2019 IL App (1st) 181892-U

No. 1-18-1892

Order filed October 17, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ARIEL ELLIOT, individually and on behalf of all others similarly situated,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County
v.	)	
	)	No. 17 CH 016447
CHICAGO TRANSIT AUTHORITY; PACE, the SUBURBAN BUS DIVISION of the REGIONAL TRANSPORTATION AUTHORITY; CUBIC CORPORATION; and CUBIC TRANSPORTATION SYSTEMS CHICAGO, INC.,	)	Honorable Neil H. Cohen, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE BURKE delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court where plaintiff lacks standing to pursue the cause of action against the defendants.

¶ 2 Plaintiff, Ariel Elliot, brought this action against defendants, the Chicago Transit Authority (CTA), Pace, the Suburban Bus Division of the Regional Transportation Authority

(Pace), Cubic Corporation, and the Cubic Transportation Systems Chicago, Inc. (together with Cubic Corporation, "Cubic") to recover economic losses she suffered as a result of being unable to obtain Student Ventra Cards for her homeschooled children. Plaintiff asserted that defendants denied her children equal protection of the laws where defendants refused to issue Student Ventra Cards, which entitled students to reduced fares on CTA and Pace trains and buses, to homeschooled children. The circuit court dismissed plaintiff's claims with prejudice pursuant to sections 2-619 and 2-615 of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-619 (West 2016); 735 ILCS 5/2-615 (West 2016). The court found that plaintiff lacked standing to bring the action and that her complaint failed to state a valid cause of action.

¶ 3 On appeal, plaintiff contends that the circuit court erred in finding that she lacked standing to bring this action and that the court erred in dismissing her complaint with prejudice rather than allowing her an opportunity to amend her complaint in order to cure any standing deficiencies. Plaintiff also contends that the court erred in finding that the fare ordinances were not "laws" and that defendants did not violate the equal protection clause. Finally, plaintiff contends that the court erred in finding that defendants were not unjustly enriched where plaintiff was required to pay the full fare for her children to use CTA and Pace transport. Because we find that plaintiff lacks standing to bring this action, we need not address the merits of her other contentions and we affirm the judgment of the circuit court on that basis.

¶ 4 I. BACKGROUND

¶ 5 A. Plaintiff's Complaint

¶ 6 In her complaint, plaintiff contended that she was seeking redress for defendants' unlawful denial of CTA student discount benefits to homeschooled children. Defendant CTA operates and maintains the public transit system in Chicago and select suburbs. Defendant Pace

operates suburban public bus transit services in Cook County and other surrounding counties. Defendant Cubic is responsible for the implementation and operation of the Ventra Open Standards Fare System (Ventra) for the collection of fares by defendants CTA and Pace. Both CTA and Pace offer discounted fares for students under certain conditions. In order to obtain a discounted student fare on CTA and Pace transit services, students are required to obtain a Student Ventra Card. The Ventra Card is a reusable, contactless, hard plastic card that customers use to purchase and pay for public transit on Pace and CTA buses and trains. The Ventra system replaced the magnetic stripe cards that CTA and Pace previously used. Plaintiff contended that before CTA and Pace switched exclusively to Ventra Cards, students, including homeschooled students, could obtain a discounted student fare magnetic stripe card from on-site agents, from CTA's customer service office, or online from Pace. Plaintiff noted that after switching to the Ventra system, CTA and Pace's policies explicitly stated that students could receive discounted fares only with valid Student Ventra Cards.

¶ 7 Plaintiff asserted that under CTA and Pace's policies, discounted student fares were available to all full-time elementary and high school students on school days between the hours of 5:30 a.m. and 8:30 p.m. regardless of the type of school the student attended. Plaintiff noted that Student Ventra Cards were distributed directly to Chicago Public Schools and were also distributed to certain private and parochial schools. Plaintiff contended that under defendants' policies, if a student attended a school that did not receive an automatic distribution of Student Ventra Cards, the student could submit an application directly to Ventra. The application provided that full-time students aged 7-20 years old were eligible for a Student Ventra Card. The application further provided that "Cards must be sent to the student's school. They cannot be sent to the student's residence." The form provides a phone number to call for customer assistance.

Plaintiff contended that she called Ventra's customer service department on "more than one occasion" to apply for Student Ventra Cards for her homeschooled children, but she was informed that her children were not eligible for discounted student fares because " 'they weren't in school.' "

¶ 8 Plaintiff asserted that Ventra's refusal to send Student Ventra Cards to students' residences was an "actual and/or de facto denial" of CTA and Pace student transit benefits to homeschooled children. Plaintiff noted that there was nowhere else for homeschooled students to send their Student Ventra Cards and Ventra did not provide an alternative means for providing Student Cards to homeschooled students. Plaintiff asserted that this amounted to an outright denial of student discount benefits to homeschooled children. Plaintiff further contended that Ventra "routinely" denied any Student Ventra Card applications or inquiries made by parents of homeschooled children who called the number listed on the application by "uniformly informing callers that homeschooled children are not eligible for Student Ventra Cards."

¶ 9 Plaintiff contended that defendants' denial of student transit benefits to homeschooled students resulted in those students being charged up to three times as much for CTA train rides and double for CTA and Pace bus rides compared to non-homeschooled students who were issued Student Ventra Cards. Plaintiff contended that this practice violated the CTA and Pace's own ordinances and that there was no rational basis to treat homeschooled children differently from other students. Plaintiff's complaint raised a number of allegations including violations of equal protection, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq*. (West 2016)), and that defendants had been unjustly enriched by refusing to issue homeschooled students Student Ventra Cards so that they would be eligible for the discounted student fare.

¶ 10 B. Defendants' Motions to Dismiss

¶ 11 Each defendant filed a motion to dismiss. In their motions, defendants contended that plaintiff lacked standing to bring the action because she never submitted the written application for a Student Ventra Card and thus was never refused a card after utilizing the proper procedure. Defendants also contended that plaintiff lacked standing to bring the action because the bases for her claims relied upon the rights of third parties: homeschooled children who had been denied student discount benefits. Defendants also contended that plaintiff failed to state a valid cause of action in any count of her complaint.

¶ 12 C. The Circuit Court's Ruling

¶ 13 The circuit court ruled on the defendants' motions in a single order because the arguments raised in the motions were substantially similar. The court first addressed plaintiff's standing to bring the action. The court found that plaintiff lacked standing to bring the suit for two reasons. First, plaintiff's complaint sought relief for a purported violation of the rights of her homeschooled children. The court noted, however, that plaintiff did not bring the suit on behalf of her children, but on behalf of herself. Second, the court noted that plaintiff never alleged that she filled out the Student Ventra Card application on behalf of her homeschooled children. Although plaintiff contended that she called the customer service telephone number on the application, the court observed that Student Ventra Cards cannot be obtained by calling customer service. The court found that plaintiff's argument that filling out the application would be futile was speculation that was not supported by any specific facts. The court concluded that any harm to plaintiff was speculative because she did not actually go through the process of applying for a Student Ventra Card. The court found that plaintiff therefore lacked standing to bring the suit.

¶ 14 With regard to the substantive claims in plaintiff's complaint, the court found that CTA and Pace's ordinances did not have the force of law and that plaintiff failed to allege any violation of those ordinances. The court also found that plaintiff failed to establish that homeschooled students were treated differently under the ordinances or that homeschooled students were similarly situated to students who attended public, private, and parochial schools. The court further found that plaintiff's equal protection claim must fail because the application process had a rational basis of fraud prevention. Finally, the court found that plaintiff could not state a claim for unjust enrichment because she could not allege that the defendants engaged in any unlawful or improper conduct. Accordingly, the court dismissed plaintiff's complaint pursuant to section 2-619 of the Code because plaintiff lacked standing to bring the suit and dismissed the complaint with prejudice pursuant to section 2-615 of the Code because plaintiff failed to state any claim as a matter of law against any and all of the defendants. Plaintiff now appeals.

¶ 15 II. ANALYSIS

¶ 16 For purposes of this appeal, we will solely address plaintiff's contentions with regard to the trial court's holding that plaintiff lacked standing to bring this action. On appeal, plaintiff contends that the court erred in finding that she lacked standing to bring this action because she is the proper party for the action. Plaintiff asserts that she is the party who suffered economic loss by being forced to pay the full fare and that the court could grant her relief by awarding her damages. She also contends that even if her children were the proper party, she could have remedied the purported defect if the circuit court had allowed her an opportunity to amend her complaint. She further contends that the court's alternate standing finding that she lacked

standing because she failed to submit the application is incorrect because it would have been futile for her to complete the application.

¶ 17 A. Section 2-619

¶ 18 The court granted defendants' motions to dismiss plaintiff's complaint for lack of standing pursuant to section 2-619 of the Code. A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, but asserts affirmative matters outside of the complaint that defeat the cause of action. *Hoover v. Country Mutual Insurance Co.*, 2012 IL App (1st) 110939, ¶ 31. Lack of standing is an "affirmative matter" that is properly raised under section 2-619. *Glisson v. City of Marion*, 188 Ill. 2d 211, 231 (1999). Where a defendant challenges standing in a motion to dismiss pursuant to section 2-619, the court must accept as true all well-pleaded facts in plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff. *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). "The court should grant the motion only if the plaintiff can prove no set of facts that would support the cause of action." *Id.* We review the dismissal of a cause of action pursuant to section 2-619 of the Code *de novo*. *Hoover*, 2012 IL App (1st) 110939, ¶ 31.

¶ 19 B. Standing

¶ 20 "The doctrine of standing ensures that issues are raised only by parties having a real interest in the outcome of the controversy." *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 35. Standing requires some injury in fact to a legally recognized interest. *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 254 (1985). The claimed injury must be "(1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Glisson*, 188 Ill. 2d at 221. In assessing standing in a purported class action, which plaintiff seeks this action to be, we focus on

the named plaintiff's allegations, not the general class she purports to represent. *Maglio v. Advocate Health and Hospitals Corp.*, 2015 IL App (2d) 140782, ¶ 21 (*citing I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 221 (2010)). Here, we will solely address the court's "alternate" finding with regard to standing: that plaintiff lacked standing to bring the action because she never submitted the application for a Student Ventra Card and that her arguments that submitting the application would have been futile were speculative.

¶ 21 1. *Plaintiff's Injury is Not Distinct and Palpable*

¶ 22 In order for an injury to be distinct and palpable, *i.e.*, to be an injury to a legally recognizable interest sufficient to confer standing, the injury must have been sustained or the plaintiff must be in immediate danger of sustaining a direct injury as a result of the challenged action. *Chicago Teachers Union, Local 1, v. Board of Education of City of Chicago*, 189 Ill. 2d 200, 208 (2000). That is, an allegation of injury cannot be merely speculative. *Maglio*, 2015 IL App (2d) 140782, ¶ 24. As the United States Supreme Court noted in *Clapper v. Amnesty International USA*, 568 U.S. 398, 409 (2013), " '[a]llegations of possible future injury' are not sufficient" to confer standing (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).[1]

¶ 23 Here, plaintiff's injury is not distinct and palpable because she has not sustained an injury, nor has she shown that she is in immediate danger of sustaining a direct injury. In her complaint, plaintiff notes that students who are not automatically issued Student Ventra Cards must submit an application for a Student Ventra Card. She concedes, however, that she never submitted the required application. She alleges that she called the customer support telephone

[1] The federal standing principles are substantially similar to those in Illinois. In federal court, to establish standing, a plaintiff must establish the existence of an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." (Internal quotation marks omitted). *Clapper*, 568 U.S. at 409.

number on the application and was told that homeschooled children were not eligible for Student Ventra Cards, but she acknowledges that she was not attempting to apply for a Student Ventra Card by phone, and she does not suggest that the customer service representatives were responsible for determining eligibility for Student Ventra Cards. Plaintiff, therefore, was never denied a Student Ventra Card because she did not go through the process of applying for one, and thus she suffered no injury. Any harm to plaintiff or her children is, therefore, speculative where she did not utilize the procedures in place to obtain a Student Ventra Card. See, *e.g.*, *Amtech Systems Corp. v. Illinois State Toll Highway Authority*, 264 Ill. App. 3d 1095, 1104 (1994). Although the Student Ventra Card application states that cards may not be sent to students' residences, we have no way of knowing whether plaintiff's application would have been denied because she listed her residence address as the address of her children's school.

¶ 24 Nonetheless, plaintiff argues, as she did before the circuit court, that completing the application would have been futile because the application explicitly states that Student Ventra Cards must be sent to the student's school and cannot be sent to a student's residence. Plaintiff asserts that, as her children are homeschooled, the Student Ventra Card could only be sent to their residence. Plaintiff also contends that she was told by representatives on the customer service helpline that homeschooled children were not eligible for Student Ventra Cards. Plaintiff maintains that it was unnecessary for her to undertake the futile action of completing the application in order to have standing.

¶ 25 The concept of futility with regard to standing most often arises in shareholder derivative actions (see, *e.g.*, *Seinfeld v. Bays*, 230 Ill. App. 3d 412, 420 (1992)) and with regard to the requirement that a plaintiff must exhaust administrative remedies before seeking judicial review (see, *e.g.*, *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 312 (1989)). However,

even in the context of administrative remedies, a plaintiff cannot avoid the exhaustion requirement and plead futility "merely because the relief they seek before an agency may be, or even probably will be, denied." *Casteaneda*, 132 Ill. 2d at 312. Likewise, in the shareholder derivative context, a plaintiff pleading futility must "raise a reasonable doubt that (i) the directors are disinterested and independent, and (ii) the directors exercised proper business judgment in approving the challenged transaction." *Seinfeld*, 230 Ill. App. 3d at 420. In other words, in responding to a motion to dismiss for lack of standing, the plaintiff must plead specific facts demonstrating futility. See *LaSalle Bank National Ass'n v. City of Oakbrook Terrace*, 393 Ill. App. 3d 905, 912 (2009) (plaintiff "bears the burden of establishing, by more than mere allegations, that pursuing a final decision would be futile.") Conclusory factual allegations are insufficient where they are not supported by allegations of specific fact. *Purmal v. Robert N. Wadington & Assocs.*, 354 Ill. App. 3d 715, 720 (2004).

¶ 26 Here, as the trial court correctly found, plaintiff failed to support her argument that submitting the application would have been futile with any specific facts. Instead, she makes the rather conclusory argument that her application would have been denied because the application states that Student Ventra Cards may not be sent to students' residences, and, as her children are homeschooled, that is the only location the card could be sent. We observe, however, that the application does not explicitly state that homeschooled children cannot receive Student Ventra Cards as plaintiff seems to suggest. Indeed, as plaintiff points out, there is nothing in the ordinances at issue that would exclude homeschooled children from receiving Student Ventra Cards.[2] Although plaintiff attempts to bolster her conclusory arguments by citing her calls to the

[2] Pace's internal fare ordinance provides that discounted student fares are available to "High School, junior high and grammar school students 12 through 20 years of age presenting a valid Ventra Student Riding Permit, Pace Permit or valid school I.D. between 5:30 A.M. and 8:30 P.M. only on school

customer service representatives, she acknowledges that she was not attempting to apply for the Student Ventra Cards over the phone and does not contend that the customer service representatives were responsible for determining eligibility for Student Ventra Cards. In fact, she recognizes in her complaint and before this court that the *only* way for students who are not automatically issued Student Ventra Cards to apply for the discounted fares is by submitting the application. Although plaintiff contended that Ventra "routinely" denied any Student Ventra Card applications or inquiries made by parents of homeschooled children, she again failed to support that conclusory contention with any specific facts. Thus, by her own admissions, plaintiff failed to fill out and submit the application for Student Ventra Cards for her homeschooled children and she has not alleged any specific facts showing that it would have been futile for her to do so.

¶ 27 We further find the precedent cited by plaintiff distinguishable from the case at bar. In *Hamlyn v. Rock Island County Metropolitan Mass Transit District*, the plaintiff, Howard Hamlyn, had Acquired Immune Deficiency Syndrome (AIDS). 986 F. Supp. 1126, 1129 (1997). Due to his condition, Hamlyn had trouble walking and standing. *Id.* The defendant, Rock Island County Metropolitan Mass Transit District (Metro Link), offered a reduced fare program that made transportation services available at a reduced rate for persons with disabilities. *Id.* The application form for reduced fares explicitly provided: "WHO DOES NOT QUALIFY: A. Applicants whose sole disability is *** AIDS ***." *Id.* at 1129-30. Although Hamlyn did not apply for reduced fares and fill out the application, the court found that Hamlyn nonetheless had

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days (Mon.- Fri.) for purposes of travel to and from classes, work/study programs, and on-campus extracurricular activities during these times." Pace Ord. SBD # 13-95. Similarly, CTA's ordinance provides that the student fare is available for "elementary and high school students on school days, 5:30am to 8:30pm. Students will be required to have a Student Riding Permit to be eligible for this fare." CTA Ord. No. 012-157 (Dec. 2012). Neither of these ordinances explicitly excludes home schooled children.

standing to bring the action because the written policy was "so facially discriminatory" that it would "deter a reasonable person in Plaintiff's position from even completing the application process." *Id.* at 1128.

¶ 28 Here, as discussed, the Student Ventra Card application does not explicitly state that homeschooled children are excluded. CTA and Pace's ordinances also do not explicitly exclude homeschooled students from receiving discounted student fares. Instead, the application provides that Student Ventra Cards must be sent to the student's school and cannot be sent to a student's residence. This is not equivalent to the explicit exclusion of persons with AIDS in *Hamlyn*. Nor do the comments from customer service representatives that homeschooled children could not receive Student Ventra Cards rise to the level of the facially discriminatory written policy in *Hamlyn*.

¶ 29 Accordingly, we hold that plaintiff lacks standing to pursue an action against defendants. "Having determined a lack of standing, there is no reason to examine whether plaintiff has stated a cause of action." *Glisson*, 188 Ill. 2d at 231. We therefore find that it is not necessary to address plaintiff's remaining contentions and we affirm the judgment of the circuit court dismissing plaintiff's complaint with prejudice.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.