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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARK GLENN,)	Appeal from the Circuit Court
)	of Lee County.
Plaintiff-Appellant,)	
)	
v.)	No. 09-L-4
)	
ROGER C. BOLIN, FRANCIS A. BOYLE as)	
Executor of the Estate of WALTER BOYLE,)	
Deceased, in his representative capacity only,)	
and CHRISTINA JUDD, and each of them)	
individually and d/b/a BOYLE & BOLIN)	
and BOYLE & BOLIN ATTORNEYS AT)	
LAW,)	Honorable
)	Charles T. Beckman,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Plaintiff properly preserved for review counts of his dismissed complaint by specifying in a footnote in his amended complaint that he was doing so; however, this preservation was only effective as to counts involving the defendant specifically addressed in the footnote, not to counts involving defendants who were not included in the footnote; (2) the trial court did not err in dismissing plaintiff's sixth and seventh amended complaints for failure to comply with pleading requirements; (3) the trial court did not err in dismissing plaintiff's seventh amended complaint with prejudice.

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Plaintiff, Mark Glenn, appeals from the trial court's orders dismissing his sixth

amended and seventh amended complaints. We affirm.

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I. BACKGROUND

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In 2007, Glenn hired defendant, Roger C. Bolin, to represent him in his divorce case. This legal representation lasted until February 2008, when Glenn hired another attorney to complete the divorce proceedings.

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In December 2008, Glenn, with the assistance of counsel, filed a small claims complaint against Bolin, alleging breach of contract and legal malpractice. Glenn voluntarily dismissed this complaint and filed a four-count amended complaint in the law division, alleging breach of contract, legal malpractice, breach of fiduciary duty, and fraud. A series of further-amended complaints and motions to dismiss ensued. In July 2011, Glenn entered his appearance *pro se* and filed a fifth amended complaint, which was dismissed because his attorney had not yet withdrawn.

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In August 2011, Glenn refiled his appearance *pro se* and filed a motion for leave to add additional parties, which the trial court granted. Glenn then filed a six count sixth-amended complaint, with allegations of legal malpractice and breach of fiduciary duty pled against Bolin, defendant law firm Boyle & Bolin, and defendant law firm partners Walter Boyle and Christina Judd. The counts against Boyle and Judd were dismissed with prejudice in January 2012, and the remaining counts were dismissed in April 2012, when the trial court granted Bolin's motion to dismiss brought pursuant to sections 2-603 and 2-615 of the Code of Civil

Procedure (Code) (735 ILCS 5/2-603, 2-615 (West 2010)). In its April order of dismissal, the trial court found that Glenn’s prior complaints had been dismissed for failure to state a cause of action and that Glenn had been given “ample time and opportunity to draft and file a complaint which alleges facts, not illusory conclusion and statements which are not germane to the alleged malpractice.” While the trial court dismissed the complaint, it gave Glenn “one final attempt at drafting and filing a complaint which comports with Illinois law.”

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On May 7, 2012, Glenn filed a *pro se* one count seventh amended complaint alleging a single count of legal malpractice against Bolin. In a footnote on page one of the complaint, Glenn stated, “This is to serve as notification to the Court and the Defendant Bolin that Plaintiff Glenn preserves the dismissed or stricken Counts of his Sixth Amended complaint for the record for appeal.” Bolin again filed a motion to dismiss pursuant to sections 2-603 and 2-615 of the Code. Glenn failed to appear for argument on Bolin’s motion, which was held on September 10, 2012. After hearing Bolin’s argument, the trial court granted with prejudice Bolin’s motion to dismiss. In granting the dismissal, the trial court noted that Glenn had failed to separate multiple claims into different counts. In addition, Glenn had repeatedly filed complaints full of conclusions, irrelevant statements, and “statements which cannot be traversed, and there’s no way that any Defendant could answer this complaint or any Complaint that Mr. Glenn has filed at this point.”

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Glenn filed a motion to vacate, asserting that he had failed to appear for argument because of an “inadvertent scheduling error” and that failing to allow him to argue against the motion to

dismiss “would be a severe penalty and prohibit a hearing and consideration of [t]his case on the merits akin to a default judgment.” Glenn prayed that the trial court would vacate its order granting the motion to dismiss “and allow the parties to reschedule oral arguments and for all such other relief as this court deems necessary.” The trial court denied the motion to vacate, noting that it did not grant the motion to dismiss because of Glenn’s failure to appear. Instead, “there comes a time when it is apparent that plaintiff will never be able to present a factual complaint alleging legal malpractice.” Glenn “had more than ample opportunity to draft a complaint alleging the facts which support his claim of legal malpractice but has wholly failed to do so.” The court also noted “the leniency which has been shown to plaintiff in allowing him to file successive amended complaints” and concluded that “it is time to end this litigation.” This appeal followed.

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II. ANALYSIS

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We first must address the status of Glenn’s sixth amended complaint. Glenn raises issues arising from the trial court’s dismissal of the sixth amended complaint, arguing that the trial court erred in dismissing counts I and II, directed against Bolin, and Counts III and V, directed against the partnership of Boyle & Bolin. Bolin argues that Glenn has waived any review of the court’s rulings on that complaint by filing the seventh amended complaint. Whether a dismissed claim has been properly preserved for review is a question of law that we review *de novo*. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17.

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The filing of an amended complaint waives any objection to the trial court’s ruling on the

former complaints. *Id.* Where an amendment is complete in itself and does not adopt or refer to an earlier pleading, the prior pleading ceases to be part of the record for most purposes and is, in effect, withdrawn and abandoned. *Id.* However, a plaintiff need only include as little as a paragraph or footnote in an amended pleading notifying the defendants and the court that the plaintiff is preserving the dismissed portions of the earlier complaint for appeal in order to avoid consigning the prior pleading to oblivion. *Id.* at n.1.

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Here, Glenn included on the first page of his seventh amended complaint a footnote that read, “This is to serve as notification to the Court and the Defendant Bolin that Plaintiff Glenn preserves the dismissed or stricken Counts of his Sixth Amended complaint for the record for appeal.” This footnote clearly informs Bolin and the trial court that Glenn intends to preserve the sixth amended complaint for appeal. However, this footnote in no way notifies Boyle & Bolin of such an intention. The footnote specifies that it is to serve as notification to “Defendant Bolin.” Boyle & Bolin is nowhere mentioned. This omission is further compounded by the fact that the seventh amended complaint contains one count that alleges legal malpractice against only Bolin. Nothing in the seventh amended complaint gives any indication that Glenn intended to further involve Boyle & Bolin in the litigation or to preserve counts III and V for purposes of appeal. Thus, we conclude that, while Glenn’s footnote is sufficient to preserve for appeal the trial court’s dismissal of counts I and II, it fails to preserve the dismissal of counts III and V, and we will not consider those claims.

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Bolin brought his motion to dismiss Glenn’s sixth amended complaint pursuant to section 2-

615 of the Code (735 ILCS 5/2-615 (West 2010)). On a challenge to the legal sufficiency brought pursuant to section 2-615, all well-pleaded facts alleged in the complaint are taken as true. *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 990 (2011). The motion should be granted only if the plaintiff can prove no set of facts to support his cause of action. *Id.* On review of a dismissal under section 2-615, this court must determine whether the allegations of the complaint, interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *Id.* As this process does not require the trial court to determine credibility or weigh findings of fact, this court is not required to defer to the trial court’s judgment, and our review is *de novo*. *Id.*

¶ 1 5

Bolin’s motion also argued that Glenn violated section 2-603(a) of the Code, which requires that “all pleadings shall contain a plain and concise statement of the pleader’s cause of action.” 735 ILCS 5/2-603(a) (West 2010). A complaint may be dismissed for failure to meet statutory pleading requirements or if it is drafted in such a manner as to render futile any attempt to answer. *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 938 (2001).

¶ 1 6

In dismissing the counts of Glenn’s sixth amended complaint directed against Bolin, the trial court noted that Glenn’s prior complaints had been “dismissed for failure to state a cause of action and the plaintiff has been given ample time and ample opportunity to draft and file a complaint which alleges facts, not illusory conclusion and statements which are not germane to the alleged malpractice” and that the sixth amended complaint “is likewise defective and fails to state a cause of action.” Our review of the sixth amended complaint reveals a 28-

page document with 108 pages of exhibits attached. Twenty five pages of the complaint are relevant to counts I and II. There are approximately nine pages of general allegations, containing 55 paragraphs and 53 subparagraphs. Count I incorporated those allegations and contained 14 pages, 61 paragraphs, 96 subparagraphs, and 22 sub-subparagraphs. Count II incorporated the general allegations and added another 21 paragraphs.

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In general, mere surplusage in pleading, such as the pleading of an additional theory or recovery, does not provide a basis for dismissing a complaint that contains all of the factual allegations necessary to state a cause of action. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 483 (1994). However, as we have stated, a complaint may be dismissed if it is drafted in such a manner as to render futile any attempt to answer. *Rubino*, 324 Ill. App. 3d at 938. Here, the sheer volume of allegations is more than “mere surplusage;” it is a tsunami of over-allegation. A few examples from the sixth amended complaint shall suffice:

¶ 1 8

Paragraph 7, from the general allegations, contains 19 subparagraphs alleging “facts, some of which are included in Defendant’s handwritten notes,” that were allegedly communicated to Bolin by Glenn’s mother and aunt at a May 2, 2007 meeting, including:

¶ 19 “g. Upon receiving notice from Plaintiff that Joanna Glenn filed 07-D-40 on March 26, 2007, one day prior to Plaintiff’s filing of his petition, Laura Palmer and Marion Glenn hired an attorney on Plaintiff’s behalf and that after a hearing on April 12, 2007 granting Petitioner’s Motion for Temporary Relief and consolidating 07-D-40 and 07-D-41, Plaintiff requested that said attorney withdraw from his case. Joanna Glenn (as

petitioner) filed a petition for Dissolution of Marriage against Mark Glenn (as respondent), and a Petition for Temporary Relief on March 26, 2006 [*sic*].”

¶ 20 “j: Plaintiff’s only information regarding the marital estate finances from June, 2006 until April 2007 came from what Joanna Glenn provided to him and from the observations of Plaintiff’s relatives who communicated to him.”

¶ 21 “k. Plaintiff relied on what he at first believed to be true statements by Joanna Glenn, during her time of control over the marital estate, continuing to profess her love for Plaintiff in phone calls, personal visits[,] and in letters (copies of the letters were provided to Defendant at the meeting).”

¶ 22 “n. Plaintiff made repeated attempts at reconciliation but Joanna Glenn refused to discuss reconciliation.”

¶ 23 Paragraph 37 alleges:

¶ 24 “In a letter dated May 12, 2007, Plaintiff repeated his desire to be helpful in the case and provided information concerning: valuation of the marital residence, mortgage information, a complete list of personal property from [*sic*] according to his best recollection, marital property Joanna Glenn dissipated (including a 1998 Goldwing motorcycle and a 1995 Pontiac Van), \$2000 in tax refunds Joanna Glenn received but never accounted for, a listing of gifts given without Plaintiff’s consent, information regarding promissory notes receivable to the marital estate of \$20,000.00 and \$12,000.00 respectively, a list of equipment purchased by TCM Properties dissipated by Joanna Glenn by gift or otherwise, pass-through income of \$3000.00 per month paid by her employer as ‘rent’, Plaintiff’s desire to sell the Mini-mall property several times and Joanna Glenn’s objection to

the sale, a detailed financial statement from memory regarding the marital real estate properties, cash notes, cash on hand, retirement accounts, and liabilities. A copy of this letter is attached as **Exhibit J**, and is incorporated by reference.” (Emphasis in original.)

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Paragraph 44 contains eight subparagraphs detailing information allegedly provided to Bolin and requests for investigation by him, including:

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“b. That Joanna Glenn was consulting a financial advisor who was also her s u p e r v i s o r a t her place of employment and that said advisor was upon Plaintiff’s knowledge and belief advising Joanna Glenn concerning financial matters;”

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c. That the real estate agent used by Joanna Glenn in the sales of marital property was a close personal friend of Joanna Glenn; and

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i. The agent was inexperienced;
¶ 29 ii The agent charged a higher rate of commission than the realtor Plaintiff and Joanna Glenn had used for all previous real estate transactions in Illinois.”

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Further examples are unnecessary. “The purpose of a pleading is to present, define, and narrow the issues and limit the proof needed at trial.” *Golf Trust of America v. Soat*, 355 Ill. App. 3d

333, 336 (2005). It produces an issue asserted by one side and denied by the other so that a trial may determine the actual truth. *Id.* The drafter of a complaint must walk a fine line between including too little and too much factual detail; if too little, the complaint improperly states conclusions, if too much detail, it improperly pleads evidence. *Powers v. Delnor Hospital*, 135 Ill. App. 3d 317, 319 (1985). Plaintiff here has fallen on the side of pleading evidence, alleging an overwhelming amount of information that neither narrows the issues nor limits the proofs for trial. The sheer volume and hyper-detail of the allegations make the complaint impossible to answer. “Mere surplusage” can be ignored; extraordinary surplusage cannot. The trial court’s dismissal of counts I and II of the sixth amended complaint was not in error.

¶ 3 1

For the same reasons, we find no error in the trial court’s dismissal of Glenn’s one-count (legal malpractice) seventh amended complaint. Twenty six pages, 164 paragraphs, innumerable subparagraphs (paragraph 161, discussing Glenn’s alleged injury, contains 31 subparagraphs) and 345 pages of attached and incorporated exhibits is a case study in surplusage and evidence-pleading. Glenn’s seventh amended effort built upon and expanded the errors of the sixth amended complaint, it did not correct them. The seventh amended complaint did not comport with Illinois rules of pleading and was properly dismissed.

¶ 3 2

Glenn also contends that the trial court erred in dismissing the seventh amended complaint with prejudice. We review a trial court’s decision to dismiss a complaint with prejudice for an abuse of the trial court’s discretion. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 28. Here, Glenn attempted seven times, both with the assistance of counsel and *pro se*, to

file a complaint that complied with statutory pleading requirements and stated a cause of action; he was unable to do so. We can find no abuse of discretion in declining to give a plaintiff more than seven attempts to file a proper complaint; we find no error here.

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III. CONCLUSION

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For these reasons, the judgment of the circuit court of Lee County is affirmed.

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Affirmed.