

No. 1-17-0314

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

MARIAN MARSHALL,)	Appeal from the
)	Circuit Court of
Plaintiff-appellant,)	Cook County.
)	
v.)	No. 16 M1 104578
)	
CHICAGO BOARD OF EDUCATION,)	Honorable
)	Jerry A. Esrig,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the dismissal of plaintiff-appellant’s second amended complaint because plaintiff is excluded from making a claim under the Fair Labor Standards Act and the Illinois Minimum Wage Act.

¶ 2 Plaintiff-appellant, Marian Marshall, is a special education teacher with the Chicago Public School System and a member of the Chicago Teacher’s Union (hereinafter “the Union”).

She filed this action after allegedly being denied compensation due to her under the Collective

Bargaining Agreement¹ (hereinafter “the CBA”) between the Union and defendant-appellee, Chicago Board of Education. Her complaint alleged that she was denied certain benefits under the CBA and therefore forced to work additional hours at home in order to prepare for teaching. Based on this, plaintiff alleged she was entitled to lump sum payout of those benefits in addition to the yearly salary she received. After several dismissals without prejudice, the circuit court granted a dismissal with prejudice after concluding plaintiff failed to exhaust her administrative remedies. Plaintiff then appealed the dismissal to this court.

¶ 3 Plaintiff contends the circuit court erred in dismissing her second amended complaint with prejudice. Plaintiff argues that under the terms of the CBA she was not required to exhaust her administrative remedies before filing suit against the defendant. She further argues that her second amended complaint states a cause of action under both federal and state employment law.

¶ 4 For the reasons stated more fully below, we affirm the dismissal with prejudice of plaintiff’s second amended complaint.

¶ 5 **JURISDICTION**

¶ 6 The trial court entered a dismissal with prejudice on January 4, 2017. On February 3, 2017, plaintiff filed her notice of appeal. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 7 **BACKGROUND**

¶ 8 Plaintiff initiated this lawsuit against the defendant in February 2016 after allegedly being denied compensation for “preparation time” and “release time.” According to her complaint, she alleged that between 2012 and 2015 there existed a CBA between the Union and the defendant

¹ The CBA was not included in the record before this court.

which set forth the conditions under which Union members would perform their teaching duties. Plaintiff alleged that Article 5-1 of the CBA provided she be given 64 minutes of continuous preparation time per day during which she would not be teaching or otherwise supervising students. She also alleged that under Article 21-16, a special education teacher, such as herself, was entitled to “release time” during which another teacher would watch her class so that she could complete Individualized Education Programs. Her complaint alleged that during the 2013 and 2014 school years she was denied these benefits and was forced to work through both her “preparation time” and “release time.” She alleged she worked extra hours at home because of the denial of these benefits. Based on the denial of these benefits, plaintiff claimed she was entitled to approximately \$18,000 in overtime at her regular hourly rate pursuant to the Fair Labor Standards Act and “Illinois Wage Labor Act.”²

¶ 9 The defendant moved to dismiss plaintiff’s initial complaint pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 *et seq.* (West 2016). After briefing by the parties, the trial court, for reasons not stated in the order, dismissed plaintiff’s initial complaint pursuant to section 2-615 but granted plaintiff leave to amend. 735 ILCS 5/2-615 (West 2016). Plaintiff filed an amended complaint which contained essentially the same allegations as the original complaint. The defendant moved to dismiss the amended complaint pursuant to section 2-619 because it alleged plaintiff had failed to exhaust her administrative remedies under the CBA. The circuit court granted the defendant’s motion without prejudice.

¶ 10 Plaintiff then filed her second amended complaint which is the subject of this appeal. In her second amended complaint, plaintiff alleged that her claim was not one for overtime but rather “is a claim for wages earned, contracted for and unpaid.” At paragraph 4, Plaintiff alleged

² There is no such Act in Illinois, however plaintiff did cite to the Illinois Minimum Wage Law (820 ILCS 105 *et seq.* (West 2014)).

that the defendant violated the Illinois Wage Payment and Collection Act (820 ILCS 115 *et seq.* (West 2014)) and the Fair Labor Standards Act (29 U.S.C. 115 *et seq.* (2012)). At paragraph 17, however, plaintiff claimed the compensation was guaranteed under both the Illinois Minimum Wage Law (820 ILCS 105 *et seq.* (West 2014)) and the Fair Labor Standards Act.

¶ 11 The defendant moved to dismiss, which the circuit court granted on January 4, 2017. According to the record, the defendant made an oral motion to dismiss the second amended complaint. In the order dismissing the second amended complaint with prejudice, the circuit court concluded “plaintiff did not exhaust her remedies under the Collective Bargaining Agreement.” Plaintiff timely filed a notice of appeal.

¶ 12 Before this court, plaintiff raises only one issue – the circuit court erred in dismissing her second amended complaint for failure to exhaust administrative remedies.

¶ 13 ANALYSIS

¶ 14 Before turning to the merits of the appeal, we must clarify the statutory provisions at issue before this court. In her second amended complaint, plaintiff discusses an alleged violation of the Illinois Minimum Wage Act and the Illinois Wage Payment Protection Act (as well as the federal Fair Labor Standards Act). In her Reply before this court, plaintiff concedes the second amended complaint did not request relief under the Illinois Wage Payment Protection Act, only the Illinois Minimum Wage Act and the Fair Labor Standards Act. Accordingly, we confine our discussion to plaintiff’s claim under those statutes and not the Illinois Wage Payment Protection Act.

¶ 15 In arguing that the circuit court erred in dismissing her second amended complaint plaintiff asserts she did not have to exhaust her administrative remedies before filing suit against the defendant in the circuit court. Plaintiff contends “the Board’s grievance process does not have exclusive jurisdiction of claims arising under the CBA.” The defendant responds that

plaintiff is exempt from the protections of the Fair Labor Standards Act and the Illinois Minimum Wage Act and therefore cannot state a claim under either. It also contends that plaintiff failed to exhaust her administrative remedies under the CBA.

¶ 16 Orders granting a motion to dismiss are subject to a *de novo* standard of review. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Additionally, in arguing that plaintiff does not fall within the protections of the Fair Labor Standards Act and the Illinois Minimum Wage Act, the defendant raises a question regarding statutory interpretation. We apply a *de novo* standard of review to this issue as well. *Davis Bancorp, Inc. v. Board of Review of the Dep't of Empl. Sec.*, 393 Ill. App. 3d 135, 142 (2009).

¶ 17 The defendant is correct that plaintiff cannot assert a claim under either the Fair Labor Standards Act or the Illinois Minimum Wage Act. This court has previously explained, “[a] violation of the Illinois Minimum Wage Law is contingent on establishing a violation under the Fair Labor Standards Act of 1938.” *Resurrection Home Health Services v. Shannon*, 2013 IL App (1st) 111605, ¶ 23. Section 213(a)(1), titled “Exemptions,” of the Fair Labor Standards Act states:

“[T]he provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to –

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in capacity of academic administrative personnel or **teacher in elementary or secondary schools**).” (emphasis added) 29 U.S.C. § 213(a)(1) (2012).

Plaintiff concedes she is a teacher in an elementary school in the City of Chicago. Pursuant to section 213(a)(1), plaintiff is excluded from alleging a claim under the provisions of the Fair Labor Standards Act. See *Kay v. Board of Educ. Of City of Chicago*, 547 F. 3d 736, 738 (7th Cir. 2008) (stating that the Fair Labor Standards Act does not cover teachers in public schools). Since a claim under the Illinois Minimum Wage Law is contingent on establishing a claim under the

Fair Labor Standards Act, plaintiff's inability to state a claim under the federal statute necessarily precludes her from stating a claim under the Illinois statute as well.

¶ 18 Because plaintiff cannot state a claim under either statute, we affirm the dismissal of her second amended complaint with prejudice. Given this outcome, we decline to address whether or not plaintiff needed to exhaust her remedies under the CBA before filing suit.

¶ 19

CONCLUSION

¶ 20 For the reasons stated above, the judgment appealed from is affirmed.

¶ 21 Affirmed.