2018 IL App (2d) 170574-U
No. 2-17-0574
Order filed June 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ERIC RIBARITS and JOSEPH MCMAHON DAIRY SERVICE, INC.,	)	Appeal from the Circuit Court of Kane County.
Third-Party Plaintiffs-Appellants,	)	
v.	)	No. 16-L-362
CPC LOGISTICS, INC.,	)	Honorable Susan Clancy Boles, Chief Judge, Presiding.
Third-Party Defendant-Appellee.	)	

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted third-party defendant's motion to dismiss with prejudice pursuant to section 2-615(a) of the Code of Civil Procedure, as third-party plaintiffs failed to state a viable negligence claim as third-party defendant owed no duty to train its employee in the act of driving.

¶ 2 Third-party plaintiffs, Eric Ribarits and Joseph McMahon Dairy Service, Inc. (Ribarits), sued third-party defendant, CPC Logistics, Inc. (CPC), for contribution in a negligence action brought against Ribarits by an employee of CPC, James Barnes (Barnes). The trial court granted CPC's motion to dismiss with prejudice pursuant to section 2-615(a) of the Illinois Code of Civil

Procedure (the Code) (735 ILCS 5/2-615(a)) (West 2016)). Ribarits appealed. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 2, 2016, plaintiff in the underlying negligence action, Barnes, filed a complaint against Ribarits for damages allegedly sustained as a result of a June 5, 2015, traffic accident. At the time of the accident, Barnes was operating a tractor trailer owned by CPC. Ribarits was operating a tractor trailer while employed with Joseph McMahon Dairy Service, Inc. as a truck driver. The trucks collided on eastbound I-90 near mile marker 51.25 when Ribarits attempted to re-enter traffic from the right-hand shoulder lane.

¶ 5 Ribarits denied all allegations of negligence and asserted an affirmative defense of contributory negligence, stating that Barnes' injuries were proximately caused by his own negligence in that he (a) failed to operate his vehicle with the regular flow of traffic; (b) carelessly and negligently failed to maintain and keep proper and sufficient lookout for other vehicles and/or objects on the roadway; (c) carelessly and negligently failed to maintain and keep a proper distance from other vehicles and/or objects in the roadway; (d) otherwise failed to exercise due care for his own safety; and (e) was otherwise careless and negligent. On February 28, 2017, Ribarits was granted leave to file a third-party complaint against CPC.

¶ 6 On March 3, 2017, Ribarits filed a one-count, third-party complaint alleging that CPC was negligent in that the company (a) failed to provide necessary training to Barnes regarding safety precautions while operating a motor vehicle; (b) failed to supervise Barnes and provide the needed supervision to ensure safety on the roadway; (c) failed to provide a safe working environment for Barnes; (d) failed to provide adequate safeguards to prevent Barnes from injury; (e) failed to ensure that others on the roadway were safe; and (f) was otherwise careless and

negligent. Ribarits' complaint alleged that the Illinois Joint Tortfeasors Contribution Act (740 ILCS 100/0.01 *et seq.* (West 2016) (the Act)), entitled them to an apportionment of fault or contribution against CPC if found liable to Barnes in the underlying action.

¶ 7 CPC moved to strike and dismiss the third-party complaint under section 2-615 of the Code (735 ILCS 5/2-615(a) (West 2016)), arguing that the third-party complaint was legally insufficient because it failed to state a recognized cause of action and that it improperly asserted derivative claims under the Act. On July 11, 2017, after reviewing the motions and hearing oral arguments, the trial court granted CPC's motion to dismiss with prejudice. Ribarits timely appealed.

¶ 8 II. ANALYSIS

¶ 9 The sole issue in this appeal is whether the trial court erred in granting CPC's motion to dismiss with prejudice pursuant to section 2-615 of the Code. Ribarits contends that they pled a viable claim for contribution against CPC pursuant to the Act by alleging that CPC was negligent in the training and supervision of Barnes. In this appeal, Ribarits' theories of negligence against CPC are limited to (a) failure to provide necessary training to Barnes regarding safety precautions while operating a motor vehicle; and (b) failure to supervise Barnes and provide the needed supervision to ensure safety on the roadway. For the following reasons, we affirm the trial court's dismissal with prejudice.

¶ 10 A motion to dismiss pursuant to section 2-615 of the Code attacks the legal sufficiency of the complaint, based on defects apparent on its face. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). "In reviewing the sufficiency of the complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 29 (2006). The critical inquiry in analyzing a 2-615 motion to dismiss is whether the

allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action on which relief may be granted. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166 ¶ 61. "A cause of action will be dismissed on the pleadings only if it clearly appears that the plaintiff cannot prove any set of facts that will entitle it to relief." *Id.* We review a dismissal pursuant to section 2-615 of the Code *de novo*. *Id.*

¶ 11 The Illinois Joint Tortfeasors Contribution Act creates a statutory right of contribution in actions where "[two] or more persons are subject to liability in tort arising out of the same injury to persons or property." 740 ILCS 100/2(a) (West 2016). The Act permits a tortfeasor to recover amounts paid in excess of its *pro rata* share of the common liability. 740 ILCS 100/2(b) (West 2016). See *Johnson v. United Airlines*, 203 Ill. 2d 121, 28 (2003). A claimant seeking contribution must show "a common injury which his acts and those of the contributor combined to bring about and which makes them subject to liability in tort." *Heinrich v. Peabody International Corp.*, 99 Ill. 2d 344, 49 (1984).

¶ 12 Here, Ribarits' third-party complaint alleges CPC's tort liability is based in negligence. For a plaintiff to state a cause of action for negligence, the complaint must allege facts sufficient to establish (1) the existence of a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty; and (3) an injury proximately caused by that breach. *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 70 (2007).

¶ 13 Here, Ribarits failed to provide a cognizable duty that CPC breached in making the argument that CPC was negligent in its training and supervision of Barnes. Our research has not revealed the recognition of a duty that requires employers to train and supervise their employees solely in the operation of a motor vehicle; rather a duty only exists when an employer's policies actively contribute to a risk of harm to a plaintiff. To plead sufficient facts to show that CPC had

a duty to control Barnes' conduct, Ribarits must have pled that CPC engaged in a course of action creating a foreseeable risk of injury to members of the public, thus creating a duty to ameliorate that risk. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139 ¶28. We review the reasoning of two recent cases cited by the parties: *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139 and *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245.

¶ 14 In *Reynolds*, a delivery driver for Jimmy John's, a sandwich restaurant known for its "freaky fast" deliveries, struck a motorcyclist while exiting the store's parking lot. *Reynolds*, 2013 IL App (4th) 120139 ¶¶ 7, 9. The injured motorcyclist pled that Jimmy John's had negligently trained and supervised the driver due to the company's failure to focus on how to make safe deliveries given its fifteen-minute delivery policy. *Id.* ¶¶ 9, 10. The court held that the trial court had erred in dismissing the plaintiff's complaint because plaintiff had pled sufficient facts to raise a question under Illinois negligence principles whether Jimmy John's engaged in a course of action, through its fifteen minute delivery policy, that created a foreseeable risk of injury to members of the public, thereby creating a duty to ameliorate that risk. *Id.* ¶ 28. In so holding, the court found that the plaintiff must still prove that (1) a policy exists; and (2) Jimmy John's did not provide training "to instruct its employees to maintain their conduct within the confines of the law." *Id.* The court's focus was on the employer's policy and not the employee's act of driving.

¶ 15 Similarly, in *Bruntjen*, a franchisor appealed a trial court's order in favor of a passenger of another vehicle who was injured when its employee, a pizza delivery driver, crossed the center line of traffic and hit a vehicle head-on. *Bruntjen*, 2014 IL App (5th) 120245 ¶ 3, 4. The court held that the plaintiff proved circumstances that gave rise to a duty owed by the franchisor to the

plaintiff. *Id.* ¶ 54. The court held that the injured passenger properly alleged that the franchisor's policies— (1) creating an "unusually large" delivery area; (2) requiring timely delivery; (3) terminating the driver's employment for failure to deliver pizzas "expeditiously;" and (4) creating a financial incentive to drive at unsafe speeds—actively contributed to a risk of harm to the plaintiff. *Id.* ¶ 42. The court recognized that when an act or omission of the defendant contributes to the risk of harm, a defendant does not escape liability. *Id.* ¶ 41. The court held that because the plaintiff properly alleged that these policies actively influenced the driver's conduct, the defendant could be found liable for the plaintiff's injuries.

¶ 16 Unlike the plaintiffs in *Reynolds* and *Bruntjen*, Ribarits did not allege that CPC had a specific policy that actively contributed to a risk of harm to the plaintiff. Without a policy actively influencing how Barnes drove, CPC has no duty to provide additional supervision or training under existing Illinois law. Ribarits does not point to any case law, nor can we find any cases, that discuss an employer's duty to train an employee specifically on the act of driving. As the cases discussed above illustrate, Illinois courts have recognized a duty for employers and franchisors to train employees when they have specific policies dictating how an employee should drive. Ribarits does not allege that CPC had specific policies regulating its drivers' speed, distance, or areas of concentration that made CPC's drivers more likely to take unnecessary risks than other drivers. Although Ribarits does not need to plead exactly how CPC had negligently instructed or trained its employees in its pleadings, they are still required to demonstrate a cognizable duty to assert a negligence claim. Their complaint failed to do so.

¶ 17 In sum, we hold that Ribarits' complaint lacks the legal sufficiency necessary to state a claim on which relief can be granted. No Illinois court has recognized a duty for an employer to

train and supervise a driver, absent an additional employer policy that increases the potential of harm to the public. Thus, the trial court properly granted CPC's 2-615 motion to dismiss.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 20 Affirmed.