

2011 IL App (1st) 101861-U  
No. 1-10-1861

**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).

SECOND DIVISION  
June 28, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JAMES M. WORTHEM,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 2427
	)	
MARIETTA DEL PRETO, MICHAEL L.	)	
GALLAGHER, TOM DART, DOROTHY BROWN,	)	
ANITAL ALVAREZ, and NANCY A. NALEWAY,	)	Honorable
	)	James D. Egan,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Karnezis and Connors concurred in the judgment.

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**O R D E R**

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*HELD:* Judgment of circuit court of Cook County dismissing plaintiff's complaint with prejudice and denying his motion for a default judgment affirmed where plaintiff failed to set forth a cause of action.

¶ 1 Plaintiff James Worthem, *pro se*, appeals from the dismissal with prejudice of the complaint he filed in the circuit court of Cook County against court reporters Marietta Del Preto and Nancy

Naleway, Assistant State's Attorney (ASA) Michael Gallagher, Cook County State's Attorney Anita Alvarez, Cook County Circuit Court Clerk Dorothy Brown, and Cook County Sheriff Tom Dart. He also appeals the denial of his motion for a default judgment against Alvarez, Brown, and Dart.

¶ 2 The common law record filed in this case shows that on February 24, 2010, plaintiff filed a *pro se* complaint against defendants in their official capacities alleging that they violated his civil rights, and had conspired against him. He specifically alleged that on September 26, 2007, while he was at a Skokie courthouse defending the criminal charge for which he is now incarcerated, the bailiff, Officer Joseph Boyle, physically attacked him. Plaintiff claimed that he filed a grievance with the court and the clerk's office, and when no one listened to the law and reason, he filed an action against Officer Boyle in federal district court pursuant to section 1983 of the Civil Rights Act of 1991 (42 U.S.C. § 1983 (2008)).

¶ 3 Plaintiff further alleged that Officer Boyle was represented in that matter by ASA Gallagher who conspired with court reporter Del Preto to alter the transcript of the September 26, 2007, incident by deleting plaintiff's pleas for help, and changing the names of the persons present in the courtroom and his words to make it appear as if the officer was justified in his use of excessive force. Plaintiff maintained that he complained of this

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to the district court judge, who decided in the officer's favor, and that his "separate" section 1983 lawsuit was pending in a federal appeals court.

¶ 4 Plaintiff also alleged that he attempted to have the defendant county officials "correct their wrongs" by filing a supplemental motion for the correct transcript, but, instead of correcting the problem, defendants Alvarez, Brown, and Dart knowingly and unlawfully adopted the altered transcript, and had the original removed from the appellate court record. He claimed that the altered transcript was filed in the state appeal of his criminal conviction, as well as his federal appeal, and that this was an abuse of the officials' powers of office and authority. Plaintiff requested \$50,000 in damages from each defendant, their resignations, and the exact transcribed taped hearing. Plaintiff then noted that whether defendants were immune from such a suit was a question for the circuit court.

¶ 5 In support of his complaint, plaintiff attached copies of the altered and original transcripts. On these transcripts, plaintiff indicated that defendants changed the name of the assistant State's Attorney who was present in the courtroom, and an individual who made a preliminary comment to the court; and his statement, "[c]an I please put in some motions that day," to "[c]an I please put in some motions today."

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¶ 6 On April 15, 2010, ASA Gallagher filed a motion to dismiss defendant's complaint pursuant to section 2-615 and/or section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2008)). He alleged that under the doctrine of sovereign immunity and the Court of Claims Act (Claims Act) (705 ILCS 505/8 (West 2008)), the circuit court did not have jurisdiction of the case because the court of claims has exclusive jurisdiction over a tort claim of civil conspiracy against a State's Attorney. ASA Gallagher also alleged that he is immune from plaintiff's claims pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2008)), where his filing of a motion for summary judgment on behalf of Officer Boyle in the district court was discretionary and not willful and wanton.

¶ 7 ASA Gallagher further alleged that plaintiff failed to sufficiently state a cause of action of conspiracy where he made conclusory statements with no factual allegations demonstrating an agreement to perform an unlawful act or injury and that plaintiff was prejudiced. He maintained that plaintiff was upset over the federal district court's decision, which he has appealed, and that any injury or prejudice he sustained should be addressed in that appeal.

¶ 8 On April 22, 2010, court reporter, Del Preto, and her supervisor, Naleway, filed a section 2-615 (735 ILCS 5/2-615

(West 2008)) motion to dismiss, alleging that plaintiff's section 1983 claim does not satisfy Illinois' fact pleading standard because he did not show that the minor corrections to the transcript deprived him of a federal right, that defendants agreed to deprive him of his rights, and that he was harmed. They also alleged that plaintiff's section 1983 claim was barred because he sued them in their official capacities as state employees, that the circuit court does not have jurisdiction because the court of claims has exclusive jurisdiction over a tort civil conspiracy claim against the State, and that even if they were sued in their personal capacities, they would be immune because the corrections to the transcript do not violate a clearly established constitutional right.

¶ 9 On May 13, 2010, plaintiff, without requesting leave of court, filed a *pro se* amended complaint essentially reiterating the allegations in his original complaint. He also alleged that he was bringing a section 1983 civil rights violations claim and a torts claim against defendants in their official and individual capacities.

¶ 10 The next day, plaintiff filed a motion opposing the motions to dismiss. Plaintiff alleged that Del Preto and ASA Gallagher were never given authority to change the transcript, and Del Preto wantonly deleted the truth and facts from it. He also alleged that the purpose of section 1983 was to deter state

actors from using their authority to deprive individuals of their federal rights and to provide relief to victims if such deterrence fails. He maintained that defendants were not immune because they conspired with persons who acted under color of state law, willfully and wantonly, and with malice, that the court reporters do not have judicial immunity because their duties are ministerial; and that he satisfied Illinois' factual pleading standard. He further claimed that the circuit court has jurisdiction over his complaint, but that it can transfer the matter to the court of claims if it finds that it does not. He then requested a default judgment against defendants Brown, Dart, and Alvarez for "negligently" failing to answer the complaint.

¶ 11 On May 19, 2010, plaintiff filed additional complaints against defendants without requesting leave of court to do so. In these complaints, he essentially reiterated the allegations in his prior complaints, and increased the amount of damages he was seeking.

¶ 12 On June 4, 2010, ASA Gallagher filed a reply in support of his motion to dismiss alleging that plaintiff briefly mentioned section 1983 in his original complaint, but that he did not develop that claim, focusing instead on his argument regarding the tort claim of conspiracy. ASA Gallagher explained that plaintiff did not set forth the elements for a cause of action under section 1983, or identify what constitutional right was

violated or injury he suffered. The ASA noted that the only possible injury plaintiff could have suffered was an improper granting of summary judgment in his district court case, but plaintiff raised the issue of the altered transcript to the federal judge who ruled against him. ASA Gallagher maintained that plaintiff was essentially attempting to have the circuit court review the district court's decision.

¶ 13 Del Preto and Naleway also filed a reply in support of their motion to dismiss alleging that plaintiff improperly filed an amended complaint without seeking leave of court. They also alleged that the original and corrected transcripts do not show any evidence of an assault against plaintiff, and thus, plaintiff has not presented a section 1983 or a civil conspiracy claim.

¶ 14 On June 15, 2010, the circuit court entered a written order granting the motions to dismiss, denying plaintiff's motion for a default judgment, and dismissing the matter with prejudice. Plaintiff timely appealed from that order.

¶ 15 On appeal, plaintiff first contends that the circuit court abused its discretion in dismissing his complaint. He maintains that he sued defendants in their individual and official capacities under state tort laws and section 1983, that defendants deprived him of his right to receive an accurate transcript of the September 26, 2007, incident, and that an officer of the State is not immune where he acts willfully and

wantonly and beyond his delegated duties.

¶ 16 As an initial matter, we observe that plaintiff failed to comply with Supreme Court Rule 341 (eff. July 1, 2008). Although plaintiff has set forth six issues and several points of authority in his brief, he has failed to set forth a cogent argument with regard to them that is readily ascertainable. Notwithstanding, we find that we may review plaintiff's challenge to the ruling given the record before us and where we have the benefit of the cogent briefs filed by the defendant court reporters and ASA Gallagher. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 17 We further observe that, in its written order granting defendants' motions to dismiss, the circuit court did not differentiate the sections on which its decision was based, or provide any reasons for its ruling. We begin our analysis with section 2-615 which was common to both dismissal motions.

¶ 18 Section 2-615 provides for the dismissal of a complaint if it is legally deficient (735 ILCS 5/2-615 (West 2008)), *i.e.*, it does not allege sufficient facts to bring a claim within a legally recognized cause of action. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006). Our review of a section 2-615 dismissal is *de novo*. *Balmoral Racing Club Inc. v. Gonzales*, 338 Ill. App. 3d 478, 484 (2003).

¶ 19 In ruling on a section 2-615 motion, courts must construe all well-pleaded facts as true and all reasonable inferences that may be drawn from those facts. *Raleigh v. Alcon Laboratories, Inc.*, 403 Ill. App. 3d 863, 868 (2010). A court must also construe the allegations in the complaint most favorably to plaintiff, and should not dismiss a cause of action unless it is clearly apparent that no set of facts can be proved that would entitle plaintiff to relief. *Raleigh*, 403 Ill. App. 3d at 868.

¶ 20 To set forth a claim under section 1983, plaintiff must establish that he has been deprived of a constitutionally protected interest, and the deprivation was caused by an official policy, custom, or usage of the municipality. *Graham v. Reid*, 334 Ill. App. 3d 1017, 1024 (2002). Here, plaintiff merely mentioned section 1983 in his certificate of service and original complaint without alleging facts to set forth the claim. As defendants note, plaintiff did not allege the elements of a cause of action under section 1983, or state facts demonstrating liability under that section, and his bare assertions that his constitutional and equal protection rights were violated was insufficient to set forth a section 1983 claim.

¶ 21 Plaintiff's further assertions that he was deprived of the right to a fair transcript, and that defendants conspired against him by changing the transcript and filing it in his state and federal appeals does not set forth a section 1983 claim. Thus,

his complaint was insufficient to plead a section 1983 cause of action (*Marshall*, 222 Ill. 2d at 429-30), and was properly dismissed by the court under section 2-615 (735 ILCS 5/2-615 (West 2008)).

¶ 22 Although plaintiff attempted to amend this claim through subsequent filings, he did not seek leave to file the additional complaints, and the record does not reflect that he was ever given leave to do so. An amended complaint is not a valid filing and part of a judicial proceeding until leave to file is granted. *Kurczaba v. Pollock*, 318 Ill. App. 3d 686, 702 (2000). Thus, we will not consider the new material asserted in his amended and additional complaints regarding his pursuit of a section 1983 claim against defendants in their individual capacities.

¶ 23 Plaintiff also failed to plead a claim of civil tort conspiracy against defendants. To set forth a claim of civil conspiracy, plaintiff must allege facts showing that defendants entered an agreement to participate in an unlawful act, an injury was caused by that act, and that the act was done pursuant to and in furtherance of a common scheme. *Canel & Hale, Ltd. v. Tobin*, 304 Ill. App. 3d 906, 920 (1999).

¶ 24 Here, plaintiff asserted that defendants had conspired against him by altering or adopting the altered transcript, and filing it in the federal and state courts. This mere characterization of a combination of acts by defendants as a

conspiracy is insufficient to withstand a motion to dismiss. *Canel & Hale, Ltd.*, 304 Ill. App. 3d at 920. In addition, plaintiff's claim that the transcript was altered to suggest that Officer Boyle was justified in his use of excessive force against him was rebutted by the record which shows that the minor corrections made to the transcript, *i.e.*, changing the names of two persons to accurately reflect the identities of the persons who were in the courtroom that day; and the words "that day" to "today," had no effect on plaintiff's allegations regarding Officer Boyle. We thus conclude that the court did not err in dismissing plaintiff's complaint where he failed to allege facts sufficient to bring his claim within a legally recognized cause of action. *Marshall*, 222 Ill. 2d at 429-30. Having so found, we need not consider whether the dismissal of defendant Gallagher's motion was also proper under section 2-619.

¶ 25 Plaintiff next contends that the court erred in denying his motion for a default judgment against Brown, Alvarez, and Dart. He claims that their failure to answer was wanton, ill-willed, and prejudicial.

¶ 26 Judgment by default may be entered for failing to appear or plead; however, the court may in either case, require proof of the allegations of the pleading upon which relief is sought. 735 ILCS 5/2-1301(d) (West 2008). Where the allegations in the complaint do not support plaintiff's cause of action, no abuse of

discretion will be found in denying plaintiff's motion for a default judgment. *Wollschlager v. Sundstrand Corp.*, 143 Ill. App. 3d 347, 349-50 (1986). Here, the court made that determination in granting the motions to dismiss, and we thus find no abuse of discretion by the trial court in denying plaintiff's motion for a default judgment. *Wollschlager*, 143 Ill. App. 3d at 350.

¶ 27 Moreover, we note in passing that defendant's argument assumes that there was service of process on the named defendants, but that the record leaves doubt as to whether they were actually served. Pursuant to section 2-203 of the Code of Civil Procedure (735 ILCS 5/2-203(a) (West 2008)) the certificate of the officer or the affidavit of the person that he has sent a copy of the summons in compliance with this section is evidence that he has done so. In this case, the record demonstrates that the summons was issued from the court, but there is no return showing that defendants were actually served. Thus, no default judgment could be entered against them. *City of Chicago v. Yellen*, 325 Ill. App. 3d 311, 315-16 (2001).

¶ 28 In light of the foregoing, we affirm the judgment of the circuit court of Cook County dismissing plaintiff's complaint with prejudice, and denying his motion for a default judgment.

¶ 29 Affirmed.