

No. 1-11-1610

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

CLARENCE MONTGOMERY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 L 12384
)	
EDWARD TALBOT,)	
)	Honorable
Defendant-Appellee.)	Leon Wool,
)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R. Gordon and Justice Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* In action for defamation, circuit court properly granted defendant's motion to dismiss where plaintiff did not bring the action within the one-year statute of limitations.
- ¶ 2 In this defamation action, plaintiff-appellant Clarence Montgomery appeals *pro se* from an order of the circuit court of Cook County granting defendant-appellee Edward Talbot's motion to dismiss (735 ILCS 5/2-619 (West 2008)), where plaintiff did not bring this action within the one-year statute of limitations.

¶ 3 Plaintiff's cause of action was based on the testimony of defendant at a hearing to determine whether plaintiff, a high school chemistry teacher at Tilden High School, should be dismissed. Although plaintiff has not filed a transcript or a bystander's report of that hearing, because the issues arise from pleadings which are part of the record, we may still consider this appeal on the merits. *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 894 (2010).

¶ 4 Plaintiff was the subject of a remediation plan instituted by the principal of Tilden High School. Defendant, a department chair at Tilden, was selected as the consulting teacher who was to aid plaintiff in this remediation. The remediation lasted from December 2007 until late September 2008. At the end of the remediation period, apparently based in part on defendant's rating, the remediation was found to be unsatisfactory. As a result of this determination, the Chicago Board of Education moved to dismiss plaintiff from his employment. The dismissal hearing was held on July 21, 2009 and September 17 and 18, 2009. According to defendant's affidavit contained in the record on appeal, defendant testified on July 21 and September 18. Plaintiff's defamation claims are based on defendant's testimony at the hearing.

¶ 5 In his *pro se* complaint for defamation against defendant, plaintiff alleges that defendant gave false testimony at the hearing, testified to a false police report filed against plaintiff, falsely testified that plaintiff intimidated him and threatened him so as to place him in fear of receiving a battery, and otherwise lied under oath concerning matters which reflected poorly on plaintiff's teaching abilities. This complaint was filed on October 29, 2010, more than one year after the last date on which defendant testified at the hearing, which was September 18, 2009.

¶ 6 The hearing officer who presided over plaintiff's termination hearing recommended that plaintiff's dismissal be affirmed. On July 28, 2010, the Chicago Board of Education adopted that recommendation and terminated plaintiff's employment as a teacher.

Plaintiff's appeal of that dismissal is pending before this court in appeal no. 1-11-2324. We have denied defendant's motion to consolidate the two appeals.

¶ 7 Defendant was served with plaintiff's defamation complaint on November 22, 2010. Defendant filed his appearance on November 30, 2010. He subsequently filed a motion to dismiss the complaint based upon affirmative matters on February 16, 2011. 735 ILCS 5/2-619 (West 2008). Defendant asserted that plaintiff's complaint for defamation was not filed within the one-year statute of limitations (735 ILCS 5/13-201 (West 2008)) and, as an independent basis for dismissal, asserted that he, defendant, was entitled to immunity based upon section 2-210 of the Illinois Tort Immunity Act (745 ILCS 10/2-210 (West 2008)). On May 27, 2011, the circuit court granted defendant's motion to dismiss the action without specifying the basis for its ruling. Plaintiff then brought this appeal.

¶ 8 We review the circuit court's order granting a section 2-619 motion to dismiss *de novo*. *Kariss v. U.S. Equities Development, Inc.* 376 Ill. App. 3d 544, 549 (2007). Furthermore, as a reviewing court we can sustain the ruling of the circuit court on any basis supported by the record. *In re Estate of Funk*, 221 Ill. 2d 30, 86 (2006). Accordingly, the fact that the circuit court did not cite the basis for its ruling does not affect our deliberations. We find that plaintiff's failure to file his defamation action within the one-year limitations period was a proper basis for dismissal of his complaint. Plaintiff had one year after his cause of action accrued in which to bring his action for defamation. 735 ILCS 5/13-201 (West 2008). Here, as plaintiff based his complaint on defendant's testimony at plaintiff's dismissal hearing, he had at most one year from the last date of defendant's testimony, September 18, 2009, in which to file his complaint. But that complaint was not filed until October 29, 2010, more than one year after plaintiff's cause of action accrued. Plaintiff asserts that he should have had one year from the date his dismissal hearing was concluded, which he states was January 22, 2010, when all briefs had been

submitted. But plaintiff did not base his cause of action on material in the briefs, he based it upon defendant's testimony, which he alleged was false and defamatory. Accordingly we find that plaintiff's complaint was properly dismissed because it was not brought within the time limit of the appropriate statute of limitations.

¶ 9 Finally, plaintiff asserts that defendant's section 2-619 motion was untimely because it was filed 76 days past the date when it should have been filed. Without calculating the precise accuracy of plaintiff's math, we note that defendant filed his appearance only eight days after he was served with the complaint, well within the thirty days in which the Supreme Court rule requires that a defendant file his answer or otherwise file his appearance. Ill. S. Ct. Rule 101(d) (eff. May 30, 2008). There is no requirement that a subsequent motion to dismiss be filed within a certain time period after a defendant has answered or otherwise filed his appearance.

¶ 10 Because of our determination that plaintiff's complaint was properly dismissed because it was not filed within the one-year statute of limitations, we do not reach defendant's alternative argument that he has absolute immunity from an action for defamation because he was acting within the scope of his employment as a public employee when he furnished the information in his testimony which formed the basis of plaintiff's complaint. 745 ILCS 10/2-210 (West 2008).

¶ 11 The judgment of the circuit court of Cook County is affirmed.

¶ 12 Affirmed.