



¶ 4

## I. BACKGROUND

¶ 5 In April 2013, Rives, acting *pro se*, filed a narrative document purporting to be a complaint against the College. Upon closer inspection, the complaint appears to allege (1) a College instructor, Roger Larkin, treated Rives unfairly; (2) Larkin caused Rives stress; and (3) the College acted negligently by failing to properly apply Rives' financial aid. Rives requested monetary relief in the amount of \$52.5 million for (1) 30 years of lost wages, (2) slander, and (3) stress caused by the College's alleged negligence.

¶ 6 In June 2013, the College filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), asserting Rives failed to state a cause of action upon which relief could be granted. Rives responded in a June 2013 letter to the trial court, asking the court to assist him by reviewing the documents he attached to his letter. In July 2013, the court granted the College's motion to dismiss but granted Rives leave to replead within 60 days.

¶ 7 In August 2013, Rives amended and refiled his complaint. The amended complaint alleged the College violated Rives' rights under the Civil Rights Act (42 U.S.C. § 1983 (2006)), the United States Constitution, and the Illinois Constitution. Rives first alleged the College violated his (1) eighth amendment protection against cruel and unusual punishment by not allowing him to resume his pole-climbing classes, (2) first amendment freedom of speech by refusing him access to the College president, and (3) first amendment freedom of speech by punishing him for complaining (count I). Rives then argued the College violated his fourteenth amendment rights by (1) infringing upon his liberty interest in his education and future employment (count II) and (2) denying him a hearing and, thus, due process (count III). Additionally, Rives asserted the College infringed upon the following rights, which he alleged

were guaranteed by the Illinois constitution: the right to (1) freedom of speech, (2) petition the government for redress of grievances, and (3) "a healthful environment," because the College inflicted "mental anguish" on him (count IV). Finally, Rives realleged the same constitutional violations against Larkin in his individual capacity (count V).

¶ 8 In support of his amended complaint, Rives set forth the following facts. In April 2013, Rives was enrolled in the College's pole-climbing class taught by Larkin. Rives registered for this class in preparation for becoming an electrical-distribution lineman. According to Rives, later that month, despite completing the course, Larkin refused to provide Rives with the necessary certification to continue his course of study. Rives stated he complained to the College's administrators, but he was denied access to the president. He also asserted the College failed to properly apply grant money to his financial aid.

¶ 9 Rives' prayer for relief requested the trial court order the College to (1) reenroll Rives in the pole-climbing course; (2) pay Rives' bills that accrued during the pendency of this case, as he was no longer attending school or receiving financial aid; (3) pay \$5 million for Rives' stress; (4) compensate Rives for his mental anguish; (5) pay reasonable attorney fees; and (6) pay punitive damages.

¶ 10 Later that month, the College filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), again asserting Rives' complaint should be dismissed for failure to state a cause of action. Following an October 2013 hearing, the trial court again granted the College's motion to dismiss, this time with prejudice.

¶ 11 This appeal followed.

¶ 12

## II. ANALYSIS

¶ 13 On appeal, Rives asserts the trial court erred in dismissing with prejudice his complaint pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)). Absent from the record on appeal is a transcript of the October 2013 hearing on the motion to dismiss. Even so, the record is sufficient to allow us to resolve the issues presented. See *In re Marriage of Hildebrand*, 166 Ill. App. 3d 795, 800, 520 N.E.2d 995, 997 (1988) (failure to provide a transcript does not prevent the reviewing court from addressing questions of law). Specifically, Rives asserts he stated a claim under section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2006)) because the College and Larkin violated his eighth-, first-, and fourteenth-amendment rights. He raises the same claims with respect to the Illinois constitutional equivalents of those federal rights. Before we reach the merits of Rives' appeal, we must determine the standards of review in analyzing the trial court's decision to dismiss a complaint with prejudice.

¶ 14

### A. Standards of Review

¶ 15 We first examine the standard of review on a section 2-615 motion to dismiss. The trial court's decision to grant a section 2-615 motion to dismiss is subject to *de novo* review. *Luise, Inc. v. Village of Skokie*, 335 Ill. App. 3d 672, 685, 781 N.E.2d 353, 364 (2002). The question is "whether the allegations in the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Id.* A motion to dismiss pursuant to section 2-615 challenges the legal sufficiency of the complaint by claiming defects exist on the face of the complaint. *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29, 801 N.E.2d 1103, 1109 (2003). In considering a section 2-615 motion to dismiss, "the court may not consider affidavits, products of discovery, documentary evidence not incorporated into the pleadings as exhibits, or other evidentiary materials." *Id.* This court will affirm the dismissal

based only on the pleadings where this court finds "no set of facts can be proven which would entitle the plaintiff to the relief sought." *Id.*

¶ 16 Second, we must determine the appropriate standard of review for a dismissal with prejudice. Section 2-612(a) of the Civil Code authorizes the court to permit amendments where the pleadings fail to sufficiently define the issues before the court. 735 ILCS 5/2-612(a) (West 2012). The section further provides, "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b) (West 2012). In determining whether it is appropriate to allow the plaintiff an opportunity to amend the complaint, the court must consider whether (1) the proposed amendment would cure the defective pleading; (2) the other parties would be prejudiced or surprised by the proposed amended complaint; (3) the plaintiff had previous opportunities to amend the complaint; and (4) the proposed amendment is timely. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 1215-16 (1992). We review the court's decision to dismiss a complaint with prejudice for an abuse of discretion. *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1046, 904 N.E.2d 1183, 1191 (2009).

¶ 17 With those standards of review in mind, we turn to the merits of Rives' appeal. In so doing, we note the aim of section 1983 of the Civil Rights Act "is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

¶ 18 B. Rives' Claims Regarding Cruel and Unusual  
Punishment and Excessive Fines

¶ 19 Rives asserts the trial court erred in finding he failed to state a cause of action with regard to his eighth-amendment claim and its Illinois constitutional equivalent. Rives'

claim asserted the College's refusal to enroll Rives in further pole-climbing and other courses constituted excessive fines as well as cruel and unusual punishment.

¶ 20 The eighth amendment provides, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. Article I, section 11, of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) has been interpreted as providing similar protections to those offered by the eighth amendment. *People v. Clemons*, 2012 IL 107821, ¶ 36, 968 N.E.2d 1046.

¶ 21 First, Rives asserts the College subjected him to cruel and unusual punishment. The cruel-and-unusual-punishment provisions of both the federal and Illinois constitutions apply "to the criminal process and direct actions initiated by government to inflict punishment." *Horvath v. White*, 358 Ill. App. 3d 844, 854, 832 N.E.2d 366, 375 (2005); see also *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989). Given the civil nature of his alleged claim, Rives cannot demonstrate his claim stems from a criminal process. Meeting the requirement of demonstrating direct action initiated by the government to inflict punishment also evades Rives. Rives' eighth-amendment argument centers on his inability to complete college courses or, as he terms it, "wrongful expulsion." He argues this constitutes cruel and unusual punishment. Rives has not shown how the action taken by the College constitutes punishment as contemplated by the eighth amendment. Because the cruel-and-unusual-punishment provision relates to the criminal process and (1) Rives' claim is civil in nature, and (2) the decisions made by the college have not been shown to be punishment, we find the trial court did not err by dismissing this claim for failure to state a cause of action.

¶ 22 Second, with respect to the "excessive fines" portion of the eighth amendment, Rives asserts he paid the fee for the class in full but was still denied access to the class.

However, *Browning-Ferris Industries* provides, "[g]iven that the [Eighth] Amendment is addressed to bail, fines, and punishments, our cases long have understood it to apply primarily, and perhaps exclusively, to criminal prosecutions and punishments." *Id.* at 262. In so finding, the Supreme Court emphasized that the word "fine" at the time of the drafting and ratification of the eighth amendment meant "a payment to a sovereign as punishment for some offense," which applied in criminal rather than civil actions. *Id.* at 265. Rives asserts that he had already paid the fee for the course and implies the College did not allow him to take the course, nor did it refund his money. However, this does not constitute a cause of action under the Civil Rights Act. Accordingly, the trial court did not err by dismissing this claim for failure to state a cause of action.

¶ 23           The next question is whether the trial court erred in dismissing Rives' eighth-amendment claim with prejudice. Given the civil nature of this case and the arguments presented, we cannot imagine a circumstance in which an amendment could cure the deficiencies in Rives' eighth-amendment claim under the test set forth by *Loyola Academy*. Therefore, we conclude the trial court did not abuse its discretion in dismissing Rives' eighth-amendment claim with prejudice.

¶ 24                                   C. Rives' Claims Regarding His Freedom of Speech and  
Right To Redress Grievances

¶ 25           Rives next asserts the trial court erred in dismissing with prejudice his claim that the College violated his freedom of speech and right to redress of grievances as protected by the federal and Illinois constitutions.

¶ 26           The first amendment provides, in relevant part, "Congress shall make no law \*\*\* abridging the freedom of speech \*\*\* or the right of the people \*\*\* to petition the Government

for a redress of grievances." U.S. Const., amend. I. These rights are also protected by the Illinois Constitution. See Ill. Const. 1970, art. I, §§ 4, 5.

¶ 27 First, Rives' complaint argued the College violated his freedom of speech when the College's president failed to meet with him. Rives did not allege the College took any direct actions to restrict or prohibit his speech or expression; instead, he argues the College president failed to grant him an audience for his complaints. Although both the federal and Illinois constitutions protect an individual's freedom of speech, they do not protect an individual's right to a particular audience at a particular time. See *Chicago Real Estate Board v. City of Chicago*, 36 Ill. 2d 530, 552, 224 N.E.2d 793, 807 (1967) ("Freedom of speech does not comprehend the right to speak on any subject at any time."). Regardless, in his amended complaint, Rives stated he was able to leave a written statement for the College's president, thus giving Rives an opportunity to convey his concerns to the College's president and, therefore, exercise his freedom of speech. Thus, this claim has no merit and the trial court properly dismissed it.

¶ 28 Second, Rives asserts the College denied his enrollment and access to classes because he exercised his freedom of speech by complaining about his "wrongful expulsion." However, nothing in Rives' complaint supports his assertion that he was expelled from the College or denied access to classes because he complained about his professor. In fact, Rives' amended complaint stated the College's officials told him he would be permitted to retake the class in the fall. Moreover, Rives' allegation that the College "wrongfully expelled" him accrued *before* he had the opportunity to speak with the Dean of Business and the registrar, so he cannot support the assertion that his speech caused the "wrongful expulsion." We therefore conclude the trial court correctly dismissed Rives' first-amendment claims under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)) for failure to state a cause of action.

¶ 29 We then look to the *Loyola Academy* test to determine whether the trial court abused its discretion by dismissing Rives' first-amendment claims with prejudice. Rives asserts the court should have given him a second opportunity to amend his complaint. However, nothing in the record indicates an additional amendment would cure the defective first-amendment claim because (1) Rives had the opportunity to provide a written account of events to the College president, thus exercising his freedom of speech, and (2) according to the complaint, Rives' "wrongful expulsion" arose *before* he had an opportunity to complain to the College's officials, therefore negating his claim that he was expelled for exercising his freedom of speech. We therefore conclude the court did not abuse its discretion in dismissing Rives' amended complaint for failure to state a first-amendment claim.

¶ 30 D. Rives' Claims Regarding His Liberty Interests  
and Deprivation of Due Process

¶ 31 Rives next contends the trial court erred in dismissing his fourteenth-amendment claim pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)). Specifically, Rives argues the College (1) infringed upon his liberty interests under the federal and Illinois constitutions by delaying his entry into the workforce, and (2) failed to provide him with a hearing in violation of his right to due process under the federal and Illinois constitutions.

¶ 32 The federal and Illinois constitutions require due process where an individual is deprived of life, liberty, or property. U.S. Const. amend. XIV; Ill. Const. 1970, art. I, § 2. Rives argues only that he is entitled to due process based on a loss of his liberty interests. Accordingly, we restrict our analysis to whether Rives' complaint demonstrated a liberty interest in his delayed entry into future, unspecified employment.

¶ 33 "[T]he concept of liberty protected by the due process clause of the fourteenth amendment includes occupational liberty in the sense of the freedom of an individual to engage

in any of the common occupations of life." *Evers v. Edward Hospital Ass'n*, 247 Ill. App. 3d 717, 733, 617 N.E.2d 1211, 1224 (1993) (citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972)). "However, it is the liberty to pursue a calling or occupation which is secured by the fourteenth amendment, not the right to a specific job or situation." *Id.*

¶ 34 Here, Rives does not assert the College precluded him from pursuing employment or foreclosed him from completing the certification necessary to pursue a particular profession. Instead, he asserts the College's actions delayed his entry into the workforce by a semester as he reenrolled in pole-climbing courses. We can find no authority to support Rives' contention that the College violated his liberty interest by delaying his entry into the workforce based upon a single failed course. Because Rives failed to demonstrate a liberty interest in this case, he cannot establish a deprivation of his right to due process. Thus, we conclude the trial court properly dismissed Rives' amended complaint pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)) for failure to state a cause of action.

¶ 35 Moreover, based on our analysis and in applying the *Loyola Academy* factors, we conclude that allowing another amendment to the complaint would not have cured the defect as Rives is unable to demonstrate a set of facts to support his assertion that he has a liberty interest in his delayed entry into future, unspecified employment. Therefore, the trial court did not abuse its discretion in dismissing Rives' due-process claim with prejudice.

¶ 36 E. Rives' Claims Against Larkin

¶ 37 Rives contends Larkin should be held individually liable for violating Rives' constitutional rights. His amended complaint incorporates all of the counts against the College in support of his assertion. Because we have concluded Rives failed to demonstrate a violation

of his constitutional rights, we hold the trial court did not err in dismissing with prejudice the amended complaint as to Larkin.

¶ 38 F. Rives' Remaining Claims on Appeal

¶ 39 Rives also raises other issues on appeal that were not raised in the trial court. Because Rives did not preserve these issues in the trial court, we will not consider them on appeal. See *McKinley Foundation at the University of Illinois v. Illinois Department of Labor*, 404 Ill. App. 3d 1115, 1120, 936 N.E.2d 708, 713 (2010) (issues raised for the first time on appeal are deemed forfeited).

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we affirm the trial court's judgment.

¶ 42 Affirmed.