2018 IL App (1st) 163320-U

No. 1-16-3320

Order filed June 28, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MICHAEL DAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 L 10414
	)	
SKOKIE SCHOOL DISTRICT 68 and OTHER	)	
DEFENDANTS OF SCHOOL DISTRICT 68,	)	Honorable
	)	John H. Ehrlich,
Defendants-Appellees.	)	Judge presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the dismissal of plaintiff's first amended complaint where his well-pled facts failed to sufficiently allege a *prima facie* case of employment discrimination. Although the circuit court did not explicitly deny plaintiff's motion for leave to file a second amended complaint and his motion to conduct discovery, the court implicitly denied them and there was no error in the implicit denials.

¶ 2 *Pro se* plaintiff, Michael Day (Day), filed a first amended complaint, in which he alleged that defendants, Skokie School District 68 and Other Defendants of School District 68

(collectively, the District), discriminated against him based on his race when it did not hire him for a position as a full-time or substitute teacher. The District moved to dismiss the complaint. Thereafter, Day filed a motion for leave to file a second amended complaint and a motion to conduct discovery to support the allegations of his complaint. The circuit court granted the District's motion to dismiss, but did not rule on Day's two motions.

¶ 3 In this appeal, Day contends that the circuit court erred in: (1) granting the District's motion to dismiss; (2) not allowing him leave to file a second amended complaint; and (3) not allowing him to conduct discovery to support the allegations of his complaint. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 Day's first amended complaint frames the issues of this appeal. In the complaint, Day stated that he was African-American and a member of a protected class. He alleged that, several times between 1995 and July 2013, he completed applications to become a full-time and/or substitute teacher with the District. According to Day, he had "renewed" his "standard teacher certificate" with the Illinois State Board of Education in 2002, 2007 and 2012, and in 2011, he received an "endorsement" in mathematics. He also stated that he had eight years of experience as a substitute teacher, taught mathematics "as a regular teacher" and had obtained a Master's Degree "in a physical science field." Despite his numerous applications for positions with the District, Day stated that no one ever contacted him regarding them, and he claimed that he still had a "viable" application on file with the District. Day alleged that, despite having the necessary qualifications to become a teacher with the District, he was not hired and individuals outside of his protected class with fewer qualifications were hired. As a result, Day claimed that the District

violated the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2016)), by discriminating against him based on his race.

¶ 6 The District moved to dismiss Day's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), arguing that he failed to allege any facts to show he was rejected for any of the positions to which he applied. Rather, according to the District, Day simply stated he was never contacted after submitting applications. The District additionally highlighted Day even conceded in his complaint that he had an application on file that had not been outright rejected when he applied for a position in 2013. The District also argued that Day failed to allege any facts to show that it continued to solicit applications from similarly qualified candidates outside of his protected class for the positions to which he applied.

¶ 7 On November 1, 2016, following briefing on the District's motion, Day filed a "Motion to File Proposed Second Amended Complaint Depending on Court Dismissing First Amended Complaint," and a week later, he filed a "Motion to Allow Discovery for Additional Facts to Support Allegations." Both motions were entered by the circuit court, and the court continued Day's case until November 16, 2016. On that date, the circuit court entered a written order granting the District's motion to dismiss with prejudice under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). The order did not mention Day's motion for leave to file his second amended complaint or his motion for discovery.

¶ 8 Day timely appealed.

¶ 9 II. ANALYSIS

¶ 10 A. Motion to Dismiss

¶ 11 Defendant first contends that the circuit court erred in dismissing his first amended complaint. A motion to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS

5/2-615 (West 2016)) challenges the legal sufficiency of a complaint by alleging defects apparent on its face. *In re Estate of Powell*, 2014 IL 115997, ¶ 12. When analyzing such a motion, the circuit court must accept all well-pled facts in the complaint as true, as well as any reasonable inferences from those facts. *Id.* Because Illinois is a fact-pleading jurisdiction, the complaint must allege facts sufficient to bring a claim within a legally recognized cause of action. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368 (2004). "[A] court must disregard conclusions that are pleaded and look only to well-pleaded facts in order to determine whether they are sufficient to state a cause of action against the defendant." *Id.* A dismissal is proper under section 2-615 only when "it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the plaintiff to recover." *In re Estate of Powell*, 2014 IL 115997, ¶ 12. We review a dismissal under section 2-615 *de novo*. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29.

¶ 12 In analyzing a claim of employment discrimination arising under the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2016)), we utilize the three-part analysis articulated by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178 (1989). First, the plaintiff must establish a *prima facie* case of unlawful discrimination. *Id.* at 178-79. To establish a *prima facie* case of employment discrimination, the plaintiff must plead facts that show: (1) he was a member of a protected class; (2) he applied for and was qualified for an available position; (3) he was rejected for that position despite his qualifications; and (4) after the rejection, the position remained open and the employer continued to seek applicants from individuals with the same qualifications as him. *C.R.M. v. Chief Legal Counsel of Illinois Deptartment of Human Rights*, 372 Ill. App. 3d 730, 733 (2007). If the plaintiff can establish a *prima facie* case, a

rebuttable presumption arises that the employer unlawfully discriminated against him. Z*aderaka*, 131 Ill. 2d at 179. Second, in order for the employer to rebut the presumption, it must articulate a legitimate non-discriminatory reason for its decision. *Id.* Third, if the employer carries its burden of production, the presumption of unlawful discrimination disappears and the plaintiff must prove that the employer's articulated reason was not the true reason. *Id.*

¶ 13 In this case, the well-pled facts in Day's first amended complaint sufficiently alleged that, as an African-American, he was in a protected class (see *R.R. Donnelley & Sons Co. v. Human Rights Comm'n*, 219 Ill. App. 3d 789, 794 (1991)) and that he applied for positions with the District. But Day failed to allege sufficient facts showing he was actually qualified for the positions he sought and that the qualifications he had were sought by the District from applicants for those positions. Furthermore, Day never made a factual allegation that he was rejected for a position with the District. Rather, he simply stated that he never heard back and even conceded in his complaint that he had an active application still on file. Also of import, Day's complaint failed to state any facts to show the District even knew his race. Lastly, Day failed to allege that the positions he applied for remained open and the District continued to seek applicants from individuals with the same qualifications as him. Consequently, Day failed to allege sufficient facts to establish a *prima facie* case of employment discrimination, and the circuit court properly dismissed his first amended complaint.

¶ 14 B. Second Amended Complaint and Discovery

¶ 15 Day next contends that the circuit court erred in not allowing him leave to file a second amended complaint and to conduct discovery to support the allegations of his complaint.

¶ 16 When Day filed his "Motion to File Proposed Second Amended Complaint Depending on Court Dismissing First Amended Complaint" and "Motion to Allow Discovery for Additional

Facts to Support Allegations," the circuit court entered the motions and continued his case until November 16, 2016. On that date, the circuit court entered a written order granting the District's motion to dismiss, but did not mention Day's two motions. The bystander's report of that proceeding (see Ill. S. Ct. R. 323(c) (eff. July 1, 2017)) reflects no mention of his motions, and thus, it appears that the court did not expressly rule on them. However, while the court did not expressly rule on Day's two motions, it implicitly denied them.

¶ 17 The procedural history of this case is akin to that of *Calamari v. Drammis*, 286 Ill. App. 3d 420, 435 (1997). In *Calamari*, after the circuit court granted a plaintiff's motion to voluntarily dismiss her complaint, she re-filed her complaint, which alleged medical malpractice, and attached an affidavit in which her attorney asserted that she had been unable to obtain a physician's report before the expiration of the statute of limitations. *Id.* at 422. The defendant moved to dismiss her complaint for failing to comply with section 2-622 of the Code of Civil Procedure (735 ILCS 5/2-622 (West 1992)). *Calamari*, 286 Ill. App. 3d at 422. In response, the plaintiff filed a motion for leave to file an amended complaint and replied to the defendant's motion to dismiss. *Id.* at 422-23. In the proposed amended complaint, the plaintiff included an attorney's affidavit and physician's report, but the report failed to address the merits of her case. *Id.* Thereafter, the circuit court dismissed her complaint with prejudice. *Id.* at 423. The plaintiff filed a motion to reconsider, but the court denied that motion, finding that she had failed to file the required physician's report during the course of litigation on her original complaint and since she had filed her re-filed complaint. *Id.* In denying the motion, the court acknowledged that the plaintiff had moved to file an amended complaint and included a physician's report, but the court determined the report was insufficient because the physician did not state that she had good cause to file the lawsuit. *Id.* The court, however, added that it did not base its decision to dismiss

the plaintiff's lawsuit with prejudice on the inadequacy of the report included with the proposed amended complaint. *Id.* And the court never ruled on her motion for leave to file an amended complaint. *Id.* at 423, 435.

¶ 18 On appeal, the plaintiff argued that the circuit court erred in dismissing her complaint with prejudice and she should have been allowed to file an amended complaint. *Id.* at 432. After determining that the court properly dismissed her complaint with prejudice, the appellate court found that the circuit court also did not err in refusing to allow her to file an amended complaint. *Id.* at 435. The appellate court observed that the circuit court never ruled on the motion for leave to amend, but "the court implicitly denied this motion in its order denying the motion to reconsider" when it found the physician's report included with the proposed amended complaint was insufficient. *Id.*

¶ 19 In this case, similar to *Calamari*, with respect to Day's motion for leave to file a second amended complaint, when the circuit court granted the District's motion to dismiss, it did so with prejudice. A dismissal with prejudice means that it was clear to the court that Day could prove no set of facts that would entitle him to relief. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). Conversely, when a court dismisses a complaint without prejudice, it is allowing the plaintiff an opportunity to replead his or her cause of action to potentially remedy a defect. See *Brown-Seydel v. Mehta*, 281 Ill. App. 3d 365, 368 (1996). But here, because the court dismissed Day's complaint with prejudice, it implicitly found that the deficiencies in Day's complaint were incurable and he was not entitled to an opportunity to replead his complaint given those fatal deficiencies. See *Sims-Hearn v. Office of Medical Examiner*, 359 Ill. App. 3d 439, 443 (2005) (finding the circuit "court may dismiss a complaint for failure to state a cause of action with no opportunity to replead if it is clearly apparent that no set of facts can be proven which will entitle

plaintiff to recovery"). Thus, while the court never explicitly denied Day's motion for leave to file a second amended complaint, it implicitly did by dismissing his first amended complaint with prejudice. See *Calamari*, 286 Ill. App. 3d at 435.

¶ 20 Section 2-616(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-616(a) (West 2016)) provides that, at any time before final judgment, the plaintiff may be allowed to amend his or her complaint for various reasons on just and reasonable terms. While the plaintiff does not have an absolute right to amend his or her complaint, Illinois has a liberal policy toward granting such motions. *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 41. When determining whether to allow such a motion, the circuit court must consider four factors: "(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." *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). We will not reverse the court's decision to deny a motion for leave to amend a complaint unless the court has abused its discretion (*id.* at 273-74), which occurs only when its decision is unreasonable or arbitrary so much that no reasonable person would adopt the same view. *Seymour v. Collins*, 2015 IL 118432, ¶ 41. On this record and based on the numerous deficiencies of Day's first amended complaint, we cannot say the circuit court abused its discretion in denying his motion for leave to file a second amended complaint.

¶ 21 Second, with respect to Day's motion to conduct discovery to support the allegations of his complaint, for the same reasons as above, we find that the circuit court implicitly denied the motion. Given the court's dismissal of his first amended complaint with prejudice, it found that Day clearly could prove no set of facts entitling him to relief. *Morr-Fitz*, 231 Ill. 2d at 488. In

turn, no discovery could have helped support the allegations in his complaint. Thus, while the court never explicitly denied Day's motion to conduct discovery, it implicitly did. And again, on this record and based on the numerous deficiencies of Day's first amended complaint, there was no basis for his discovery request, and we cannot find error by the court in denying his motion.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.