2012 IL App (1st) 112950-U

SIXTH DIVISION
JUNE 29, 2012

No. 1-11-2950

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

SUZANNE WEISBERGER, Individually and as Trustee of the Amended and Restated Jacob Brotman M.D. Declaration of Trust and Brotman Family Trust Jacob Brotman M.D., Grantor; and WILLIAM WEISBERGER, Individually,	)	Appeal from the Circuit Court of Cook County.
	)	No. 10 L 004710
Plaintiffs-Appellants,	)	
v.	)	
LEAH WEISBERGER,	)	Honorable Joan E. Powell,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Lampkin and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: Where a daughter sues her parents for conversion, that lawsuit cannot be a basis for a later lawsuit by the parents against the daughter for fraud and intentional infliction of emotional distress because the parents believe that their daughter never intended to complete the case and filed it to harass them. The parents' suit will be dismissed on a 2-615 motion for failure to state a cause of action.

¶ 2 On April 21, 2010, plaintiffs Suzanne Weisberger, individually and as a trustee of various family trusts, and her husband, William Weisberger, filed a complaint against their daughter,

defendant Leah Weisberger, in the circuit court of Cook County. Their second amended complaint, dated May 25, 2011, contained one count for fraud, and a count for intentional infliction of emotional distress.

¶ 3 On June 23, 2011, Leah filed a motion pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)), to dismiss the second amended complaint on the ground that it failed to contain sufficient facts to state causes of action for either fraud or intentional infliction of emotional distress. On September 14, 2011, the trial court held a hearing and entered an order dismissing the complaint with prejudice. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 I. The Second Amended Complaint

¶ 6 Since we must accept the well-pled factual allegations of the complaint as true when reviewing a section 2-615 dismissal, we summarize below the allegations of the second amended complaint. *Young v. Bryco Arms*, 213 Ill. 2d 433, 440 (2004).

¶ 7 The complaint alleges that Suzanne served as the trustee of two trusts: (1) the amended and restated Jacob Brotman M.D. declaration of trust; and (2) the Brotman family trust Jacob Brotman M.D., grantor (collectively, the "Brotman trusts").

¶ 8 The complaint alleges that the Brotman trusts provide certain withdrawal rights of principal to Leah as follows: one-third after age 21; two-thirds at age 25; and the balance at age 30. The complaint alleges that Leah did not request any withdrawals of funds pursuant to her withdrawal rights until July 2008, when she was 28 years old. This request occurred one year and five months before she stood in a position to be in complete control of the trusts. The complaint alleges that, when Leah sought the distributions, her parents grew concerned for the

safety and health of Leah and her financial needs, urging her to wait until she would assume complete control over the funds.

¶ 9 The complaint further alleges that, at the time of this request, Leah had recently engaged in a romantic relationship with a non-Jewish man. Leah kept her relationship hidden from her parents for a period of time, but they eventually learned of the relationship through another family member. Upon learning of this relationship, her parents were overcome with a great deal of stress and the relationship between Leah and her parents also became stressful. The parents further allege and question why Leah would keep such information hidden from them.

¶ 10 The complaint alleges that, in August 2008, Leah filed suit in the Cook County chancery division against her parents regarding the Brotman trusts and their alleged conversion of funds from a Harris Bank account. Weisberger v. Weisberger, No. 08 CH 25989 (Cir. Ct. Cook Co.).[1] The complaint alleges that on December 30, 2009, when Leah turned 30 years old, she seized control over the trust funds despite the fact that there were motions pending in the chancery case regarding a settlement the parties had reached.

¶ 11 The complaint alleges that Leah filed the suit regarding the Brotman trusts solely to abuse her parents financially, physically, and emotionally because they did not approve of her non-Jewish boyfriend. The parents allege that Leah had no intention of relying on the judicial system to resolve their issues; rather, she intended to seize the Brotman trusts' funds on December 30, 2009, when she turned 30 years of age. The complaint further alleges that Leah

[1] The chancery court entered summary judgment in favor of Leah in the conversion action where William withdrew funds without authorization that he claimed he placed in the trust where Leah was the sole trustee and beneficiary. We affirmed on appeal. *Weisberger v. Weisberger*, 2011 IL App (1st) 101557.

litigated the chancery case vigorously with the intent that her parents would rely on her actions and participate, as well as incur attorney fees and costs in doing so.

¶ 12 The complaint further alleges that the parents participated in numerous settlement conferences and spent thousands of dollars in reliance upon Leah's conduct. The parents allege that these actions were extreme and outrageous and were intended to inflict punishment on them for their disapproval of Leah's relationship. The complaint alleges that the parents have suffered extreme emotional distress as a result of Leah's conduct and that they have been damaged with emotional distress, mental anguish, and the attorney's fees that they have incurred, and they request punitive damages in addition.

¶ 13 II. The Trial Court's Order

¶ 14 On September 14, 2011, the trial court held a hearing on Leah's motion to dismiss and entered an order dismissing the second amended complaint with prejudice because the complaint failed to allege sufficient facts to state causes of action for common law fraud or intentional infliction of emotional distress.

¶ 15 ANALYSIS

¶ 16 The parents appeal the dismissal of their complaint against their daughter for fraud and intentional infliction of emotional distress. For the following reasons, we affirm.

¶ 17 I. Standard of Review

¶ 18 A motion to dismiss under section 2-615 challenges the legal sufficiency of the complaint by alleging defects on its face. *Young*, 213 Ill. 2d at 440.; *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003). We review *de novo* an order granting a section 2-615 motion to dismiss. *Young*, 213 Ill. 2d at 440; *Wakulich*, 203 Ill. 2d at 228. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578

(2011). The critical inquiry is whether the allegations in the complaint are sufficient to state a cause of action upon which relief may be granted. *Wakulich*, 203 Ill. 2d at 228. In making this determination, all well-pleaded facts in the complaint, and all reasonable inferences that may be drawn from those facts, are taken as true. *Young*, 213 Ill. 2d at 441. In addition, we construe the allegations in the complaint in the light most favorable to the plaintiff. *Young*, 213 Ill. 2d at 441.

¶ 19 II. Fraud

¶ 20 The parents argue that their second amended complaint alleges sufficient facts to state a cause of action for fraud. The elements of fraud are:

> "(1) a false statement of material fact (2) known or believed to be false by the party making it; (3) intent to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; and (5) damage to the other party resulting from that reliance." *Dloogatch v. Brincat*, 396 Ill. App. 3d 842, 847 (2009).

In order to state a cause of action for common law fraud, the essential elements of fraud must be plead with specificity. *Elson v. State Farm Fire and Casualty Co.*, 295 Ill. App. 3d 1, 13 (1998).

¶ 21 The parents argue that the allegations in their complaint set forth sufficient facts regarding Leah's "false statement." They claim Leah's "false statement" was her lawsuit in the chancery case when she did not intend to litigate the case to a conclusion, but intended to use the litigation to harass her parents until she turned 30 when she could collect the trust funds. However, the parents' appellate briefs do not cite to any legal authority to support their argument that the filing of a lawsuit under the facts of this case satisfies the definition of a "false statement."

¶ 22 The "false statement" element of fraud includes three requirements: (1) defendant must make a misrepresentation, (2) it must involve a fact, and (3) the misrepresentation must be material. *Wernikoff v. Health Care Service Corp.*, 376 Ill. App. 3d 228, 233 (2007). An example of a false statement necessary to prevail on a cause of action for fraud is provided in *Cwikla v. Sheir*, 345 Ill. App. 3d 23 (2003). In *Cwikla*, the plaintiff bought the defendant's share in a trucking company. *Cwikla*, 345 Ill. App. 3d at 30. The plaintiff alleged the defendant made a $40,000 loan from the trucking company to his mother-in-law, and knowingly misrepresented the condition of the trucking company by failing to disclose the loan during their negotiations. *Cwikla*, 345 Ill. App. 3d at 30. The court held that the plaintiff's pleadings contained the sufficient specificity, particularity, and certainty to apprise the opposing party of what he was called upon to answer. *Cwikla*, 345 Ill. App. 3d at 31. In the instant case, the parents' complaint simply alleges Leah engaged in chancery litigation with no intent to finish, as opposed to stating a more specific misrepresentation within this litigation. Therefore, the parents have not identified the misrepresentation to the heightened specificity standards as discussed in *Cwikla*.

¶ 23 This court has repeatedly held that a party waives a point by failing to support it with either existing legal authority or reasoned argument seeking an extension of existing law. *Rosier v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 568 (2006) (by failing to offer supporting legal authority or "any reasoned argument," plaintiffs waived consideration of their theory for asserting personal jurisdiction over defendants); *People v. Ward*, 215 Ill. 2d 317, 332 (2005) ("point raised in a brief but not supported by citation to relevant authority *** is therefore forfeited"); *In re Marriage of Bates*, 215 Ill. 2d 317, 332 (2005) (a reviewing court is entitled to have issues clearly defined with relevant authority cited); *Ferguson v. Bill Berger, Associates, Inc.*, 302 Ill. App. 3d 61, 78 (1998) (it is not necessary to decide this question since the

defendant has waived the issue by failing to offer case citation or other support as Supreme Court Rule 341 requires); 210 Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008) (argument in appellate brief must be supported by citation to legal authority and factual record). Since the parents' brief does not provide any legal authority to support their cause of action for fraud and does not argue for an extension of existing law, it is therefore forfeited. However, putting forfeiture aside, the parents have not pleaded facts that state a cause of action for fraudulent misrepresentation.

¶ 24 III. Intentional Infliction of Emotional Distress

¶ 25 The parents argue that their second amended complaint alleges sufficient facts to state a cause of action for intentional infliction of emotional distress. The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant; (2) intent by the defendant that his or her conduct will cause severe emotional distress, or knowledge by the defendant that there is a high probability that his or her conduct will cause extreme emotional distress; (3) severe emotional distress to plaintiffs; and (4) causation of the plaintiffs' stress by the defendant's conduct. *McGrath v. Fahey*, 126 Ill. 2d 78, 86 (1988); *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 270 (2003). The parents must allege facts to support each and every element in order to survive dismissal. See *McGrath*, 126 Ill. 2d at 86.

¶ 26 The parents argue that the allegations in their complaint set forth sufficient facts regarding Leah's outrageous conduct. Specifically, the parents allege that Leah falsely litigated the underlying chancery case to harass and abuse her parents. However, the parents do not provide any legal authority to show that Leah's litigation of the chancery case constitutes "outrageous conduct" as defined by Illinois courts. Illinois case law makes clear that under no circumstances would "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" qualify as outrageous conduct. *McGrath*, 126 Ill. 2d at 86; *Feltmeier*, 207 Ill. 2d at

270. Rather, the nature of Leah's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable to a civilized community. *Feltmeier*, 307 Ill. 2d at 270; *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 21 (1992).

¶ 27 For the following reasons, we find that the parents have failed to allege sufficient facts to support the element of outrageous conduct, and, thus, we must dismiss.

¶ 28 An example of the outrageous conduct necessary to prevail on a cause of action for intentional infliction of emotional distress is provided in *Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (2003). In *Feltmeier*, the plaintiff alleged that on repeated occasions, the defendant battered her by striking, kicking, shoving, pulling her hair, and twisting her limbs; the defendant prevented her from leaving the house to escape abuse; the defendant subjected the plaintiff to verbal abuse, which included threats and constant criticism to demean, humiliate, and degrade her; the defendant engaged in stalking behavior of the plaintiff; and the defendant attempted to interfere with the plaintiff's employment. *Feltmeier*, 207 Ill. 2d at 268. The Illinois Supreme Court in *Feltmeier* held that the allegations in the plaintiff's complaint sufficiently alleged the type of abuse that is extreme enough to be actionable. *Feltmeier*, 207 Ill. 2d at 273. Unlike the case at bar, the plaintiff's complaint in *Feltmeier* alleged dozens of episodes of abusive behavior, including specific details and timeframes for the various physical and emotional attacks, whereas the parents in the present case allege only that Leah litigated the chancery case "vigorously" with no intent of relying on the judicial system. That is not enough to rise to the level of outrageous conduct as defined by our courts.

¶ 29 Additionally, in *Public Finance Corp. v. Davis*, 66 Ill. 2d 85 (1976), the plaintiff alleged that she defaulted on a promissory note to defendant. In attempts to collect, the defendant called the plaintiff's house weekly, frequently more than once a day; the defendant visited the

plaintiff's home multiple times a week; the defendant repeatedly called the plaintiff at hospital when the plaintiff's child fell severely ill; the defendant phoned an acquaintance of the plaintiff to inform her that the plaintiff was writing bad checks; and on one occasion, the defendant "failed or refused" to leave the plaintiff's home until her son entered. *Public Finance Corp.*, 66 Ill. 2d at 91. The Illinois Supreme Court held that the defendant's repeated harassment of the plaintiff did *not* constitute the outrageous conduct necessary to state a cause of action for intentional infliction of emotional distress. Our supreme court relied on the Restatement (Second) of Torts, section 46, comment G, which stated that the actor is not liable " 'where he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress.' " *Public Finance Corp.*, 66 Ill. 2d at 92 (quoting Restatement (Second) of Torts, § 46 cmt. g (1965)). This holding in *Public Finance* applies to the present case because Leah engaged in a suit in chancery court, which was insisting upon her legal rights in a permissible way, although it caused stress to her parents. Moreover, Leah prevailed in chancery court. See *Weisberger v. Weisberger*, 2011 IL App (1st) 101557. If the conduct in *Public Finance* was not outrageous, neither is the conduct in our case.

¶ 30 In assessing what constitutes outrageous conduct, the Illinois Supreme Court in *Knierim v. Izzo*, 22 Ill. 2d 73, 85 (1961), elaborated:

> "Indiscriminate allowance of actions for mental anguish would encourage neurotic overreactions to trivial hurts, and the law should aim to toughen the psyche of the citizen rather than pamper it. But a line can be drawn between the slight hurts which are at the price of a complex society and the severe mental disturbances inflicted by intentional actions wholly lacking in social utility."

¶ 31 We believe that the parents' allegations that Leah vigorously litigated in chancery court are merely the "hurts which are the price of a complex society." *Knierem*, 22 Ill. 2d at 85. For the most part parents attempt to bring up their children in the way that they believe is in the best interests of the child. However, when the child reaches majority, it is the child who determines what is in his or her best interest, even when that decision displeases the parents. In addition, the parents do not cite any legal authority to support their claim that Leah's conduct rose to the level of outrageous conduct as required by our courts. For these reasons, we do not find persuasive the parents' argument that the allegations in their complaint set forth sufficient facts to show a cause of action for intentional infliction of emotional distress.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in dismissing the parents' second amended complaint with prejudice for failure to state claims for fraud and intentional infliction of emotional distress.

¶ 34 Affirmed.