

2014 IL App (3d) 130121-U
Order filed March 19, 2014
Modified upon denial of rehearing April 30, 2014

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
THIRD DISTRICT¹

PATRICIA MONCELLE, Individually and)	Appeal from the Circuit Court
As Special Administrator of the Estate of)	of Peoria County.
Michael Moncelle, deceased,)	
)	
Plaintiff-Appellant,)	
v.)	
)	Appeal No. 3-13-0121
C.A.P. AIR FREIGHT, INC.; AIR CAP,)	Circuit No. 05 L 337
LLC; and MATTHEW F. GROSS,)	08 L 17
)	
Defendants-Appellees, and)	
)	
JUSTICE MARY McDADE, JUSTICE)	
VICKI WRIGHT; and JUSTICE MARY K.)	Honorable
O'BRIEN)	David Dubicki,
)	Judge, Presiding.
Defendants-Appellees.)	

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

¹ Since this appeal involves a case where three justices from the Third District Appellate Court were named as defendants in a complaint, all the justices from that district have recused themselves. Accordingly, the Illinois Supreme Court used its power to assign this case to be heard and decided by the Second District Appellate court. Such an assignment is a proper exercise of the supreme court's power. *People v. Ortiz*, 196 Ill. 2d 236, 256 (2001).

ORDER

¶ 1 *Held:* The trial court properly dismissed the judicial defendants from this case since plaintiff did not request leave to add them in as new parties before filing her complaint. Also, the trial court did not abuse its discretion in denying plaintiff's request for leave to amend the pleadings to add them as parties when such an amendment would not cure the defective pleading since: (1) counts I and III were nullities because they were filed in closed cases; (2) count II was a defective section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)); and (3) the allegations in all three counts of the complaint were based solely upon legal conclusions. Finally, the trial court properly granted the trucking defendants' motion to dismiss the complaint.

¶ 2 Appellant Patricia Moncelle, individually and as special administrator of the estate of Michael Moncelle (Moncelle), appeals from an order of the trial court dismissing a complaint that she filed in two closed cases which named appellees C.A.P. Air Freight, AIR CAP, LLC and Matthew Gross (collectively, the trucking defendants) and Justices Mary McDade, Vicki Wright and Mary K. O'Brien (the Justices). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case stems from an automobile accident that occurred on November 24, 2004, between Moncelle's husband, Michael, and Matthew Gross (Gross) the driver of the truck. Michael died as a result of the collision.

¶ 5 A. The 2005 Case

¶ 6 On January 25, 2005, Moncelle filed a six-count complaint against appellees Gross and his employer, C.A.P. Air Freight, Incorporated (employer). The complaint included counts for wrongful death and property damage under theories of willful and wanton misconduct on Gross' part, and the willful and wanton hiring, retention and entrustment of a vehicle on the employer's part. The complaint sought compensatory damages on all counts, and punitive damages under counts III, IV and VI, which sought recovery for property damage. All of the counts alleged

willful and wanton misconduct. The case was initially filed in McLean County, but was transferred to Peoria County in September 2005 and was renumbered as case number 05 L 337 (the 2005 case).

¶ 7 On November 7, 2005, the trial court dismissed the complaint based upon Moncelle's failure to sufficiently plead willful and wanton misconduct. On December 9, 2005, Moncelle filed a first amended complaint against Gross and the employer. On February 6, 2006, the trial court struck the punitive damage claim from Moncelle's first amended complaint, and found that section 604.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-604.1 (West 2004)) applied to Moncelle's cause of action and that she was therefore required to make an appropriate evidentiary showing and obtain leave of court prior to filing any punitive damage claims in the case. On May 9, 2006, the trial court modified its order of February 6, 2006, to provide that those portions of the prayer for relief in counts III, IV and VI of Moncelle's first amended complaint were stricken without prejudice, and Moncelle was given the right to request leave to amend the complaint to include a prayer for punitive damages against Gross and the employer that met statutory requirements.

¶ 8 On November 17, 2006, Moncelle filed a ten-count second amended complaint against Gross and the employer, and for the first time added AIR CAP, LLC, the owner of the truck, as a defendant. In each count Moncelle alleged that defendants had violated federal trucking regulations in various ways. In that complaint, Moncelle noted that it was her position that counts VI through X did not fall within section 604.1 of the Code (735 ILCS 5/2-604.1 (West 2004)), however, in light of the trial court's February 6, 2006 ruling, those counts did not mention punitive damages, and she would file a motion requesting leave to amend those counts to include a request for punitive damages. On November 30, 2006, Gross filed a motion to strike

Moncelle's reference to her intention to file a motion in the future requesting leave to include a request for punitive damages. On January 19, 2007, the trial court granted Gross' motion and ordered that all paragraphs containing a reference to punitive damages be stricken.

¶ 9 On February 26, 2007, Moncelle filed a motion for leave to include prayers for punitive damages in all 10 counts of the second amended complaint, or, in the alternative, counts VI through X of that pleading. On November 2, 2007, after considering the evidentiary submissions and arguments of all the parties, the trial court held that punitive damages could not be sought for the wrongful death counts as a matter of law. It held that based upon the evidence, punitive damages could be sought only for the property damage claim against Gross, and not the employer or owner (collectively, the corporate defendants). Therefore, it held that Moncelle could amend her second amended complaint to add a request for punitive damages in one count, and denied her request for leave to amend the other nine counts.

¶ 10 The corporate defendants subsequently moved for partial summary judgment against Moncelle. On November 20, 2007, the trial court granted partial summary judgment to the corporate defendants on several paragraphs in Moncelle's second amended complaint, denied the motion in part, and reserved ruling on the remainder of the motion. Specifically, it granted partial summary judgment to the employer with respect to paragraphs 12(d),(k),(l) and (m) of counts I and VI of the second amended complaint, as well as paragraphs 10(d), (k), (l) and (m) of counts II and VII. It further granted the owner partial summary judgment with respect to paragraphs 10(d),(l),(j) and (k) of counts IV and IX. On November 26, 2007, the trial court granted partial summary judgment to the employer on "[p]laintiff's use of sections 391.21(b)(7), 391.21(b)(8), 391.23(a)(1) [and] 391.27" of the Federal Motor Carrier Safety Act as referenced in counts I, II, VI and VII of plaintiff's second amended complaint." On November 30, 2007,

one business day before trial was to begin, Moncelle moved to voluntarily dismiss without prejudice her case as to all defendants. The trial court granted the motion. No appeal of any order or ruling in the 2005 case was taken by any party.

¶ 11

B. The 2008 Case

¶ 12 On January 16, 2008, Moncelle filed another action in 08 L 17 (the 2008 case) against Gross and the corporate defendants. In addition to the wrongful death and property damage counts, Moncelle added counts against Gross pursuant to the Cannabis and Controlled Substances Tort Claims Act (740 ILCS 20/2 (West 2004)). Moncelle sought compensatory and punitive damages in every count.

¶ 13 Gross and the corporate defendants all filed motions to dismiss the 2008 complaint with prejudice on the basis of *res judicata*. Generally, they argued that when the trial court granted partial summary judgment to the corporate defendants on separate parts of Moncelle's second amended complaint in the 2005 case, final orders were entered which became appealable when Moncelle voluntarily dismissed her action. Gross and the corporate defendants also contended that when the court denied Moncelle's request to seek punitive damages for nine out of the ten counts in the 2005 case, which affected every defendant, that also constituted a final order on a separate part of her action that became appealable when she voluntarily dismissed her action. Since Moncelle did not appeal those final orders in the 2005 case, they argued, the orders barred a new action raising those claims or any other claims that were raised or could have been raised in the 2005 action.

¶ 14 On June 30, 2008, the trial court dismissed the 2008 case with prejudice as barred by *res judicata*. It held that the November 2, 2007 order in the 2005 case denying Moncelle her request for leave to amend to add requests for punitive damages for all but one count was a final order

which became appealable when she voluntarily dismissed that action. Specifically, it held that Moncelle commenced a new action after part of her original cause of action had gone to judgment in a previous case. Further, it ruled that none of the exceptions to the rule against claim-splitting were present in this case. Accordingly, the trial court dismissed the 2008 case with prejudice as to all defendants.

¶ 15 On July 30, 2008, Moncelle filed a motion to reconsider. While that motion was pending, she filed a petition pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2004)) in the closed 2005 action. In that petition she first discussed the trial court's order dismissing the 2008 action and stated that she did not agree with the trial court's holding regarding *res judicata*. Plaintiff acknowledged that her assertion that no part of the November 2, 2007, order constituted a final judgment was inconsistent with her request that that order be vacated pursuant to a statutory provision which was only applicable to final judgments. Moncelle stated that she was "quite willing" to have her 2-1401 petition denied on the basis that no part of the November 2, 2007, order was, or ever became, a final judgment. She then alleged that newly discovered evidence, *i.e.*, that the employer had fraudulently concealed that a thermos with an odor of alcohol had been found in the truck following the accident, would have prevented the entry of one of the two sets of orders upon which the trial court's *res judicata* determination was based. Accordingly, Moncelle requested an order vacating the order of November 2, 2007, and all subsequent orders, "thus reinstating the case as it stood prior to November 2, 2007."

¶ 16 On January 2, 2009, the trial court issued an order under both the 2005 and the 2008 action case numbers. In it, the trial court denied Moncelle's section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)) that she brought in the 2005 action on the ground that even if the

existence of the thermos had been known in November 2007, it would not have prevented the entry of judgment to all defendants on the punitive damage requests in nine of the ten counts. The court also noted that Moncelle had withdrawn her motion to reconsider that she filed in the 2008 action.

¶ 17 Moncelle appealed from the January 2, 2009, order in both the 2005 action and the 2008 action. After a hearing on a rule to show cause at which Moncelle declined to participate, the trial court discharged the rule on February 27, 2009. Moncelle then filed a supplemental notice of appeal.

¶ 18 On April 7, 2010, the Third District appellate court issued a Rule 23 order in the consolidated appeals from the 2005 action and the 2008 action. See *Moncelle v. C.A.P. Air Freight, et al.*, (April 7, 2010) (unpublished order pursuant to Supreme Court Rule 23). In its order, the Third District held:

“[T]he trial court’s order dismissing the counts in plaintiff’s second-amended complaint against the corporate defendants that were premised on alleged violations of the FMCSR was a final judgment on the merits of a separate branch of the controversy. Accordingly, when plaintiff voluntarily dismissed the remainder of her complaint, she triggered the *res judicata* bar to re-filing her complaint against those defendants. Further, because plaintiff’s individual property damage claims against Gross could have been litigated in the prior proceedings, *res judicata* also bars plaintiff’s 2008 claim against Gross.”

Therefore, the Third District affirmed the trial court’s order in the 2008 action dismissing the 2008 case with prejudice. The Third District also affirmed the trial court’s order in the 2005 action denying Moncelle’s section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)). Finally,

the court found Moncelle's argument regarding the rule to show cause in the 2008 action to be moot.

¶ 19 Moncelle subsequently filed a petition for rehearing. In that petition she argued that the appellate court had incorrectly stated that in the 2005 action, the corporate defendants had been granted partial summary judgment on entire counts of the second amended complaint and on all of the allegations regarding the federal trucking regulations. Instead, Moncelle alleged, even after the trial court's grant of summary judgment, every count still contained allegations of FMCSR violations. According to Moncelle, these alleged errors led the appellate court to mistakenly affirm the trial court's order in the 2008 action that dismissed the case with prejudice on *res judicata* grounds. The appellate court denied the petition for rehearing.

¶ 20 Moncelle then filed with the Third District an application for a certificate of importance pursuant to Supreme Court Rule 316 (eff. Dec. 6, 2006), asking the court to certify that the case involved a question of such importance that it should be decided by the Illinois Supreme Court. In the application, Moncelle contended that the appellate court had intentionally misrepresented the procedural history of the 2005 action so that it could reach the result it desired. Moncelle did not identify any motivation for the appellate court to do so. The court denied the application, with one justice dissenting.

¶ 21 Next, Moncelle filed a petition for leave to appeal with the Illinois Supreme court. In that petition she argued that the appellate court had misstated the record, and that no order disposing of entire claims or all of the allegations regarding violations of federal trucking regulations existed. The petition was denied.

¶ 22

C. The "October 2011 Complaint"

¶ 23 On October 31, 2011, Moncelle filed a three-count complaint in both the 2005 and the 2008 actions. She entitled the document “October 2011 complaint.” In it, she named the trucking defendants, along with Justices Mary McDade, Vicki Wright, and Mary K. O’Brien, the justices who heard and denied her appeal (Justices). The 39-page complaint contained 105 paragraphs. None of the allegations involved the trucking defendants. Instead, all of the allegations involved alleged misconduct by the Justices regarding the Rule 23 order.

¶ 24 Count I named all defendants and was brought under the Court Records Restoration Act (705 ILCS 85/0.01 *et seq.* (West 2010)). In it, Moncelle accused the Justices of “fabricating an order” in the 2005 case granting partial summary judgment on entire counts and on all allegations regarding violations of federal trucking regulations. It also alleged that this fabrication constituted the felony offense of tampering with public records (see 720 ILCS 5/32-8 (West 2010)) and an attempt to defraud Moncelle.

¶ 25 Count II named all defendants and alleged that the Justices had engaged in corruption in fabricating the order. It also alleged that after Moncelle accused the Justices of intentional misrepresentation in the application for a certificate of importance, the only reason that they did not issue a rule to show cause why her counsel should not be held in contempt for that accusation is because the charges of intentional misrepresentation were true, and “because the panel desires the least possible sunlight upon its misconduct.” She also alleged that the Justices had committed the crime of official misconduct (720 ILCS 5/33-3 (West 2010)), and had violated the Rules of Professional Conduct for attorneys and the Illinois Code of Judicial Conduct. Model Rules of Professional Conduct Rule 8.4(c); Ill. S. Ct. R. 63(a)(1) (eff. April 16, 2007). However, she conceded that she “had yet to discover what motivated the panel to engage in that corruption.” As for relief, Moncelle asked that pursuant to the section 2-1401 petition she had

filed (735 ILCS 5/2-1401 (West 2010)), the trial court would declare the Rule 23 order void, and that the underlying trial court orders in the 2005 action and the 2008 action that were reviewed in the Rule 23 order also be vacated. She further requested that the Justices be compelled to appear and testify in the 2005 action granting partial summary judgment on entire counts or an all allegations regarding violations of federal trucking regulations.

¶ 26 Count III named only the Justices and requested that if Moncelle did not obtain the relief requested in counts I and II, that the trial court require the Justices to pay her compensatory damages for the value of her action against the trucking defendants, as well as punitive damages. In support of her request, Moncelle cited to section 32-8(d)(5) of the Criminal Code of 1961. 720 ILCS 5/32-8(d)(5) (West 2010). She also asked the trial court to find the Justices guilty “beyond a reasonable doubt” of falsification of an order.

¶ 27 The Justices filed a motion to quash summons on the ground that the summons was issued to them as new defendants after judgment had already been entered. See 735 ILCS 5/2-301 (West 2010). They also filed a motion to dismiss (735 ILCS 5/2-615 (West 2010)), and a memorandum in support of both motions. Among other arguments, the Justices contended that Moncelle had failed to obtain leave of court to add them as defendants in the 2005 and the 2008 cases, that her “2011 complaint” did not constitute a proper section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)), that the action was barred by judicial immunity, and that Moncelle lacked the authority to charge them with criminal offenses.

¶ 28 The trucking defendants also filed a motion to dismiss counts I and II of the October 2011 complaint (735 ILCS 5/2-619 (West 2010)). In their motion, they argued that Moncelle’s claims were barred by the Third District’s Rule 23 order, and were an improper attempt to circumvent the appellate process by collaterally attacking an order of a higher court after she had

exhausted or waived all appellate processes applicable to that order. The trucking defendants also argued that the relief requested by Moncelle in counts I and II was not available under either the Court Records Restoration Act (705 ILCS 85/0.01 (West 2010)) or pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)).

¶ 29 In her response to the trucking defendants' motion to dismiss, Moncelle alleged that the Justices fabricated the trial court order in the 2005 case that allegedly disposed of entire counts, either by declaring its existence through judicial fiat, or by forging such an order on paper and placing the forgery in the record. She also argued that it was possible that one or more "entities" other than the panel forged the order, placed it in the record on appeal, and the panel accurately described that forged order in its disposition.

¶ 30 In a supplemental brief to their motion to dismiss, the Justices argued that Moncelle was incorrectly relying on an amended version of the criminal statute regarding tampering with a public record that was not in effect at the time the Rule 23 order was issued. Therefore, they contended, she could not obtain restitution against them for the alleged tampering because that was not permissible at the time of the alleged fabrication of the order. They later noted that, in any event, such restitution can only be ordered solely by a criminal court following a conviction, and cannot be sought by a private party as part of a civil suit.

¶ 31 On July 17, 2012, the trial court held a hearing on the motions to dismiss and a motion filed by Moncelle to amend the complaint to refer to an earlier version of the criminal statute regarding tampering with a public record. The court allowed that motion to amend. At the hearing, Moncelle's counsel stated that at the time he filed the petition for rehearing, he thought that the Justices had committed an honest mistake. He later decided, however, that they were "not that dumb" and must have intentionally misrepresented the record to reach a desired result.

Counsel again conceded that he did not know what the Justices' motivation would have been to engage in the alleged corruption.

¶ 32 On August 10, 2012, the trial court ruled on all defendants' motions. With regard to the Justices, it dismissed all claims against them on the ground that Moncelle had not obtained leave of court to add them as defendants. The court further noted that it could not envision any circumstances under which the Justices could be added as parties to this action, since section 2-616 of the Code of Civil Procedure (735 ILCS 5/2-616 (West 2010)) only allows amendments at any time before final judgment, and the 2008 action became final when the trial court dismissed Moncelle's complaint with prejudice (it did not refer to the 2005 action). The court also said that its allowance of Moncelle's motion to amend the complaint was not an implicit allowance of the joinder of the Justices as defendants. The trial court then held that the Justices were dismissed, "without prejudice." Therefore, it said, it would not reach the merits of the Justices' motion to dismiss. It noted that in the alternative, Moncelle sought leave to amend to add the Justices as defendants. It denied that request since "the second part of this order dismisses counts I and II with prejudice. There is, therefore, no pending action to which additional defendants could be joined."

¶ 33 With regard to counts I and II, the court noted that the October 2011 complaint could only be construed as a section 2-1401 petition because it was collaterally attacking the Rule 23 order. 735 ILCS 5/2-1401 (West 2010). It noted that a trial court lacks authority to review the merits of an appellate court decision. It also said that a 2-1401 petition must be filed within two years of the challenged order, so it was too late for Moncelle to challenge any of the trial court's orders that were reviewed in the Rule 23 order. In any event, it reasoned, the alleged corruption of the appellate court could not undermine the integrity of the trial court orders.

¶ 34 The trial court continued and said that the gist of Moncelle's claim was that the record on appeal in the 2005 action did not support the Rule 23 order. However, the trial court said, those arguments are only properly made to the appellate court in a petition for rehearing or to the Illinois Supreme Court in a petition for leave to appeal, and Moncelle had already availed herself of those opportunities. It also ruled that the section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)) was deficient because it did not plead facts demonstrating that the Justices had tampered with the record, and instead she had only speculated that they may have done so. The court reasoned that Moncelle had not shown due diligence in filing the petition since she had waited approximately 18 months after the issuance of the Rule 23 order and more than a year after her petition for leave to appeal was denied to file the "October 2011 complaint." Finally, it noted that there was no just reason to delay appeal of the dismissal with prejudice of counts I and II.

¶ 35 On September 27, 2012, Moncelle filed a motion to reconsider or for leave to amend her complaint. In her motion, she argued that she was not attempting to add the Justices as defendants to pre-existing actions and that the "October 2011 complaint" initiated a new action that in part invoked section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). She claimed that for purposes of the motions to dismiss, the court was required to accept as true all of her allegations regarding judicial corruption. She also argued that she was not required to show due diligence in filing her petition because a void order can be attacked at any time. In the proposed amended complaint Moncelle noted that she had recently filed a new separate action against the Justices (case number 12 L 269) seeking the same relief as in count III.

¶ 36 During the hearing on the motion to reconsider the trial court explained that Illinois is a fact pleading state, and therefore Moncelle had to plead facts regarding alleged judicial tampering with the record, and not simply conclusions. Moncelle's counsel responded that the

Justices “[knew] what they did.” Counsel then admitted that he had not examined the trial court record in the 2005 action to see if any orders had been removed, added, or altered. On January 16, 2013, the trial court denied the motion to reconsider and the motion for leave to amend. Moncelle timely appealed.

¶ 37

II. ANALYSIS

¶ 38 On appeal, Moncelle claims that the trial court erred in: (1) dismissing count II of the October 2011 complaint; (2) dismissing count I of the October 2011 complaint; and (3) dismissing the Justices. Before reaching the merits of Moncelle’s appeal, however, we first turn to the issue of this court’s jurisdiction.

¶ 39

A. Jurisdiction

¶ 40 In the jurisdictional statement of her brief, Moncelle contends that because the trial court found there was no just reason to delay enforcement or appeal with regard to counts I and II, Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides a basis for this court’s jurisdiction over her appeal from the dismissal of those counts. However, she notes that other than the trial court’s comment that “[t]he judicial defendants were dismissed, without prejudice,” the trial court never otherwise addressed whether count III was dismissed or not. Moncelle argues that normally, the dismissal of a defendant “without prejudice” is not a final judgment and therefore not appealable. See *Department of Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 10. Therefore, she argues that the dismissal without prejudice of the Justices is not a final judgment as to the Justices or as to the viability of count III. However, Moncelle notes that she also addressed the merits of count III in her brief in the event that this court finds that it has jurisdiction over the entire matter.

¶ 41 In her reply brief, Moncelle argues that because the trial court found that it lacked personal jurisdiction over the Justices, neither the trial court nor this court has jurisdiction to “enter a valid judgment on the merits as to the [Justices], because ‘[i]t is essential to the validity of a judgment that the court have both jurisdiction of the subject matter of the litigation and jurisdiction over the parties’” (quoting *State Bank of Zurich v. Thill*, 113 Ill. 2d 294, 300 (1986)).

¶ 42 In response, the Justices agree that the trial court did not make an explicit ruling regarding count III, but that instead it dismissed all claims against them because Moncelle had not obtained leave of court to add them as defendants. They note that although the trial court described the dismissal as without prejudice, it stated that the Justices could not be added to the 2008 action because it was a closed case. Further, the Justices contend, it is obvious that the same logic would apply to the 2005 case. The Justices also point out that the trial court held that it would not grant leave to amend to add the Justices as defendants since there would be no point when it was dismissing counts I and II with prejudice. Therefore, they contend, it appears that the trial court intended to dismiss all claims against them *with prejudice*. Finally, they note that the effect of a dismissal order is determined by its substance and not by the incantation of any particular “magic words,” and the trial court’s description of the dismissal as “with prejudice” or “without prejudice” is not determinative of its finality. *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 5 (2009).

¶ 43 Whether the appellate court had jurisdiction to consider an appeal presents a question of law which will be reviewed *de novo*. *Board of Education of Roxana Community School District No. 1 v. Pollution Control Board*, 2013 IL 115473, ¶ 17.

¶ 44 We have carefully reviewed the trial court’s order of August 10, 2012, and have determined that the portion of the trial court’s order dismissing all the Justices was a final order.

¶ 45 It is clear that in dismissing all the Justices from this case, and specifically noting that it would not review the merits of the Justices' motion to dismiss, the trial court was ruling on the Justices' motion to quash summons for Moncelle's failure to request leave to add them as defendants. 735 ILCS 5/2-301; 2-616 (West 2010). This district, as well as the Illinois Supreme Court, has long held that an order granting a motion to quash service of summons is an appealable judgment. See *DiNardo v. Lamela*, 183 Ill. App. 3d 1098, 1102 (1989); *Brauer Machine & Supply Company v. Parkhill Truck Company*, 383 Ill. 569, 577-78 (1943) (an order quashing the service of summons "was a complete and final disposition of the case, based upon the conclusion the court had reached that appellee was not amenable to the service of process in the manner in which the summons was served. On that issue it was not only as effectual and conclusive but it was as final as any decision on the merits. The result [is] the same."). Here, the trial court dismissed the Justices as defendants because Moncelle failed to request leave to add them pursuant to section 2-616 of the Code (735 ILCS 5/2-616 (West 2010)), and it also denied Moncelle's belated request to add them as parties. Therefore, the portion of the order dismissing the Justices was a final one because it disposed of Moncelle's rights to bring an action against the Justices.

¶ 46 We also reject Moncelle's claim that the trial court lacked personal jurisdiction over the Justices. The notion that a pleading filed with the addition of new parties is a nullity if the plaintiff did not request leave to add the parties before filing has been largely abandoned. *Cedzidlo v. Marriott International, Inc.*, 404 Ill. App. 3d 578, 579-80 (2010) (defendants' procedural failure in filing a third-party complaint against a contractor without seeking the required leave of court did not deprive the trial court of jurisdiction and render the filing a nullity). The practice of treating the obtaining of leave as an element of jurisdiction is contrary

to the notion that circuit courts are courts of general jurisdiction. *Ganci v. Blauvelt*, 294 Ill.App.3d 508, 516 (1998). Therefore, Moncelle's failure to request leave to add the Justices as parties before filing the October 2011 complaint did not deprive the trial court of personal jurisdiction over them.

¶ 47 Here, the trial court's reference to the Justices being dismissed "without prejudice," as well as its inclusion of Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language into the order, is irrelevant. *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 5 (2009) (trial court's description of dismissal order is not determinative of its finality). Pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008) (appeals from final judgments of the circuit court in civil cases) this court has jurisdiction to review the propriety of the trial court's order granting the trucking defendants' motion to dismiss on counts I and II, as well as the portion of the order the Justices from this case. We now turn to the merits of Moncelle's case.

¶ 48 **B. Dismissal of the Justices**

¶ 49 Moncelle argues that the trial court erred in dismissing the Justices as defendants in this case because leave to amend to add the Justices as defendants was never required. In the alternative, she argues that the trial court abused its discretion in denying her request for leave to add the Justices as defendants.²

¶ 50 **1. Failure to Add the Justices Before Filing the October 2011 Complaint**

¶ 51 Moncelle first argues that leave to add the Justices was never required because the Justices were named as defendants in all three counts in the October 2011 complaint at the same

² Our review of the trial court orders dismissing the October 2011 complaint that Moncelle filed in the 2005 and 2008 cases does not necessitate, nor does it allow, a review of the Third District's Rule 23 order. Accordingly, we will engage in no such review here.

time as the trucking defendants. She also argues that leave to amend was never required since count II in the October 2011 complaint sought relief under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), which commences a new proceeding.

¶ 52 a. Counts I and III of the October 2011 complaint

¶ 53 In her argument, Moncelle only discusses count II as commencing a new proceeding and alleges that therefore section 2-616 of the Code (735 ILCS 5/2-616 (West 2010)) does not apply to it. With regard to the complaint as a whole, she says, “[t]he Judicial Defendants were named as defendants in each count, including count 2, of Plaintiff’s October 2011 Complaint. The Judicial Defendants were made parties in the October 2011 complaint at the same time as were CAP, AIR CAP and Gross, *i.e.*, the instant the October 2011 Complaint was filed on 10/31/11. Plaintiff is not attempting to ‘add’ them to the October 2011 Complaint, they have always been there.”

¶ 54 Section 2-616 of the Code provides that “[a]t any time *before final judgment* amendments may be made on just and reasonable terms.” 735 ILCS 5/2-616 (West 2010). An order of voluntary dismissal, because it disposes of all matters before the trial court, renders all orders which were not final in nature, but which were not previously appealable, immediately final and appealable. *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 503 (1997). A judgment or order is final if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy. *Id.* at 502.

¶ 55 Here, counts I and III were nullities because they were filed *after final judgment*, in violation of section 2-616 of the Code. 735 ILCS 5/2-616 (West 2010). Moncelle’s October 2011 complaint listed the 2005 case and the 2008 case in the caption. Both of those cases were closed. Even without determining whether the trial court’s grant of part of the corporate

defendants' motions for partial summary judgment constituted a final order, the 2005 case became final when Moncelle voluntarily dismissed it in November 2007 after the trial court had denied her motion for leave to amend her complaint to add requests for punitive damages. The record is clear that the trial court ruled that based upon the evidence in this case punitive damages could not be awarded on nine of the ten counts in the second amended complaint, and therefore it denied Moncelle's request to amend the complaint to seek such relief. That ruling clearly disposed of "some definite and separate part of the controversy" and was thus a final order. *Gray v. National Restoration Systems, Inc.*, 354 Ill. App. 3d 345, 364-65 (2005) (trial court's ruling denying plaintiff's motion to seek punitive damages was a definite and separate part of the case and the order was final and appealable when plaintiff voluntarily dismissed her case).

¶ 56 The 2008 case became final in September 2010 when the Illinois Supreme Court denied Moncelle's petition for leave to appeal from the Third District Appellate court's Rule 23 order affirming the dismissal of the 2008 case. "When the decree is affirmed, in all its parts, the controversy is at an end. In such a case, the circuit court has no power to allow amendment of the pleadings, or to alter or change the decree." *Perrin v. Pioneer National Title Insurance Company*, 108 Ill. App. 3d 181, 183 (1982) (quoting *Chickering v. Failes*, 29 Ill. 294, 302 (1862)). The fact that the Justices and the trucking defendants were all named at the same time in the October 2011 complaint does not change the fact that the Justices were named as defendants in two closed cases in which they were never parties before the final judgments.

¶ 57

b. Count II of the October 2011 Complaint

¶ 58 With regard to count II, Moncelle claims that the trial court erred when it held that her inclusion of the Justices in the October 2011 complaint was a violation of section 2-616 of the Code (735 ILCS 5/2-616 (West 2010)). Specifically, she argues that section 2-616 of the Code is not applicable here, because count II of the October 2011 complaint sought relief under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), and that type of petition begins an entirely new proceeding and is not a continuation of the original proceeding. Therefore, she claims, she is not attempting to add the Justices to the October 2011 complaint since “they have always been there.”

¶ 59 Section 2-1401 of the Code allows for relief from a final order or judgment *of the trial court* when that relief is sought more than 30 days after entry of the order or judgment. 735 ILCS 5/2-1401(a) (West 2010). The petition must be filed in the same proceeding in which the order or judgment was entered, but is not a continuation thereof. *Id.* To provide relief under section 2-1401, the petitioner must affirmatively allege specific facts to support the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence presenting this defense or claim to the trial court in the original action; and (3) due diligence in filing the petition. *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 30. A timely and sufficient petition under section 2-1401 would allow the trial court to correct *its own errors*, upon a proper showing by plaintiff. See 735 ILCS 5/2-1401(a), (b) (West 2010).

¶ 60 We cannot agree with Moncelle that since a section 2-1401 petition is a new proceeding, the Justices “have always been there” so that she did not need to request leave of court to add them as defendants. She cites no authority for the proposition that a plaintiff can file a section 2-1401 petition in a case and add completely new parties as defendants: (1) who were not named in the earlier proceeding; and (2) who had no connection to or interest in those proceedings.

Moncelle completely ignores the fact that a section 2-1401 petition is used to obtain relief from a final order or judgment *of the trial court*. 735 ILCS 5/2-1401(a) (West 2010). It is used to bring facts to the attention of that court which, if known at the time of judgment, would have precluded its entry. *Roepenack*, 2012 IL App (3d) 110198, ¶ 30. In this case, such relief would be impossible, since the allegations in count II of the complaint (as well as in counts I and III) pertain to the actions of the Justices, *who had no connection whatsoever with the trial court proceedings* in the 2005 or 2008 cases. As the trial court held, section 2-1401 does not provide a mechanism of “reverse appellate review” under which a lower court may review the decision of a higher court.

¶ 61 None of the elements needed to obtain relief pursuant to section 2-1401 of the Code are present in this case. Count II, as amended, asked the trial court to : (1) make factual declarations about the content of its own records; (2) declare that the Third District Appellate court had altered the record on appeal by fabricating an order; (3) declare that the appellate court’s judgment is based on a fabricated order, and therefore is void; (4) vacate all trial court orders that the appellate court had affirmed in her appeals of the 2005 and 2008 cases, then proceed to the merits of all of Moncelle’s claims against the trucking defendants. First, she has no meritorious defense or claim since, as we have held, none of the allegations in count II pertain in any way to the trial court proceedings in the 2005 or the 2008 cases. Second, she cannot prove due diligence in presenting these claims to the trial court in the original action, since they had not occurred yet at the time of the earlier proceedings. Third, and perhaps most egregious, Moncelle used *no diligence whatsoever* in filing count II of the October 2011 complaint. As the trial court noted, Moncelle was aware, upon issuance of the Third District’s Rule 23 order in April of 2010, that she did not believe the order was supported by the record on appeal. Nevertheless, she waited

another 18 months, until October 2011, to file the instant complaint. Further, even if due diligence were measured from the denial of the petition for leave to appeal, which was denied on September 29, 2010, Moncelle waited over a year to file this complaint.³ For all these reasons, we find that the Justices were properly dismissed from this case with regard to count II.

¶ 62 We note that within this argument, Moncelle requests that “this Court exercise as much original jurisdiction as necessary to allow for a complete determination of the allegations and request for relief contained in count 2.” However, other than a passing reference to the Illinois Constitution, Moncelle makes no legal argument or citation to relevant authority in support of this request. Accordingly, she has forfeited this argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 63 2. Denial of Leave to Amend the October 2011 Complaint

¶ 64 In the alternative, Moncelle argues that the trial court abused its discretion in denying her request for leave to add the Justices as defendants.

¶ 65 A trial court has broad discretion in ruling on a motion for leave to amend the pleadings and its decision in that regard will not be reversed on appeal absent an abuse of discretion. *Joseph Construction Company v. Board of Trustees of Governors State University*, 2012 IL App (3d) 110379, ¶ 55. To determine whether the trial court has abused its discretion, we must look at four factors: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment;

³ Had Moncelle filed a proper section 2-1401 petition alleging that an order of the *trial court* was void, she would not have needed to allege a meritorious defense or due diligence. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). However, since we have already decided that count II is not a valid 2-1401 petition such a rule does not apply.

(3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. *Loyola Academy v. S & S Roof Maintenance, Incorporated*, 146 Ill. 2d 263, 272 (1992).

¶ 66 Here, the trial court did not abuse its discretion in denying Moncelle's request for leave to add the Justices as defendants in this action because such an amendment would not cure the defective pleading.

¶ 67 It is well settled that Illinois is a fact-pleading state. *Time Savers, Incorporated v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007). Therefore, this court will disregard all legal and factual conclusions in the complaint that are not supported by specific factual allegations. *Simmons v. Champion*, 2013 IL App (3d) 120562, ¶ 21.

¶ 68 Here, the October 2011 complaint is a bizarre pleading in that it names the trucking defendants in two of the three counts, yet contains no allegations of wrongdoing on their parts. Instead, all of the allegations are directed at the Justices. Count II accuses the Justices of "corruption," while count I accuses them of tampering with the trial court record as part of that corruption. Count III requests money from the Justices if Moncelle does not receive the relief sought in counts I and II, and her basis for such relief is found in a criminal statute.

¶ 69 The October 2011 complaint completely fails to allege *specific facts* regarding any purported corruption or tampering with the record. Instead, it only relates to Moncelle's speculation that the Justices "must have" acted corruptly. She has repeatedly admitted that she has no idea what would have motivated the Justices to do so, and she has not alleged that there is any witness who has personal knowledge that the Justices acted corruptly in issuing their Rule 23 order. She also speculates that the Justices forged an order granting partial summary judgment to the corporate defendants on entire counts and on all allegations regarding violations of federal

trucking regulations and inserted it into the trial court record in the 2005 case. However, *she has failed to point to anywhere in the record where such a forged order can be found, or identified anyone who witnessed forgery, or even saw the forged document. In fact, Moncelle cannot cite to the record to support her legal conclusions since her counsel conceded at oral argument that he never even checked the record for a forgery or an alteration after the Third District issued its Rule 23 order!* These allegations fall far short of Illinois' fact-pleading standard. For the same reasons, we reject Moncelle's argument that since the Rule 23 order was based upon "fraud" it is a void judgment and can be attacked at any time; no such fact-specific allegations exist. Accordingly, the trial court did not abuse its discretion in denying Moncelle's leave to amend the pleading to add the Justices as defendants since such an amendment would not cure the defective pleadings when: (1) counts I and III were nullities since they were filed in closed cases; (2) count II is not a proper section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)); and (3) all the counts were completely devoid of facts to support the legal conclusion contained within them.

¶ 70 As an aside, we feel compelled to note that even if count III was not a nullity, it is also insufficient as a matter of law because in it Moncelle sought damages against the Justices for actions taken in their judicial capacities. It has long been held that a judge is absolutely immune from liability for acts committed while exercising the authority vested in her. *Grund v. Donegan*, 298 Ill. App. 3d 1034, 1039 (1998). Judges are not liable to civil actions even when such acts are alleged to have been done maliciously or corruptly. *Generes v. Foreman*, 277 Ill. App. 3d 353, 356 (1995). This doctrine is subject to only two exceptions: (1) actions not taken in the judge's judicial capacity; and (2) actions taken in the complete absence of all jurisdiction. *Grund*, 298 Ill. App. 3d at 1039. Neither exception applies in this case. Therefore, count III is barred on the grounds of judicial immunity.

¶ 71

C. Dismissal of the Trucking Defendants

¶ 72 Here, the trucking defendants moved to dismiss counts I and II of the October 2011 complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) and alleged that Moncelle's original October 2011 complaint was subject to dismissal because it was barred by a prior judgment or other affirmative matter defeating the claim.

¶ 73 For all the same reasons we have noted above, we hold that the trial court did not err in granting the trucking defendants' motion to dismiss.

¶ 74

III. CONCLUSION

¶ 75 In sum, we hold that the trial court properly dismissed the Justices from this case for Moncelle's failure to request leave to name them as defendants before filing the October 2011 complaint. Further, the trial court did not abuse its discretion in denying Moncelle's request to add the Justices as parties after filing the complaint because such an amendment would not cure the defective pleading. Finally, the trial court correctly granted the trucking defendants' motion to dismiss counts I and II of the October 2011 complaint.

¶ 76 Accordingly, the judgment of the circuit court of Peoria County is affirmed.

¶ 77 Affirmed.