

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).

2012 IL App (4th) 110241-U

Filed 2/8/12

NO. 4-11-0241

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PHILIP J. HUTCHISON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Macon County
THE MACON COUNTY SHERIFF'S DEPARTMENT)	No. 10MR60
and THE ILLINOIS STATE POLICE,)	
Defendants-Appellees.)	Honorable
)	Albert G. Webber,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where the registration requirements of the Sex Offender Registration Act do not constitute punishment and do not violate the *ex post facto* clause, plaintiff's petition for declaratory judgment was properly dismissed.

¶ 2 In February 2010, plaintiff, Philip J. Hutchison, filed a petition for declaratory judgment. Defendants, Macon County Sheriff's Department and Illinois State Police, filed motions to dismiss, which the trial court granted in February 2011.

¶ 3 On appeal, plaintiff, *pro se*, argues that requiring him to register as a sex offender is an *ex post facto* violation and therefore unconstitutional. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2010, plaintiff filed a petition for declaratory judgment pursuant to section 2-701 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-701 (West 2010)).

Plaintiff stated he was convicted of rape of a child in the State of Washington in March 1989. In October 2005, plaintiff was convicted of unlawful failure to register as a sex offender in Macon County. See 730 ILCS 150/10 (West 2004). In his petition, plaintiff argued (1) he was under no legal obligation to register as a sex offender at the time of his conviction in Washington, (2) the Sex Offender Registration Act (Act) (730 ILCS 150/1 through 12 (West 2004)) did not require him to register as a sex offender when it was enacted, and (3) the retroactive application of the Act is an *ex post facto* law and a violation of his rights to due process and equal protection.

¶ 6 In April 2010, the Illinois State Police filed a motion to dismiss pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2010)), arguing that requiring plaintiff to register as a sex offender does not violate the prohibition against *ex post facto* laws. Moreover, the State Police argued plaintiff failed to state a claim for violation of his rights to substantive due process and equal protection.

¶ 7 In July 2010, the Macon County Sheriff's Department filed a motion to dismiss pursuant to section 2-615 of the Procedure Code and adopted the motion filed by the State Police. The Sheriff's Department also argued it was improperly joined as a party because plaintiff did not reside in Macon County.

¶ 8 In February 2011, the trial court granted the motions to dismiss with prejudice. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Initially, we note plaintiff's *pro se* brief fails to adhere to Illinois Supreme Court Rule 341(h) (eff. Sept. 1, 2006) pertaining to appellate briefs. The 1 ½ page brief does not contain a proper summary statement, an introductory paragraph, a statement of issues presented

for review, a statement of the standard of review, a statement of jurisdiction, a citation to the statute involved, a statement of facts referencing pages in the record, a defined argument section, or a conclusion. Instead, the brief is more akin to a letter setting forth plaintiff's grievances with the Act.

¶ 11 "The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules.' " *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)).

¶ 12 As stated, plaintiff's brief does not conform to Rule 341(h). However, we may still consider the appeal despite plaintiff's failure to file a sufficient brief "so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511, 748 N.E.2d 222, 226 (2001). Despite plaintiff's failure to comply with Rule 341(h), and considering the Attorney General's clear and cogent brief on defendants' behalf, we will consider the appeal.

¶ 13 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).

¶ 14 When a trial court is confronted with a motion for declaratory judgment, section 2-701(a) of the Procedure Code states, in part, as follows:

"The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, *** and a declaration of the rights of the parties interested." 735 ILCS 5/2-701(a) (West 2010).

"The essential requirements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Behringer v. Page*, 204 Ill. 2d 363, 372, 789 N.E.2d 1216, 1223 (2003). A court's decision to dismiss a declaratory judgment action under section 2-615 of the Procedure Code is subject to *de novo* review. *Northern Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 275, 818 N.E.2d 389, 395 (2004).

¶ 15 The Act requires a sex offender to register with local law-enforcement officials.

730 ILCS 150/3 (West 2010). The Act's purpose "is to enhance public safety by enabling law enforcement agencies to keep track of sex offenders." *Leshner v. Trent*, 407 Ill. App. 3d 1170, 1174, 944 N.E.2d 479, 483 (2011). A "sex offender" includes a person who has been convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16 (West 2010)) or a similar offense in another state or country. 730 ILCS 150/2(A)(1)(a) (West 2010). The sex offender must provide, *inter alia*, "a current photograph, current address, [and] current place of employment ***." 730 ILCS 150/3(a) (West 2010). With certain exceptions, the Act requires the sex offender to register for a period of 10 years after conviction if not confined to a penal institution or hospital or, if confined, for a period of 10 years after parole, discharge, or release from such facility. 730 ILCS 150/7 (West 2010). The failure to comply with the Act's registration requirements is a Class 3 felony. 730 ILCS 150/10 (West 2010).

¶ 16 Plaintiff was convicted in the State of Washington of rape of a child in the third degree (Wash. Rev. Code Ann. §9A.44.079 (West 2010)), which is similar to the offense of aggravated criminal sexual abuse in Illinois (720 ILCS 5/12-16(d) (West 2010)). Thus, plaintiff was required to register as a sex offender under the Act.

¶ 17 On appeal, plaintiff argues only that the Act is unconstitutional because it violates "the *ex post facto* clauses under the Constitution." See U.S. Const., art. I, §10; Ill. Const. 1970, art. I, §16.

"The *ex post facto* clauses of the United States Constitution prohibit retroactive application of a law inflicting greater punishment than the law in effect when a crime was committed. [Citation.] Those constitutional provisions, therefore, restrain legisla-

tive bodies from enacting arbitrary or vindictive legislation and assure that a statute gives fair warning of its effect. [Citation.] A law is *ex post facto* if it is retroactive and disadvantageous to a defendant. [Citation.] A law is disadvantageous to a defendant if it criminalizes an act innocent when performed, increases the punishment for an offense previously committed, or alters the rules of evidence making a conviction easier." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 208-09, 909 N.E.2d 783, 800 (2009).

Our supreme court has noted it interprets this state's *ex post facto* provision in step with the United States Supreme Court's pronouncements. *Birkett*, 233 Ill. 2d at 209, 909 N.E.2d at 800.

¶ 18 The United States Supreme Court, in a case involving an Alaska sex-offender-registration law, found it nonpunitive and the retroactive application did not result in a violation of the *ex post facto* clause. *Smith v. Doe*, 538 U.S. 84, 105-06 (2003). Our supreme court has similarly found the requirement of registration as a sex offender under the Act does not constitute punishment. *People v. Adams*, 144 Ill. 2d 381, 389, 581 N.E.2d 637, 641 (1991); see also *Birkett*, 233 Ill. 2d at 210, 909 N.E.2d at 801 (noting "the Act's registration requirements do not constitute punishment"). Since an additional punishment has not been imposed for a previously committed offense, the *ex post facto* clauses are not violated. *People v. Malchow*, 193 Ill. 2d 413, 424, 739 N.E.2d 433, 440 (2000); see also *Leshner*, 407 Ill. App. 3d at 1175, 944 N.E.2d at 484 ("Because registration is not punishment, the retroactive application of the [Act] and its amendments does not violate principles of *ex post facto*"); *Rodimel v. Cook County Sheriff's Office*, 354 Ill. App. 3d 744, 748, 822 N.E.2d 7, 11 (2004).

¶ 19 In the case *sub judice*, plaintiff argues the retroactive effect of the Act is unconstitutional and violates the *ex post facto* clauses. Plaintiff's argument, however, has been consistently rejected by courts of this State. Thus, plaintiff failed to meet his burden of demonstrating the Act was unconstitutional as applied to him, and the trial court did not err in granting the motions to dismiss his petition for declaratory judgment.

¶ 20 III. CONCLUSION

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

¶ 22 Affirmed.