2018 IL App (1st) 161806-U

No. 1-16-1806

Order filed February 1, 2018

Fourth Division

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

JAMES T. STRUCK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 15 M2 004900
	)	
SAFEWAY DOMINICK'S,	)	Honorable
	)	Thaddeus Stephen Machnik,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court properly dismissed complaint, as it failed to plead sufficient facts to set forth a legally recognized cause of action.

¶ 2 Plaintiff James T. Struck, *pro se*, appeals from an order of the trial court granting the motion of defendant, Safeway Inc., to dismiss plaintiff's complaint pursuant to sections 2-606, 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-606, 2-615, 2-619 (West 2014)). We affirm.

¶ 3 The record shows that on December 2, 2015, plaintiff *pro se* filed a complaint against Safeway, claiming $8.9 million in damages. The complaint, in its entirety, read:

> "Safeway made about $800 billion off of sale of Albertson's. Safeway/Dominicks gave $8.9 million to Michael Jordan. The Equal Pay Act protects my right to get paid equally as I daily work as a supplier to Safeway with inventions like vertical numbers, mysterious numbers 11/30/2015. I also worked for 7 years exposed to second hand smoke, car exhaust, paid subminimum wage of $36 month union dues. Asking for union dues $3400 returned. Beaten [with] 15-20 bones coming home from work."

¶ 4 In its motion to dismiss, Safeway first argued that the complaint failed to plead sufficient facts to state a cause of action. Safeway also claimed that any claims for personal injury or wage inequality were time-barred, as plaintiff's employment with Safeway ended on July 29, 2013 (as Safeway demonstrated through sworn affidavits and documentation), and plaintiff filed his complaint more than two years later on December 2, 2015. See 820 ILCS 110/2 (West 2012) (claims arising under Illinois Equal Wage Act must be filed within 6 months of alleged violation); 820 ILCS 112/15(b) (West 2012) (claims arising under Illinois Equal Pay Act must be filed within one year of alleged violation); 735 ILCS 5/13-202 (West 2012) (claims for personal injury must be filed within two years of alleged injury).[1]

¶ 5 Finally, with supporting sworn affidavits and documentation, Safeway argued that the complaint should be dismissed because plaintiff's compensation was governed by a collective bargaining agreement, which plaintiff failed to attach to the complaint (see 735 ILCS 5/2-606

[1] In his appellate brief, plaintiff says his employment with Safeway ended on August 1, 2013, a minor disagreement with the date given by Safeway of July 29, and for our purposes an immaterial one.

(West 2014) (complaints founded on written instrument must attach that instrument)) and which, in any event, allowed for the deduction of union dues under state and federal law.

¶ 6 The trial court dismissed the complaint with prejudice. Plaintiff moved for reconsideration. The trial court denied that motion. The trial court found the motion for reconsideration "incoherent" and "nonsensical" and wrote that plaintiff "fail[ed] to make relevant or rational statements" and "fail[ed] to offer any legitimate grounds" for reconsideration. The trial court cautioned plaintiff that even a *pro se* litigant may be subjected to sanctions for frivolous pleadings under Supreme Court Rule 137 (eff. July 1, 2013). This appeal followed.

¶ 7 Before addressing the merits of this appeal, we must note that plaintiff's appellate brief fails to comply with the requirements of Illinois Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. Jan. 1, 2016)) in many ways. "Rule 341 governs the form and content of appellate briefs." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. Rule 341(h) provides that all briefs should contain a statement of "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment" and an argument "which shall contain the contentions of the appellant and reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(6), (7) (eff. Jan. 1, 2016).

¶ 8 Without belaboring the point, plaintiff's statements of facts and argument are inadequate, providing this court with little to no understanding of the case. His brief is comprised of elaborate allegations and claims that seem to have no bearing on the case. The only repeated allegation in plaintiff's brief is his claim that he is owed "equal pay to Michael Jordan's $8.9 million." Plaintiff does not cite to any pertinent legal authority or to the record on appeal.

¶ 9 "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). That proposition is true even where the appellate party is acting *pro se*. See *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12 (parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys); *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys."). Compliance with these procedural rules is mandatory and this court may, in its discretion, strike a brief and dismiss and appeal for failure to comply with Rule 341. *Dart*, 2015 IL App (1st) 141291, ¶ 12; *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001).

¶ 10 That said, we see no impediment to resolving this appeal notwithstanding the shortcomings of plaintiff's brief, as the record is not voluminous, and we have the benefit of a cogent appellee's brief. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill App 3d 509, 511 (2001). We will not dismiss this appeal but consider it on the merits.

¶ 11 Whether under section 2-615 or 2-619, our review of a complaint's dismissal is *de novo*. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). We may affirm on any basis in the record, regardless of whether it was the trial court's basis for dismissal. *Miller v. Lawrence*, 2016 IL App (1st) 142051, ¶ 20.

¶ 12 A section 2-615 motion to dismiss tests the legal sufficiency of a complaint based on defects apparent on its face. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. The question is whether the facts as alleged in the complaint,

viewed in the light most favorable to the plaintiff and taking all reasonable inferences that may be drawn from all well-pled facts as true, are sufficient to state a cause of action upon which relief may be granted. *Id.* at ¶ 16. To survive a section 2-615 motion, a "plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009).

¶ 13 Here, the complaint failed to allege sufficient facts to set forth a legally recognized cause of action. We have recited the complaint in its entirety above. It is challenging to even discern a cause of action in the first place, in order to determine whether that action is sufficient pleaded, and plaintiff has not aided us in that endeavor. The complaint references the "Equal Pay Act" specifically, but the Illinois Equal Pay Act of 2003 bars wage discrimination among similarly-situated employees on the basis of gender. See 820 ILCS 112/10 (West 2012). Nothing in the complaint states or even hints that plaintiff was paid less than a similarly-situated employee due to a difference in gender.

¶ 14 The complaint never specifically references the Illinois Equal Wage Act. 820 ILCS 110/1 (West 2012). Even if it did, the complaint would fail to plead a violation of that statute. That law bars "an unequal wage for equal work" if the employees are otherwise similarly situated (*id.*), but the complaint does not plead unequal pay for equal work. The only "wage" comparison in the complaint is to the $8.9 million Safeway "gave" to Michael Jordan, which based on plaintiff's appellate brief seems to reference the famous athlete—but regardless of which person is referenced, there is no hint that plaintiff was engaged in the same work as that individual.

¶ 15 As Safeway additionally noted in its claim for dismissal under section 2-619 of the Code, a claim under the Equal Wage Act does not apply, in any event, when an employee's wages are governed by a collective bargaining agreement, as here. See *id.* And the complaint would be

time-barred, in any event, as a claim under the Act must be filed within 6 months of the violation (see 820 ILCS 110/2 (West 2012)), and the complaint was filed more than 2 years after plaintiff's employment with Safeway ended.

¶ 16 Plaintiff's appellate brief—not his complaint—briefly discusses the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207 (West 2012), but the complaint does not mention unpaid minimum wages or overtime compensation, nor will we comb that federal statute to see if we can find a provision that fits within the sparse allegations in this complaint. We will be as fair and thorough as possible, but we cannot cross the line and become advocates for one party or the other. See *Jackson v. Board of Election Commissioners of City of Chicago*, 2012 IL 111928, ¶ 34 (reviewing court must remain neutral and should not take on role of advocate for one party). In any event, we have already noted that the complaint was filed more than 2 years after plaintiff's employment ended, and any FLSA claim must be brought within 2 years of the violation absent a willful violation. See 29 U.S.C. § 255(a) (West 2012); *Bartoszewski v. Village of Fox Lake*, 269 Ill. App. 3d 978, 981 (1995). Thus, a FLSA claim would be time-barred, regardless.

¶ 17 To the extent the complaint alleges the tort of negligence against his employer, Safeway—and assuming that such claims could be raised outside the purview of the workers compensation statutes—the complaint fails to provide any facts regarding the duty Safeway owed to plaintiff, its breach of that duty, or how any injuries suffered by plaintiff were proximately caused by that breach of duty. Each of these elements must be pleaded with some specificity to survive a motion to dismiss. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006).

¶ 18 Plaintiff did not seek leave to amend his complaint, nor does he complain on appeal that he should have been granted leave to amend. So the question of whether plaintiff should have been allowed to amend his complaint is not before us.

¶ 19 In his appellate brief, plaintiff ventures far beyond the allegations of his complaint, arguing about such things as whether Michael Jordan's right of publicity really was violated, such that he deserved the $8.9 million he received from Safeway; whether plaintiff's pension and ERISA rights have been violated; whether inventors should receive compensation on par with basketball stars; and the like. Even under the most liberal reading of the complaint, we do not see how these issues are before us. We are limited to the question of whether the complaint in the record was properly dismissed. For the reasons we have given above, we find that it was.

¶ 20 The court sympathizes with plaintiff, who feels he has been wronged in various ways and sought to navigate the legal system without the benefit of counsel. We have done our best to review the record and identify the claims he tried to raise. But we can find no viable cause of action based on the complaint before us, and thus we find no error in the trial court's ruling.

¶ 21 Affirmed.