

No. 1-18-1694

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MARCUS LEWIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 15 L 7598
)	
ANDREW FINKO,)	Honorable
)	Daniel J. Kubasiak,
Defendant-Appellee.)	Judge, Presiding.
)	
)	

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the orders of the circuit court dismissing the plaintiff’s fifth amended complaint; denying his motion to vacate the dismissal of his fifth amended complaint; and denying his motion for leave to file his sixth amended complaint.

¶ 2 The plaintiff, Marcus Lewis, appeals *pro se* from the orders of the circuit court of Cook County: (1) dismissing his fifth amended complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)); (2) denying his

postjudgment motion to vacate the dismissal of his fifth amended complaint; and (3) denying his postjudgment motion for leave to file his sixth amended complaint. For the reasons that follow, we affirm.

¶ 3 The following facts relevant to our disposition of this appeal were adduced from the pleadings and orders of record.

¶ 4 On February 14, 2018, the plaintiff filed his three-count fifth amended complaint against the defendant, Andrew Finko, alleging breach of contract, civil conspiracy, and negligence. The plaintiff alleged that, as a result of the defendant's failure to file an appearance on his behalf before the Merit Systems Protection Board (the Board) and file an answer to the complaint filed against him by the United States Office of Special Counsel (OSC), alleging that he violated the Hatch Act (5 U.S.C. §7321 *et seq.* (1994)), a default judgment was entered against him and he was terminated from his employment with the United States Postal Service (USPS). The defendant moved to dismiss all three counts of the plaintiff's complaint. The circuit court granted the motion, pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016))¹, and subsequently denied the plaintiff's postjudgment motions to vacate and for leave to file an amended complaint. This appeal followed.

¶ 5 Prior to setting forth our legal analysis, we must first place this case in both its procedural and factual context. The plaintiff was an employee of the USPS from October 11, 1997, until May 16, 2014. In 2012, the plaintiff ran for Congress in the Second Congressional District of Illinois during the November 2012 general election and lost. Subsequently, Representative Jesse Jackson, Jr. resigned from Congress, and a special election was scheduled for April 9, 2013, to elect his replacement. The plaintiff also ran in that election and lost.

¹ The defendant filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)) and the circuit court dismissed the plaintiff's fifth amended complaint solely pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)).

¶ 6 On December 21, 2012, the plaintiff filed a declaratory judgment action in the Northern District of Illinois: (1) arguing that the Hatch Act violated his First and Fifth Amendment rights under the U.S. Constitution; and (2) seeking to enjoin the OSC from enforcing the Hatch Act against him as he was an “independent and not a partisan candidate.” The district court dismissed the plaintiff’s First Amendment claim, in open court, on January 7, 2013. On February 1, 2013, the district court dismissed the remainder of the plaintiff’s action, holding that: (1) the plaintiff’s Fifth Amendment claim fails as he and all employees under the Hatch Act are explicitly prohibited from running for national office and; (2) he has not alleged that he was treated differently from those similarly situated to him. The plaintiff filed an appeal from this decision in the United States Court of Appeals for the Seventh Circuit. On July 8, 2013, the seventh circuit vacated the district court’s judgment and remanded the cause “with instructions to dismiss as moot” because there was no indication that the plaintiff intended to run for public office in the future. *Lewis v. Pinta*, No. 13-1862 (7th Cir. 2013). The seventh circuit made no finding on whether the plaintiff violated the Hatch Act.

¶ 7 During the pendency of the proceedings before the Federal District Court, the OSC filed a complaint against the plaintiff with the Board, alleging that the plaintiff violated the Hatch Act by running for partisan political office in both the November 2012 and the April 2013 elections and by soliciting political contributions through his campaign website and his Facebook page. The plaintiff hired the defendant to represent him in the proceedings before the Board, but no answer to the complaint was filed. In the absence of a response to the complaint, the administrative law judge (ALJ) entered a default judgment against the plaintiff, treating the OSC’s unanswered allegations as admitted facts and finding that he violated the Hatch Act. The ALJ ordered that the plaintiff be removed from his position with the USPS because he continued

to violate the Hatch Act, despite several warnings and opportunities to withdraw from both elections. Because the elections involved Republican and Democratic candidates, the ALJ found that they were elections for a partisan political office, and that the Hatch Act prohibits federal employees from running in such elections. Additionally, the ALJ concluded that the plaintiff knowingly solicited political contributions for his campaigns by requesting donations on his campaign website and his Facebook page.

¶ 8 The plaintiff filed a timely petition for review seeking to vacate the default judgment entered against him. He argued that his failure to respond to the OSC's complaint was because the defendant, whom he hired to represent him before the Board, did not file an answer. The plaintiff also included an answer to the OSC's complaint, arguing that he did not violate the Hatch Act, as running for an elected office as an "independent candidate" is permissible under the Hatch Act, and that any violation of the Hatch Act was unknowing and unintentional. The Board affirmed the ALJ's decision and on May 16, 2014, the plaintiff was terminated from his position with the USPS. The Board concluded that the plaintiff's untimely answer to the complaint would not have changed the outcome of the case because the plaintiff admitted the relevant facts forming the basis of the ALJ's findings that he violated the Hatch Act—specifically, that he ran for political office while employed with the USPS and that his websites solicited the public to donate to his campaign. The Board also rejected the plaintiff's arguments that the OSC's complaint was procedurally invalid and that he justifiably relied on a newspaper article that formed the basis for his belief that running for political office as an "independent" in an election would not violate the Hatch Act when he received multiple OSC notices that his activities were prohibited. The plaintiff filed a timely appeal of the Board's decision to the United States Court of Appeals for the Federal Circuit and the court affirmed the Board's

decision to remove the plaintiff from his employment with the USPS. *Marcus Lewis v. Merit Systems Protection Board*, CB-1216-13-0063-T-1, (Fed. Cir. 2014).

¶ 9 On February 14, 2018, the plaintiff filed his three-count fifth amended complaint against the defendant, alleging breach of contract, civil conspiracy, and negligence. The plaintiff alleged that as a result of the defendant's failure to: (1) file an appearance on his behalf before the Board; and (2) file an answer to the complaint filed against him by the OSC, which alleged that he violated the Hatch Act, a default judgment was entered against him, and he was terminated from his employment with the USPS. The defendant moved to dismiss the fifth amended complaint arguing that: (1) it failed to allege facts which state a cause of action against him for any of the legal theories set forth therein; and (2) its claims were barred by other affirmative matters; namely, that collateral estoppel prevented the plaintiff from relitigating the propriety of his removal from the USPS for his undisputed and repeated violations of the Hatch Act. On June 12, 2018, the circuit court granted the defendant's motion to dismiss, pursuant to section 2-615 of the Code, with prejudice, holding that the plaintiff failed to allege damages that were proximately caused by any action on the part of the defendant. On July 12, 2018, the plaintiff filed a postjudgment "Motion to Amend Complaint," as well as a "Motion to Vacate Judgment of 6/12/18," which the circuit court denied.

¶ 10 At the outset, we note that the defendant argues, both in his brief and in a separate motion that we have taken with the case, that we should strike the plaintiff's brief for failing to comply with Illinois Supreme Court Rule 341 (eff. May 25, 2018). We agree that the plaintiff's brief fails to conform with Rule 341. Specifically, the statement of facts section includes argument and contains no citations to the record in support of its assertions as required by Rule 341(h)(6). Moreover, the argument section contains no citations to the record or case law as required by

Rule 341(h)(7). As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. “The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Arguments that are not supported by citations to authority fail to meet the requirements of Rule 341(h)(7) and are procedurally defaulted. *Vallis Wynngroff Business Forms, Inc. v. Illinois Workers’ Compensation Comm’n*, 402 Ill. App. 3d 91, 94 (2010). The fact that a party appears *pro se* does not relieve him from complying as nearly as possible with the Illinois Supreme Court Rules for practice before this court. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Nevertheless, we deny the defendant’s motion to strike the plaintiff’s brief and dismiss this appeal. However, as the plaintiff has failed to cite authority, his arguments on appeal are forfeited. See *Klein v. Caremark Int’l, Inc.*, 329 Ill. App. 3d 892, 905 (2002). Forfeiture aside, and to the extent that we may discern the plaintiff’s arguments, we conclude that they lack merit.

¶ 11 Based on our reading of the plaintiff’s brief, it appears that he is requesting that this court reverse the orders of the circuit court that: (1) granted the defendant’s section 2-615 motion to dismiss; (2) denied his postjudgment motion to vacate the dismissal of his fifth amended complaint; and (3) denied his postjudgment motion for leave to file his sixth amended complaint.

¶ 12 This appeal comes to us following the dismissal of the plaintiff’s claims pursuant to section 2–615 of the Code. Therefore, our review of the issue of whether his fifth amended complaint stated a cause of action is *de novo*. *Kanerva v. Weems*, 2014 IL 115811, ¶ 33. The question presented is whether the allegations of the plaintiff’s complaint, when taken as true and viewed in the light most favorable to the plaintiff, state a cause of action upon which relief may

be granted. *Id.*

¶ 13 To withstand a motion to dismiss based on section 2–615, a complaint must allege facts that set forth the essential elements of the cause of action. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). Although a plaintiff is not required to prove his case in the pleading stage, he must allege sufficient facts to state all the elements which are necessary to sustain his cause of action. *Id.* The plaintiff has alleged causes of action for breach of contract, conspiracy, and negligence, each of which requires allegations of proximately caused damages. See *Green v. Trinity International University*, 344 Ill. App. 3d 1079, 1085 (2003); see *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140 (1990); see *Vance v. Chandler*, 231 Ill. App. 3d 747, 750 (1992); see also *Indeck North American Power Fund, L.P.*, 316 Ill. App. 3d 416, 432 (2000). Here, the plaintiff has failed to allege facts that would establish that the defendant caused his damages. Because the plaintiff ran for partisan political office while employed with the USPS, the Board entered a default judgment against him, finding that he violated the Hatch Act and terminated his employment with the USPS. It was the plaintiff's violation of the Hatch Act that proximately resulted in his termination, not the defendant's failure to file an appearance before the Board or file an answer to the OSC's complaint.

¶ 14 In his fifth amended complaint, the plaintiff has alleged that he ran for partisan political office while working for the USPS thereby establishing the violations of the Hatch Act which resulted in his termination. As a consequence, the plaintiff has not, nor could he, alleged facts sufficient to support the element of proximately resulting damages in the causes of action pled in his fifth amended complaint. See *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 26. Therefore, the circuit court did not err when it dismissed the plaintiff's complaint.

¶ 15 Next, the plaintiff requests that this court reverse the circuit court's denial of his motion

to vacate the dismissal of his fifth amended complaint. Once a complaint has been dismissed, it is within the discretion of the circuit court whether to vacate the dismissal order. *Michel v. Gard*, 181 Ill. App. 3d 630, 636 (1989). Here, because the circuit court did not err when it dismissed the plaintiff's fifth amended complaint, and because the motion to vacate did not present any new facts, the circuit court did not abuse its discretion when it denied the plaintiff's motion to vacate. *Id.*

¶ 16 Lastly, the plaintiff requests that this court reverse the circuit court's denial of his motion for leave to file an amended complaint. Whether to grant leave to file an amended complaint is within the sound discretion of the trial court. *McCastle v. Mitchell B. Sheinkop, M.D., Ltd.*, 121 Ill. 2d 188, 194 (1987). In determining whether the trial court has abused its discretion in denying such a motion, we look to four factors, namely: "(1) whether the proposed amendment would cure the defective pleading; (2) whether the other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). "The plaintiff must meet all four factors, and if the proposed amendment does not state a cognizable claim, and thus, fails the first factor, courts of review will often not proceed with further analysis." (Internal quotation marks omitted.) *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶ 51. "Where it is apparent even after amendment that no cause of action can be stated, leave to amend should be denied." *Id.*

¶ 17 In this case, our focus is on the first factor. The plaintiff's proposed amendment simply does not cure his pleading deficiencies. He has not alleged facts that state a cause of action against the defendant—namely that the defendant caused his damages. The plaintiff still admits

to the facts that establish his violations of the Hatch Act which resulted in the termination of his from employment with the USPS. Consequently, he cannot allege that, but for the defendant's inaction, the Board would have found that he did not violate the Hatch Act. Because it is apparent that, due to his inability to plead proximately resulting damages, the plaintiff could not allege a cause of action against the defendant, we find that the circuit court did not abuse its discretion when it denied the plaintiff's motion for leave to file his sixth amended complaint.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 19 Affirmed.