SIXTH DIVISION
November 30, 2018

No. 1-18-0922

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LISA J. GILLARD, Plaintiff-Appellant, v. NORTHWESTERN MEMORIAL HOSPITAL, PRENTICE HOSPITAL, STARBUCKS CORPORATION, UNIVERSAL PROTECTIONS SERVICES, FRESH MARKET CAFÉ (d/b/a MORRISON'S), and PREMIER SECURITY CORPORATION, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 16 L 5386 Honorable Marcia Maras, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held*:** The circuit court did not err in denying a motion to amend the pleadings after plaintiff's third amended complaint was dismissed with prejudice.

¶ 2 BACKGROUND

¶ 3 Plaintiff Lisa J. Gillard filed a four-count *pro se* complaint against Northwestern Memorial Hospital, Prentice Hospital, Starbucks Corporation, and Universal Protection Services

seeking $49 million in damages and the termination of several of defendants' employees. She pleaded claims for assault (count I), the "denial of the full equal use and enjoyment of areas of public accommodations" (count II), violations of her religious freedom (count III), and the "lowering of individual human dignity" (count IV). These claims all relied on allegations that the defendants harassed her and removed her from various facilities at Northwestern Memorial Hospital and Prentice Hospital on various dates over the course of one year. Although it is not explicit in the original complaint, Gillard was neither a patient of the defendant hospitals, nor was she visiting a patient. According to the affidavit attached to her complaint, she used the hospitals' facilities for "reading, researching, and writing," and performed "her daily meditations" in the hospitals' chapels.

¶ 4 Northwestern Memorial Hospital and Prentice Hospital moved to dismiss the entire complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), arguing that Gillard did not plead specific factual allegations in support of her claims. Gillard moved for leave to amend the complaint, which the circuit court granted. In her amended complaint, Gillard pleaded the same four causes of action and added Fresh Market Café (d/b/a/ Morrison's)[1] and Premier Security Corporation as defendants.

¶ 5 The two-month period between the filing of the first amended complaint and the next scheduled court date was tumultuous. In that time, Gillard was arrested at Prentice Hospital for committing a battery on a security guard.[2] Also during that period, Gillard filed motions for leave to file a second amended complaint, to default various defendants, to compel discovery,

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[1] According to its brief, this defendant is named Morrison Management Specialist, Inc.

[2] After a bench trial, Gillard was convicted of criminal battery and sentenced to one-year's supervision and ordered not to have any contact with Northwestern Memorial Hospital except in the case of medical emergency. This court affirmed Gillard's conviction. *People v. Gillard*, 2018 IL App (1st) 171121-U.

and three "emergency motions for injunctive relief and sanctions." The circuit court struck Gillard's other motions, but granted leave to file her second amended complaint. The second amended complaint was identical to the first amended complaint, except that it added allegations and exhibits related to her arrest and criminal charge for battery.

¶ 6 The defendants variously filed motions to dismiss the second amended complaint under sections 2-615 (735 ILCS 5/2-615 (West 2016)) and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). The circuit court granted the motions on section 2-615 grounds and granted Gillard leave to file a third amended complaint.

¶ 7 In her third amended complaint, Gillard pleaded two counts: civil assault (count I) and "public accommodations" (count II). She also increased the alleged damages from $49 million to $500 million. In response, the defendants again variously filed motions to dismiss. After Gillard failed to appear on three consecutive hearing dates, the circuit court dismissed her case for want of prosecution.

¶ 8 The circuit court vacated the order of dismissal after Gillard filed a motion to vacate. Gillard then moved for substitution of judge for cause, accusing the judge of being prejudiced against her as a racial minority and a *pro se* litigant. Another judge heard and denied the motion for substitution. Nevertheless, the assigned judge then recused himself. The Presiding Judge of the Law Division reassigned the case to Judge Maras.

¶ 9 The circuit court granted the defendants' motions to dismiss, dismissing count I on section 2-615 grounds and dismissing count II on section 2-619 grounds. The court dismissed the entire complaint with prejudice.

¶ 10 The very next day, Gillard filed a one-page "motion to rehear, amend and supplement." Although the motion argued that the circuit court relied on "discretionary and very misguided

reasons" in dismissing the third amended complaint, Gillard did not point to any specific error in the court's application of the law. In the motion, Gillard sought leave to file documents related to her criminal conviction and to amend her pleadings. She attached to the motion a transcript from her criminal trial, an affidavit from the judge who presided over that trial (which the judge had drafted in response to a complaint made by Gillard), and the criminal disposition sheet related to her conviction. She did not attach any proposed amended complaint to the motion.

¶ 11 Before the date noticed for presentment of that motion, Gillard filed an "emergency motion to substitute judge for cause." The motion alleged that Judge Maras lacked the knowledge and experience to hear such a "difficult" case. Another judge heard and denied the motion for substitution. Judge Maras then denied the "motion to rehear, amend and supplement." This appeal followed.

¶ 12 ANALYSIS

¶ 13 At the outset, we note that there is some confusion about the scope of this appeal. Supreme Court Rule 303(b)(2) provides that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017). The filing of a notice of appeal is "the jurisdictional step which initiates appellate review." (Internal quotation marks omitted.) *General Motors Corp. v. Pappas*, 242 Ill. 163, 176 (2011). "Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obligated to dismiss the appeal." *Id.* at 176. "A notice of appeal confers jurisdiction on a court of review to consider only the judgment or parts of judgments specified in the notice of appeal." *Id.* An unspecified order is reviewable only where it is a step in the "procedural progression" leading to the judgment specified in the notice of appeal. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 435 (1979).

¶ 14 Gillard's notice of appeal specifies only the May 3, 2018 order denying her "motion to rehear, amend and supplement." The notice does not mention any other order by the circuit court.

¶ 15 However, even if we found that the order dismissing her third amended complaint was a "necessary step" leading to the entry of the May 3, 2018 order, we still would not be in a position to review the dismissal order. Points that an appellant fails to raise in her opening brief are waived. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). The arguments in Gillard's briefs are confined to whether the circuit court erred in denying her request to file a fourth amended complaint by adding a claim based on a negligence theory of liability. She makes no substantive argument that the dismissal of her third amended complaint was in error. In her opening brief, Gillard frames the issue presented in the appeal as whether the circuit court's denial of her motion was proper "based on the weight of a statutory claim of negligence." Because she did not plead a claim for negligence in her original or amended complaints, it is clear that Gillard is only appealing the court's denial of her request to amend her complaint, not the dismissal of her third amended complaint. See *In re Estate of Nicholson*, 268 Ill. App. 3d 689, 694 (1994) ("[P]laintiff only requests the opportunity to replead his counts and does not contend that the trial court's decision to grant the motion to dismiss was improper. Thus, plaintiff has waived any contention that the motion [to dismiss] was improvidently granted"). Therefore, we only review whether the circuit court erred in denying Gillard leave to file a fourth amended complaint.

¶ 16 Defendants also argue that Gillard's briefs should be stricken because they are disorganized and lack citations to pertinent authority. A *pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants. *People v. Adams*, 318 Ill. App. 3d 539, 542 (2001). "Nevertheless, we will not dismiss an appeal for briefing deficiencies 'if a reading of the entire brief makes it possible for

the court to determine the questions or issues sought to be raised.'" *Id.* (quoting *People ex rel. Carter v. Touchette*, 5 Ill. 2d 303, 305 (1955)). Although Gillard's briefs are somewhat muddled and lack consistent citations to the record or legal authority, we have chosen not to strike the brief in this appeal, and we address her appeal on the merits.

¶ 17 When leave to amend a complaint is requested before the entry of judgment, leave should be liberally granted. *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 13. This rule is consistent with section 2-616(a) of the Code of Civil Procedure (735 ILCS 5/2-616(a) (West 2016)), which provides that amendment before judgment should be allowed on "just and reasonable terms." When making a determination on a pre-judgment request for leave to amend, trial courts are to consider: (1) whether the amendment would cure the defects in the original pleading; (2) whether the other party would suffer prejudice or surprise as a result of the amendment; (3) the timeliness of the proposed amendment; and (4) whether the requesting party has had other opportunities to amend the pleading. *Loyola Academy v. S&S Room Maintenance*, 146 Ill. 2d 263, 273 (1994).

¶ 18 However, when leave to amend is sought *after* judgment, those principles do not apply, and the determination of whether leave to amend should be granted is instead governed by section 2-616(c) of the Code (735 ILCS 5/2-616(c) (West 2016)). See *Tomm's* 2014 IL App (1st) 131005, ¶ 14 ("But these [*Loyola Academy*] factors apply only to amendments that have been proposed prior to final judgment."). As explained in *Tomm's*:

> "After final judgment, a plaintiff has no statutory right to amend a complaint and a court commits no error by denying a motion for leave to amend. [Citation.] The reason is that although section 2-616(a) of the Code of Civil Procedure [citation] provides that '[a]t any time before final judgment amendments may be allowed on

> just and reasonable terms,' there is no corresponding provision mandating similar latitude in amendments offered after final judgment has been entered. Following judgment, a complaint may only be amended in order to conform the pleadings to the proofs. 735 ILCS 5/2-616(c) (West 2010). A complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies. [Citations.]" *Tomm's*, 2014 IL App (1st) 131005, ¶ 14.

¶ 19 Although amendment is to be liberally granted if the request to amend is made before the entry of judgment, if the plaintiff makes the request after judgment, amendment is not permitted for any purpose other than to conform the pleadings to the proofs. See, *e.g.*, *Fultz v. Haugan*, 49 Ill. 2d 131, 136 (1971); *FHP Tectonics Corp. v. American Home Assurance Co.*, 2016 IL App (1st) 130291, ¶ 36; *Tomm's*, 2014 IL App (1st) 131005, ¶ 14.

¶ 20 The order dismissing the third amended complaint with prejudice was a final judgment. See *Tomm's*, 2014 IL App (1st) 131005, ¶ 15. Gillard filed her request for leave to amend the next day. At that point, she had no statutory right to amend the complaint and add a negligence claim. See *id.* ¶ 14 ("A complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies.") The court's decision to deny leave to amend was not error.

¶ 21 Defendant Premier Security Corporation argues that this appeal is frivolous, that Gillard's serial litigation is egregious, and that this court should enter an order of sanctions against Gillard under Supreme Court Rule 375(b) (Ill. S.Ct. R. 375(b) (eff. Feb. 1, 1994)). Rule 375(b) allows for "appropriate sanctions" against parties who file frivolous appeals. *Id.* "[T]he appeal is considered frivolous if it would not have been brought in good faith by a reasonable, prudent attorney." *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.*, 203 Ill. App. 3d 304, 312

(1990). Although this court is especially solicitous of self-represented parties who do not display punctilious compliance with our rules, we will order sanctions against *pro se* litigants under sufficiently egregious circumstances. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87. The imposition of Rule 375 sanctions is left entirely to the discretion of the reviewing court. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 182 (2011).

¶ 22 First, Premier Security contends that Gillard's appeal is frivolous because no reasonable and prudent attorney would have brought it. Not only was the dismissal of the third amended complaint proper, it argues, but Gillard should have known that appealing the dismissal was futile in light of our rulings in her other cases. As to count I, Premier Security argues that Gillard's criminal conviction established that she, rather than any of the defendants, was the aggressor in one of the altercations underlying the alleged civil assault. See, *People v. Gillard*, 2018 IL App. (1st) 171121-U (affirming Gillard's conviction for criminal battery against a Premier Security employee.) As to count II, Premier Security argues that Gillard should have known that her failure to plead exhaustion of administrative remedies was fatal to her appeal. Before Gillard filed this appeal, we affirmed the dismissal of a similar lawsuit brought by Gillard against Harold Washington College for that very reason. *Gillard v. Board of Trustees of Community College District No. 508*, 2018 IL App (1st) 171083-U, ¶ 21.

¶ 23 Next, Premier Security argues that Gillard has engaged in a pattern of frivolous litigation that is so egregious that she has been admonished by several federal courts. See *Gillard v. Southern New England School of Law*, 563 U.S. 1030 (2011) ("[Gillard] has repeatedly abused this Court's process,"); *Gillard v. Proven Methods Seminars, LLC*, 388 Fed. Appx. 549, 550 (7th Cir. 2010) (warning "that, if [Gillard] continues to file frivolous appeals, she will be subject to sanctions or restrictions on future litigation."); *Gillard v. Board of Trustees of Community*

College District No. 508, 393 Fed. Appx. 399, 401 (7th Cir. 2010) ("we remind [Gillard] that litigants who abuse the judicial process face sanctions and restrictions on future suits."); *Gillard v. United States District Court for District of Massachusetts*, 2016 WL 8716220, at *2 (D. Mass. July 22, 2016) ("[Gillard's] conduct is vexatious and an abuse of the processes of this Court for the administration of justice.")

¶ 24 Premier Security also alleges that, as of the filing of its October 18, 2018 brief, Gillard has no fewer than nine civil law suits pending in the Circuit Court of Cook County. We may take judicial notice of lawsuits before the circuit court. See, *e.g.*, *In re N.G.*, 2018 IL 121939, ¶ 32. Additionally, Gillard has recently filed a notice of appeal in a second lawsuit against the very same defendants as in this case.[3]

¶ 25 The issue is close, but we find this appeal is not so frivolous as to warrant sanctions. Although Gillard's arguments are unconvincing and unstructured, they are not totally groundless. See *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 950 (1992) (declining to impose sanctions upon appellant despite unconvincing arguments in her briefs.) However, given Gillard's litigious history and the number of her active cases and appeals involving stunningly similar fact patterns, we echo the warnings of the federal courts: if she pursues a pattern of frivolous appeals before this court, she will face sanctions under Rule 375(b). Along the same line, if a circuit court hears similarly meritless litigation brought by Gillard, it should recognize that she has now been given ample prior warnings regarding her persistent misuse of the court system.

¶ 26 CONCLUSION

[3] *Lisa Gillard v. Northwestern Memorial Hospital, et al.*, No. 2016-L-9575, now before this court as No. 1-18-0922.

¶ 27 We affirm the circuit court's denial of Gillard's motion for leave to amend. For the reasons stated above, we do not review the dismissal of the third amended complaint or any prior order by the circuit court.

¶ 28 Affirmed.