SIXTH DIVISION
March 31, 2011

Nos. 1-09-1606 & 1-09-2994, Consolidated

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 JUDICIAL DISTRICT

SARA BALAKAR,	)	Appeal from the
	)	Circuit Court of Cook County
Plaintiff-Appellant,	)	
v.	)	No. 06 L 481
	)	09 L 1874
JAMES M. URTIS, ANTONIO M. ROMANUCCI,	)	
STEPHEN J. BLANDIN, and ROMANUCCI &	)	Honorable
BLANDIN, LLC,	)	Thomas R. Chiola and
	)	Diane J. Larsen
Defendants-Appellees.	)	Judges Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Justices McBride and R.E. Gordon concurred in the judgment.

O R D E R

Held: Trial court properly denied plaintiff leave to file an amended complaint alleging legal malpractice after she voluntarily dismissed the action on two separate occasions.

This consolidated appeal arises from a negligence action brought by plaintiff Sara Balakar against DeWayne Allen for injuries she allegedly sustained in a February 21, 2002, pedestrian-automobile accident. Allen was the driver of the car that hit plaintiff. Plaintiff retained the law

firm of Romanucci & Blandin, LLC, who referred her case to attorney James Urtis. Urtis filed a complaint against Allen but did not cause a summons to be placed. The statute of limitations expired and Urtis withdrew from the case. Plaintiff retained another attorney who refiled the complaint against Allen and caused a summons to be placed. Allen filed a motion to dismiss the complaint for plaintiff's lack of diligence to obtain service under Illinois Supreme Court Rule 103(b) (eff. July 1, 2007).

While that motion was pending, plaintiff filed an amended complaint against Allen on January 25, 2005. The amended complaint added a professional negligence action against defendants, attorneys Urtis, Antonio M. Romanucci, Stephan D. Blandin and the law firm of Romanucci & Blandin, LLC, for their alleged failure to timely effect service on Allen. Urtis filed a motion to dismiss the complaint under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2004)), arguing that plaintiff's legal malpractice claim was premature because Allen's Rule 103(b) motion had not yet been granted. On April 19, 2005, plaintiff moved for a voluntary dismissal of her claims against defendants under section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2004)). The court then granted Allen's Rule 103(b) motion to dismiss plaintiff's complaint.

On January 17, 2006, plaintiff refiled her legal malpractice claim against defendants under trial court No. 06 L 481. Discovery proceeded, and plaintiff filed a motion for partial summary judgment, seeking a ruling that defendants were professionally negligent as a matter of law. Defendants replied to the motion, alleging triable questions of fact. After a February 17, 2009, hearing, the court denied the motion. The case proceeded to trial on the same date.

Before trial, the court asked plaintiff if she had retained an expert witness to support her claim of professional negligence. Plaintiff told the court that she had withdrawn her disclosed expert, Nancy Addae, after Urtis served a notice to depose her. She now moved to disclose this witness. The court admonished plaintiff that this witness was not timely disclosed and that she could proceed to trial without the expert witness or move to voluntarily dismiss the case. Plaintiff moved to voluntarily dismiss the case under section 2-1009 of the Code. Urtis objected to plaintiff's motion, noting that she had voluntarily dismissed the action once before. The court admonished plaintiff that a second voluntary dismissal is a final disposition of the matter and may be a bar to future proceedings. On February 17, 2009, the court granted the motion and entered a written order, noting plaintiff voluntarily dismissed the case.

The next day, plaintiff filed a motion to reconsider the court's February 17, 2009, order. In that motion, plaintiff argued that the trial judge was unfair and partial to defendants' position. The court entered a written order the same day, denying plaintiff's motion and noting that plaintiff failed to raise substantive issues for the court to consider. On February 23, 2009, plaintiff filed an emergency motion to vacate the court's February 18, 2009, order. In that motion, plaintiff argued that she was denied due process of law and that the trial judge was attempting to "hide and suppress information." The court denied the motion on February 23, 2009. On March 17, 2009, plaintiff filed two motions: a motion to reconsider the denial of partial summary judgment and a motion to vacate non-suit. The court denied those motions in a written order entered on April 9, 2009. The court noted that these were plaintiff's third and fourth post-voluntary-dismissal motions and that the court would not consider further motions.

On May 7, 2009, plaintiff filed her notice of appeal (appeal No. 1-09-1606) from that order and the court's February 17, 2009, order granting her voluntary dismissal.

On February 17, 2009, the same date plaintiff voluntarily dismissed her second action against defendants, she refiled the action under trial court No. 09 L 1874. In her complaint, plaintiff acknowledged that her first action against defendants was premature because the malpractice claim did not accrue until Allen prevailed on his Rule 103(b) motion to dismiss her underlying negligence complaint for lack of service. She also acknowledged that she voluntarily dismissed her second action against the attorneys. Urtis moved to dismiss the complaint under section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2008)), arguing that the action was statutorily barred because it followed two voluntary dismissals and was an impermissible third filing of the same cause of action. The court agreed and dismissed plaintiff's complaint with prejudice on May 5, 2009. On May 19, 2009, plaintiff sought leave to file an amended complaint. The court denied plaintiff leave to file an amended complaint on May 27, 2009, noting that it would be the third refiling of the same action. Plaintiff filed her notice of appeal from that order (appeal No. 1-09-2994) on the same day. We granted plaintiff's motion to consolidate the two appeals.

We first note that plaintiff's appellate brief does not comply with Illinois Supreme Court Rule 341 (eff. July 1, 2008). Plaintiff's brief does not include a "Points and Authorities" section or a "Certificate of Compliance." See Ill. S. Ct. R. 341(c),(h)(1) (eff. July 1, 2008). The brief includes a 26-page statement of facts that recounts the history of the case, raises legal arguments and expresses displeasure with the trial judge in violation of Illinois Supreme Court Rule

341(h)(6) (eff. July 1, 2008). It also refers to instances of alleged court misconduct during the February 17, 2009, hearing, occurring during an in-chambers discussion. The record does not include a report of those proceedings, a bystander's report or an acceptable substitute from which we may ascertain the conduct of the court as required by Illinois Supreme Court Rule 323(a), (c) (eff. December 13, 2005).

In her argument section, plaintiff has failed to properly or informatively state the errors relied on for reversal or present an organized and cohesive legal argument for this court's consideration. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 465, 876 N.E.2d 273 (2007) (arguments not supported by relevant authority are waived). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26, 441 N.E.2d 360 (1982). It is not the function of this court to act as an advocate or search the record for error. *XLP Corp. v. County of Lake*, 359 Ill. App. 3d 239, 256, 832 N.E.2d 480 (2005).

But our jurisdiction to entertain an appeal is unaffected by the insufficiency of a plaintiff's brief so long as we understand the issue presented and we have the benefit of a cogent brief of the opposing party. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511, 748 N.E.2d 222 (2001), citing *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344, 354, 637 N.E.2d 1054 (1994). To this end, we note that the issue on appeal is apparent from the record and we can decide it as a matter of law. Also, defendants have filed an appellee brief containing argument supporting the trial court's order denying plaintiff leave to file a third

complaint. We will review the propriety of that order to the extent made possible by the record and defendants' brief.

On appeal, plaintiff contends that the trial court erred in denying her leave to file a third amended complaint against defendants because she did not voluntarily dismiss the action twice. She claims that her first filing of the legal malpractice action against defendants was a "nullity" because the action against the attorneys had not accrued at the time and could be voluntarily dismissed without consequence.

Defendants respond that this court lacks jurisdiction to consider plaintiff's appeal from the court's February 17, 2009, order (appeal No. 1-09-1606) because plaintiff did not file a timely notice of appeal. Defendants claim that the date for filing the notice of appeal commenced on February 18, 2009, the date the trial court denied plaintiff's first posttrial motion. Relying on *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 57, 550 N.E.2d 1080 (1990), defendants maintain that plaintiff's successive posttrial motions did not serve to extend the time for filing a notice of appeal because the court had no authority to hear those motions.

B-G Associates was distinguished by *People v. Walker*, 395 Ill. App. 3d 860, 869, 918 N.E.2d 1260 (2009), *pet. for leave to appeal allowed* 236 Ill. 2d 542, No. 109631 (March 24, 2010). *Walker* rejected the idea that courts inherently lack jurisdiction to consider successive posttrial motions. Rather, successive posttrial motions are a limit on the time for appeal and do not extend it. *Walker*, 395 Ill. App. 3d at 869. We must consider whether plaintiff filed a timely notice of appeal.

Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) governs appeals from final

judgment in civil cases and provides that, for this court to have jurisdiction, a notice of appeal must be filed within 30 days of the entry of the final judgment in the trial court or, if a timely posttrial motion directed against the judgment has been filed, within 30 days after the entry of the order disposing of that motion.

Here, the court's February 17, 2009, order granting plaintiff's voluntary dismissal of her second action against defendants was a final judgment because plaintiff did not have the right to refile the action. See *Green v. Northwest Community Hospital*, 401 Ill. App. 3d 152, 157, 928 N.E.2d 550 (2010). Plaintiff had until March 19, 2009, 30 days from entry of the dismissal order, to file her notice of appeal. Instead, plaintiff filed a motion to reconsider that order on February 18, 2009. That motion did not toll the 30-day limit. See Ill. S. Ct. R. 303(a)(2) (eff. June 4, 2008) ("[n]o request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule"). Plaintiff then filed three successive posttrial motions. Although those motions were filed within 30 days of the court's February 17, 2009, order, the successive posttrial motions did not extend the time to appeal. See *Walker*, 395 Ill. App. 3d at 869. After the court denied the motions, plaintiff filed her notice of appeal on May 7, 2009, almost three months after the entry of the appealed-from order. Plaintiff's notice of appeal under appeal No. 1-09-1606 is untimely and we have no jurisdiction to consider it.

Section 13-217 of the Code (735 ILCS 5/13-217 (West 2008)) permits a plaintiff to refile an action within one year of a voluntary dismissal. *Gibellina v. Handley*, 127 Ill. 2d 122, 134, 535 N.E.2d 858 (1989). The right to refile is not limitless and the statute does not permit more

than one refiling. *Gibellina*, 127 Ill. 2d at 134; *Timberlake v. Illini Hosp.*, 175 Ill. 2d 159, 165, 676 N.E.2d 634 (1997).

Here, the record shows plaintiff voluntarily dismissed her first action against defendants on April 19, 2005. She later refiled the action (trial court No. 06 L 481) only to voluntarily dismiss it again on February 17, 2009. After the second dismissal, plaintiff did not have the right to refile the action. See *Timberlake*, 175 Ill. 2d at 165. The trial court did not err in denying plaintiff leave to file a third action against defendants.

We are unpersuaded by plaintiff's argument that her first filing of the legal malpractice action against defendants was a "nullity" because the action against the attorneys had not accrued at the time and could be voluntarily dismissed without consequence. Because plaintiff cites no authority in support of this argument it is waived. See *Universal Casualty Co*, 376 Ill. App. 3d at 465 (arguments not supported by relevant authority are waived).

We are also unpersuaded by plaintiff's argument that her second voluntary dismissal of the action should be vacated because she was forced to dismiss the action in light of the trial court's adverse rulings. The record belies this claim and shows the court gave plaintiff the option of proceeding to trial without an expert or voluntarily dismissing the action. The court also admonished plaintiff of the consequences of a second voluntary dismissal. Plaintiff still chose to dismiss the action. She cannot now challenge the order she sought. *Kahle v. John Deere Co.*, 104 Ill. 2d 302, 306, 472 N.E.2d 787 (1984).

The judgment of the circuit court is affirmed.

Affirmed.