

2014 IL App (1st) 132744-U

No. 1-13-2744

December 9, 2014

SECOND DIVISION

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 DISTRICT

EDWARD K. HALL, JR.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 12 L 7759
)	
McDONALD'S RESTAURANTS OF)	
ILLINOIS and MARIA GUZMAN,)	The Honorable
)	Kathy Flanagan,
Defendants-Appellees.)	Judge presiding.
)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court properly dismissed case for failure to state a cause of action where a plaintiff failed to plead facts sufficient to establish all the elements of a cause of action for false arrest and malicious prosecution. But where a plaintiff fails to object to a motion to vacate a default judgment in the circuit court, the issue has been forfeited and cannot be considered on appeal.

¶ 2 Plaintiff, Edward Hall, filed false arrest and malicious prosecution actions against the defendants, McDonald's and Maria Guzman. Hall's motion for a default judgment against Guzman was granted but the order was vacated by the circuit court when Guzman, without objection, filed a motion to vacate the default judgment. Finally, Guzman's and McDonald's motion to dismiss Hall's second amended complaint was granted by the circuit court.

¶ 3 We hold that the circuit court did not err when it granted McDonald's and Guzman's motion to dismiss Hall's second amended complaint because Hall failed to plead facts sufficient to establish all the elements of a cause of action for false arrest and malicious prosecution. We also hold that because Hall failed to object to Guzman's motion to vacate in the circuit court, the issue has been forfeited, and we cannot consider the matter on appeal. Therefore, we affirm the circuit court's order dismissing Hall's second amended complaint.

¶ 4 **BACKGROUND**

¶ 5 On March 25, 2010, Administrative Hearing Officer P. Murray heard a violation charge filed against Hall and found him guilty of disorderly conduct. Hall filed a motion for reconsideration of the guilty finding, the finding was vacated, and Hall was found not guilty of disorderly conduct. Then Hall filed a two count complaint against McDonald's and Guzman for false arrest and malicious prosecution.

¶ 6 Hall alleged in his complaint that after receiving meatless hamburgers for his two young sons and complaining to McDonald's, he was promised a complimentary meal for himself and his sons. He returned to the restaurant to receive his complimentary meal on November 11, 2009, and was told by Guzman, an employee of McDonald's whom Hall alleged was

acting within the scope of her employment, that he had already received a refund for his meal.

¶ 7 During the conversation, Hall alleged that Guzman stated, "sir, if you don't lower your voice I'm going to call the police," to which Hall told Guzman that he never raised his voice. Hall also alleged that he never created a disturbance. He finally asked Guzman if she would honor McDonald's promise of a complimentary meal. Guzman provided the meal, and Hall thanked her and left the restaurant.

¶ 8 Hall alleged that as he was about to enter his vehicle, he noticed several police cars pulling into the parking lot. He approached a "Caucasian Berwyn police officer", who he learned was Eric Olsauskas. Believing that Guzman had called the police, Hall explained the events from the prior two days and told the officers that everything was now resolved. Hall alleged in his complaint that during Guzman's telephone call with the Berwyn Police Department, she made a series of false and defamatory statements about Hall's interaction with Guzman in the restaurant.

¶ 9 Hall also alleged that after he approached Officer Olsauskas, that the officer asked for his identification. When Hall asked why the officer needed his identification, the officer yelled, "Do you want me to slam you against the wall and throw the cuffs on you in front of your kids?" When Hall asked why he would be slammed against the wall, the officer allegedly responded, "for not following orders."

¶ 10 In the false arrest count of the complaint, Hall sets forth, in pertinent part, the following allegations in order to establish that he was arrested:

"54. The actions of the Berwyn officer in taking the plaintiff's driver's license, effectively taking the plaintiff into his custody, proximately resulted from the defamatory statements about plaintiff's alleged conduct made by defendant Guzman on the telephone.

55. Once the Berwyn police officer took the plaintiff's driver's license, by operation of Illinois law plaintiff was not free to leave in his vehicle, and the plaintiff was in the custody of the Berwyn officer based solely upon false information which has been provided by the McDonald's employee, Maria Guzman.

56. While the initially arriving officer was inside the restaurant in possession of plaintiff's driver's license, two other Berwyn officers remained outside to maintain custody of the plaintiff.

* * *

59. The plaintiff Edward Hall remained in the custody of the Berwyn officers until his driver's license was returned to him – which did not occur until after Officer Olsauskas came out of the restaurant after speaking with defendant Guzman."

¶ 11 In the malicious prosecution count of the complaint, Hall alleged, in pertinent part, the following allegations in order to establish the disorderly conduct administrative action was wrongfully brought:

"62. As a result of the false and defamatory statements by defendant Guzman to the Berwyn police, an ordinance violation complaint was executed by

defendant Guzman on behalf of her employer, thereby directly and proximately causing plaintiff Hall to be falsely charged with an ordinance violation.

* * *

65. At no time on November 11, 2009 did plaintiff Edward Hall perform any acts which caused a breach of the peace or any other violation of the municipal ordinance of the City of Berwyn proscribing disorderly conduct.

66. No probable cause existed for the institution of the disorderly conduct charged against the plaintiff.

67. Malice in the bringing of this false charge may be inferred from the signing of a false complaint without probable cause, as well as from the respective races of the complainant and putative defendant.

68. The false charge of disorderly conduct has now been fully resolved in favor of the plaintiff, and the bringing of that complaint constituted a malicious prosecution under Illinois law."

¶ 12

On May 24, 2013, the circuit court, with no evidence in the record of Hall objecting, granted Guzman's motion to vacate and Guzman filed her appearance. McDonald's and Guzman filed a section 2-615 motion to dismiss Hall's second amended complaint for failure to state a cause of action for false arrest or malicious prosecution and the circuit court granted the motion. Hall timely filed his notice of appeal.

¶ 13

ANALYSIS

¶ 14

The appellate court reviews an appeal from an order granting a section 2–615 motion to dismiss *de novo*. *Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 491 (1999); *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 127 (1995). When reviewing an order granting a section 2-615 motion to dismiss, the appellate court must determine "whether the allegations of [plaintiff's] 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." *Weatherman*, 186 Ill. 2d at 491. We must take all well-pleaded facts in the complaint and all reasonable inferences therefrom as true in making this determination. *Weatherman*, 186 Ill. 2d at 491. However, "liberal construction cannot cure factual deficiencies" therefore, a section 2-615 motion to dismiss does not admit "conclusions of law or factual conclusions which are unsupported by allegations of specific facts." *Vincent v. Williams*, 279 Ill. App. 3d 1, 5 (1996). Only those facts apparent from the face of the pleadings, including exhibits attached to the pleadings (735 ILCS 5/2–606 (West 1992)), and matters of which the court can take judicial notice, and judicial admissions in the record, may be considered." *Weatherman*, 186 Ill. 2d at 491-92.

¶ 15

False Arrest

¶ 16

First, we must determine whether Hall set forth facts in his complaint which are sufficient to establish a cause of action for false arrest. Illinois is a fact pleading state, and in order to satisfactorily plead a cause of action, a complaint must be legally sufficient, stating a legally recognized cause of action, and factually sufficient, pleading facts "which bring the claim within the legally recognized cause of action alleged." *People ex rel. Fahner v. Carriage Way West Inc.*, 88 Ill. 2d 300, 308 (1981).

¶ 17 Under Illinois law, a claim for false arrest requires the plaintiff to allege that (1) the plaintiff was restrained or arrested by the defendant, and (2) the defendant acted without having reasonable grounds to believe that an offense was committed by the plaintiff. *Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 474 (1990). An arrest occurs when "the circumstances are such that a reasonable person, innocent of any crime, would conclude that he was not free to leave." *See In re D.G.*, 144 Ill. 2d 404, 409 (1991) (where the court found that an arrest occurred when the police ordered the appellant to get into the squad car.) In determining whether an arrest has occurred, Illinois courts consider the following factors: (1) the time, place, length, mood, and mode of the encounter between the defendant and the police; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, (e.g. the use of handcuffs or drawing of guns); (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to accompany the police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by officers. *People v. Vasquez*, 388 Ill. App. 3d 532, 549 (2009). "No single factor is dispositive, and in each case the court considers all of the circumstances surrounding the detention." *Vasquez*, 388 Ill. App. 3d at 549.

¶ 18 We note that "an unlawful arrest by an officer caused or procured by a private person is the same as an arrest by the private person." *Vincent*, 279 Ill. App. 3d at 6. However, the arresting officer must have relied solely on the information given to him by the private party when making the arrest. *Vincent*, 279 Ill. App. 3d at 6.

¶ 19 "Custody occurs when a defendant is placed under formal arrest or when a defendant's freedom of movement is restrained to the degree normally associated with a formal arrest." *People v. Ripplinger*, 316 Ill. App. 3d 1261, 1270 (2000). We find, based on the allegations in the complaint, that Hall was neither restrained nor arrested when he surrendered his license to the police officer because such a finding would make every encounter, where a police officer asks a citizen for a driver's license, an arrest. *See People v. Harris*, 228 Ill. 2d 222, 248-49 (2008) (where the Supreme Court found that "a request for identification is facially innocuous: 'It does not suggest official interrogation and is not the type of question or request that would increase the confrontational nature of the encounter.'"). Moreover, there was no allegation in Hall's complaint that the officers detained him, that he was handcuffed, that he was placed in a squad car, that he was transported anywhere, that he was informed that he was under arrest, or that he was told he was not free leave. *Vasquez*, 388 Ill. App. 3d at 549. Custody, as pled in the complaint, is merely a conclusion because Hall failed to plead specific facts which show that his freedom of movement was restrained or that a formal arrest occurred. *Ripplinger*, 316 Ill. App. 3d at 1270. Therefore, we find that Hall pled conclusions and failed to allege facts which establish that his freedom of movement was restrained or that he was formally arrested.

¶ 20 Because we find that Hall failed to plead facts sufficient to establish that he was arrested, we need not address whether the officer relied on information provided by Guzman or McDonald's or whether Hall pled sufficient facts to establish that Guzman and McDonald's had reasonable grounds for believing Hall had committed an offense. Therefore, we find that Hall failed to set forth facts which establish the elements of a cause of action for false arrest.

Accordingly, the circuit court did not err when it granted the defendants' motion to dismiss the false arrest count of Hall's second amended complaint.

¶ 21 Malicious Prosecution

¶ 22 Next, we must determine whether Hall set forth facts sufficient to establish a cause of action for malicious prosecution. In order to state a cause of action for malicious prosecution, the plaintiff must allege facts showing: "(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such a proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff." *Meerbrey*, 139 Ill. 2d at 473; *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 45 (1980). If any one of these elements is lacking recovery is barred. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 986 (1994).

¶ 23 In the present case, Hall has adequately alleged that Guzman commenced the disorderly conduct proceedings, that the proceedings were terminated in his favor, and that there was an absence of probable cause for such a proceeding. However, we find, after reviewing the complaint, that Hall failed to adequately plead the facts necessary to establish the presence of malice or special damages.

¶ 24 We find that Hall pled conclusions when he alleged that "malice in bringing this false charge may be inferred from the signing of a false complaint." *See Misselhorn*, 257 Ill. App. 3d at 986 (where the court held that a plaintiff's complaint containing the statement that each defendant "initiated the aforesaid proceedings with malicious intent" was a conclusion.) Hall also failed to allege facts to support his conclusions that the disorderly conduct complaint was false, and that the defendants acted with malice. *Doyle v. Schlensky*, 120 Ill. App. 3d

807, 815-17 (1983) (where the court held that allegations in a complaint that threats were made "fraudulently, maliciously and willfully" was a conclusion because no facts supported the legal conclusions.) While we construe the allegations in the light most favorable to the plaintiff, we cannot rely on "conclusions of law or factual conclusions which are unsupported by allegations of specific facts" to establish the elements of a cause of action for malicious prosecution. *Vincent*, 279 Ill. App. 3d at 5.

¶ 25 Special damages, beyond the usual expenses, time or annoyance in defending a lawsuit, is another element that must be pled to state a claim for malicious prosecution. *Cult Awareness Network v. Church of Scientology Int'l*, 177 Ill. 2d 267, 272 (1997). Here, however, we find that Hall's second amended complaint included no allegations concerning damages.

¶ 26 Therefore, because Hall did not plead facts sufficient to establish malice or special damages, we find that he did not adequately plead all the elements of a cause of action for malicious prosecution. Accordingly, we hold that the circuit court did not err when it granted the defendants' motion to dismiss

¶ 27 Motion to Vacate Default Order

¶ 28 Hall argues for the first time that the circuit court erred by granting Guzman's motion to vacate. Illinois courts have long held that preservation of a question for review requires an appropriate objection below and failure to object constitutes a waiver of the issue on review. *See People v. Enoch* 122 Ill. 2d. 176, 186 (1988); see also *Zimmerman v. Kennedy*, 405 Ill. 306, 313 (1950). The Illinois Supreme Court explained the difference between waiver and forfeiture as follows: "forfeiture is the failure to make the timely assertion of the right,

waiver is the 'intentional relinquishment or abandonment of a known right.' " *People v. Blair*, 215 Ill. 2d 427, 444, n.2 (2005). Here, there is no evidence in the record that Hall objected to Guzman's motion to vacate the default judgment. Therefore, we find that because Hall failed to timely object to Guzman's motion to vacate, but instead, raised the issue for the first time on appeal, he forfeited the issue and we cannot consider the matter on appeal. *Blair*, 215 Ill. 2d at 444, n.2.

¶ 29

CONCLUSION

¶ 30

We find that plaintiff failed to plead all the elements of a cause of action for false arrest and malicious prosecution, and, therefore we hold that the circuit court did not err when it granted McDonald's and Guzman's motion to dismiss Hall's second amended complaint. We also hold that because Hall did not object to Guzman's motion to vacate in the circuit court, the issue has been forfeited, and we cannot consider the matter on appeal. Therefore, we affirm the circuit court's order dismissing Hall's second amended complaint.

¶ 31

Affirmed.