintiff has failed to comply with Rule 341(h)(7) and has forfeited these issues. *Id.*; Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Walters*, 2011 IL App (1st) 103488, ¶ 6.

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[*]The plaintiff's only citation to legal authority, which is in support of his argument regarding Dr. Shah, is as follows: " 'Judgment by default may be entered for want of an appearance.' 735 ILCS 5/2-1301(d) [(West 2014)]." He provides no law regarding the propriety of service.

¶ 20 The only remaining issue is whether the circuit court erred when it granted the motions to dismiss the complaint pursuant to section 2-615 of the Code. We will address this issue on the merits.

¶ 21 As part of his argument that the circuit court erred in dismissing his complaint, the plaintiff contends that court "bundle[d] all requests for relief into a single cause of action[.]" According to the plaintiff, the court should have instead "address[ed] the requests for relief as separate causes of action[.]" The plaintiff did not raise this issue in the circuit court proceedings although he had the opportunity to—when he filed his motion to vacate the June 23, 2016, order and for leave to file an amended complaint. This argument is, therefore, forfeited. See *Shaun Fauley, Sabon, Inc. v. Metropolitan Life Insurance Co.*, 2016 IL App (2d) 150236, ¶ 55. The plaintiff also forfeited this issue by his failure to comply with Rule 341(h)(7). First, he does not present a coherent argument because he fails to explain what other relief he requested in his complaint or how those requests would have equated to causes of action. Second, he does not cite to the record and cites only generally to section 2-701 of the Code (735 ILCS 5/2-701 (West 2014)), which governs declaratory judgments. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see *Robinson*, 2012 IL App (1st) 111889, ¶ 54; *Walters*, 2011 IL App (1st) 103488, ¶ 6.

¶ 22 On to the merits, the plaintiff contends that the circuit court erred in dismissing his complaint because he stated a cause of action by satisfying the elements for a declaratory judgment. We disagree.

¶ 23 A motion to dismiss pursuant to section 2-615 attacks "the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). "In order for a complaint to be legally sufficient, it must set forth a legally recognized claim [']upon which relief can be granted.[' Citation.] If the complaint fails

to do this, there is no recourse at law for the injury alleged, and the complaint must be dismissed." *Willis v. NAICO Real Estate Property & Management Corp.*, 379 Ill. App. 3d 486, 489 (2008) (quoting *Winfrey v. Chicago Park District*, 274 Ill. App. 3d 939, 943 (1995)). In ruling on a section 2-615 motion to dismiss, courts "accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Pooh-Bah Enterprises*, 232 Ill. 2d at 473. "However, a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations." *Id.* We review a circuit court's dismissal of a complaint pursuant section to 2-615 *de novo*. *Id.*

¶ 24 The elements for a declaratory judgment action are as follows: "(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003). "[T]he threshold requirement for establishing a declaratory judgment claim is *** whether [the plaintiff] can plead a legal theory in which he has a personal legal interest." *Gore v. Indiana Insurance Co.*, 376 Ill. App. 3d 282, 291 (2007).

¶ 25 In his complaint, the plaintiff sought to clarify who owned his birth records and to replace those records with documents that he had drafted. The Act and the Counties Code are the relevant statutes regarding records in Illinois. The Act defines "vital records," in pertinent part, as "records of births *** and data related thereto." 410 ILCS 535/1(1) (West 2014). According to the Act, county clerks are "official custodians of vital records in this State" and they are tasked with, *inter alia*, "maintain[ing] such records in a safe place." 410 ILCS 535/23 (West 2014). Section 3-2012 of the Counties Code (55 ILCS 5/3-2012 (West 2014)), which governs the duties of clerks relating to records, provides that the county clerk: "shall have the care and custody of all the records, books and papers appertaining to and filed or deposited in their respective offices,

and the same, except as otherwise provided in the *** Act, shall be open to the inspection of all persons without reward." A person can obtain a certification or certified copy of his birth certificate pursuant to section 25(4)(b) of the Act (410 ILCS 535/25(4)(b) (West 2014)). He can also amend his birth certificate as outlined in section 22 of the Act (410 ILCS 535/22 (West 2014)).

¶ 26 The plaintiff argues that the Act makes it clear that he has a legal tangible interest in his birth records because he can obtain a certification or certified copy of his birth certificate (see 410 ILCS 535/25(4)(b) (West 2014)). The flaw in the argument is, before explaining his interest, the plaintiff was required to plead a valid legal theory and he has failed to do so. *Gore*, 376 Ill. App. 3d at 291. Although the Act permits amendments to birth certificates in certain circumstances, there is nothing in the Act or the Counties Code that allows a person to replace his birth records with documents that he has created. Therefore, the plaintiff has not set forth a legally recognized right that could support a cause of action. The circuit court, thus, properly dismissed his complaint pursuant to section 2-615 of the Code.

¶ 27 Affirmed.