

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).

2011 IL App (4th) 100961-U

Filed 9/30/11

NO. 4-10-0961

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LOUIS C. PEACH,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Macoupin County
L&L EXCAVATING & TRUCKING, INC.; BRADLEY)	No. 09L30
A. VARWIG, Individually and in His Official Capacity as)	
Supervisor; and LYNDA S. VARWIG, Individually and)	Honorable
in Her Official Capacity as Agent,)	Patrick J. Londrigan,
Defendants-Appellees.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that the trial court erred by granting the defendants' motion to dismiss, noting that the record was simple and the issues could be easily decided without the aid of the appellee's brief.

¶ 2 In August 2010, plaintiff, Louis C. Peach, *pro se* filed an amended complaint, claiming, in pertinent part, that defendants, L & L Excavating & Trucking, Inc., Bradley A. Varwig, and Lynda A. Varwig, discharged him from their employ in retaliation for a workers' compensation claim that he filed six hours before he was discharged. Defendants responded by filing a motion to dismiss, asserting that plaintiff failed to allege a "plain and concise statement" of his cause of action.

¶ 3 In October 2010, the trial court granted defendants' motion to dismiss with prejudice.

¶ 4 Plaintiff *pro se* appeals, arguing that the trial court erred by dismissing his amended complaint.

¶ 5 Defendants have not filed an appellee brief.

¶ 6 Because the record is simple and the issues can be easily decided without the aid of the appellee's brief, we reverse the trial court's judgment and remand for further proceedings.

¶ 7 I. BACKGROUND

¶ 8 In August 2010, plaintiff *pro se* filed an amended complaint, claiming, in pertinent part, that defendants discharged him from their employ in retaliation for a workers' compensation claim that he filed six hours before he was discharged. As part of his complaint, plaintiff set forth the following pertinent facts and allegations: (1) L & L Excavating & Trucking, Inc., is an Illinois corporation; (2) defendants hired plaintiff in 2006 through the Laborers Local 338 Union Hall; (3) on January 19, 2007, plaintiff (a) injured his shoulder on the job while installing a sewer line on defendants' behalf, (b) notified Bradley Varwig that he intended to file a workers' compensation claim, and (c) was discharged from defendants' employ in retaliation for filing a workers' compensation claim in contravention of the "clearly mandated public policy" of the Worker's Compensation Act (820 ILCS 305/1 through 30 (West 2010)); and (4) plaintiff sustained damages in excess of \$50,000 for loss of income and benefits.

¶ 9 Defendants responded by filing a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), asserting that plaintiff failed to allege a "plain and concise statement" of his cause of action as required by section 2-603(a) of the Code of Civil Procedure (735 ILCS 5/2-603(a) (West 2010) (requiring that all pleadings contain "a plain and concise statement of the pleader's cause of action, counterclaim, defense, or

reply"))). Defendants further asserted that plaintiff's complaint was insufficient because plaintiff "merely [alleged] that [he] was injured, notified the employer of his workmen's compensation injury and that he was discharged."

¶ 10 In October 2010, the trial court—by docket entry and without explanation—granted defendants' motion to dismiss with prejudice.

¶ 11 This appeal followed.

¶ 12 II. PLAINTIFF'S APPEAL

¶ 13 Plaintiff argues that the trial court erred by dismissing his amended complaint. Defendants, however, have not filed an appellee brief. Because the record is simple and the issues can be easily decided without the aid of the appellee's brief, we reverse the court's judgment and remand for further proceedings.

¶ 14 A. The Impact of Defendants' Failure To File an Appellee Brief

¶ 15 In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the options a reviewing court may exercise when an appellee fails to file a brief, as follows:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the

appeal. In other cases[,] if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed."

¶ 16 Put another way, the supreme court has set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1099 (2009).

¶ 17 B. Plaintiff's Claim That the Trial Court Erred

¶ 18 As previously stated, a reviewing court may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief. *Talandis Construction Corp.*, 63 Ill.2d at 133, 345 N.E.2d at 495. Here, plaintiff's claim is that the trial court erred by granting defendants' motion to dismiss his amended complaint because he stated a claim of retaliatory discharge. " 'A plaintiff states a valid claim for retaliatory discharge only if [he] alleges that [he] was (1) discharged; (2) in retaliation for [his] activities; and (3) that the discharge violates a clear mandate of public policy.' " *Hester v. Gilster–Mary Lee Corp.*, 386 Ill. App. 3d 1104, 1107, 899 N.E.2d 589, 592 (2008) (quoting *Hinthorn v. Roland's of Bloomington, Inc.*, 119 Ill. 2d 526, 529, 519 N.E.2d 909, 911 (1988)). When, as here, a trial court grants a motion to dismiss, our review is *de novo*. *Hester*, 386 Ill. App. 3d at 1107, 899 N.E.2d at 592.

¶ 19 As previously explained, defendants asserted that plaintiff's complaint was insufficient because plaintiff "merely [alleged] that [he] was injured, notified the employer of his workmen's compensation injury and that he was discharged." But that is not an accurate depiction of plaintiff's amended complaint. In fact, in addition to those allegations, plaintiff also alleged that he was discharged from defendants' employ (1) six hours after he informed them that he was planning to file a workers' compensation claim, (2) in retaliation for filing that claim, and (3) in violation of, as plaintiff put it, "the clearly mandated public policy" of the Workers' Compensation Act.

¶ 20 Accordingly, we conclude that plaintiff properly pled a cause of action for retaliatory discharge.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the trial court's judgment and we remand for further proceedings.

¶ 23 Reversed and remanded for further proceedings.