2018 IL App (1st) 171671-U

FOURTH DIVISION
December 31, 2018

No. 1-17-1671

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIAHANN GRASTY, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION (by its General Counsel, Ron Rascia); CAMBRIDGE INTEGRATED SERVICES GROUP, INC./SEDGWICK CLAIMS MANAGEMENT SERVICES INC.; SUSAN E. WALSH, Attorney; ILLINOIS DEPARTMENT OF INSURANCE (Workers' Compensation Fraud Unit); WILLIAM M. BLUMTHAL, Jr., Deputy Director; ADVOCATE ILLINOIS MASONIC MEDICAL CENTER; and MAAZA G-AMLAK, Psychiatrist, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 15 CH 17920 Honorable Pamela McLean Meyerson, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurrred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County dismissing third amended complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure.

¶ 2 Plaintiff Diahann Grasty (Grasty), *pro se,* filed an initial complaint in the circuit court of Cook County seeking the enforcement of subpoenas in her cases before the Illinois Workers'

Compensation Commission (Commission). After multiple amendments, the operative complaint essentially alleged that certain defendants conspired to "kill" her workers' compensation claims. Grasty appeals, as a *pro se* appellant, from a circuit court order dismissing her third amended complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The defendants-appellees have filed three briefs: (1) a brief on behalf of the Commission by its general counsel, Ron Rascia (Rascia), the Illinois Department of Insurance, and William Blumthal (Blumthal), its deputy director and head of its Workers' Compensation Fraud Unit (WCFU) (collectively, the State Defendants); (2) a brief on behalf of Sedgwick Claims Management Services Inc. (Sedgwick) and attorney, Susan E. Walsh (Walsh); and (3) a brief on behalf of Advocate Illinois Masonic Medical Center (Advocate), and psychiatrist Maaza G-Amlak, M.D. (G-Amlak). For the reasons discussed below, we affirm the judgment.

¶ 3 BACKGROUND

¶ 4 Grasty was employed as a customer service agent at Cambridge Integrated Services Group, Inc. (Cambridge) beginning in 2008. Cambridge operated a call center on behalf of the Regional Transportation Authority. Grasty has stated that Cambridge sold its business operations to Sedgwick. Grasty has also represented that attorney Walsh represented Cambridge/Sedgwick.

¶ 5 Grasty allegedly sustained multiple physical and psychological injuries during her employment. She alleged, in part, that a coworker struck her head and that she was subjected to religious discrimination and harassment in the workplace. Grasty's purported injuries resulted in four workers' compensation cases before the Commission, initiated in 2010 and 2011. G-Amlak, a psychiatrist at Advocate, was one of the medical professionals who treated Grasty.

¶ 6 Grasty apparently submitted a complaint to the WCFU regarding Cambridge. In a 2014 letter to Grasty, Blumthal stated that the WCFU would not open an investigation of Cambridge, primarily because Grasty's workers' compensation cases remained pending before the Commission at that time.[1] He subsequently explained that none of Grasty's submissions indicated that Cambridge attempted to violate section 25.5 of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/25.5 (West 2014)), which penalizes various unlawful acts relating to workers' compensation matters. Blumthal also asserted that the WCFU had fulfilled its duties with regard to Grasty's allegations and was not in violation of section 25.5.

¶ 7 In late 2015, Grasty initiated the instant cause of action in the circuit court of Cook County to secure compliance with subpoenas as to certain respondents relating to her workers' compensation cases. The circuit court ultimately permitted Grasty to file three amended complaints. Grasty's third amended complaint is the operative complaint for purposes of this appeal.[2]

¶ 8 Although the allegations are unclear (as discussed below), the counts of the operative complaint appear to be as follows. Counts 1 through 4 were against Cambridge/Sedgwick and Walsh. Count 1 and 2 alleged violations of the Act pursuant to specified subsections of section 25.5 and section 26 (820 ILCS 305/25.5 (West 2016); 820 ILCS 305/26 (West 2016)). Grasty stated, in part, that Walsh had filed a false statement indicating that Grasty did not receive medical care until one month after her "work related assault injury." In Count 3, Grasty alleged a violation of a federal criminal statute regarding witness tampering (18 U.S.C. § 1512),

[1] The current status of the workers' compensation proceedings is unclear from the record on appeal.

[2] As the circuit court acknowledged, the complaint filed on December 5, 2016, is "at least the fourth pleading" filed by Grasty in the action. Although certain appellate briefs reference this complaint as a fifth amended complaint, for purposes of clarity, we will refer to the complaint at issue – filed on December 5, 2016 – as the third amended complaint or the operative complaint.

asserting that Walsh had intimidated witnesses into not appearing or testifying at administrative or judicial proceedings. In Count 4, Grasty alleged that Sedgwick was liable for all damages sought against Cambridge in Count 1, pursuant to the doctrine of successor liability.

¶ 9 In Counts 5 through 8, Grasty asserted various claims against the State Defendants. Count 5 alleged violations of section 25.5 and 26 of the Act. In Count 6, she alleged a claim pursuant to section 16 of the Act and a provision of the Illinois Administrative Code (50 Ill. Adm. Code 7030.50), regarding subpoenas in proceedings before the Commission. In Count 7, she asserted a claim for contempt but referenced 730 ILCS 130/3, which is the County Jail Good Behavior Allowance Act. Count 8 referenced the doctrine of sovereign immunity and *Ex Parte Young*, 209 U.S. 123 (1908), a United States Supreme Court case which permits certain federal lawsuits against officials acting on behalf of states despite sovereign immunity.

¶ 10 In Counts 9 and 10 against Advocate and G-Amlak, Grasty asserted claims based on section 16 of the Act and section 7030.50 of the Illinois Administrative Code, as well as a contempt claim pursuant to 730 ILCS 130/3. It should be noted that it is not clear under what basis Grasty is asserting a claim against G-Amlak in Count 11 of the complaint.

¶ 11 The State Defendants filed a motion to dismiss pursuant to section 2-619.1 of the Code. The State Defendants argued: the operative complaint failed to state a cause of action; Grasty's exclusive remedy is in the Commission; Grasty had not exhausted her administrative remedies; and the doctrine of sovereign immunity bars any claims Grasty would otherwise have against Blumthal and Rascia, as state employees acting within the scope of their employment. Advocate and G-Amlak also moved for dismissal with prejudice pursuant to sections 2-615 and 2-619 of the Code; Sedgwick and Walsh filed a motion to dismiss under section 2-615.

¶ 12 In an order entered on May 18, 2017, the circuit court dismissed the operative complaint

with prejudice pursuant to section 2-615. The circuit court characterized the complaint as "confusing," noting that "[i]t cites a plethora of laws – state and federal, civil and criminal, statutory and common law – but does not coherently state the elements of a cause of action." The circuit court further stated, in part, that Grasty is not the proper party to compel the enforcement of subpoenas under section 16 of the Act. The circuit court denied requests for sanctions under Illinois Supreme Court Rule 137 by Advocate/G-Amlak and Sedgwick/Walsh.

¶ 13 Grasty filed a timely appeal, which initially was treated as a workers' compensation appeal. In an order entered on December 6, 2018, the five-judge panel sitting as the Workers' Compensation Commission Division of the Appellate Court determined that it lacked authority under Illinois Supreme Court Rule 22(i) (eff. July 1, 2017) to hear and decide this appeal because Grasty does not seek review of an order by the Commission. This appeal was thus transferred to the Illinois Appellate Court, First District for further proceedings.

¶ 14 ANALYSIS

¶ 15 As a preliminary matter, we note the extensive issues with Grasty's briefs on appeal. First, her briefs suggest that "United States Assistant Attorney General William Rock" is a defendant-appellee. The record on appeal is clear that Mr. Rock was an attorney employed by the Illinois Attorney General's office and was not a defendant in the circuit court action. Issues not raised in the circuit court cannot be raised for the first time on appeal. See *Robidoux v. Oliphant*, 201 Ill. 2d 324, 344 (2002). As no claims were raised in the circuit court vis-à-vis Mr. Rock, we will disregard any appellate arguments directed at him.

¶ 16 In addition, Grasty's opening brief does not include any arguments specifically addressing its claims against Advocate or G-Amlak. An appellant's failure to argue a point in the opening brief results in forfeiture under Illinois Supreme Court Rule 341(h)(7). See *BAC*

Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶ 23. Grasty has forfeited her arguments regarding the dismissal of her claims against Advocate and G-Amlak.

¶ 17 Grasty's briefs indicate that this appeal involves a matter subject to expedited disposition under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). Rule 311(a) addresses the mandatory accelerated disposition of appeals from certain orders regarding child custody, the allocation of parental responsibilities, or the relocation of unemancipated minors. *Id.* See *In re Marriage of Dougherty*, 2017 IL App (1st) 161893, ¶¶ 12-14 (explaining the purpose of Rule 311(a)). As the instant appeal does not involve the care and custody of children, Grasty's reliance on Rule 311(a) is misplaced.

¶ 18 We further note that Grasty's briefs fail to satisfy the requirements of Illinois Supreme Court Rule 341 (eff. May 25, 2018), which governs the format and content of briefs. *In re Marriage of Sanchez and Sanchez-Ortega*, 2018 IL App (1st) 171075, ¶ 31. Among other things, the jurisdictional statement in her opening brief incorrectly states that the circuit court entered summary judgment, in violation of Rule 341(h)(4) (requiring a brief "but precise" statement or explanation of the basis for the appeal). Ill. S. Ct. R. 341(h)(4) (eff. May 25, 2018). The statement of facts does not contain the facts necessary to an understanding of the case. See Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018). While she claims that "[a]ll defendants were found to be in contempt of the courts," the cited page of the record does not mention contempt. The argument section lacks coherence and contains invective, *e.g.*, referencing an "out-of-control judicial system whose conduct crossed every line of justice." See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 79 (describing the argument section of the appellant's brief as "nearly impossible to follow"). Neither the statement of facts nor the argument section consistently includes appropriate references to the pages of the appellate record. See Ill. S. Ct. R. 341(h)(6),

(h)(7) (eff. May 25, 2018).

¶ 19 The procedural rules governing the format and content of appellate briefs are mandatory, and where an appellant does not meet the requirements of Rule 341, we have the authority to dismiss the appeal. *Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 31. As a *pro se* litigant, Grasty is not entitled to more lenient treatment than attorneys. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001) (stating that *pro* se litigants are presumed to have full knowledge of applicable court rules and procedures); *Holzrichter*, 2013 IL App (1st) 110287, ¶ 78 (noting that *pro se* litigants "are held to the same standards as licensed attorneys"). Despite the deficiencies of her briefs, we choose to address the merits of Grasty's appeal to the extent possible.

¶ 20 As a preliminary matter, the operative complaint in the instant case did not comply with section 2-603 of the Code. 735 ILCS 5/2-603 (West 2016). Section 2-603(a) requires all pleadings to "contain a plain and concise statement of the pleader's cause of action." 735 ILCS 5/2-603(a) (West 2016). Pursuant to section 2-603(b), "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count[,] *** and each count *** shall be separately pleaded, designated and numbered," with "each paragraph containing, as nearly as may be, a separate allegation." 735 ILCS 5/2-603(b) (West 2016). See also 735 ILCS 5/2-613(a) (West 2016) (requiring causes of action to be "separately designated and numbered"). The operative complaint in this case was a 65-page, 11-count complaint with 198 numbered paragraphs. The complaint did not include the "plain and concise statement" mandated by section 2-603(a). Certain paragraphs contained multiple allegations or were otherwise incomprehensible. The purpose of section 2-603 is to give notice to the court and parties of the claims being presented (*Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009)), and a complaint may be dismissed if it is drafted in a manner that renders any attempt to

answer futile. *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 938 (2001). Dismissal with prejudice pursuant to section 2-603 would have been appropriate in this case, particularly where the defendants previously raised section 2-603 concerns and Grasty was granted multiple opportunities to file a proper complaint. See *Cable America, Inc.*, 396 Ill. App. 3d at 25 (concluding that the "plaintiff's fifth amended complaint did not comply with section 2-603" and thus "[t]he plaintiff's cause of action was properly dismissed with prejudice as an exercise of the circuit court's inherent authority").

¶ 21 Even if we were to parse through the operative complaint in an attempt to decipher its allegations, her complaint fails to state a valid claim. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 5; 735 ILCS 5/2-615 (West 2016). "When reviewing whether a motion to dismiss under section 2-615 should have been granted, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 5. The critical question is whether the allegations in the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Id.* A cause of action should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recover. *Id.* We review a section 2-615 dismissal *de novo*. *Id.*

¶ 22 Grasty's operative complaint is based, in part, on statutes which have little or no applicability herein. For example, she relies on section 1512 of title 18 of the United States Code, which criminalizes tampering with a witness, victim, or an informant. 18 U.S.C. § 1512. Grasty, however, has no private cause of action for an alleged violation of this statute. See *Shahin v. Darling*, 606 F. Supp. 2d 525, 538 (D. Del. 2009); *Hamrick v. Gottlieb*, 416 F. Supp.

2d 1, 4-5 (D.D.C. 2005). In her contempt counts, she cites a statute addressing a good behavior allowance for certain persons sentenced to confinement in the county jail (730 ILCS 130/3 (West 2016)), which is irrelevant in the instant case. While she references section 26 of the Act, which addresses violations, punishment, and enforcement under the Act, section 26 expressly provides that "[t]he Attorney General and the State's Attorney of each county, upon the request of the [Commission], shall enforce any penalties set forth in this Act." 820 ILCS 305/26 (West 2016). Grasty has not provided any support for the proposition that she has a private right of action under section 26 of the Act.

¶ 23 Although not articulated coherently, the core of Grasty's contentions appears to be that (a) the subpoenas should have been enforced and the defendants should have complied therewith, and (b) Grasty has claims for defamation and intentional infliction of emotional distress against certain defendants.

¶ 24 As to the subpoenas, section 9030.50 of Title 50 of the Illinois Administrative Code (formerly codified at 50 Ill. Admin. Code § 7030.50) provides, in part, that a party seeking enforcement of a workers' compensation subpoena shall present an application to the arbitrator or a member of the Commission requesting enforcement pursuant to section 16 of the Act. 50 Ill. Admin. Code. § 9030.50. If the arbitrator or commission signs the application, the party seeking enforcement of the subpoena may then file and prosecute the application in the circuit court. *Id.* The record does not indicate, however, that such procedure was followed in the instant case. Because it is not clear that she complied with the mandated procedure, her claims based on the subpoenas are legally insufficient. See *Chadesh v. Commonwealth Edison Co.*, 128 Ill. App. 3d 827, 829 (1984) (noting that the foregoing procedure "provides sufficient safeguards against frivolous suits flooding the already crowded docket of the circuit court while also saving

the Commission needless involvement at each instance").

¶ 25 Although none of her claims are so captioned, Grasty referenced defamation and intentional infliction of emotional distress throughout the operative complaint. While Grasty curiously relied on Colorado law, to state a cause of action for defamation under Illinois law, "a plaintiff must present facts showing the defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and the publication caused damages." *Hadley v. Doe*, 2015 IL 118000, ¶ 30. "A defamatory statement is one that harms a person's reputation because it lowers the person in the eyes of others or deters others from associating with her or him." *Id.* As to the State Defendants, the complaint does not clearly allege what statement was false or to which third party it was published. As to Cambridge/Sedgwick and Walsh, the complaint does not allege how Grasty was damaged by Walsh's purportedly false statements. Furthermore, even if Walsh's statement that Grasty did not receive medical care until one month after her work-related injury were untrue, Grasty has not alleged how such statement would harm her reputation. *Id.* To the extent Grasty asserted defamation claims, section 2-615 dismissal was proper.

¶ 26 Our supreme court has articulated three requirements for a claim of intentional infliction of emotional distress. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 50. "First the conduct involved must be truly extreme and outrageous." *Id.* "Second, the actor must either intend that his conduct inflict severe emotional distress or know that there is at least a high probability that his conduct will cause severe emotional distress." *Id.* "Third, the conduct must in fact cause severe emotional distress." *Id.* None of the alleged conduct by any of the defendants – *e.g.*, Walsh's statement regarding the timing of Grasty's medical treatment or Blumthal's correspondence regarding the WCFU's decision not to investigate Cambridge – is

extreme or outrageous such that a claim for intentional infliction of emotional distress could be stated. To the extent Grasty asserted claims for intentional infliction of emotional distress, section 2-615 dismissal was appropriate.

¶ 27 Because the operative complaint failed to state any valid claims, dismissal under section 2-615 was properly granted. We thus need not consider the defendants' other arguments, including the State Defendants' arguments regarding sovereign immunity.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court is affirmed in its entirety.

¶ 30 Affirmed.