2018 IL App (1st) 171705-U
No. 1-17-1705

SECOND DIVISION
September 25, 2018

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

JOSE ANTONIO COSSIO, JR.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16 L 063055
	)	
PATRICK BLANCHARD and NICOLE	)	
NELSON, in their official capacity as employees	)	The Honorable
of Cook County, MARTHA MARTINEZ, in her	)	Thomas Murphy,
official capacity as the Bureau Chief of the Bureau	)	Judge Presiding.
of Administration, DOE SHERIFF DEPUTIES, in	)	
their official capacity, COOK COUNTY, COOK	)	
COUNTY SHERIFF'S OFFICE, and the COOK	)	
COUNTY EMPLOYEE APPEALS BOARD, and	)	
its members in official capacity, G.A. FINCH,	)	
JUAN OCHOA, JULIA RIEKSE, ARTHUR	)	
WHEATLEY, and GREGORY ZYGERT,	)	
	)	
Defendants,	)	
	)	
(Cook County, Defendant-Appellee).	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissal with prejudice of the plaintiff's complaint affirmed where the plaintiff had already used his one and only opportunity to refile his original cause of action under section 13-217 of the Illinois Code of Civil Procedure (735 ILCS 5/13-217 (West 1994)).

¶ 2 Plaintiff, Jose Antonio Cossio, Jr., appeals *pro se* from the circuit court's dismissal of his discrimination claim against defendant Cook County ("County"). On appeal, plaintiff argues that the circuit court erred in dismissing his complaint and in failing to specify in its written order whether the dismissal was with or without prejudice. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In October 2014, following an investigation by the Cook County Office of the Independent Inspector General ("OIIG"), plaintiff's employment as fleet manager for the County was terminated. The basis for his termination was that plaintiff had violated County personnel rules and ordinances by falsifying employment records and providing false and misleading statements during the OIIG's investigation into the nature of his discharge from the military. Plaintiff appealed his termination to the Cook County Employee Appeals Board ("EAB").

¶ 5 On March 9, 2015, while his appeal to the EAB was still pending, plaintiff instituted a declaratory judgment action (15 CH 3913) ("Case I") against the County. In that action, plaintiff alleged that the County failed to follow required procedures in terminating him, the EAB failed to hold a timely hearing, the County violated the Illinois Human Rights Act ("IHRA") (775 ILCS 5/1-101 *et seq.* (West 2014)) by terminating him based on his failure to disclose his unfavorable military discharge and failure to answer discriminatory questions during the OIIG investigation, and the County failed to follow its personnel rules.

¶ 6 On March 31, 2015, plaintiff also filed a charge of employment discrimination against the County with the Illinois Department of Human Rights ("IDHR"). In that charge, plaintiff alleged that the County had discriminated against him by terminating his employment on the

bases that he had failed to disclose his unfavorable military discharge and that he had lied to investigators about his unfavorable military discharge.

¶ 7 Plaintiff instituted another action in the circuit court on July 21, 2015 (15 L 065040) ("Case II"). In that action, plaintiff alleged that a circuit court judge and unnamed County sheriff's deputies conspired to reveal his military convictions (and thus unfavorable discharge), which resulted in plaintiff's termination. Based on these allegations, plaintiff's complaint in Case II included claims of civil rights violations under 42 U.S.C. § 1983; defamation; "false light"; abuse of process; malicious prosecution; privacy violations; intentional infliction of emotional distress; negligent infliction of emotional distress; civil conspiracy; respondeat superior; negligent hiring, retention, supervision, and training; and Fourth Amendment violations. Due to the presence of the federal law claims, the case was removed to federal court (15 CV 7746), resulting in dismissal of Case II in the circuit court.

¶ 8 On July 30, 2015, the EAB rendered a decision affirming plaintiff's termination, concluding that plaintiff had, in fact, failed to disclose information to the OIIG regarding his military convictions and unfavorable discharge.

¶ 9 Shortly thereafter, on August 4, 2015, plaintiff instituted a third proceeding in the circuit court (15 CH 11749) ("Case III"), in which he sought administrative review of the EAB's decision. Plaintiff alleged that the EAB violated his due process rights by affirming his termination based on new allegations of false statements and by failing to provide a procedure by which plaintiff could have charges dismissed if they did not state an offense; the OIIB violated the IHRA by questioning him about his military discharge; the EAB was not timely in holding its hearing; the EAB's sanction against plaintiff was unreasonable and discriminated against plaintiff on the basis of his unfavorable discharge. In his complaint in Case III, plaintiff

acknowledged that he had alleged similar facts in Case I. In fact, plaintiff subsequently moved to have Case I and Case III consolidated on the basis that they involved the same defendants and the same "alleged discriminatory actions surrounding Plaintiff's unfavorable discharge." The circuit court granted plaintiff's request and consolidated the two cases.

¶ 10 On September 1, 2015, plaintiff voluntarily dismissed his action in Case I. In February 2016, in Case III, the circuit court affirmed the EAB's decision in 15 CH 11749, and we ultimately affirmed the decision of the EAB and the circuit court. *Cossio v. Cook County*, 2017 IL App (1st) 160654-U.

¶ 11 On March 16, 2016, the IHDR issued its notice of dismissal of the charge plaintiff had filed with it. The dismissal was based on a lack of substantial evidence. In that dismissal, the IHDR informed plaintiff of his ability to institute a civil action in the circuit court.

¶ 12 On July 7, 2016, the federal court dismissed plaintiff's federal-law claims with prejudice and relinquished its supplemental jurisdiction over the state-law claims. Plaintiff then filed a motion to vacate the circuit court's dismissal of Case II and a request for leave to file a third amended complaint. The circuit court continued those motions pending resolution of a motion to reconsider that plaintiff had filed in the federal court. Plaintiff subsequently withdrew the circuit court motions voluntarily. After the federal court denied his motion to reconsider, plaintiff filed another motion to vacate the circuit court's dismissal of Case II, which the circuit court granted.

¶ 13 During this time, after plaintiff's federal case was dismissed but before Case II was reinstated, plaintiff sought leave to reinstate his action in Case I, but the circuit court denied his request on August 10, 2016.

¶ 14 About two weeks after the circuit court denied plaintiff's request to reinstate Case I, plaintiff filed the complaint in the present action (16 L 063055). In the single-count complaint,

plaintiff alleged that the County and the other defendants violated the IHRA when they discriminated against him by terminating his employment based on his unfavorable military discharge and his failure to cooperate in the OIIG's investigation and by coercing him into answering questions about his unfavorable military discharge. The County filed a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure ("Code") (735 ILCS 5/2-619 (West 2016)) on the basis that the County did not have the capacity to be sued and that plaintiff filed the present action more than 90 days after the IHDR issued its notice of dismissal. Plaintiff responded by arguing that section 13-217 of the Code (735 ILCS 5/13-217 (West 1994)[1]) tolled the time in which he could file, because the present case was a refiling of Case I. In reply, the County argued that section 13-217 permits only one refiling of a voluntarily dismissed case and that plaintiff had already used that one refiling when he filed Case II.

¶ 15 The County then filed an amended motion to dismiss, this time pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). In the amended motion to dismiss, the County argued that plaintiff could not state a claim against any of the defendants other than the County, because none of the other defendants qualified as an employer of plaintiff. The County also argued that the circuit court lacked jurisdiction over any of the defendants other than the County, the Cook County Sheriff's Department and the EAB lacked the capacity to be sued, and plaintiff did not file his action until more than 90 days after the IHDR issued its notice of dismissal. In response, plaintiff voluntarily dismissed with prejudice all of the defendants except the County. Plaintiff also submitted responses to the amended motion to dismiss, arguing that he could not have included his discrimination claims in Case II because the IHDR had not issued its

[1] This version of section 13-217 of the Code is currently in effect, because it predates the amendments of Public Act 89-7, § 15 (eff. Mar. 9, 1995), which was found to be unconstitutional in its entirety in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

notice of dismissal when plaintiff instituted Case II and that his motions to reinstate Case II and file a third amended complaint in that action did not count as a refiling of Case I. The County replied by pointing out that it was the initial complaint in Case II, not the proposed third amended complaint, that constituted the refiling of Case I and by also arguing that the federal case constituted an additional refiling of Case I.

¶ 16 After all the briefing was finally completed, the circuit court granted the County's motion to dismiss, stating in its order, "Defendant's Motion to dismiss is granted. Case closed."

¶ 17 Plaintiff filed a motion to reconsider, contending that the federal court would not allow him to amend his complaint, and Case II did not involve the same operative facts as Case I because he did not have the IHDR notice of dismissal during Case I. In a memorandum filed weeks later, plaintiff asked that the circuit court clarify that its dismissal order was not issued on the merits. The circuit court ultimately denied plaintiff's motion to reconsider, and plaintiff brought this timely appeal.

¶ 18 ANALYSIS

¶ 19 Before addressing the merits of this appeal, we note that plaintiff's briefs on appeal fail to comply with Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017) in several respects. First, plaintiff's statement of facts does not include all of the facts necessary to understand the present case, specifically, the procedural background of plaintiff's various filings and the interplay between them. Moreover, plaintiff included only sporadic record citations in his statement of facts. He also included facts that were not supported by the record, namely, statements by the parties and the circuit court made during various hearings, when no reports of proceedings were included in the record on appeal. Ill. S. Ct. R. 341(h)(6). Second, although plaintiff included a number of cases and statutes in his points and authorities section, he did not reference the vast

majority of them in his argument section, much less explain the principle for which he relied on each of these authorities. Finally, his arguments on appeal are cursory and not well explained, making it difficult to ascertain what, exactly, he intended to argue or how his contentions warrant reversing the circuit court's decision. Ill. S. Ct. R. 341(h)(7). Although we recognize that plaintiff is acting *pro se*, these deficiencies in his brief would nevertheless be sufficient reason to either dismiss plaintiff's appeal or consider his contentions on appeal waived. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Despite these deficiencies, however, we will address plaintiff's contentions to the extent that we can discern them.

¶ 20 Section 13-217

¶ 21 Plaintiff's first contention on appeal is that the circuit court erred in dismissing his complaint in the present case because the federal court would not allow him to amend his complaint in federal court. Plaintiff does not explain how this contention, even if true, warrants reversal of the circuit court's dismissal of the present case. Based on the procedural history of the case and the arguments made by the parties on the County's motion to dismiss, this contention appears to be part of the larger question of whether the present case was barred by section 13-217's limitation of one refiling after a voluntary dismissal. Accordingly, we will review whether plaintiff's complaint was properly dismissed based on section 13-217. We conclude that it was.

¶ 22 Section 13-217 of the Code (735 ILCS 5/13-217) provides in relevant part:

> "In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited, if ***the action is voluntarily dismissed by the plaintiff, *** then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff *** may commence a new action within

> one year or within the remaining period of limitation, whichever is greater, *** after the action is voluntarily dismissed by the plaintiff ***."

A plaintiff who voluntarily dismisses his case is entitled to only one refiling of the same cause of action under section 13-217. *E.H. Flesner v. Youngs Development Co.*, 145 Ill. 2d 252, 254 (1991). In determining whether a claim is the same cause of action, we look to *res judicata* principles, which consider claims to be the same cause of action if they arise from a single group of operative facts. *Schrager v. Grossman*, 321 Ill. App. 3d 750, 755 (2000). "Although a single group of operative facts may give rise to the assertion of more than one kind of relief or more than one theory of recovery, assertions of different kinds or theories of relief arising out of a single group of operative facts constitute but a single cause of action." *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484, 490-91 (1993).

¶ 23 Here, plaintiff voluntarily dismissed his Case I on September 1, 2015. Prior to that dismissal, however, plaintiff had filed two other cases—Case II on July 21, 2015 (which was subsequently removed to federal court and then later returned to state court and remains pending), and Case III on August 4, 2015. Although framed in different theories of recovery, all of the claims in Case II and Case III arose out of the same group of operative facts: those leading up to and resulting in his termination of employment with the County based on his unfavorable military discharge and his failure to cooperate with the OIIG investigation. Likewise, the claims in the present case arose out of his termination from employment with the County. In fact, in his complaint in Case III, plaintiff acknowledged that he had alleged similar facts in Case I, and even moved to have the two actions consolidated on the basis that they involved the same defendants and the same "alleged discriminatory actions surrounding Plaintiff's unfavorable discharge."

¶ 24 We recognize that both Case II and Case III were instituted before plaintiff voluntarily dismissed his case in Case I. This District addressed this issue in *Schrager*. There, the plaintiff instituted two separate cases against the defendants in two different courts. *Schrager*, 321 Ill. App. 3d at 752. The second case was dismissed as duplicative of the first. *Id.* A month later, the plaintiff voluntarily dismissed the first case. *Id.* This District held that although the filed case was filed before the first case was voluntarily dismissed, it nevertheless counted as the plaintiff's one and only refiling under section 13-217, because the claims in both cases arose out of the same group of operative facts. *Id.* at 756. Thus, the plaintiff was not entitled to a third case, and the dismissal of the plaintiff's complaint was necessary. *Id.*

¶ 25 Similarly, in the present case, although Case II and Case III were filed before Case I was voluntarily dismissed, they nevertheless qualify as refilings under section 13-217, because they arose out of the same group of operative facts as Case I. Accordingly, whether Case II or Case III, plaintiff has already used his one opportunity to refile his cause of action following his voluntary dismissal of Case I, and the circuit court did not err in dismissing the present case. See *id.* at 756.

¶ 26 Having determined that the circuit court's dismissal of the present case was proper under section 13-217, we turn back to plaintiff's specific contention that he could not have amended his federal claims, because the federal court would not allow him to amend them where a pending motion to dismiss had already been fully briefed. He also argues that even if he had been able to amend his claims in the federal court, it would not have mattered, because the federal court would have ultimately just dismissed the claim when it later relinquished jurisdiction over the state law claims. Finally, plaintiff contends that he could not have amended any of his other cases, because they were all closed, except for the federal case.

¶ 27 According to plaintiff's statement of facts, the circuit court, in ruling on the motion to dismiss, stated that plaintiff should have amended "the case" to include his discrimination claims. Without a more thorough argument from plaintiff or a transcript of the hearing, we are unable to provide a meaningful review of plaintiff's contentions. Although plaintiff claims that the circuit court stated that plaintiff should have amended his case (which case is unclear) to include his current discrimination claims, we have no way of ascertaining the accuracy of plaintiff's representation or the context in which the circuit court made such a statement. Moreover, plaintiff fails to fully explain his contention—what he would have attempted to amend the federal claims to include, why amendment of the federal claims would have been warranted, what effect it would have on the analysis under section 13-217, or why it would otherwise warrant reversal of the circuit court's dismissal. He also does not cite any authority that would shed any light on these topics or provide any support for the proposition that an inability to amend certain claims somehow precludes the application of section 13-217, especially where his earlier cases included discrimination claims. For all these reasons, despite our best efforts to address plaintiff's contentions on the merits, this specific argument by plaintiff is forfeited. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 207 (2007) ("Mere contentions without argument or citation of authority, do not merit consideration on appeal and are waived.").

¶ 28 Plaintiff also argues that because he raised his discrimination claims in his "Administrative Review filing" but they were not addressed by the circuit court, he is entitled to raise them again. Again, plaintiff's lack of further explanation makes this argument impossible to review. First, we cannot determine which of plaintiff's previous cases he is referring to, as Case III was the administrative review proceeding from the EAB decision, but plaintiff provides

a record citation to a filing made in Case II. Second, the case cited by plaintiff in support of his contention does not address section 13-217 or whether a plaintiff is entitled to additional refilings under section 13-217 if some claims are not addressed on the merits by the circuit court; rather, it deals with the application of *res judicata* and collateral estoppel. See *Jones v. City of Alton*, 757 F.2d 878 (1985). Thus, that decision[2] is of no relevance here.

¶ 29 Even putting these shortcomings aside, plaintiff's argument fails. First, with respect to Case II, there is nothing in the record on appeal demonstrating that it has been resolved. Thus, absent record evidence to the contrary, it cannot yet be said that the circuit court has failed to address certain of plaintiff's claims. Second, regardless of whether plaintiff was referring to Case II or Case III, and even if it were true that the circuit court disposed of those cases on grounds that had nothing to do with the merits of plaintiff's discrimination claims, it would have no effect on our analysis under section 13-217. It is well established that the reason for disposing of a plaintiff's refiling has no bearing on whether the plaintiff is entitled to another refiling; in every case, the plaintiff gets only one opportunity to refile his voluntarily dismissed claim. *Timberlake v. Illini Hospital*, 175 Ill. 2d 159, 165 (1997) ("Under [section 13-217], the reason a cause of action was originally dismissed is important in determining whether a plaintiff can subsequently refile, but after the case has been filed a second time, the reason for the second dismissal is of no consequence at all. No matter why the second dismissal took place, the statute does not give plaintiff the right to refile again."). Accordingly, even if the circuit court dismissed Case II and Case III without ever addressing the merits of the discrimination claims,

[2] Plaintiff states in his reply brief that the circuit court dismissed Case II in March 2018, but plaintiff has not supplemented the record on appeal with evidence of the dismissal. Accordingly, as it appears from the record on appeal before us, Case II is unresolved.

those cases nevertheless counted as refilings of Case I, thus precluding him maintaining the present action.

¶ 30 In sum, after he voluntarily dismissed Case I, plaintiff used his one and only opportunity to refile his cause of action arising out of the OIIG's investigation of him and his termination from County employment when he filed Case II. He then refiled again when he instituted Case III. Thus, whether by way of Case II or Case III, plaintiff has exhausted his right to refile under section 13-217 of the Code, and he is not entitled to maintain the present case, his fourth filing.

¶ 31 Res Judicata

¶ 32 In response to plaintiff's appeal, the County also argued that the circuit court properly dismissed plaintiff's complaint because his claims were barred by the doctrine of *res judicata*. Plaintiff makes a number of arguments to counter this contention, including that *res judicata* did not apply because his IHDR claims were ignored in previous filings, and that the County waived its claim against claim splitting by acquiescing in the consolidation of Case I and Case III. Because we conclude that the circuit court properly dismissed plaintiff's complaint based on section 13-217 of the Code, we need not address the County's alternative *res judicata* argument or plaintiff's response thereto.

¶ 33 Circuit Court's Order

¶ 34 Plaintiff's other contention on appeal is that the circuit court failed to specify whether its dismissal order was with or without prejudice. He also asks that we amend the dismissal order to reflect that it is without prejudice. Where a circuit court's dismissal order does not indicate whether it is with or without prejudice, we must look to the substance of what was actually decided to determine whether the order is final. *McMann v. Pucinski*, 218 Ill. App. 3d 101, 106 (1991). We conclude that the dismissal order was with prejudice.

¶ 35 Here, the County's motion to dismiss requested that the circuit court dismiss plaintiff's case with prejudice, and the circuit court's order specifically stated that the County's motion to dismiss was granted. It is, therefore, most likely that the circuit court intended to grant the County all of the relief it sought. See *Hozian v. Sweeney*, 202 Ill. App. 3d 444, 448-49 (1990) (concluding that the circuit court's dismissal was with prejudice where "defendants' motion specifically asked that the dismissal be granted with prejudice, and the circuit court's order stated that the defendants' motion was granted. There is no indication that the circuit court did not intend to grant the defendants full relief."). Moreover, the basis on which the circuit court granted the County's dismissal—that plaintiff had already used his one and only opportunity to refile under section 13-217—was not an issue that plaintiff could cure in any way, thereby making any amendment or refiling of the complaint futile. See *Schal Bovis, Inc. v. Casualty Ins. Co.*, 314 Ill. App. 3d 562, 568 (1999) (stating that where the dismissal is based on a deficiency that could be cured by amendment, the order is not final, but where the dismissal is based on a substantive legal deficiency, the order is final). In addition, the trial court's order, after granting the motion to dismiss, stated, "Case closed." By stating that the case was closed, the trial court indicated that it viewed the matter as completely resolved with no future pleadings or amendments contemplated, *i.e.*, that it was dismissed with prejudice.

¶ 36 We pause to note that we believe it better practice for trial courts, when possible, to avoid using general, one-line orders in rendering their decisions on parties' motions. Especially in situations such as the one here, one-line orders provide reviewing courts with little information on which to review the basis for and effect of the trial court's decision. As a result, such orders leave open the opportunity for the parties to disagree and argue over the import of the trial court's order. It would be preferable for trial courts to state the basis for their decision and, in

the context of motions to dismiss, specifically state whether the dismissal is with or without prejudice. This would not only preclude disagreement by the parties over the order's meaning, but would also relieve reviewing courts from guessing the basis of the trial court's decision or whether the trial court considered all necessary issues.

¶ 37 Moving on, with respect to plaintiff's request that we amend the dismissal order to reflect that it is without prejudice, we are unable to provide any relief in that respect, because plaintiff has given us no basis to conclude that the circuit court's dismissal with prejudice was incorrect. In fact, other than making the request that we amend the order, plaintiff makes no argument in this respect whatsoever. He also completely fails to cite any authority that would shed light on why he might be entitled to such relief. *First National Bank of LaGrange*, 375 Ill. App. 3d at 207 ("Mere contentions without argument or citation of authority, do not merit consideration on appeal and are waived."). Although we have done what we could, within reason, to afford plaintiff as much substantive review as possible, these deficiencies make it impossible for us to afford any relief in this respect. It is not our obligation to act as advocates for parties to an appeal, and for us to seek out a basis on which plaintiff might be entitled to an order without prejudice when he has not done so himself. See *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993) ("A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error.").

¶ 38 Accordingly, we conclude that the circuit court's dismissal of plaintiff's complaint was with prejudice, and that plaintiff has forfeited any claim that the circuit court erred in making that dismissal with prejudice.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 41 Affirmed.