2012 IL App (1st) 110841-U

FOURTH DIVISION
December 20, 2012

No. 1-11-0841

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEVIN DUFFY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 3591
	)	
CATHERINE M. HABERKORN	)	
and CASSIE CIRIGNANI,	)	The Honorable
	)	James D. Egan
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Quinn and Pucinski concurred in the judgment.

ORDER

¶ *1* *Held*: The trial court properly dismissed plaintiff's complaint where he failed to allege facts supporting elements necessary for the causes of action raised therein and added an additional defendant after the statute of limitations had expired.

¶ 2 Plaintiff Kevin Duffy appeals from an order of the circuit court of Cook County which dismissed his second-amended complaint filed against defendants Catherine M. Haberkorn and Cassie Cirignani. Duffy asserts that the trial court erred in granting

defendants' motions to dismiss because he sufficiently pled allegations supporting his claims for false arrest and intentional infliction of emotional distress (IIED), tortious interference with a contract, and malicious prosecution. Finally, Duffy asserts that his complaint adequately pled facts which should have survived Cirignani's motion to dismiss based on the expiration of the statute of limitations. We affirm.

¶ 3 **I. FACTUAL BACKGROUND**

¶ 4 This somewhat bizarre tale began with a simple-enough domestic complaint involving a man acting suspiciously in a parking lot outside defendants' apartment building. On March 24, 2008, Cirignani, who lived with her mother, Haberkorn, observed a small vehicle in a parking lot adjacent to their building. Cirignani had previously noticed some suspicious activity in that area, so she was extra alert. She noticed that the vehicle was empty, with the engine running. As she was in the act of attempting to obtain the license plate number of the car, a white male emerged from some nearby bushes, got into the vehicle and hurriedly left the parking lot. Cirignani followed the vehicle and was able to get the license plate. She then returned home and her mother called 911.

¶ 5 The Park Ridge police responded to the call and determined that the license plate was registered to Duffy. Efforts were then undertaken to find Duffy, who was spotted in a parking lot near his residence. Duffy walked up to the police vehicle and asked whether they were "looking for" him. The officer asked Duffy his name. He replied and also informed the officer that he, Duffy, was a Chicago police officer. When the officer told him that they were investigating a suspicious person call in Park Ridge, Duffy

immediately denied having been in that suburb. Shortly thereafter, Duffy allowed that he may have been in that area and that he may have stopped near a private drive to call his girlfriend who lived in Aurora, another suburb many miles from Park Ridge. According to the officer, Duffy acted very nervously, but the officer decided to leave and go back to the Haberkorn residence. Remarkably enough, upon the officer's return to the scene where he began to update his sergeant with information about his brief interview with Duffy, Duffy himself showed up and interrupted their conversation with his statement that he had merely stopped in that area to light a cigar, making no mention of the alleged call to his girlfriend. The Park Ridge officers told Duffy that they did not need any further information from him and Duffy left.

¶ 6 On March 25, 2008, Duffy was interviewed by Detective Moran from the Cook County Sheriff's Police at a Starbucks in Park Ridge. Duffy was advised that he was not under arrest and that he was free to leave at any time. In sum and substance, Duffy could offer Moran no reasonable explanation for his presence outside the Haberkorn residence and actually admitted that his conduct seemed suspicious. During this interview, Sergeant Cochran of the Internal Affairs Division (IAD) of the Chicago Police Department appeared and informed Duffy that he was immediately stripped of his police powers during the pending investigation by his department. He was ordered to refrain from any contact with Haberkorn and Cirignani.

¶ 7 Duffy was never formally arrested or charged with any offense related to his conduct toward defendants.

¶ 8 **II. PROCEDURAL BACKGROUND**

¶ 9 Just short of two years later, on March 23, 2010, Duffy filed a four-count complaint asserting claims for defamation (Count I); IIED (Count II); intentional interference with Duffy's employment (Count III); and malicious prosecution (Count IV). This complaint was filed against Haberkorn alone. All four counts were based on Duffy's contention that in March 2008, Haberkorn made false allegations to police authorities that Duffy stalked her family outside their condominium complex in Park Ridge. About a month later, on April 30, 2010, Duffy filed his first-amended complaint, claiming that he was falsely arrested due to Haberkorn's actions. Several months later, on July 12, 2010, Duffy filed a four-count second-amended complaint against both Haberkorn and Cirignani, alleging claims of false arrest (Count I); IIED (Count II); tortious interference with Duffy's employment contract as a police officer (Count III); and malicious prosecution (Count IV).

¶ 10 Specifically, Duffy alleged that he had been a police officer in the Chicago Police Department since 2001. On March 24, 2008, Haberkorn and Cirignani falsely reported to the Park Ridge Police Department that at various times over the previous 11 days, Duffy had stood in the bushes under the windows of their home and watched them while they were home. He also sat and watched them from his car. In addition, they reported that Duffy followed them while they were in their car. The complaint further alleged that Haberkorn informed the authorities that she was a Cook County judge. Other than the reference to Haberkorn's profession, Duffy alleges that the report was otherwise false and

as a result, he was investigated by Park Ridge Police Officers.

¶ 11 Duffy also alleged that Haberkorn and Cirignani made false allegations about him to the Cook County Sheriff's Department on March 25, 2008, and made false statements about Duffy to the IAD on May 28, 2008. Duffy alleged that when he was investigated by the Park Ridge Police Department, the Cook County Sheriff's Department and the IAD, he did not "feel free to leave." In addition, Duffy alleged that he was "arrested" during these interviews on March 24, 2008, March 25, 2008, and May 28, 2008, to support his claim of false arrest (Count I). Duffy also alleged that as a result of these statements to the IAD, an investigation ensued, which caused Duffy to go through "administrative judicial proceedings at the City of Chicago Police Department" but the IAD subsequently dismissed the statements. Duffy further alleged that he had a valid and enforceable contract with the Chicago Police Department and claimed that the false allegations caused damage to his reputation as an officer. Duffy alleged that he was stripped of his badge and police powers. Moreover, Duffy alleged that the false allegations were severe, extreme and outrageous, and required him to seek psychological counseling due to physical manifestations of emotional harm, including difficulty sleeping, panic attacks, stomach problems and migraines.

¶ 12 On August 3, 2010, Haberkorn and Cirignani each filed a combined motion to dismiss the complaint pursuant to section 2-615 (735 ILCS 5/2-615 (West 2010)) and section 2-619 (735 ILCS 5/2-619 (West 2010)) of the Illinois Code of Civil Procedure (the Code), along with memorandums of law in support thereof. Cirignani also moved to dismiss all claims

against her under section 2-619(a)(5) (735 ILCS 5/2-619 (a)(5) (West 2010)) because the claims were not commenced within the applicable two-year statute of limitations.

¶ 13 On October 15, 2010, the circuit court granted with prejudice the motions to dismiss all counts of Duffy's complaint against both defendants. This timely appeal followed.

¶ 14 **III. ANALYSIS**

¶ 15 A. False Arrest

¶ 16 Duffy asserts that his false arrest claim was improperly dismissed under section 2-615 because he sufficiently pled a claim for false arrest by pleading that Haberkorn and Cirignani took affirmative steps to ensure his arrest and that he felt restrained. We review an order granting a motion to dismiss pursuant to section 2-615 *de novo*. *Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East*, 378 Ill. App. 3d 713, 719 (2008). This court may affirm the trial court's dismissal on any basis in the record, regardless of the reasoning relied upon by the trial court. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 586 (2005). In considering whether to grant or deny a motion to dismiss, the court must determine whether the complaint standing alone has stated sufficient facts to demonstrate a cause of action pursuant to which relief may be granted. *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 712 (2010). To survive a motion to dismiss, the plaintiff must allege specific facts supporting each element of his cause of action and the trial court will not admit conclusory allegations or conclusions of law that are not supported by specific facts. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp*., 406 Ill. App. 3d 325, 336 (2010).

¶ 17 In order to successfully plead false arrest, one must show that (1) the plaintiff was restrained or arrested by the defendant; and (2) the defendant acted without having reasonable grounds to believe that an offense was committed by the plaintiff. *Meerbrey v. Marshall Field & Co.,* 139 Ill. 2d 455, 474 (1990). An unlawful arrest by an officer caused or procured by a private person is the same as an arrest by the private person. *Vincent v. Williams*, 279 Ill. App. 3d 1, 6 (1996). Nonetheless, a private person's conduct in giving information to the police is insufficient in itself to constitute participation in an arrest. *Carey v. K-Way, Inc.*, 312 Ill. App. 3d 666, 670 (2000). Affirmative steps must be taken to convince the officer to make the arrest. *Id.* at 671. "It is always a requirement of liability that the defendant be shown to have suggested or encouraged the arrest in some way." *Id.*

¶ 18 In the case *sub judice*, it is abundantly clear that the trial court properly dismissed the false arrest claim because Duffy failed to allege specific facts supporting each element of false arrest. Duffy alleged that he was arrested on March 24 and 25 and also May 28 of 2008. As previously mentioned, Duffy was never formally arrested by anybody in connection with his behavior that is the subject of this whole controversy. Duffy obviously did not plead that he was arrested by Haberkorn or Cirignani but, rather, attempted to allege that their reports to the police authorities caused him to be effectively "arrested" during his several police interviews. Duffy never pled that Haberkorn or Cirignani took any affirmative steps "suggesting" or "encouraging" the officers to arrest Duffy.

¶ 19 To the extent that Duffy argues Haberkorn "indicated" to Park Ridge Police officers that she was a judge, this is merely an accurate representation of her professional occupation. In addition, since threats against public officials is a specific violation and Haberkorn, as a judge, had at that point no way of knowing the motives of the unknown man, the information that she is a judge was important to their ability to properly question any suspect they turned up. While Duffy pled that Haberkorn knew her position would make her comments more believable and effective, he never pled sufficient facts to in any way establish that Haberkorn used her authority as a judge to "suggest" or "encourage" the officers to arrest Duffy. We find that the trial court properly dismissed Duffy's claim of false arrest under section 2-615.

¶ 20 B. IIED

¶ 21 Duffy next contends that his IIED claim was improperly dismissed under section 2-615 because he sufficiently pled allegations supporting the elements of IIED. A claim for IIED requires that (1) the conduct involved must be truly extreme and outrageous; (2) the actor must either intend that his conduct inflict severe emotional distress, or know that there is at least a high probability that his conduct will cause severe emotional distress; and (3) the conduct must in fact cause severe emotional distress. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 269 (2003). In Illinois, an IIED claim has a heightened pleading requirement, meaning that a plaintiff's allegations must be "specific, and detailed beyond what is normally considered permissible in pleading a tort action." *Welsh v. Commonwealth Edison Co.*, 306 Ill. App. 3d 148, 155 (1999). In addition, extreme and

outrageous conduct must "go beyond all possible bounds of decency" and be "regarded as intolerable in a civilized community." *Feltmeier*, 207 Ill. 2d at 270. Extreme and outrageous conduct does not, however, include "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id.* Making police reports, including ones alleged to be false does not "constitute extreme and outrageous conduct." *Schiller v. Mitchell,* 357 Ill. App. 3d 435, 450 (2005); *Adams v. Sussman & Hertzberg, Ltd.*, 292 Ill. App. 3d 30, 39-40 (1997) (making false complaint of criminal trespass to police is not extreme and outrageous). Furthermore, to successfully plead an IIED claim, the emotional distress must be "so severe that no reasonable man could be expected to endure it." *Feltmeier*, 207 Ill. 2d at 276. "[M]erely characterizing emotional distress as severe is not sufficient." *Welsh*, 306 Ill. App. 3d at 156.

¶ 22 Here, Duffy merely alleges that defendants made false reports to three law enforcement agencies, which does not meet the heightened pleading standard. Moreover, even if defendants made three false police reports, it is "not beyond all possible bounds of decency" such that it can be deemed extreme and outrageous, as required to satisfy the first element of IIED. In addition, case law shows that "the more control which a defendant has over the plaintiff, the more likely that defendant's conduct will be deemed outrageous, particularly when the alleged conduct involves either a veiled or explicit threat to exercise such authority or power to plaintiff's detriment." *McGrath v. Fahey*, 126 Ill. 2d 78, 86-87 (1988). Contrary to Duffy's assertion, however, the allegations did not show that Haberkorn had specific authority over Duffy. Accordingly, Haberkorn's

profession did not render her conduct extreme and outrageous, and the trial court properly dismissed Duffy's claim.

¶ 23 C. Tortious Interference

¶ 24 We also reject Duffy's contention that the trial court improperly dismissed his tortious interference claim pursuant to section 2-615. In order to successfully plead a claim for tortious interference with a contractual relationship, the plaintiff must show the following elements: "(1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of the contract; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's conduct; and (5) damages." *Complete Conference Coordinators, Inc. v. Kumon North America, Inc.*, 394 Il. App. 3d 105, 109 (2009).

Here, Duffy's complaint failed to plead with specificity the terms of the contract as well as facts alleging how the Chicago Police Department breached its contract with Duffy or how defendants induced the department to do so. Accordingly, the trial court properly dismissed this claim.

¶ 25 D. Malicious Prosecution

¶ 26 Duffy contends his malicious prosecution claim was improperly dismissed under section 2-615 because he pled allegations supporting the elements of malicious prosecution. In order to successfully plead a claim for malicious prosecution, the plaintiff must allege the following elements: (1) the commencement or continuance of an original criminal or civil proceeding by the defendant; (2) the termination of the proceeding in favor of the

plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) the damages resulting to the plaintiff. *Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996). Commencing a proceeding requires more than merely providing information, even false information. *Randall v. Lemke*, 311 Ill. App. 3d 848, 850 (2000). Moreover, this court has held that an investigation by the Office of Internal Affairs of the Cook County Sheriff's Police Department did not qualify as a judicial proceeding for the purposes of a malicious prosecution claim. *Zych v. Tucker*, 363 Ill. App. 3d 831, 836 (2006).

¶ 27 Here, Duffy failed to plead facts showing that Haberkorn and Cirignani did anything more than provide information to the police, conduct that does not qualify as the commencement of a criminal or civil proceeding. As Duffy appears to acknowledge in his reply brief, an investigation by the IAD does not qualify as criminal or civil proceeding for the purposes of a malicious prosecution claim. In addition, although the complaint also alleged that Duffy "went through administrative judicial proceedings at the City of Chicago Police Department," this vague allegation failed to identify the specify body governing those proceedings or their nature. We are unpersuaded by Duffy's contention that the trial court was required to speculate that his allegation referred to the Chicago Police Board, rather than the IAD or some other investigative body within the police department. Accordingly, the trial court properly dismissed Duffy's claim.

¶ 28 E. Second-Amended Complaint against Cirignani

¶ 29 Finally, Duffy contends the trial court improperly dismissed his second amended

complaint against Cirignani under section 2-619(a)(5) because he adequately pled a basis for adding Cirignani. A motion to dismiss under section 2-619, admits the legal sufficiency of the complaint but raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Krilich v. American National Bank & Trust Co. of Chicago,* 334 Ill. App. 3d 563, 569-70 (2002). When reviewing a circuit court's disposition of a motion to dismiss under section 2-619, this court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 141 (2006). The question on appeal is whether a genuine issue of material fact exists and whether the defendant is entitled to a judgment as a matter of law. *LaSalle Bank National Ass'n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635 (2005).

¶ 30 Pursuant to section 13-202 of the Code (735 ILCS 5/13-202 (West 2010)), a plaintiff has two years from the time the cause of action accrued to bring forth his claims against an individual for the actions alleged. The discovery rule delays commencement of the relevant statute of limitations until a plaintiff knows or reasonably *should know* he has been injured and that his injury was caused wrongfully. *Hermitage Corp. et al. v. Contractors Adjustment Co. et al.*, 166 Ill. 2d 72, 77 (1995). The burden is on the plaintiff to prove the discovery date. See *Goldberg v. Mintz,* 288 Ill. App. 3d 666, 673 (1997).

¶ 31 Here, defendants filed reports of stalking against Duffy on March 24 and 25 of 2008, and

made statements to the IAD on May 28, 2008. The second-amended complaint adding Cirignani as a defendant was not filed until July 12, 2010, outside the two-year statute of limitations. The parties dispute whether the discovery rule may be applied where, as here, the plaintiff knew he had wrongfully been injured but merely did not know the identity of the injuring party. Even assuming the rule may be applied in such an instance, it does not assist Duffy in this case.

¶ 32 Although Duffy contends he did not "learn that Cirignani was involved in any way in the underlying incident until after the limitations period had run," he has failed to allege sufficient facts showing that it was reasonable for him to be unaware of those facts. The second-amended complaint stated that Duffy learned of Cirigani's involvement in June 2010 as a result of recently subpoenaed documents. Nonetheless, the record indicates that on March 25, 2008, Duffy signed an order to stay away from, among other individuals Cirignani. Thus, Duffy had enough information from which to investigate the identity of all potential defendants. Accordingly, the trial court properly dismissed all counts against Cirignani.

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

¶ 34 Affirmed.