

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).

NO. 4-10-0367 Order Filed 4/19/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOEL MINGO,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Pike County
THE COUNTY OF PIKE and SCOTT SYRCLE,)	No. 09L9
Pike County Board Chairman,)	
Defendants-Appellees.)	Honorable
)	Richard D. Greenlief,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Justices Appleton and McCullough concurred in the judgment.

ORDER

Held: Where plaintiff failed to state a cause of action against defendants, the trial court did not err in granting defendants' motion to dismiss.

In March 2009, plaintiff, Joel Mingo, filed a *pro se* negligence complaint against defendants, the County of Pike and Scott Syrcle, the Pike County Board Chairman, after suffering injuries in a fall. In February 2010, plaintiff filed an amended complaint. In May 2010, the trial court granted defendants' motion to dismiss the amended complaint with prejudice.

On appeal, plaintiff argues the trial court erred in dismissing his amended complaint. We affirm.

I. BACKGROUND

In March 2009, plaintiff filed a *pro se* negligence complaint against defendants after falling down some stairs in

the Pike County courthouse. Plaintiff alleged he was being escorted out of a courtroom by officers when he "slipped and fell on wet stairs." Plaintiff stated no maintenance personnel were present to make sure the floors, stairs, and hallways were dry on that "snowy, wet[,] and icy day."

In February 2010, defendants filed a motion to dismiss pursuant to sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615, 2-619(a)(9) (West 2008)). Under section 2-615, defendants argued dismissal was warranted because no duty was owed to plaintiff to remove water tracked into the premises. Under section 2-619(a)(9), defendants argued the complaint should be dismissed pursuant to section 3-105(a) of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-105(a) (West 2008)).

Without leave of court, plaintiff filed an amended complaint, alleging he slipped and fell on a "foreign substance." He claimed defendants disregarded his health and safety by failing to remove the foreign substance, warn of the danger, and provide medical attention.

In May 2010, the trial court conducted a hearing on the original and amended complaints. The court dismissed the original complaint without prejudice and granted plaintiff leave to file the amended complaint. Defendants then made an oral motion

to dismiss based on sections 2-615 and 2-619. The court granted the motion to dismiss the amended complaint with prejudice. The court found plaintiff failed to state a cause of action and also could not recover because of the Tort Immunity Act. This appeal followed.

II. ANALYSIS

Plaintiff argues the trial court erred in dismissing his amended complaint. We disagree.

A. Section 2-615

A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.'" *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). Although all well-pleaded facts are accepted as true, "a plaintiff may not

rely on mere conclusions of law or fact unsupported by specific factual allegations." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009). We review an order granting a section 2-615 motion to dismiss *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008).

To prevail on a claim of negligence, a plaintiff must establish the existence of a duty, a breach of that duty, and an injury proximately caused by the breach. *Vancura v. Katris*, 238 Ill. 2d 352, 373, 939 N.E.2d 328, 342 (2010). In a business context, an owner owes an invitee a duty to exercise ordinary care in the maintenance of the premises in a reasonably safe condition. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063, 753 N.E.2d 1007, 1010 (2001).

"Liability is imposed if a foreign substance which causes a patron to fall is placed on the premises through the negligence of the owner or his employees. When the plaintiff cannot show how the substance came to be on the premises, he must show that the owner or his servants knew of it or that it was on the premises for a sufficient period to establish constructive notice to the owner of a dangerous condition." *Piper v. Moran's Enter-*

prises, 121 Ill. App. 3d 644, 652, 459 N.E.2d
1382, 1388 (1984).

In the case *sub judice*, plaintiff's amended complaint failed to state a cause of action. In support of his claim, the only facts set forth by plaintiff were that he slipped and fell on a foreign substance through no fault of his own and no caution signs were posted. Plaintiff, however, failed to state how the foreign substance found its way on to the stairs through the negligence of defendants' agents and failed to identify or describe the substance. Moreover, plaintiff failed to allege how long the foreign substance was present, that defendants had notice of the substance on the stairs, or that defendants' agents should have discovered the foreign substance on the stairs. Thus, the trial court did not err in granting defendants' motion to dismiss under section 2-615.

B. Section 2-619

Section 2-619 allows for the involuntary dismissal of a cause of action based on certain defects and defenses, including on the ground "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2008). "Immunity under the Tort Immunity Act is an affirmative matter properly considered in a section 2-619 motion to dismiss." *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 331, 898 N.E.2d 631, 636

(2008). The dismissal of a complaint pursuant to section 2-619(a)(9) is reviewed *de novo*. *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 359, 904 N.E.2d 18, 24 (2009).

The Tort Immunity Act protects "local public entities and public employees from liability arising from the operation of government." 745 ILCS 10/1-101.1 (West 2008). Under section 3-102(a) of the Tort Immunity Act, a local public entity "shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition." 745 ILCS 10/3-102(a) (West 2008). "Constructive notice under section 3-102(a) of the [Tort Immunity] Act 'is established where a condition has existed for such a length of time, or was so conspicuous, that authorities exercising reasonable care and diligence might have known of it.'" *Burke v. Grillo*, 227 Ill. App. 3d 9, 18, 590 N.E.2d 964, 970 (1992) (quoting *Finley v. Mercer County*, 172 Ill. App. 3d 30, 33, 526 N.E.2d 635, 637 (1988)).

Here, plaintiff failed to plead facts sufficient to establish defendants or its agents had actual or constructive notice of the alleged hazardous condition. Given that plaintiff could not describe the foreign substance, other than it was "slippery," and was unable to sufficiently plead when the alleged

substance was placed on the stairs, plaintiff's allegations failed to show defendants had sufficient notice to subject it to liability. Accordingly, the trial court did not err in granting defendants' motion to dismiss under section 2-619.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.