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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KELEME GELLAW,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 L 2158
)	
KEFALE GELLAW,)	Honorable
)	Patrick J. Heneghan,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not err when it granted defendant's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) where plaintiff's complaint was filed outside the applicable statute of limitations.

¶ 2 Plaintiff Keleme Gellaw appeals *pro se* from the order of the circuit court granting defendant Kefale Gellaw's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). The circuit court found that the complaint was filed after the statute of limitations expired and that there was no factual or legal basis for finding

fraudulent concealment tolled the limitations period. Defendant has not filed a brief as the appellee in this matter, and we ordered the case taken on plaintiff's brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)). We affirm the judgment of the circuit court of Cook County.

¶ 3 On March 1, 2017, plaintiff filed, *pro se*, a complaint against defendant. The complaint read: "The defendant intentionally and negligently in breach of duty of due care struck and injured me causing damages of \$320,000." In a document filed with the complaint, plaintiff alleged defendant "punched and hurt me 12-3-2013," causing [my] lip and mouth to bleed profusely.

¶ 4 In October 2017, counsel filed an appearance on behalf of defendant. Defendant subsequently filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code. The motion alleged that, according to the attachment to the complaint, the injury occurred on December 3, 2013, the applicable statute of limitations for personal injury claims under section 13-202 of the Code (735 ILCS 5/13-202 (West 2016)) was two years, and the complaint was filed on March 1, 2017, more than three years after the injury. Defendant concluded that plaintiff's complaint was untimely filed and asked the court to dismiss the action with prejudice.

¶ 5 Plaintiff answered the motion, alleging that he was born in Ethiopia and was not familiar with United States' law. English was not plaintiff's first language. Plaintiff further alleged:

"The plaintiff delayed in filing the police report and this lawsuit because he did not know that he had the right to sue the defendant for his injuries because the defendant informed the plaintiff that the plaintiff could not do anything against the

defendant. The defendant also threatened the plaintiff, who was not an American citizen at the time of the 12-3-13 attack, that the defendant would make sure to have the plaintiff deported if he tried to pursue the defendant for the attack of 12-3-13.”

¶ 6 Plaintiff argued that, by misinforming and threatening him, defendant fraudulently concealed his right to file a lawsuit against defendant. Citing section 13-215 of the Code (735 ILCS 5/13-215 (West 2016)), which provides for a five-year limitations period where a cause of action has been fraudulently concealed, plaintiff claimed his lawsuit was filed within five years of learning of his right to file his lawsuit and within five years of the injury.

¶ 7 Defendant responded, arguing that plaintiff’s allegations did not constitute “concealment” within the meaning of the Code and therefore, he filed his lawsuit too late.

¶ 8 On February 16, 2018, the circuit court held that there was no factual or legal basis for finding fraudulent concealment of plaintiff’s cause of action, and dismissed plaintiff’s complaint with prejudice because it was filed after the statute of limitations had expired. Plaintiff timely appealed. Accordingly, we have jurisdiction to hear this appeal.

¶ 9 Initially, we note that plaintiff’s *pro se* brief fails to comply with numerous provisions of Illinois Supreme Court 341(eff. Nov. 1, 2017), which governs the contents of appellate briefs. For example, the statement of facts lacks citation to the record in violation of Rule 341(h)(6). Similarly, the argument, to the extent it is present, lacks coherent contentions of error and citation to any authority in violation of Rule 341 (h)(7). The rules governing appellate briefs are not merely suggestions. *In re Marriage of Reidy*, 2018 IL App (1st) 170054, ¶ 18. Failure to comply with the rules is not an inconsequential matter, and we may strike a brief that does not

conform to the rules. *Id.* However, where, as in this case, the violations of the rules do not hinder our review, we may simply disregard those portions of the brief that fail to comply. *Id.*

¶ 10 Plaintiff's complaint was dismissed on defendant's motion pursuant to section 2-619(a)(5) based on the statute of limitations. When a defendant moves pursuant to section 2-619(a)(5) to dismiss a complaint, all well-pleaded facts and reasonable inferences therefrom are taken as true for the purpose of the motion. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277 (2003). A section 2-619 motion should be granted only if the plaintiff can prove no set of facts that would support his cause of action. *Id.* at 277-78. We review *de novo* an order dismissing a cause of action under section 2-619. *Arnold v. Kapraun, P.C.*, 2018 IL App (1st) 172854, ¶ 10.

¶ 11 Section 13-202 of the Code (735 ILCS 5/13-202 (West 2016)) applies to plaintiff's personal injury action and provides, in relevant part: "Actions for damages for an injury to the person *** shall be commenced within 2 years next after the cause of action accrued." Generally, the statute of limitations begins to run on the date of the injury. *Solis v. BASF Corp.*, 2012 IL App (1st) 110875, ¶ 28. The discovery rule postpones the commencement of a statute of limitations until the injured party knows or reasonably should know that he or she has been injured and that the injury was wrongfully caused. *Morietta v. Reese Construction Co.*, 347 Ill. App. 3d 1077, 1082 (2004). However, where the injury was caused by a sudden, traumatic event such that the circumstances thereof put the injured party on notice the injury might be actionable, the statute of limitations commences on the date of injury. *Id.*

¶ 12 In this case, the complaint alleged defendant hit plaintiff and caused his injuries on December 3, 2013. As the injuries were caused by a sudden, traumatic event, the circumstances of which put plaintiff on notice that the injury might be actionable, the statute of limitations

commenced on the date of injury. *Id.* at 1082-83. Thus, the two-year statute of limitations expired on December 3, 2015, and plaintiff's complaint filed on March 1, 2017, more than three years after plaintiff's injury, was untimely. We conclude that the circuit court did not err when it granted defendant's section 2-619 motion to dismiss the complaint with prejudice.

¶ 13 Plaintiff argues, as he did below, that by threatening him with deportation, defendant fraudulently concealed the cause of action within the meaning of section 13-215 of the Code (735 ILCS 5/13-215 (West 2016)). Section 13-215 provides:

“If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.” 735 ILCS 5/13-215 (West 2016).

¶ 14 Fraudulent concealment is not a separate cause of action but rather an exception to a statute of limitations that would otherwise bar some other, underlying cause of action. *Wisniewski v. Diocese of Belleville*, 406 Ill. App. 3d 1119, 1154 (2011). Fraudulent concealment under section 13-215 “ ‘must consist of affirmative acts or representations which are calculated to lull or induce a claimant into delaying filing of his claim or to prevent a claimant from discovering his claim.’ ” *Id.* (quoting *Smith v. Cook County Hospital.*, 164 Ill. App. 3d 857, 862, (1987)). The plaintiff “ ‘must plead and prove that the defendant made misrepresentations or performed acts which were known to be false, with the intent to deceive the plaintiff, and upon

which the plaintiff detrimentally relied.’ ” *Id.* (quoting *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 18 (2007)).

¶ 15 In this case, plaintiff has not identified any affirmative act by defendant which would prevent him from *discovering* his claim. Plaintiff further alleged that defendant punched him in the face damaging his teeth and lip and causing copious bleeding. He necessarily should have been aware of his injury and potential cause of action immediately. Plaintiff further alleged that he delayed filing his lawsuit until he became a United States citizen because defendant told him that there was no recourse, and threatened to have him deported if he reported the battery to the police. However, plaintiff has alleged no facts which would lead us to conclude that, when defendant made the threat, it was “calculated to lull or induce” plaintiff into delaying filing his claim. Instead, plaintiff concedes, as he did in his filing below, that the actual cause of the delay was his lack of knowledge regarding the laws of the United States. We conclude that the circuit court did not err when it found that there was no support for plaintiff’s claim of fraudulent concealment.

¶ 16 Further, it is plaintiff’s burden as the appellant, to present a sufficiently complete record of the proceedings below to support a claim of error, and “ ‘[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant.’ ” *Romito v. City of Chicago*, 2019 IL App (1st) 181152, ¶ 23 (quoting *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Here the record on appeal contains no report of proceedings of the hearing on defendant’s motion to dismiss. We cannot know what evidence or arguments the trial court heard. Therefore, to the extent the record is incomplete, we must presume that circuit court acted with a sufficient legal and factual basis. *Id.* ¶ 24.

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¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.