

No. 1-12-0302

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

JEFFREY MANDALIS DESCENDANTS TRUST and)	Appeal from the Circuit
DANIEL MANDALIS DESCENDANTS TRUST,)	Court of Cook County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 09 CH 15897
)	
PETER JOSEPH O'BRIEN SENIOR and UNKNOWN)	
DEFENDANTS,)	Honorable
)	Martin S. Agran,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court did not abuse its discretion in dismissing the plaintiffs' fifth amended complaint with prejudice or in denying the plaintiffs leave to file a sixth amended complaint.
- ¶ 2 The plaintiffs, the Jeffrey Mandalis Descendants Trust and the Daniel Mandalis Descendants Trust, appeal the circuit court's orders dismissing their fifth amended complaint with prejudice and denying them leave to file a sixth amended complaint. For the reasons that follow, we affirm the judgment of the circuit court.

¶3 In April 2009, the Jeffrey Mandalis Descendants Trust and the Daniel Mandalis Descendants trust filed their first complaint, against Peter Joseph O'Brien Senior and unknown defendants, seeking injunctions to allow the plaintiffs to inspect certain partnerships in which they claimed an interest and to prevent the defendants from distributing or disposing of partnership assets. In May, O'Brien filed a motion to dismiss the complaint on the ground that the complaint was prepared by Jeffrey Mandalis, a non-attorney who was not authorized to prosecute the action on the plaintiffs' behalf. On May 28, the circuit court granted the motion to dismiss but gave the plaintiffs leave to file an amended complaint.

¶4 On that same day, the plaintiffs filed an amended complaint, which they later withdrew upon obtaining leave to file their second amended complaint. The second amended complaint, brought in the name of several trusts and partnerships and prepared by an attorney, was filed in August 2009. On motion, the circuit court dismissed several counts of the second amended complaint, but it granted the plaintiffs leave to replead. The plaintiffs' counsel subsequently withdrew from the case, and the plaintiffs filed their third amended complaint. The third amended complaint, which was brought by the two appellant trusts and several limited partnerships, was prepared by Jeffrey and Daniel Mandalis. The defendants moved to dismiss this complaint, again on the basis that it was filed by non-attorneys as representatives of other parties. In May 2010, the circuit court granted the defendants' motion to dismiss but granted the plaintiffs leave to replead within 28 days.

¶5 In June 2010, the plaintiffs filed a fourth amended complaint, which was prepared by Jeffrey and Daniel Mandalis. As with the prior complaints, the defendants moved to dismiss the fourth amended complaint on the ground that Jeffrey and Daniel Mandalis were not attorneys. In response,

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the plaintiffs sought leave to withdraw their fourth amended complaint and file a fifth. The circuit court granted this request.

¶ 6 The fifth amended complaint was prepared again by Jeffrey and Daniel Mandalis, but it also named them as the sole plaintiffs in the case, both in their individual capacities and in their capacities as beneficiaries of the appellant trusts. The defendants moved to dismiss the complaint on the ground that the plaintiffs did not have standing to raise their claims and thus were again appearing as non-attorney representatives. In January 2011, the circuit court entered an order granting the defendants' motion and dismissing the fifth amended complaint with prejudice. The plaintiff thereafter filed a timely motion to reconsider the dismissal. In that motion, which was prepared by an attorney, the plaintiffs sought leave to file a sixth amended complaint. In January 2012, following a hearing, the circuit court denied the plaintiffs' motion "for the reasons stated by the court on the record."

¶ 7 In the transcript of the hearing related to that motion—the only transcript included in the record on appeal—the defendants' counsel argued that the plaintiffs had been admonished several times that their complaint could not be accepted unless it was prepared by an attorney. During plaintiffs' counsel's rebuttal, the following exchange occurred:

"There was no flouting or thumbing of the nose to the Court, and moreover, the orders do not reflect the admonitions that counsel talks about to the plaintiffs that you better get counsel.

THE COURT: Excepting that my notes do reflect it.

* * *

THE COURT: This is the first time in the history of this case there has been a court

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reporter there so.

[PLAINTIFF'S COUNSEL]: Very well.

THE COURT: Unfortunately, you don't have that record, but I have the record in my notes."

After the plaintiffs' counsel finished his rebuttal, the court explained his decision to deny the motion to reconsider:

"At a hearing on the Motion to Dismiss the Second Amended Complaint the plaintiffs were represented by an attorney, and that Motion to Dismiss was granted, and they dismissed their attorney for whatever their reasons were. On the third, fourth and fifth complaint, they were dismissed primarily on the basis that the Mandalis brothers as nonattorneys could not represent the trust. I admonished them on each case. *** I sympathize with their position that maybe they couldn't afford an attorney. *** [T]he bottom line was on each and every occasion *** they were trying to act as attorneys, and they were nonattorneys ***."

And I did after the Fourth Amended Complaint say I will give you one more shot, but *** you need to come in here with an attorney, and *** once the Fifth Amended Complaint was filed, and it was dismissed for essentially the same reasons, I dismissed it with prejudice because it can only go on for so long."

¶ 8 The plaintiffs now timely appeal the circuit court's ruling.

¶ 9 The plaintiffs' first argument on appeal is that the circuit court erred in dismissing their fifth amended complaint with prejudice. The plaintiffs do not dispute that their fifth amended complaint was defective; they argue only that the court should have granted them leave to re-plead instead of

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dismissing their complaint with prejudice.

¶ 10 In deciding whether to dismiss a complaint with or without prejudice, a circuit court should consider the particular facts and unique circumstances of the case. *Ingold v. Irwin*, 302 Ill. App. 3d 378, 384, 705 N.E.2d (1998). The determination of whether to dismiss an action with or without prejudice rests within the sound discretion of the trial court, and we will disturb such a determination on appeal only if it constitutes an abuse of discretion. *Ingold*, 302 Ill. App. 3d at 383. An abuse of discretion occurs when no reasonable person would take the circuit court's view. *Fennel v. Illinois Central Railroad Co.*, 2012 IL 113812, ¶ 59.

¶ 11 Here, the circuit court explained at length that it dismissed the fifth amended complaint with prejudice because the plaintiffs had been told repeatedly how to cure their pleading yet failed to do so. In their reply brief, the plaintiffs fervently argue that there is no evidence from the record that the court gave them instructions and that they ignored the instructions. However, as the circuit court noted in its ruling, the record contains no transcript of the in-court proceedings relating to the plaintiffs' prior complaints. It is axiomatic that the appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record, a reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958 (1984). Thus, any doubts that arise from the incompleteness of the record must be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Here, without anything in the record to contradict the circuit court's stated recollection that he had admonished the plaintiffs, we must presume that the circuit court's account is correct.

¶ 12 That account provided the circuit court ample reason to dismiss the plaintiffs' fifth amended complaint with prejudice. As the court explained, it gave the plaintiffs repeated admonishments followed by opportunities to cure their pleadings, and the plaintiffs not only failed to heed those admonishments but also continued to file complaints that violated the admonishments. Under those circumstances, the court correctly reasoned that it must dismiss the action with prejudice, lest the serially deficient complaints continue indefinitely. For that reason, we see no abuse of discretion in the circuit court's decision to dismiss the fifth amended complaint with prejudice.

¶ 13 The plaintiffs' second argument on appeal, not so different from their first, is that the circuit court erred in denying them leave to file their sixth amended complaint when they presented it with a post-judgment motion. As a general rule, a trial court should exercise its discretion liberally in favor of allowing amendments to pleadings if doing so would further the ends of justice. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 748, 910 N.E.2d 1134 (2009). However, the privilege to amend is not absolute. *Alpha School Bus*, 391 Ill. App. 3d at 748. In determining whether to allow an amendment, a trial court should consider (1) whether the proposed amendment would cure defective pleadings, (2) whether other parties would sustain prejudice or surprise because of the proposed amendment, (3) the timeliness of the proposed amendment, and (4) whether there were earlier opportunities to amend. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211 (1992). We will not reverse a trial court's decision on a motion to amend a pleading unless the trial court abused its discretion. *Loyola Academy*, 146 Ill. 2d at 273–74.

¶ 14 We find no abuse of discretion in the circuit court's decision to deny leave to file an amendment for the same reasons we find no abuse of discretion in the court's decision to dismiss the

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plaintiffs' suit with prejudice. Even if the proposed amendment would have cured the defect in the plaintiffs' prior pleading and might not have unduly surprised the defendants, so that the first two of the above factors favor the plaintiffs, the remaining factors weigh heavily against them. On the third factor, the proposed amendment was quite untimely: it came several months after the circuit court's dismissal order, which itself followed over a year of litigation in which the plaintiffs were instructed as to how to cure their defective pleadings. On the fourth factor, as the circuit court explained, the plaintiffs failed to take advantage of several opportunities the court provided them to cure their pleading, and, indeed, they did so even though the court explained to them precisely how their complaint could be cured. Under these circumstances, we see no abuse of discretion in the circuit court's decision to deny the plaintiffs leave to file yet another complaint.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 16 Affirmed.