2012 IL App (1st) 102042-U

No. 1-10-2042

SIXTH DIVISION
February 24, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANET BOBER, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION; LITTELFUSE, INC.; MARIANJOY MEDICAL GROUP; DR. RICHARD KRIEGER; NANCY SZMYD; ARRICA SMITH; JOSEPH AMARILIO; KAREN HAARSGAARD; MICHAEL EVERS; ELFENBAUM, EVERS & AMARILIO, P.C.; CASEY DUNN; THADDEUS GUSTAFSON; LAW OFFICES OF THADDEUS J. GUSTAFSON; TWIN CITIES FIRE INSURANCE COMPANY; THE HARTFORD; LARRY ROSENBLOOM, Administrator for the Estate of E. Richard Blonsky; THE PAIN AND REHABILITATION CLINIC OF CHICAGO; M & M ORTHOPAEDICS, LTD.; DR. E. THOMAS MARQUARDT; JONATHAN BARRISH; KENNETH BARRISH; LITCHFIELD CAVO LLP; DR. ROBERT REFF; and DR. STEVEN ROTHKE, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 08 L 6829 Honorable Lee Preston, Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court properly granted respondents' motions to dismiss with prejudice plaintiff's amended complaints based on: lack of subject matter jurisdiction, plaintiff's failure to plead legally sufficient causes of action, the statutes of limitations, plaintiff's failure to file a complaint containing plain and concise statements of the causes of action, and the court's inherent authority to control its docket.

¶ 2 After receiving benefits in her workers' compensation action, plaintiff Janet Bober sued numerous individuals and entities in the circuit court, alleging, *inter alia*, that those defendants engaged in fraud, corruption and various conspiracies in the proceedings before the Illinois Workers' Compensation Commission (Commission). After plaintiff filed a 62-count, 513-page first amended complaint and then repled certain counts in an 8-count, 104-page third amended complaint, the circuit court granted the defendants' motions to dismiss plaintiff's complaint with prejudice. Plaintiff appealed.

¶ 3 On appeal, plaintiff argues the circuit court erred in dismissing her causes of action based on a lack of subject matter jurisdiction, her failure to plead legally sufficient causes of action, the expiration of the statutes of limitations, her failure to file a complaint stating plain and concise causes of action, the circuit court's authority to control its docket, and *res judicata*. Plaintiff also asserts that she should have been allowed another opportunity to replead her causes of action.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.

¶ 5 I. BACKGROUND

¶ 6 Plaintiff filed claims for workers' compensation benefits in April 1998 and May 2005, alleging that she had injured her hands, wrists, arms, back, shoulder, neck and chest in November 1997 while working for defendant Littelfuse, Inc. Specifically, plaintiff alleged that she used a keyboard extensively throughout the day and her injuries resulted from a work station that was poorly designed ergonomically. She described her injury as chronic myofascial pain syndrome with a history of repetitive stress syndrome and subsequent chronic depression.

¶ 7 Furthermore, in July 2005, plaintiff filed with the Commission a petition requesting a disciplinary hearing against her former attorney, Karen Haarsgaard of Elfenbaum, Evers & Amarilio. Plaintiff alleged that Haarsgaard had participated in the creation of a fraudulent medical report that was presented to the Commission by Dr. E. Richard Blonsky, a physician. Plaintiff also alleged, *inter alia*, that Haarsgaard failed to provide thorough representation, concealed the "misconduct of her and her comrades," and participated in a conspiracy to deny plaintiff any benefits.

¶ 8 In addition, in November 2005, plaintiff filed with the Commission an additional petition requesting a disciplinary hearing against Littelfuse, Inc.'s attorney–Casey Dunn of the Law Offices of Thaddeus J. Gustafson–and Littelfuse Inc.'s insurance carrier–The Hartford. Plaintiff alleged, *inter alia*, that Dunn and The Hartford conspired to defraud the Commission and harm plaintiff by attempting to avoid accountability for her physical or mental condition.

¶ 9 After a hearing on plaintiff's disciplinary petitions, the Commission in December 2005 denied her petitions, finding that she presented unsubstantiated allegations and failed to present

any evidence to prove her allegations of fraud, collusion, conspiracy and perjury.

¶ 10 Meanwhile, in November 2005, a Commission arbitrator found that plaintiff was permanently and totally disabled and awarded her benefits for temporary total disability, total permanent disability, medical expenses and interest.

¶ 11 In 2007, plaintiff filed a petition for a disciplinary hearing before the Commission review board, alleging corruption. In May 2008, the review board dismissed her complaint against the Commission chairman and three commissioners, finding that plaintiff failed to present any evidence to support her allegations.

¶ 12 Meanwhile, on April 2, 2008, the Commission adopted, with minor modifications, the arbitrator's decision concerning plaintiff's workers' compensation benefits. The Commission ordered Littelfuse, Inc. to pay plaintiff $512.27 per week for 16 weeks for temporary total disability, $512.27 per week for life for total permanent disability, $16,943.64 for medical expenses, and interest. The Commission, however, denied plaintiff's request for a lump sum benefit payout.

¶ 13 On June 23, 2008, plaintiff filed in the circuit court a *pro se* complaint, which seemed to make various allegations against the Commission; Littelfuse Inc.; The Hartford; the Law Offices of Thaddeus J. Gustafson; The Hartford's attorney, Litchfield Cavo LLP; and Elfenbaum, Evers & Amarilio. Plaintiff stated that she was challenging (1) the Commission's April 2008 decision denying her request for permanent partial disability, future medical care, penalties and a lump sum payout, and (2) the Commission's May 2008 decision denying her request to discipline the Commission's chairman and commissioners and their agents and associates.

¶ 14 In response, various defendants filed motions to dismiss, contending generally that the complaint was incomprehensible and failed to sufficiently plead allegations of fraud, conspiracy and collusion. The circuit court allowed plaintiff leave to amend her complaint.

¶ 15 On November 5, 2008, plaintiff filed a 62-count, 513-page first amended complaint. The amended complaint included allegations of negligence, intentional infliction of emotional distress, fraudulent concealment, deceit, negligent misrepresentation, breach of fiduciary duty, and abuse of process. Plaintiff sought damages on various counts in the amounts of $2.5 million, $5 million, $7.5 million, or $10 million. She also sought a remand to the Commission for a new decision to provide increased benefits. This complaint seemed to include the previously named parties and added plaintiff's former attorneys Joseph Amarilio, Michael Evers and Haarsgaard; Dr. E. Thomas Marquardt of M&M Orthopaedics, Ltd.; Dr. Blonsky of the Pain & Rehabilitation Clinic of Chicago; Dr. Steven Rothke; attorneys Dunn and Thaddeus Gustafson of the Law Offices of Thaddeus J. Gustafson; attorneys Jonathon and Kenneth Barrish of Litchfield Cavo LLP; Dr. Richard Krieger of Marianjoy Medical Group and its employees Nancy Szmyd and Arrica Smith; and Dr. Robert Reff.

¶ 16 Various defendants again filed motions to dismiss the first amended complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2008)). They argued, *inter alia*, that the complaint did not conform to Illinois pleading standards in form or substance and that plaintiff failed to state a claim because she did not plead the necessary elements of her various causes of action.

¶ 17 In response, plaintiff filed a 148-page document defending her claims and adding new ones. In April 2009, the circuit court granted defendants' motions to strike plaintiff's response and allowed her to file separate, 20-page responses to each motion to dismiss. Plaintiff filed a motion for leave to file a 658-page second amended complaint that alleged 73 causes of action against more than 53 defendants. The trial court denied plaintiff's motion and found that her second amended complaint primarily consisted of conclusory language, failed to cure any of the defects of the prior complaint, and failed to contain plain and concise statements of the claimed causes of action. The trial court reminded plaintiff that she was advised on numerous occasions to seek counsel in this matter because the court could not "continue to close its eyes to the frivolous nature of pleadings that are unsupported by allegations of fact." Thereafter, plaintiff filed responses to the motions to dismiss, and defendants filed replies.

¶ 18 On October 23, 2009, the circuit court ruled on the sections 2-615 and 2-619 motions to dismiss filed by defendants the Commission, Littelfuse Inc., The Law Firm of Thaddeus J. Gustafson, Gustafson, Dunn, Litchfield Cavo LLP, Kenneth[1] and Jonathon Barrish, and Twin Cities Fire Insurance Company (Twin Cities), which was incorrectly sued as The Hartford. The court dismissed with prejudice 52 counts of the first amended complaint against these defendants, finding that the court lacked subject matter jurisdiction based on plaintiff's failure to comply with the statutory requirements to seek judicial review. Specifically, the court determined that those counts arose from or related to the Commission's hearings regarding plaintiff's injuries as an employee of Littelfuse, Inc., her workers' compensation benefits, and her

[1] Kenneth Barrish was dismissed from this appeal pursuant to plaintiff's motion.

petitions to discipline the participants in the Commission proceedings. The court found, however, that plaintiff failed to file in the circuit court a written request for the summons and failed to commence her proceeding for review of the Commission's disciplinary decisions within 20 days of the receipt of the notice of those decisions.

¶ 19 The court also found that plaintiff's complaint, which alleged fraud, abuse of process, and intentional infliction of emotional distress, was filed past the two-year statutes of limitations for those causes of action. Specifically, the court determined that the alleged events occurred at various times between November 11, 1997, and March 9, 2006, but plaintiff did not file her complaint until more than two years later on June 23, 2008.

¶ 20 On November 2, 2009, the circuit court ruled on the sections 2-615 and 2-619 motions to dismiss filed by defendants Elfenbaum, Evers & Amarilio; Amarilio; Evers; Haarsgaard; Dr. Marquardt; M& M Orthopaedics, Ltd; Marianjoy Medical Group; Dr. Krieger; Szmyd; Smith; Dr. Reff; and Dr. Rothke. The court dismissed with prejudice 32 counts of the first amended complaint against these defendants, finding that the court lacked subject matter jurisdiction where plaintiff failed to properly commence a proceeding to review the Commission's decisions.

¶ 21 The court also ruled that plaintiff's fraud, abuse of process, and intentional infliction of emotional distress claims against these defendants, who were attorneys, doctors, and medical services providers or their employees, were barred by the two-year statutes of limitations and four-year period of repose. Specifically, the court determined that the alleged events concerning plaintiff's former attorneys occurred at various times between June 1, 1999, and March 6, 2006, but plaintiff did not file her complaint until more than two years later on June 23, 2008.

Furthermore, the claims against the doctors, medical providers or their employees were also barred by the two-year statute of limitations and four-year period of repose where the physicians' evaluations of plaintiff's injuries occurred at various times between March 11, 1998, and July 21, 2004, and where certain physicians' reports were sent to plaintiff in April 2005 and May 2004.

¶ 22 The circuit court noted that only eight counts of plaintiff's first amended complaint (*i.e.*, counts 51-55, and 60-62) remained, but the court could not "make heads or tails" of who plaintiff was bringing those counts against or the nature of her causes of action in those counts. Accordingly, the court struck those counts pursuant to section 2-612(a) of the Code (735 ILCS 5/2-612(a) (2008)) and granted plaintiff leave until November 20, 2009 to file a third amended complaint for those particular eight counts. The court did not grant plaintiff leave to replead counts against parties that the court had dismissed with prejudice.

¶ 23 Plaintiff's third amended complaint was 104 pages long and incorporated hundreds of pages of exhibits. That complaint pled the same causes of action against the same defendants the court had dismissed with prejudice in its October and November 2009 orders. In addition to all the defendants in this appeal, plaintiff also made allegations against some commissioners of the Commission and employees and officials of the Illinois Attorney Registration and Disciplinary Commission. Plaintiff seemed to plead against all defendants fraudulent concealment, breach of fiduciary duty, intentional infliction of emotional distress, fraud, and abuse of process. She asserted that the parties engaged in unethical and criminal misconduct, concealed information in order to underpay and deprive her of her compensation benefits, and failed to maintain a fair and impartial legal system.

¶ 24 Defendants filed motions to dismiss plaintiff's third amended complaint. Meanwhile, plaintiff filed a motion for the immediate removal of the circuit court judge, alleging that the judge had engaged in fraud. Plaintiff also filed an affidavit to disqualify the judge and a motion to stay the proceedings.

¶ 25 On June 16, 2010, the circuit court granted the sections 2-615 and 2-619 motions of all the defendants in this matter to dismiss plaintiff's third amended complaint with prejudice. The court ruled that the doctrine of *res judicata* barred the third amended complaint as pled against defendants Marianjoy Medical Group; Dr. Krieger; Szmyd; Smith; Litchfield Cavo LLP; Kenneth and Jonathon Barrish; the Law Firm of Thaddeus J. Gustafson; Dunn; Twin Cities; Littelfuse Inc.; Dr. Marquardt; M&M Orthopaedics, Ltd.; Elfenbaum, Evers & Amarilio; Amarilio; Evers; Haarsgaard; and Dr. Rothke. The trial court determined that its two prior orders dismissing with prejudice the same causes of action against the same parties constituted final judgments on the merits for purposes of *res judicata*.

¶ 26 The court noted that *res judicata* did not apply to the three defendants who were not dismissed with prejudice from plaintiff's first amended complaint, *i.e.*, the Commission, Rosenbloom, who was the administrator for the estate of the deceased Dr. Blonsky, and the Pain Rehabilitation Clinic of Chicago. However, the court dismissed with prejudice plaintiff's third amended complaint against them due to lack of subject matter jurisdiction. Specifically, the court determined that plaintiff's allegations against these defendants arose from the Commission hearings and she failed to properly commence a review of the Commission's decisions.

¶ 27 Finally, the circuit court also dismissed with prejudice plaintiff's third amended complaint based on the court's inherent authority to control its docket and plaintiff's failure to file a coherent complaint despite numerous opportunities.

¶ 28 Plaintiff appealed. Plaintiff, who is now represented by counsel, contends the circuit court erroneously dismissed her case pursuant to sections 2-615 and 2-619 of the Code based on lack of subject matter jurisdiction, failure to plead a cause of action, the statutes of limitations, *res judicata*, failure to state plain and concise causes of actions, and the court's authority to control its docket

¶ 29 II. ANALYSIS

¶ 30 Section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2008)) allows a movant to combine a section 2-615 motion to dismiss, which challenges the legal sufficiency of the nonmovant's pleadings, with a section 2-619 motion to dismiss, which admits the legal sufficiency of the nonmovant's pleadings but asserts certain defects or defenses. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009); *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). Under either section 2-615 or 2-619 of the Code, our standard of review is *de novo*. *Kean*, 235 Ill. 2d at 361.

¶ 31 Our review of the issues presented in this appeal has been made extremely difficult due to the manner in which plaintiff chose to plead her first and third amended complaints. The purpose of section 2-603 of the Code (735 ILCS 5/2-603 (West 2008)) is to give notice to the court and the parties of the claims being presented. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009). Plaintiff's complaints are the antithesis of the plain and

concise statement of the plaintiff's causes of action as mandated by section 2-603(a) of the Code. *Id*. Her prolix pleading style results in repetitious and ill-defined multiple causes of action. Numerous paragraphs contain allegations that are irrelevant to the specific cause of action being pled. Many paragraphs incorporate by reference other paragraphs, which in turn incorporate other paragraphs, and so on. To further complicate matters, plaintiff's third amended complaint incorporates by reference many paragraphs from her first amended complaint. In addition, plaintiff makes lengthy allegations against individuals who are not parties in this matter. Moreover, her inclusion of numerous exhibits of doubtful relevance adds more bulk to her already unwieldy complaints.

¶ 32 A. Subject Matter Jurisdiction

¶ 33 Lack of subject matter jurisdiction was one of the grounds for the circuit court's dismissal of plaintiff's first and third amended complaints. Due to plaintiff's failure to make a plain and concise statement of her causes of action and the difficulty in deciphering the basis of her claims, the trial court determined that the intelligible allegations in her complaints seemed to present claims that related to or arose out of her claim for workers' compensation benefits and petitions for disciplinary action before the Commission. The court found that, as a result, the statutory prerequisites of the Workers' Compensation Act (Act) applied. According to the Act:

> "The decision of the Commission acting within its powers *** shall, in the absence of fraud, be conclusive unless reviewed as *** hereinafter provided. ***
>
> [T]he Circuit Court *** shall by summons to the Commission have power to review all questions of law and fact presented by such record.

> A proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request ***." 820 ILCS 305/19(f)(1) (West 2008).

Plaintiff, however, failed to comply with the statutory prerequisite of the Act to file a written request for the summons. *Whitmer v. Industrial Commission*, 187 Ill. App. 3d 409, 411 (1989) (the failure to file a written request for summons was substantive, and the court refused to exercise subject matter jurisdiction over the claim as a result). She also failed to commence her action in the circuit court within 20 days after receipt of the notice of certain Commission decisions. Because plaintiff did not comply with those jurisdictional prerequisites, the court concluded that it did not have subject matter jurisdiction to consider her claims.

¶ 34 Plaintiff challenges the dismissal of her first and third amended complaints for lack of subject matter jurisdiction. She does not contest the trial court's finding that she did not comply with the statutory prerequisites to seek judicial review of the Commission's decisions. Rather, she contends all her claims were outside the framework of work-related injuries that must be exclusively litigated before the Commission. See *Meerbrey v. Marshall Field & Co., Inc.*, 139 Ill. 2d 455, 464, 472 (1990) (the exclusivity provisions of the Act will not bar a common-law cause of action against an employer or co-employees for injuries intentionally inflicted upon an employee). She argues that her claims were not subject to the exclusivity provisions of the Act because her injury was not accidental, did not arise from her employment, and was not received during the course of her employment.

¶ 35 Plaintiff's argument lacks merit. She did not merely adjudicate a workers' compensation claim before the Commission. She also filed petitions for disciplinary hearings before the Commission, alleging fraud, collusion, conspiracy and perjury against her former attorneys, her former employer's attorneys, and that employer's insurance carrier. Those petitions invoked the Commission's authority to discipline attorneys, and insurers or their agents in workers' compensation actions. See 50 Ill. Adm. Code §§7090.10, 7090.20 (2011). In December 2005, the Commission dismissed plaintiff's petitions, finding that her claims for disciplinary action were unsubstantiated. Plaintiff failed, however, to timely and properly seek judicial review in the circuit court of those decisions, and circuit courts do not have subject matter jurisdiction unless the strict statutory requirements of the Act are met. *Kinn v. Prairie Farms/Muller Pinehurst*, 368 Ill. App. 3d 728 (2003). Accordingly, the circuit court properly dismissed the claims with prejudice based on lack of subject matter jurisdiction, finding that the claims essentially sought judicial review of the Commission's decisions.

¶ 36 B. Failure to Allege an Intentional Tort or Fraud

¶ 37 Next, we consider whether plaintiff pled any legally sufficient claim that is outside the scope of the matters that must be exclusively litigated before the Commission. Plaintiff asserts that the circuit court did not lack subject matter jurisdiction to hear her claims that alleged new and other injuries than those she sustained in the course of and arising out of her employment. According to plaintiff, the new injuries resulted from defendants' continuous and intentionally tortious conduct after her employment with Littelfuse, Inc. terminated. Specifically, she argues that she sufficiently pled causes of action against the defendants for intentional infliction of

emotional distress, civil conspiracy, breach of fiduciary duty, and fraudulent concealment. In the alternative, she argues she may maintain her action in the circuit court because she sought review of a Commission decision that was obtained by fraud, and the Act plainly indicates that fraud is a basis upon which a Commission decision may be re-examined by a court. See 820 ILCS 305/19(f) (West 2008); *Ming Auto Body v. Industrial Commission*, 387 Ill. App. 3d 244, 254 (2008).

¶ 38 As discussed above, the trial court also dismissed plaintiff's third amended complaint pursuant to section 2-615 of the Code on the ground that there were insufficient facts to support a cause of action against the defendants. On review of the 2-615 dismissal, we must take all well-pleaded facts in the plaintiff's complaint as true and draw all reasonable inferences from those facts that are favorable to the plaintiff. *Meerbrey*, 139 Ill. 2d at 473. "A complaint should not be dismissed for failure to state a claim unless it clearly appears that no set of facts could be proved under the allegations which would entitle the party to relief." *Id.* However, conclusions of law or fact contained in the pleadings will not be taken as true unless supported by specific factual allegations. *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 47 (1991).

¶ 39 1. Intentional Infliction of Emotional Distress

¶ 40 We first consider whether plaintiff's factual allegations were sufficient to state a cause of action against defendants for intentional infliction of emotional distress. To state this cause of action, plaintiff must allege facts showing (1) conduct that was truly extreme and outrageous, (2) that the actor intended that his conduct inflict severe distress or knew that there was a high probability that his conduct would inflict such distress, and (3) the conduct must in fact have

caused severe emotional distress. *Pavlik v. Kornhaber*, 326 Ill. App. 3d 731, 743-44 (2001).

¶ 41 According to plaintiff's appellate brief, the allegations in the third amended complaint supported a cause of action for intentional infliction of emotional distress because plaintiff alleged that: her attorneys sabotaged her claim; a staged disciplinary hearing resulted in a "pre-determined outcome of concealing the fraudulent activity of the co-conspirators throughout the adjudication of [her] claim"; the Commission failed to address the issue of future medical benefits; the Commission disciplinary review process was manipulated to exclude evidence and potential witnesses; the Commission's disciplinary review panel's decision was not mailed to her in order to foil her chances to seek a timely review of that decision in the circuit court; and the defendants knew she was vulnerable and would be extremely distraught by their misconduct.

¶ 42 "The plaintiff is bound, as was the trial court, by the allegations in her complaint." *McIntosh v. A & M Insulation Co.*, 244 Ill. App. 3d 244 , 247 (1993). Although the citations within her appellate brief direct this court to various passages in her complaint, we do not find pleaded facts to support a cause of action for intentional infliction of emotional distress. Her third amended complaint is indecipherable and we do not take as true her conclusory allegations of fraud and conspiracy. Her allegations are vague and unsupported by specific factual allegations relating to various defendants' knowledge and intent. She also fails to allege specific conduct on the part of various defendants that would satisfy the elements of this cause of action. Instead, she attempts to impute liability to multiple unrelated parties by merely insisting that they were agents or co-conspirators. Furthermore, her allegations are logically defective. For example, we do not understand how The Hartford's issuance of a prescription drug card

established the outrageous conspiratorial behavior of all the defendants.

¶ 43 2. Civil Conspiracy

¶ 44 To state a claim for civil conspiracy, a plaintiff must allege facts establishing: (1) an agreement to accomplish by concerted action either an unlawful purpose or a lawful purpose by unlawful means; (2) a tortious act committed in furtherance of that agreement; and (3) an injury caused by the defendant. *Reuter v. MasterCard International, Inc.*, 397 Ill. App. 3d 915, 927 (2010). To connect a defendant to a conspiracy, the complaint must allege the "necessary and important element" of an agreement. *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 924 (2007). A complaint must do more than merely characterize a combination of acts as a conspiracy to survive a motion to dismiss. *Id.* at 923. Moreover, any circumstantial evidence offered to show a conspiracy must be clear and convincing. *Id.* at 924.

¶ 45 Plaintiff argues she alleged that various conspiracies helped Littelfuse Inc. delay the workers' compensation process and underpay the benefits that were due to her. According to plaintiff, the Commission protected all of the co-conspirators, whose goal "was to insure [she] did not receive benefits and to conceal the misconduct and fraud of Hartford, Dunn, Dr. Marquardt, Dr. Blonsky and Dr. Rothke along with Amarilio, Evers, Haarsgaard and doctors they had involved–Dr. Krieger and Dr. Reff." Specifically, she alleged her former attorney and Littelfuse Inc.'s attorney instructed Drs. Krieger, Reff and Rothke to extract evidence from their files. She also alleged that her former attorney participated in the creation and preservation of Dr. Blonsky's fraudulent report and failed to report the fabrication of evidence and concealment of certain medical evidence.

¶ 46 Plaintiff's allegations, even when liberally construed, failed to plead specific facts to indicate that a conspiracy existed or that her former employer, her former attorneys, the insurance carrier, various attorneys and numerous physicians participated in a conspiracy. She alleged in a convoluted and cryptic fashion that various defendants took part in a long-running conspiracy to delay her receipt of workers' compensation benefits, exacerbate her health problems, promote institutional corruption, and then conceal all of the foregoing activities. She accused the defendants of conspiring to "throw the hot potato away" by engaging in "criminal activities" and acting as "promoters of corruption." The various defendants are lumped together in such a way that an individual defendant is not apprised of what, if anything, it has done wrong. She assumes an agency relationship among the defendants and attempts to impute wrongful conduct to all the defendants by repeatedly asserting that they were co-conspirators or agents of the particular one who allegedly carried out certain wrongful conduct. Plaintiff's conclusory allegations about fraud and the existence of multiple conspiracies are not sufficient to plead a cause of action for civil conspiracy.

¶ 47 3. Breach of Fiduciary Duty

¶ 48 To state a claim for breach of fiduciary duty, a plaintiff must establish (1) a fiduciary duty on the part of the defendant, (2) the defendant's breach of that duty, and (3) damages that were proximately caused by the defendant's breach. *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000). Here, plaintiff alleged that her former attorney contacted the public guardian's office and painted her as delusional, conspired with Drs. Reff and Krieger to write fraudulent medical reports, failed to report the fraudulent medical reports to the appropriate authorities, and willfully sabotaged her

compensation claim.

¶ 49 Plaintiff's conclusory allegations about fraudulent medical reports and willful sabotage fail to plead the necessary element to indicate her former attorneys breached their fiduciary duty to her. Moreover, plaintiff fails to indicate how any alleged contact between her former attorneys and the public guardian proximately caused damages to plaintiff.

¶ 50 4. Fraudulent Concealment

¶ 51 There is a high standard of specificity required for pleading claims of fraud. *Board of Education v. A,C & S, Inc.*, 131 Ill. 2d 428, 457 (1989). Facts setting forth a claim for fraud must be pled with sufficient specificity, particularity and certainty to apprise the opposing party of what he is called upon to answer. *Id*. at 457. The elements of a claim for fraudulent misrepresentation are: (1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement. *W.W. Vincent & Co. v. First Colony Life Insurance*, 351 Ill. App. 3d 752, 761 (2004). In order to state a claim for fraudulent concealment, a plaintiff must allege, in addition to the elements of fraud stated above, that the defendant concealed a material fact when it was under a duty to disclose to the plaintiff. *Id*. at 762.

¶ 52 Plaintiff's appellate brief contends plaintiff sufficiently pled a fraudulent concealment claim where she alleged that the Commission did not mail the April 2, 2008 disability review panel's decision to plaintiff, despite having her current address, and gave her the runaround until the 20-day time period to appeal that decision had passed. Our review of plaintiff's complaint,

however, does not uncover any allegation that the Commission thwarted plaintiff's attempt to seek judicial review of the April 2, 2008 decision. Rather, plaintiff complained that when she finally received a copy of the decision on June 9, 2008, she was furious that the panel "did not acknowledge Hartford's tmesys drug card because doing so would have validated the existence of a disciplinary matter to which Defendant Hartford confessed upon issuing the 05/22/06 tmesys drug card."

¶ 53 Even if we construed plaintiff's third amended complaint as liberally as she has done in her appellate brief, plaintiff clearly has failed to allege a claim for fraudulent concealment. As discussed above, the time period to seek judicial review of the Commission's April 2, 2008 decision did not begin to run until plaintiff's *receipt* of the notice of that decision. Accordingly, the trial court's dismissal of certain claims in plaintiff's first amended complaint due to lack of subject matter jurisdiction was not based on any failure to seek judicial review within 20 days of the Commission's *issuance* of the April 2, 2008 decision. Rather, the trial court's dismissal was based, *inter alia*, on plaintiff's failure to file any written request to issue the summons as required by the Act. Because any alleged delay by the Commission in sending its decision to plaintiff did not preclude her from timely seeking judicial review, that delay cannot form the basis of her cause of action for fraudulent concealment. Moreover, plaintiff did not allege that the other defendants knew the Commission failed to mail the decision to her and had a duty to disclose that fact.

¶ 54 5. Fraud

¶ 55 In the alternative, plaintiff argues she may maintain her action in the circuit court because

she seeks relief from a Commission decision that, according to plaintiff, was based on fraud. She alleged the Commission's April 2008 decision failed to provide her with complete relief because she did not receive all the benefits to which she was entitled and was not granted penalties for the vexatious delay caused by the defendants' fraud. She alleged that all the defendants were involved and cooperated in misconduct and interlocking conspiracies designed to delay and thwart her claim for workers' compensation benefits and they covered up their misconduct and unethical behavior.

¶ 56 A circuit court's power to review a decision of the Commission does not extend to cases where no fraud is alleged. *Gilmore v. Ideal Industries, Inc.*, 74 Ill. App. 3d 143, 144 (1979). A general allegation of fraud, however strong in expression, is insufficient in the absence of proper pleading of the claim. *McCaskill v. Barr*, 92 Ill. App. 3d 157, 158-59 (1980). A high standard of specificity is imposed on pleadings asserting fraud. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005). The pleading must contain specific allegations of facts from which fraud is the necessary or probable inference. *Id*. at 803-04. Excessively verbose narratives replete with legal conclusions and unsupported by sufficient facts do not meet the pleading standard. *Knox College v. Celotex Corp.*, 117 Ill. App. 3d 304, 308 (1983).

¶ 57 As discussed above, plaintiff has not pled specific facts to support the elements of a fraud cause of action. She has failed to support the allegations in her pleadings with facts showing that various defendants knowingly made a false statement of material fact or that plaintiff relied upon the truth of the statement.

¶ 58 Because plaintiff failed to plead a common law theory of recovery beyond the scope of the Act, we affirm the circuit court's dismissal of her causes of action due to lack of subject matter jurisdiction. *McIntosh*, 244 Ill. App. 3d at 247.

¶ 59 C. Statutes of Limitations

¶ 60 Plaintiff challenges the circuit court's dismissal of her complaint based upon the lapse of the statutes of limitations. She argues the trial court failed to apply the continuing tort doctrine. In the alternative, she argues her June 2008 complaint was filed before the lapse of the limitations period because her complaint included allegations that certain co-conspirator defendants engaged in tortious behavior as late as June of 2008.

¶ 61 The purpose of the statute of limitations is not to shield a wrongdoer; rather, it is to discourage the presentation of stale claims and encourage diligence in the bringing of actions. *Pavlik*, 326 Ill. App. 3d at 744-45. Where a tort involves continuing or repeated injurious behavior, the statute of limitations does not begin to run until the date of the last injury or when the tortious acts cease. *Id*. at 745.

¶ 62 On appeal, plaintiff contends the continuing tort doctrine is applicable here because the "ongoing, long-running conspiracy among the defendants amount[ed] to the same single scheme–to deprive plaintiff of workers' compensation benefits and the vindictive campaign to forestall needed medical treatment for her MPS and chronic depression, inflicting additional emotional distress." Specifically, she argues that she alleged a pattern, course and accumulation of misconduct by the various defendants, which forced her to wage a 10-year war of attrition that defendants knew would inflict additional physical and psychological damage on her. She also

alleged that the defendants hoped their allied forces would wear her down until she accepted an unreasonable settlement or received an unfavorable award by the arbitrator.

¶ 63 We affirm the circuit court's dismissal of plaintiff's claims as barred pursuant to the relevant statutes of limitations. As discussed above, plaintiff failed to plead the essential elements of a cause of action for conspiracy. See *Buckner v. Atlantic Plant Maintenance*, 182 Ill. 2d 12, 24 (1998) (the plaintiff failed to plead a conspiracy where he alleged the defendant conspired to deny him workers' compensation benefits and hinder his efforts to pursue his claim). Her pleadings did not allege sufficient facts to indicate that defendants conspired to engage in a chain of wrongful acts. Instead, her allegations indicated that various defendants merely participated in the proceedings before the Commission and defended themselves against plaintiff's compensation and disciplinary claims. Plaintiff's allegations attempted, in a conclusory fashion, to string together separate and unrelated events and actions that occurred during the adjudication of her compensation and disciplinary claims. Consequently, her characterization of the separate acts of various defendants as parts of a giant conspiracy was unavailing.

¶ 64 We also reject plaintiff's argument that her complaint sufficiently pled a pattern, course and accumulation of misconduct by defendants to intentionally inflict emotional distress and, thus, warranted the application of the continuing tort doctrine. Plaintiff cited no relevant authority to support her contention that she may avoid the effect of the applicable statute of limitations on the alleged misconduct pled against one defendant individual or entity by imputing to that defendant the alleged misconduct pled against another defendant individual or entity. None of the cases cited by plaintiff applied the continuing tort doctrine in a context remotely

relevant to the instant case. See, e.g., *Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (2003) (finding a husband's pattern of domestic abuse against his wife was a continuing tort); *Pavlik*, 326 Ill. App. 3d 731 (finding a therapist's ongoing sexual pursuit of a patient established a continuing series of tortious behavior); *Cunningham v. Huffman*, 154 Ill. 2d 398 (1993) (finding that a physician's course of negligent treatment was a continuing tort and the medical clinic's continuous assignment of negligent doctors was a continuing tort); *Field v. The First National Bank of Harrisburg*, 249 Ill. App. 3d 822 (1993) (finding that a bank's continuous wrongful deposit of checks into an unauthorized account was a continuous tort and that the depositor's knowing continuous deposit into an unauthorized account was a continuous tort); *City of Rock Falls v. Chicago Title & Trust Co.*, 13 Ill. App. 3d 359 (1973) (where a city resident sued the city's mayor for tortious interference with the resident's use of his property, only the mayor's conduct formed the basis for the court's holding that the continuing tort doctrine applied).

¶ 65 In the alternative, plaintiff argues the statute of limitations for her lawsuit began to run in June 2008 because her complaint included allegations that certain co-conspirator defendants engaged in tortious behavior as late as June of 2008. Specifically, she alleged the Commission intentionally failed to timely send her a copy of the April 2, 2008 disability review panel decision and that failure was the foundation for her claims of fraud, fraudulent concealment, intentional infliction of emotional distress, and conspiracy. We reject plaintiff's alternate argument. As discussed above, any alleged delay by the Commission in giving plaintiff notice of the April 2008 decision did not prevent her from timely seeking judicial review of that decision because the statutory time limit to seek review runs from the receipt of the notice of the decision, not the

issuance of the decision.

¶ 66 D. Repleading

¶ 67 Plaintiff argues that she should be allowed an opportunity to replead her causes of action and the circuit court abused its discretion by dismissing her complaint with prejudice pursuant to section 2-603 of the Code based on the court's inherent authority to control its docket.

¶ 68 Section 2-603 of the Code provides that "[a]ll pleadings shall contain a plain and concise statement of the pleader's cause of action." 735 ILCS 5/2-603 (2008). A violation of section 2-603 warrants dismissal of a complaint. *Cable America, Inc.*, 396 Ill. App. 3d at 21. "If, by amendment, a plaintiff can state a cause of action, a case should not be dismissed with prejudice on the pleadings." *Bowe v. Abbott Laboratories, Inc.*, 240 Ill. App. 3d 382, 389 (1992). Amendment of the complaint generally rests within the sound discretion of the trial court. *Id.* Factors to consider in determining whether the trial court abused that discretion are whether a proposed amendment would cure the defective pleading, whether other parties would sustain prejudice or surprise by the proposed amendment, whether the proposed amendment is timely, and whether the plaintiff had previous opportunities to amend the pleading. *Id.*

¶ 69 We find no abuse of discretion in the trial court's dismissal with prejudice. Plaintiff was placed on notice that her original, first and proposed second amended complaints failed to set forth her causes of action plainly and concisely. Nevertheless, she failed to plead a coherent, factually supported cause of action after three or four attempts over the course of two years.

¶ 70 Our review of the record establishes that the trial court patiently allowed plaintiff to argue in court at length her position that her complaints were sufficient. When the trial court denied

her motion to file her proposed second amended complaint, the court warned her that her pleadings did not sufficiently define the issues. She acknowledged that the trial judge had advised her numerous times to seriously consider obtaining counsel to file her complaint and pursue her claims. However, she felt "confident that [her] First Amended Complaint [was] fine." She maintained that her pleadings were sufficient, clear, and not frivolous. Instead of asking the trial court for another opportunity to replead, she argued that the case should proceed and the defendants should file their answers. When the trial court dismissed plaintiff's first amended compliant, she was granted leave to file amendments for eight of her 62 counts.

¶ 71 After the June 2010 hearing on defendants' motions to dismiss plaintiff's third amended complaint, the trial court determined that the complaint was "as confused and jumbled as the original complaint filed in June 2008." The trial court noted that the dates alleged were not consistent. For example, in paragraph 3 on page 12, plaintiff alleged, "From 6/23/05 to 1/28/04, Conspiracy #1 was in play that entailed the employer's physiatrist Doctor-Defendant Blonsky, writing a fraudulent report ***." The trial court also noted that plaintiff's allegations were rambling and attacked individuals who were not parties to her lawsuit. For example, in paragraph 29 on page 15, plaintiff alleged:

> "By choosing to aid and abet in the concealment of the fraudulent activity committed by the employer's co-conspirators evidenced by not mentioning Hartford's tmesys drug card in its 04/02/08 disability-review order, the Commission Disability-Review Panel (**Dauphin, Lamborn, Sherman**) simultaneously sealed their fate as being guilty of fraud and fraud concealment so

to aid Defendant Hartford achieve intentional underpayment of compensation." (Emphasis in original.)

¶ 72 The trial court noted that plaintiff's lawsuit was now two years old but she had not yet presented to the court a valid cause of action. Furthermore, during the eight months that had passed since the court dismissed with prejudice a majority of the claims in her first amended complaint, plaintiff submitted thousands of pages to the court regarding her case. Moreover, dozens of attorneys representing the dozens of defendants appeared in court on this matter nearly once a month. Despite the passage of time, the use of the court's resources, and the expense to the parties, plaintiff failed to file any pleading or motion that presented a coherent, cognizable cause of action against any defendant. As a result, the trial court dismissed with prejudice plaintiff's third amended complaint based on the court's inherent authority to control its docket.

¶ 73 Our supreme court has "acknowledge[d] the inherent authority of a circuit court to dismiss a cause of action with prejudice for failure to comply with court orders where the record shows deliberate and continuing disregard for the court's authority." *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 67 (1995). Such authority is necessary to prevent undue delays in the disposition of cases caused by abuses of procedural rules, and also to empower courts to control their dockets. *Id*. at 66.

¶ 74 Here, the circuit court informed plaintiff that her original, first and proposed second amended complaints were fatally deficient. After the court dismissed with prejudice a majority of the counts alleged against various defendants and gave plaintiff leave to file amendments to only eight of those counts, plaintiff disregarded the circuit court's order. Her third amended

complaint pled causes of actions against all of the defendants that the court previously dismissed with prejudice in its October 23 and November 2, 2009 orders. Although her third amended complaint contained the eight numbered counts with titles of recognized causes of action, the substance of her allegations essentially pasted the dismissed counts against the various defendants back into her complaint in the guise of amendments to the eight counts she had leave to replead.

¶ 75 Based on plaintiff's actions and her assertion to the court that she believed her complaints were legally sufficient, the court had no reason to believe plaintiff would or could present claims that complied with section 2-603 of the Code. Plaintiff's repeated noncompliance caused the type of undue delay in the disposition of cases that the circuit court has authority to curtail. We find that plaintiff's repeated failure to comply, despite numerous opportunities, with the circuit court's order to plead a plain and concise cause of action was the type of abuse of procedural rules that warranted dismissal with prejudice in the exercise of the circuit court's inherent authority to control its docket. See *Cable America*, 396 Ill. App. 3d at 23; *Sander*, 166 Ill. 2d at 66.

¶ 76 III. CONCLUSION

¶ 77 Because we have determined that plaintiff's lawsuit was properly dismissed pursuant to sections 2-619 and 2-615 of the Code based on lack of subject matter jurisdiction, failure to plead a cause of action, the statutes of limitations, failure to make a plain and concise statement of her claims, and the trial court's inherent authority to control its docket, we have no need to address plaintiff's *res judicata* argument in support of reversal.

¶ 78 Accordingly, we affirm the judgment of the circuit court that dismissed plaintiff's first and third amended complaints pursuant to sections 2-615 and 2-619 of the Code.

¶ 79 Affirmed.