

to Illinois's common fund doctrine and that any amounts recovered on behalf of United would be subject to a setoff for attorney fees and costs.

¶ 3 In August 2008, Progressive reached an agreement with the plaintiff to settle the negligence action for \$20,000. Progressive tendered a check in the sum of \$20,000 to the plaintiff. Progressive included United as a payee on the check. The plaintiff asked United to authorize someone to complete a limited power of attorney so that a portion of the settlement funds claimed by United could be placed in trust pending a resolution of the validity of United's lien and the applicability of the common fund doctrine, but United declined. The plaintiff returned the settlement check to Progressive and requested that it issue three checks: one for \$113, payable to the plaintiff, her attorney, and Dr. Kent Herron; another for \$4,020, payable to the plaintiff, her attorney, and United; and a third for \$15,867, payable to the plaintiff and her attorney. Progressive issued three checks in accordance with the plaintiff's request.

¶ 4 In April 2009, the plaintiff filed a three-count complaint in the circuit court of Franklin County. In count I, the plaintiff asked the court to adjudicate the validity of United's subrogation lien and the applicability of the common fund doctrine to the lien claim. In count II, the plaintiff asked the court to assess attorney fees and penalties under section 155 of the Illinois Insurance Code (Code) (215 ILCS 5/155 (West 2008)) against United for its unreasonable and vexatious manner in which it pursued its subrogation claim and in acting alone and in concert with Progressive to delay payment of a portion of the agreed settlement in the underlying negligence action. In count III, the plaintiff asked the court to assess attorney fees and penalties against Progressive under section 155 of the Code. The plaintiff alleged that in including United as a payee on the settlement check, Progressive acted in concert with and

substantially assisted United in unreasonable and vexatious conduct that delayed the payment of the settlement.

¶ 5 In July 2009, United offered to waive its subrogation lien in exchange for the plaintiff's dismissal of the action brought against it. On September 1, 2009, the plaintiff's attorney notified Progressive that the plaintiff had reached a potential settlement with United and that a precondition of the settlement was that Progressive issue a new check without United as an additional payee. A representative from Progressive contacted the plaintiff's attorney the next day and stated that a new check would be forthcoming. On September 17, 2009, Progressive issued a new check in the sum of \$4,020, payable to the plaintiff and her attorney. The plaintiff moved to voluntarily dismiss counts I and II against United by reason of settlement. On September 28, 2009, the circuit court entered an order, dismissing counts I and II of the complaint with prejudice.

¶ 6 Progressive had moved to dismiss count III pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)). Progressive argued, among other things, that an action for attorney fees and penalties brought against an insurer pursuant to section 155 of the Code could be brought only by an insured party or assignees of the insured, and not by third parties. After considering the written briefs and oral arguments of the parties, the circuit court found that section 155 did not apply to the pending claim filed by the plaintiff, a third party, and it granted Progressive's motion to dismiss. The court denied the plaintiff's motion to reconsider but granted the plaintiff leave to file an amended pleading. The plaintiff elected to stand on her pleading. The court dismissed the case.

¶ 7 On appeal, the question is whether the circuit court properly dismissed the plaintiff's section 155 claim for attorney fees and penalties against Progressive.

¶ 8 A motion to dismiss filed pursuant to section 2-615 of the Code of Civil Procedure attacks the sufficiency of the complaint. *Nesby v. Country Mutual Insurance Co.*, 346 Ill. App. 3d 564, 566, 805 N.E.2d 241, 242-43 (2004). A section 2-615 motion to dismiss admits all well-pleaded facts, but it does not admit unsupported conclusions of fact or law. *Nesby*, 346 Ill. App. 3d at 566, 805 N.E.2d at 242-43. The question is whether the allegations, when construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action on which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004). The trial court's decision to grant a section 2-615 motion to dismiss is reviewed *de novo*. *Vitro*, 209 Ill. 2d at 81, 806 N.E.2d at 634.

¶ 9 Section 155 of the Code permits the court to award reasonable attorney fees and statutory penalties to an insured who encounters unnecessary difficulties when an insurer withholds policy benefits. 215 ILCS 5/155 (West 2008); *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 520, 675 N.E.2d 897, 901 (1996). As a general rule, the remedy embodied in section 155 of the Code extends only to the party insured or an assignee, and not to third parties. *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill. 2d 458, 466, 551 N.E.2d 1319, 1322 (1990). In this case, the plaintiff was not insured by Progressive and she was not an assignee of an insured party. Count III does not allege specific facts that, if taken as true, would reveal any concerted action between Progressive and United to add an unauthorized payee on a settlement check, to delay the payment of settlement benefits to the plaintiff, to improperly assist United in the collection of a subrogation lien, or to otherwise accomplish a tortious result. After reviewing the allegations in count III, we conclude that the plaintiff failed to allege specific facts to establish an exception to the general rule that the remedies provided in section 155 extend only to the insured party or

assignees thereof, and that the circuit court did not err in granting Progressive's motion to dismiss count III.

¶ 10 During the pendency of the appeal, the plaintiff moved to strike certain portions of the appellee's brief because of allegedly improper arguments by the defense, and that motion was taken with the case. Given that our disposition of the appeal is based only on the sufficiency of the allegations in the complaint, unaided by the challenged arguments, we find it unnecessary to take up the merits of the motion.

¶ 11 Accordingly, the decision of the circuit court of Franklin County is affirmed.

¶ 12 Affirmed.