

2019 IL App (1st) 182453-U

No. 1-18-2453

Order filed June 19, 2019

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LOUIS ROBERT FASULLO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 CH 15894
)	
GENERATIONS AT COLUMBUS PARK, INC.,)	Honorable
)	Michael T. Mullen,
Defendant-Appellee.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not err when it dismissed plaintiff's complaint for intentional infliction of emotional distress, where the complaint failed to state a cause of action.

¶ 2 Plaintiff Louis Robert Fasullo appeals *pro se* from the order of the circuit court granting defendant Generations at Columbus Park, Inc.'s (Generations) motion to dismiss his amended complaint for intentional infliction of emotional distress pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). We affirm.

¶ 3 As the record on appeal does not contain any reports of proceedings, the following procedural history has been gleaned from the common law record.

¶ 4 On December 1, 2017, plaintiff filed a *pro se* complaint seeking an injunction against Generations, a nursing home. The complaint referred to intentional infliction of emotional distress. It did not contain a prayer for relief, but indicated in its heading that plaintiff claimed \$500,000 in damages. Plaintiff also filed a motion for a temporary restraining order seeking an order that Georgia Rauen be allowed to leave Generations' facility with plaintiff. He then filed a "Prayer for Relief" requesting an injunction preventing Generations from limiting Rauen's choice to come and go with plaintiff.

¶ 5 On January 9, 2018, Generations moved to dismiss plaintiff's motions for a temporary restraining order and injunction. Generations alleged that, on December 14, 2017, Rauen had been discharged to her home and that Generations no longer had anything to do with plaintiff's ability to "visit and/or come and go" with Rauen. Generations also moved to dismiss plaintiff's complaint pursuant to section 2-615, arguing the complaint did not state a cause of action for intentional infliction of emotional distress. The circuit court granted plaintiff leave to file an amended complaint and continued Generations' motion to dismiss.

¶ 6 On February 13, 2018, plaintiff filed a *pro se* amended complaint naming intentional infliction of emotional distress as his cause of action and identifying two potential recoveries: compensatory damages and a declaratory judgment, although neither prayer for relief specifies the basis for such relief or the actual relief sought. The complaint described plaintiff as "violated because of bystander injuries of emotional distress to a loved one [Rauen]."

¶ 7 Plaintiff alleged that, on October 24, 2017, he signed Rauen out of Generations. At 10:18 that evening, a nurse called plaintiff telling him that Rauen “only had a pass for 10 p.m. that night.” Plaintiff told the nurse that he could not return Rauen that evening and would be back at 2 p.m. the next day. That day, the staff at Generations informed plaintiff that Rauen would no longer be allowed to leave with him, because she needed another mental health evaluation.

¶ 8 Plaintiff further alleged that Generations wrongfully gave Rauen a dose of Ativan pursuant to a “PRN” order, Rauen wished to leave with plaintiff again, and a nurse told plaintiff that Rauen was not allowed to leave with him because, on doctor’s orders, Rauen needed another mental health evaluation. Plaintiff alleged: “The doctor's evaluation is taken [*sic*] too long, and [Rauen] is emotionally distressed, she cannot leave with Louis.” Plaintiff claimed Rauen asked to change doctors, but the new doctor also took too long to reevaluate her and, from October 26, 2017 “to today,” he and Rauen were unable to leave Generations together because the staff asserted she needed to be reevaluated.

¶ 9 Plaintiff asserted a nurse at Generations “wants to cause Georgia injury with false statements needing a PRN, and infurtherence [*sic*], calling the doctor to order Georgia cannot leave with Louis.” He claimed “Georgia alleges that this nurse made false statements about Georgia wanting to stab the nurse, and Georgia has to use plastic utensils.” Plaintiff asserted he “is emotionally distressed, because he cannot continue his relationship with Georgia, because the staff deprives Louis, and Georgia to leave the nursing home with excuses of needing another mental health evaluation.”

¶ 10 Noting Generations’ motion to dismiss was “amended to” plaintiff’s amended complaint, the court continued the case repeatedly. When plaintiff failed to appear, the court dismissed the

case for want of prosecution. Plaintiff moved to vacate the dismissal, alleging that he was unable to appear because he had been in the custody of the Department of Human Services at the Elgin Mental Health Care Center.

¶ 11 On October 29, 2018, the circuit court vacated the dismissal for want of prosecution, and granted Generations' motion to dismiss for failure to state a cause of action with prejudice. The court found "no operative set of facts to allow the matter to proceed." Although the court's order did not expressly identify plaintiff's earlier motions for injunctive relief, the order did state "All matters of controversy are concluded." Plaintiff timely appealed.

¶ 12 As an initial matter, we note that it is difficult to determine the legal issues plaintiff intends to raise due to inadequacies in his brief. In violation of Illinois Supreme Court Rule 341(h) (eff. May 25, 2018), plaintiff provides neither citation to the record nor pertinent authority. His arguments consist primarily of unsupported factual allegations that do not define or address pertinent legal standards. It is within our discretion to strike a brief and dismiss an appeal for failure to comply with Rule 341. See *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20. However, because we are able to ascertain the relevant issues from the relatively simple record and Generations' cogent brief, we will reach the merits of this appeal. See *Stolfo v. KinderCare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 19.

¶ 13 A motion to dismiss brought pursuant to section 2-615(a) of the Code of Civil Procedure (735 ILCS 5/2-615(a) (West 2016)) tests the legal sufficiency of the complaint based on defects apparent on its face. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25. The question presented to the circuit court in a section 2-615 motion is whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff and taking all well-

pleaded facts and all reasonable inferences that might be drawn from those facts as true, are sufficient to state a cause of action upon which relief might be granted. *Id.* “ ‘[A] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.’ ” *Id.* (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)). We review the circuit court’s decision to grant Generations’ section 2-615 motion to dismiss *de novo*. *Id.*

¶ 14 In his opening brief, plaintiff asserts his amended complaint stated a cause of action for declaratory relief and the circuit court erred by not considering his declaratory judgment count. However, plaintiff did not state a cause of action for a declaratory judgment. The elements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties. *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 30. Beyond making cursory mention of a declaratory judgment in the “recovery” section of his complaint, albeit without specifying the relief he sought from such a judgment, plaintiff did not specifically allege any of the elements of a declaratory judgment.

¶ 15 Construing plaintiff’s amended complaint extremely liberally, we can, as plaintiff claims on appeal, read in an allegation of an actual controversy between the parties regarding whether Rauen should be allowed to leave the facility with plaintiff. However, it is simply impossible to discern in the complaint any facts supporting the elements of his legal tangible interest and Generations’ opposing interest. On appeal, plaintiff has failed to identify the allegation or allegations of his pleading that set forth these two elements. Instead, what we are confronted with is a seemingly random series of factual allegations and the assertion that the circuit court should have declared the rights of the parties.

¶ 16 This court is not a repository into which a litigant may dump the burdens of research and argument. See *Northbrook Bank and Trust Co. v. Abbas*, 2018 IL App (1st) 162972, ¶ 34. We will not sift through the complaint's factual allegations hoping to construct a cause of action on plaintiff's behalf, nor will we impose such a burden on the circuit court. His failure to provide this court with a cogent argument addressing the elements of his alleged declaratory judgment action forfeits this claim on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Therefore, we find that plaintiff has forfeited any argument the circuit court erred by failing to declare the rights of the parties based on plaintiff's complaint.

¶ 17 Generations argues that, although inarticulate and unclear, plaintiff's amended complaint should be read as alleging intentional infliction of emotional distress. We agree. Plaintiff's amended complaint is indeed unclear and his appellate briefs do little to clarify his claims, but it appears that he intended the complaint to sound in intentional infliction of emotional distress. Therein he cites intentional infliction of emotional distress as "cause of action 1," lists no other "cause of action," and claims he suffered emotional distress due to Generations' interference with his relationship with Rauen. Further, in his reply brief on appeal, he makes cursory mention that he "was seeking to file an action for intentional infliction of emotional [distress]."

¶ 18 However, to state a claim for intentional infliction of emotional distress, a plaintiff must plead three elements: (1) the defendant's conduct was truly extreme and outrageous; (2) the defendant either intended that his conduct would cause severe emotional distress or knew there was a high probability that his conduct would do so; and (3) the defendant's conduct did in fact cause severe emotional distress. See *Taliani v. Resurreccion*, 2018 IL App (3d) 160327, ¶ 26 (setting forth the elements of intentional infliction of emotional distress); *Hadley v. Doe*, 2015 IL

118000, ¶ 29 (“A circuit court should not dismiss a complaint under section 2-615 unless it is clearly apparent no set of facts can be proved that would entitle the plaintiff to recovery”). As set forth below, plaintiff’s amended complaint does not sufficiently plead any of these elements.

¶ 19 In the complaint, plaintiff alleged no conduct that could be regarded as extreme and outrageous. Extreme and outrageous conduct is conduct that goes beyond all possible bounds of decency and is regarded as intolerable in a civilized community. *Taliani*, 2018 IL App (3d) 160327, ¶ 26. Mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities do not constitute extreme and outrageous conduct. *Id.* Whether conduct is extreme and outrageous is determined using an objective standard, taking into consideration all of the facts and circumstances present in a particular case. *Id.* Here, the complaint alleges only that Generations, acting on Rauen’s doctor’s instructions, refused to allow her to leave the facility overnight and subsequently required her to stay in the care facility for further evaluation. Plaintiff’s complaint pled nothing of Rauen’s medical condition or what prompted her confinement in a nursing home. Based on the allegations of the complaint, we cannot conclude that refusing to allow a nursing home resident to leave the premises with plaintiff until she receives a further evaluation consistent with doctor’s orders constituted conduct “beyond all possible bounds of decency and to be regarded as intolerable in a civilized community” (*id.*) such that it was extreme and outrageous.

¶ 20 Nor has plaintiff sufficiently alleged that Generations acted to intentionally cause him severe emotional distress or with knowledge that such would likely result from its conduct, or that plaintiff did, in fact, suffer severe emotional distress therefrom. The complaint alleges *inter alia* that a nurse “wants to cause [Rauen] injury with false statements needing a PRN, and

infurtherence [*sic*], calling the doctor to order [Rauen] cannot leave with [plaintiff]" and that Rauen wanted to leave with plaintiff but Generations refused to allow her to do so. Liberally construed, nothing in this or any other allegation in the amended complaint suggests Generations intended to cause emotional distress to plaintiff, let alone severe emotional distress, or that it knew such would result from its actions.

¶ 21 Although plaintiff alleged he suffered emotional distress due to Generations' conduct in refusing to allow Rauen to leave with him, he has alleged no facts from which it could be concluded his emotional distress was severe. Emotional distress alone is not sufficient to give rise to a cause of action for intentional infliction of emotional distress. *Taliani*, 2018 IL App (3d) 160327, ¶ 27. To be actionable, the distress inflicted must be so severe that no reasonable person could be expected to endure it. *Id.* Here, plaintiff merely claimed, without elaboration, that he was distressed.

¶ 22 In sum, we find the facts alleged in the amended complaint, viewed in the light most favorable to plaintiff and taking all well-pleaded facts and all reasonable inferences therefrom as true, are insufficient to state a cause of action for intentional infliction of emotion distress upon which relief might be granted.

¶ 23 For the foregoing reasons, we conclude the circuit court did not err when it granted Generations' section 2-615 motion to dismiss plaintiff's amended complaint. The circuit court's order is affirmed.

¶ 24 Affirmed.