

Nos. 1-18-2312 & 1-18-2318 (cons.)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOSE ANTONIO COSSIO, JR.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	Nos. 14 L 65054 &
)	17 L 65050
)	
DOROTA MACIASZEK,)	The Honorable
)	John J. Hynes,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Griffin and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court is affirmed in all respects.

¶ 2 Plaintiff Jose Antonio Cossio, Jr. filed a first amended complaint in Cook County case no. 17 L 65050 against defendant Dorota Maciaszek for breach of a settlement agreement and for rescission (2017 action). Cossio also filed an amended section 2-1401 petition (735 ILCS 5/2-1401 (West 2016)) in Cook County case no. 14 L 65054—the case that gave rise to the settlement agreement (2014 action)—seeking to set aside the settlement agreement. On Maciaszek’s motion to dismiss—which the parties agreed applied to both the first amended

complaint in the 2017 action and the amended 2-1401 petition in the 2014 action—the circuit court dismissed the amended complaint and the amended petition. Cossio filed notices of appeal in both cases, which we have consolidated. For the reasons that follow, we affirm the circuit court’s judgments.

¶ 3

I. BACKGROUND

¶ 4 We set forth only those facts relevant to our disposition, taken from Cossio’s complaint, his 2-1401 petition, the record on appeal, and other relevant decisions of this court involving Cossio. In May 2014, Maciaszek filed a *pro se* “Petition for Stalking No Contact Order” against Cossio, docketed in the circuit court as Cook County case no. 14 OP 30234 (order of protection proceedings). Maciaszek alleged that in November 2013, Cossio sent her threatening and harassing text messages after she turned him down for lunch. She further alleged that Cossio left his car outside of her residence with a two-page letter “offering his car in return for our friendship.” On July 22, 2014, following a hearing, at which Cossio represented himself *pro se* and Maciaszek was represented by counsel, the circuit court denied Maciaszek’s petition for a plenary stalking no contact order.

¶ 5 During the course of the order of protection proceedings, it was disclosed that Cossio began working for Cook County in June 2013. As we noted in *Cossio v. Cook County*, 2017 IL App (1st) 160654-U, ¶ 1, “[a]t some point, the Cook County Office of the Independent Inspector General (hereinafter ‘the OIIG’) obtained information which showed Cossio may have falsified certain aspects of his employment application.” On October 10, 2014, Cossio was terminated from his position with Cook County for failing to disclose that he had been discharged from the United States Air Force for bad conduct and that his bad conduct discharge constituted a felony conviction, and for providing false and misleading information to OIIG investigators. *Id.* Cossio

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appealed to the Cook County Employee Appeals Board, which affirmed his termination on the grounds that Cossio had not cooperated with the OIIG's investigation. The board's decision was affirmed by the circuit court on administrative review (*id.* ¶ 2), and we affirmed the board's decision on appeal (*id.* ¶ 3).

¶ 6 On November 19, 2014, Cossio initiated the 2014 action and ultimately filed a *pro se* four-count amended complaint against Maciaszek, asserting that Maciaszek's petition for a stalking no contact order was defamatory *per se* and *per quod*, that Maciaszek maliciously prosecuted him, and that the order of protection proceedings were an abuse of process. In each count, Cossio alleged that Maciaszek's conduct led to his termination from the county, and he sought monetary damages. Maciaszek, through counsel, moved to dismiss Cossio's amended complaint and filed a counterclaim. On May 21, 2015, Cossio and Maciaszek entered into what was supposed to be a confidential written settlement of the 2014 action, and Cossio dismissed the 2014 action with prejudice.

¶ 7 In December 2015, Cossio filed a "Motion to Rescind Settlement Agreement in Whole or in Part" in the 2014 action, asserting that Maciaszek's attorney violated section 2301(a) of the Code (735 ILCS 5/2-2301(a) (West 2014)) by failing to tender plaintiff a release within 14 days of the written settlement agreement, and that a liquidated damages clause in the written settlement agreement was an unenforceable penalty. The circuit court did not address Cossio's motion, and on January 6, 2016, the circuit court struck all future court dates, as "the matter [had] been dismissed with prejudice on May 21, 2015." In November 2016, Cossio filed his first section 2-1401 petition in the 2014 action, which was amended on January 3, 2017, but which was voluntarily withdrawn in March 2017 without having been served on Maciaszek.

¶ 8 In January 2016, Cossio initiated Cook County case no. 16 CH 303 against Maciaszek and her attorney (2016 chancery action), and ultimately filed a *pro se* five-count amended complaint. The claims advanced and the relief sought in the 2016 chancery action are not relevant to this appeal.¹ What is relevant, however, is that Cossio’s amended complaint disclosed many of the material terms of the settlement agreement. He specifically pleaded in his complaint that

“47. Paragraph seven of the settlement agreement states that if Cossio violates ‘any of the terms and conditions’ of the settlement agreement he owes Maciaszek \$50,000 of liquidated damages.

48. The terms under the settlement agreement are generally as follows:

(a) Give [plaintiff’s attorney] \$657.00;

(b) Not to appear at each other’s work or have any contact with neighbors or friends;

(c) Takedown and disclose all internet sites regarding Maciaszek maintained by Cossio;

(d) Destroy all photos, media, arrest records, litigation statements, lawsuits, and any other documents regarding Maciaszek. Cossio is permitted to retain all documents until the expiration of his appeals involving the County.”

¶ 9 Relevant to appeal no. 1-18-2312, in April 2017, Cossio filed a second section 2-1401 petition in the 2014 action, which was subsequently amended in June 2018. The amended

¹The 2016 chancery action was dismissed in June 2016, and no appeal was taken from the dismissal order. The circuit court’s order states that the matter was dismissed “with prejudice for the reasons stated on the record.” The parties do not direct our attention to any transcript of the proceedings in the 2016 chancery action that might suggest what the reasons were for the dismissal.

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petition asserted that Maciaszek initiated the order of protection proceedings in order to get Cossio fired from the county. The gist of Cossio's petition was that Maciaszek's attorney provided the county and the state's attorney's office with information that was then used against Cossio to terminate his employment with the county, thereby breaching the settlement agreement. Cossio asserted that the 2014 action's settlement agreement prohibited Maciaszek from "appear[ing] at, contact[ing] or interfere[ing] with Cossio's employment, including but not limited to contacting his present and future employers[.]" The parties had further agreed to

"not disclose or discuss the settlement of the alleged dispute, the terms, amount and fact of [the settlement], or the circumstances related thereto *** with any other person, except, in the case of and to the extent necessary by Cossio in any subsequent lawsuit against the Cook [sic] County regarding his termination, and as for each party to the extent necessary to the party's respective attorney and tax advisors, or unless compelled to do so by issuance of a valid order from a court of competent jurisdiction."

¶ 10 Relevant to appeal no. 1-18-2318, Cossio initiated the 2017 action in September 2017, and filed an amended two-count *pro se* complaint in June 2018. Count I was styled as a breach of contract claim, and count II was styled as a claim for rescission, although the allegations in both claims are virtually identical. Cossio asserted that Maciaszek, through her attorney, "breached [the] confidentiality, interference, and non-disparagement clauses of the [2014 action's settlement agreement] by discussing and disseminating disparaging comments and confidential matters of the case" to the state's attorney's office, and by "continuing to interfere with Cossio's employment with Cook County."

¶ 11 Maciaszek filed identical combined motions to dismiss the amended complaint in the 2017 action and amended 2-1401 petition in the 2014 action pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). Maciaszek argued that the amended complaint and the amended petition should be dismissed pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) because the records related to Cossio's military conviction and bad-conduct discharge that were allegedly disclosed by Maciaszek's attorney were from various court decisions on Cossio's claims, or were documents filed in Cossio's various cases, some of which were Cossio's own filings. Maciaszek also argued that Cossio alleged offending conduct that took place in either 2016 or 2017, more than two years after Cossio was terminated by the county. Maciaszek further argued that Cossio breached the 2014 action's confidential settlement by introducing its terms as part of the 2016 chancery action. Maciaszek also argued that the amended complaint and amended petition should be dismissed under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) because Cossio either did not or could not allege that he performed his obligations under the settlement agreement, that Maciaszek breached the agreement, or that there were any damages resulting from Maciaszek's breach. Finally, Maciaszek argued that because Cossio had not sufficiently alleged Maciaszek's breach of the agreement, he could not maintain a rescission claim.

¶ 12 In response, Cossio argued in relevant part that a proposed settlement of a federal lawsuit that he was pursuing against the county related to his termination would change his termination from the county to a "resignation." Cossio further argued that it would be premature to dismiss his claims without allowing him to take discovery on the issue of what Maciaszek's counsel disclosed to the state's attorney's office. Furthermore, Cossio argued that any of his own disclosures of the terms of the settlement agreement were protected under the "litigation

privilege.” Maciaszek’s reply argued that the litigation privilege only applied to allegedly defamatory statements made during litigation, and did not apply to violations of confidentiality clauses in settlement agreements.

¶ 13 After hearing oral argument, the circuit court entered a written order granting Maciaszek’s motions to dismiss the amended complaint and the amended 2-1401 petition. The circuit court agreed with Maciaszek that Cossio’s claims were barred by section 2-619 of the Code because (1) Cossio was not employed by the county at the time Maciaszek’s counsel provided any documents to the state’s attorney’s office, and thus there could not have been any interference with Cossio’s employment; and (2) Cossio materially breached the settlement agreement by disclosing its terms in the 2016 chancery action. The circuit court rejected Cossio’s litigation privilege argument as “nonsensical,” and relied on *Johnson v. Johnson & Bell, Ltd.*, 2014 IL App (1st) 122677, for the proposition that the litigation privilege only applies to defamatory statements made by an attorney during the course of litigation. The circuit court noted that the privilege had been extended to claims against attorneys for violations of the right to privacy (see *McGrew v. Heinhold Commodities, Inc.*, 147 Ill. App. 3d 104 (1986)), but had never been extended to a breach of a confidentiality clause in a settlement agreement. The circuit court also agreed with Maciaszek that Cossio’s breach of contract and rescission claims should be dismissed under section 2-615 of the Code because Cossio’s material breach of the settlement agreement meant that he would never be able to state a claim for breach of contract against Maciaszek. Cossio filed notices of appeal in both the 2014 action and the 2017 action.

¶ 14 Cossio also filed a motion to reconsider, and Maciaszek filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018), and a motion for costs. The circuit court granted Maciaszek’s motion for costs. After briefing and hearing, the circuit court

denied Cossio's motion to reconsider and denied Maciaszek's motion for sanctions. Cossio then sought leave in this court to amend his notices of appeal, which we allowed.

¶ 15

II. ANALYSIS

¶ 16 At the outset, we observe that Cossio's *pro se* appellate brief fails to comply with Supreme Court Rule 341(h) (eff. May 25, 2018) in several respects. He does not set forth the standard of review for any of the issues he raises on appeal, in violation of Supreme Court Rule 341(h)(3). He regularly fails to cite to the record in support of his statement of facts and his arguments, in violation of Rule 341(h)(6), (7). Furthermore, his arguments are at times disjointed and cursory, and he only sporadically cites authority in support of his arguments. This is not the first time that Cossio has submitted an appellate brief to this court that does not comply with Rule 341. See *Cossio v. Cook County*, 2017 IL App (1st) 160654-U, ¶ 26 (listing Cossio's failure to include "an adequate statement of the standard of review as to each issue he raises" and "an argument section that contains citations to the record and authority" as just two of several violations of Rule 341); see also *Cossio v. Blanchard*, 2018 IL App (1st) 171705-U, ¶ 19 (observing Cossio's failure to include all of the facts necessary to understand the case, his sporadic record citations in his statement of facts, his inclusion of facts not supported by the record, and his presentation of cursory arguments).

¶ 17 Cossio's *pro se* status does not relieve his obligation to comply with our supreme court's mandatory rules governing appellate briefs. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. This court has "the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341." *Fryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 25. "[D]oing so is a harsh sanction and is appropriate only when the procedural violations interfere with our review." *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 14 (citing *Carter v. Carter*, 2012 IL App (1st)

110885, ¶ 12). Here, Cossio's violations are not so flagrant as to warrant dismissal of this appeal, and we will address his arguments as best we can. Cossio, however, has been repeatedly admonished for failing to abide by our supreme court's rules, making his noncompliance here even more inexplicable. We caution Cossio that future noncompliance with Rule 341 will not be tolerated. We urge Cossio to visit the Access to Justice website, https://courts.illinois.gov/CivilJustice/Resources/Guide_for_Appeals_to_the_IL_Appellate_Court.pdf, and to visit our supreme court's approved statewide appellate forms website, <http://illinoiscourts.gov/Forms/approved/appellate/appellate.asp>, to aid him in preparing any future *pro se* appellate briefs that he files with this court.

¶ 18 On appeal, Cossio advances four issues for our review. First, he argues that the litigation privilege can apply to breach of contract claims (although he largely fails to advance any actual argument as to why that matters), and contends that Maciaszek's attorney was not covered by the litigation privilege. Second, he argues that the settlement agreement contains a litigation exception for the disclosure of the agreement's terms, although again, he largely fails to develop an argument as to why that is significant. Third, Cossio argues that the confidentiality clause in the settlement agreement is unenforceable and is severable from the remainder of the agreement. Finally, he argues that he adequately pleaded a rescission claim based on Maciaszek's nonperformance under the settlement agreement.

¶ 19 Section 2-619.1 of the Code permits a party to file a motion to dismiss that combines a motion under sections 2-615 and section 2-619 of the Code. 735 ILCS 5/2-619.1 (West 2016). A motion to dismiss pursuant to section 2-615 challenges the legal sufficiency of a complaint, and inquires whether the allegations state a cause of action upon which relief may be granted. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. All well-pleaded facts must be taken as true, but

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conclusions of law will not be taken as true unless supported by specific factual allegations. *Id.* Section 2-619(a)(9) of the Code permits the involuntary dismissal of a claim where the claim asserted is “barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (West 2016). An affirmative matter is “something in the nature of a defense which negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint.” *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486 (1994). “Unless the affirmative matter is already apparent on the face of the complaint, the defendant must support the affirmative matter with an affidavit or with some other material that could be used to support a motion for summary judgment.” *Pleasant Hill Cemetery Ass’n v. Morefield*, 2013 IL App (4th) 120645, ¶ 21. Our review of a dismissal under either section 2-615 or 2-619 of the Code is *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

¶ 20 First, we address Cossio’s contention that the confidentiality clause in the settlement agreement is unenforceable and is severable from the remainder of the agreement. This issue is forfeited. Cossio did not raise this argument in the circuit court; plaintiff’s contention did not form the basis of any of his claims in the amended complaint or the amended petition, and he did not advance any argument on this point in opposition to Maciaszek’s motion to dismiss. An issue raised for the first time on appeal is forfeited. *Trapani Construction Co., Inc. v. Elliot Group, Inc.*, 2016 IL App (1st) 143734, ¶ 55. Compounding Cossio’s forfeiture of this point is his failure to develop and advance an argument supported by citations to the record and citations to relevant authority. Ill. S. Ct. R. 341(h)(7). Cossio’s argument that the confidentiality clause is unenforceable is forfeited, and merits no further consideration.

¶ 21 Next, we find that Cossio’s appellate argument regarding the application of the litigation privilege to this case is inadequate; he implies—without actually arguing—that he satisfied the “pertinency requirement” for application of the privilege, and then argues that Maciaszek’s attorney’s actions in disclosing materials to the state’s attorney’s office are not covered by the privilege. Cossio’s failure to develop and advance a meaningful argument on this points results in forfeiture. Ill. S. Ct. R. 341(h)(7).

¶ 22 Even if we were to excuse Cossio’s forfeiture, he argues—as far we can tell—that his disclosure of the settlement’s terms was privileged and should not operate to bar his breach of contract claim on the grounds that he failed to perform all of his obligations under the agreement. Cossio, however, fails to identify a single case in which the litigation privilege has been applied to excuse a plaintiff’s breach of a material term of a contract in order to permit the plaintiff to pursue damages based on the other party’s breach, nor does he advance any coherent argument that the privilege should be extended to such circumstances. Cossio has failed to demonstrate that the litigation privilege has ever been applied in the manner that he seeks to apply it, and has failed to advance any meaningful argument as why the privilege should apply to the situation before us. We therefore have no basis from which we might conclude that the circuit court erred as a matter of law by refusing to find that Cossio’s conduct is protected by the litigation privilege.

¶ 23 We note that Cossio’s invocation of the litigation privilege stems from a fundamental misunderstanding of the privilege and its purpose. The attorney litigation privilege “is well established” (*Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874, ¶ 16), and

“derives from section 586 of the Restatement (Second) of Torts, which

states:

“An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.” Restatement (Second) of Torts § 586 (1977).’ ” *Id.*

¶ 24 The function of the privilege is to provide an attorney with “complete immunity with respect to the communications he makes.” *Id.* ¶ 18. This is true regardless of the attorney’s motives and regardless of the attorney’s knowledge that his statements are false or that his conduct is unreasonable. *Id.* The privilege applies to communications and conduct made before, during, and after litigation, so long as the communication pertains to proposed or pending litigation. *Id.* ¶¶ 18-19. In other words, “[a]s long as [the communication] relates to the litigation and is in furtherance of representation, the privilege applies.” *Id.* ¶ 19. The privilege has progressed to protect a broad array of attorney communications and conduct (*id.* ¶ 20), and has been applied to bar more than just defamation claims; otherwise, the privilege would be rendered “meaningless if a party could merely recast its cause of action to avoid the privilege’s effect.” *O’Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 26 (citing *Johnson*, 2014 IL App (1st) 122677, ¶ 17).

¶ 25 At its core, the litigation privilege absolutely immunizes—in other words, provides a complete defense to—an attorney from civil suits based on the attorney’s actions in furtherance of their representation of a client. Similarly, the Restatement (Second) of Torts provides that “A private litigant enjoys the same privilege concerning a proceeding to which he is a party.” Restatement (Second) of Torts § 587 (1977). Essentially, a party is not subject to civil liability

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for its conduct in litigation. *Id.* (citing *Harris Trust & Savings Bank v. Phillips*, 154 Ill. App. 3d 574, 585 (1987)). But here, Cossio does not invoke the litigation privilege as a defense to a claim arising out of something he did in the course of the 2014 action; instead, he asserts that his breach of the settlement agreement should be excused under the privilege because the disclosure occurred in the 2016 chancery action that he initiated. At bottom, Cossio’s argument is that the confidentiality provision of the settlement agreement does not interfere with his ability to breach the confidentiality provision so long as he breaches it in litigation. That cannot be. Cossio’s conduct is not the type of conduct protected by the litigation privilege, and we see absolutely no principled basis for extending the litigation privilege so as to immunize Cossio from his own breach of the settlement agreement.

¶ 26 Cossio next argues that the settlement agreement itself contains a litigation exception for the disclosure of the agreement’s terms. We disagree. The settlement agreement provides,

“The Parties agree that they will not disclose or discuss the settlement of the alleged dispute, the terms, amount and fact of this Agreement, or the circumstances related thereto *** with any other person, except, in the case of and to the extent necessary by Cossio in any *subsequent lawsuit against the Cook [sic] County regarding his termination*, and as for each party to the extent necessary to the party’s respective attorney and tax advisors, or unless compelled to do so by issuance of a valid order from a court of competent jurisdiction.” (Emphasis added.)

¶ 27 Nothing in the language of the settlement agreement gave Cossio *carte blanche* to disclose the terms of the settlement in all lawsuits for any purpose. The settlement specifically permitted Cossio to disclose or discuss the terms and circumstances of the settlement in any

lawsuits against the county regarding his termination. Cossio cannot plausibly assert that his complaint against Maciaszek for breach of contract and rescission, or his petition to vacate the dismissal of his defamation, malicious prosecution, and abuse of process claims against Maciaszek, amount to “lawsuit[s] against the [county] regarding his termination.” Therefore, Cossio’s argument that he was somehow permitted under the agreement to disclose the terms of the settlement in the underlying actions here must fail.

¶ 28 Cossio has not advanced any other arguments that would save his breach of contract claim against Maciaszek in the 2017 action. Cossio materially breached the settlement agreement by disclosing the terms of the settlement in various court filings, and this precludes him from pursuing a breach of contract claim against Maciaszek. We therefore affirm the circuit court’s dismissal of count I of Cossio’s amended complaint with prejudice.

¶ 29 Cossio’s next argument is that the circuit court erred by dismissing his rescission claim. He argues that the circuit court applied “the same standard of [b]reach [c]laims under [c]ontract [r]escission.” He provides citations to case law for various circumstances in which rescission may be available, but, once again, he fails to develop and advance any meaningful argument as to why his claim should not have been dismissed or how the case law he cites supports his argument, resulting in forfeiture.

¶ 30 Forfeiture aside, rescission of a contract is an equitable remedy that contemplates voiding a contract and returning the parties to the positions they were in prior to the execution of the contract. *Newton v. Aitken*, 260 Ill. App. 3d 717, 719 (1994). To state a claim for rescission, a plaintiff must allege “(1) substantial nonperformance or breach by the defendant; and (2) that the parties can be restored to the status quo ante.” *Horwitz v. Sonnenschein Nath & Rosenthal LLP*, 399 Ill. App. 3d 965, 973 (2010) (citing *Ahern v. Knecht*, 202 Ill. App. 3d 709, 715-16 (1990)).

¶ 31 Here, as we noted above, count I of Cossio’s amended complaint was styled as a breach of contract claim, and count II was styled as a claim for rescission, but the allegations in both claims were virtually identical. *Supra* ¶ 10. In both claims, Cossio asserted that Maciaszek and her attorney breached the settlement agreement. In count II, Cossio alleged that “[p]laintiff is entitled to rescission of the contract for failure of consideration.” We find that Cossio’s claim for rescission was properly dismissed under section 2-615 of the Code because he failed to allege any facts that, if true, would show that rescission could restore the parties to the status they were in prior to the settlement agreement. We therefore affirm the circuit court’s dismissal with prejudice of count II of Cossio’s amended complaint.

¶ 32 Finally, Cossio does not advance any specific argument on appeal to why his amended 2-1401 petition should not have been dismissed, and he has thus forfeited any argument that the circuit court erred in dismissing the amended petition. Ill. S. Ct. R. 341(h)(7) (“Points not argued are forfeited[.]”). We therefore affirm the circuit court dismissal of Cossio’s section 2-1401 petition.

¶ 33 **III. CONCLUSION**

¶ 34 In sum, we affirm the circuit court’s dismissal of Cossio’s amended complaint in the 2017 action in appeal no. 1-18-2318, and affirm the dismissal of Cossio’s amended 2-1401 petition in the 2014 action in appeal no. 1-18-2312. For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 35 No. 1-18-2312, Affirmed.

¶ 36 No. 1-18-2318, Affirmed.