SECOND DIVISION
February 17, 2015

No. 1-13-3541

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GRETA BERECZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 4317
	)	
WALMART STORES,	)	Honorable
	)	Randye A. Kogan,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the judgment of the circuit court granting defendant's motion to dismiss plaintiff's complaint where plaintiff failed to meet her burden of proving the settlement agreement awarding her $16,000 for injuries she sustained in a fall should be set aside.

¶ 2 Plaintiff Greta Berecz appeals *pro se* from an order of the trial court granting the motion to dismiss her complaint by defendant Wal-Mart Stores, Inc. (Walmart) in accordance with a written settlement agreement awarding plaintiff $16,000 for injuries she sustained in a slip and

fall at a Walmart store. On appeal, plaintiff appears to contend that the trial court erred in upholding the settlement agreement. We affirm.

¶ 3 This case arises from injuries plaintiff sustained on January 27, 2012, when she slipped and fell on broken veneer flooring at a Walmart store located at 4650 West North Avenue in Chicago. On March 13, 2012, plaintiff entered into an attorney-client agreement with the Shea Law Group to prosecute a claim for injuries she sustained in the fall. Plaintiff's attorney engaged in settlement discussions on her behalf with Arkansas Claims, Management, Inc. (ACM), a claims representative for Walmart, and obtained ACM's offer to settle her claim for $16,000. The parties agreed, and the settlement was memorialized in a "Full and Final Confidential Settlement, Release of all Claims and Indemnity Agreement" (Settlement Agreement), which plaintiff executed on October 17, 2012. The settlement agreement specifically stated that in consideration for the total payment of $16,000 to plaintiff by Walmart, plaintiff agreed to "refrain from filing any law suit against the Released Parties."

¶ 4 On April 26, 2013, plaintiff filed a *pro se* complaint, naming Walmart and ACM as defendants, and alleging that at 3 p.m. on January 27, 2012, she was in a Walmart store when she tripped on an uneven floor board, lost her balance, and fell onto her shopping cart. As a result of the fall, she suffered a "cracked rib on [her] right side and a cracked bone in the spine," which took six months to heal and left her with a permanent limp, soreness, and stiffness. Walmart and ACM knew or should have known that the floor was dangerous and failed to post signs or otherwise warn customers of the defective floor. As a result of Walmart and ACM's negligence, plaintiff requested a judgment against them in the sum of $150,000 plus costs. Plaintiff subsequently filed a "Verified Complaint" again asserting negligence against Walmart relative to the January 27 incident.

¶ 5 Counsel appeared for Walmart on May 15, 2013, noting that it was incorrectly sued as Walmart and ACM. In a subsequent motion, plaintiff conceded that ACM was improperly named as a party to the lawsuit.

¶ 6 On June 6, 2013, plaintiff filed a "motion to invalidate settlement agreement," where she acknowledged she had retained the Shea Law Group to represent her, and attended a meeting to discuss a settlement offer from ACM for $16,000 on October 17, 2012. In the motion, plaintiff contended that she was initially told by her attorney that the settlement offer was for $19,000, but that it was reduced to $16,000. Plaintiff's attorney pressured her into signing the settlement release form quickly, which she did, even though she was confused and did not read the release because she did not understand English. After executing the release, plaintiff observed that the settlement sum had no "reasonable relationship" to her injuries or medical bills, which her attorney failed to submit in full. Plaintiff told her attorney to invalidate the release, but he did not follow her instructions. Plaintiff sent her attorney a letter the day after the settlement agreement was executed discharging the Shea Law Group.

¶ 7 On July 8, 2013, Walmart filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)), alleging, in pertinent part, that plaintiff was previously represented by the Shea Law Group relative to the incident alleged in her complaint and the parties reached a settlement agreement for $16,000. Pursuant to the settlement agreement, which is attached to the motion, Walmart requested that the matter be dismissed.

¶ 8 On September 27, 2013, the trial court entered an order denying plaintiff's motion for release of agreement and granting defendant's motion to dismiss with prejudice. Plaintiff was

also ordered to accept the settlement payment. In so finding, the court indicated that due notice was given and the court and parties were duly advised in the premises.

¶ 9 On October 7, 2013, plaintiff filed a "motion on decrease of the settlement offer," in which she requested "the court to take another look at her complaint." The motion was essentially a summary of the facts alleged in plaintiff's complaint, and plaintiff stated that she "would like to have some pain and suffering added to her damages." The trial court treated plaintiff's motion as a motion for reconsideration, and denied it on November 5, 2013. Plaintiff filed a timely notice of appeal from that order on November 8, 2013.

¶ 10 On appeal, plaintiff appears to contend in her *pro se* brief that the court erred in upholding the settlement agreement. In particular, she seems to argue for the first time that the settlement agreement should be set aside where it was entered into by mistake, and while she lacked the mental capacity to understand the agreement.

¶ 11 We initially note that plaintiff's brief fails to comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013), particularly where it fails to cite to the record or legal authority, except for a list of cases provided in the table of authorities. Furthermore, plaintiff attached to her brief an appendix containing documents not included in the record. For instance, plaintiff attached a correspondence from Rush University internists to her, a copy of the October 18 settlement draft issued to her and her attorneys for the sum of $16,000, and what appears to be a medical bill from Rush University Medical Center prepared on October 29, 2012. We cannot rely on these documents because they were not included in the record on appeal. See *Jones v. Police Board of the City of Chicago*, 297 Ill. App. 3d 922, 930 (1998) (attachments to briefs not otherwise before the reviewing court cannot be used to supplement the record). A reviewing court has the inherent authority to dismiss an appeal for noncompliance with the rules regarding

briefs, but we will not do so here as striking a brief or dismissing an appeal for failure to comply with supreme court rules is a harsh sanction. *People v. Webb*, 267 Ill. App. 3d 954, 956-57 (1994).

¶ 12 In addition, we find it significant that plaintiff did not raise the defenses of mistake or lack of mental capacity in the trial court. Notably, the grounds she raised in the trial court for not enforcing the settlement agreement were that she was confused, pressured into it, did not believe her attorney submitted all of her medical bills, and wanted pain and suffering added to her damages. Because plaintiff did not raise mistake or lack of mental capacity as reasons to invalidate the settlement agreement in the trial court, they are waived on appeal. See *Jackson v. Hooker*, 397 Ill. App. 3d 614, 617 (2010) (finding that questions not raised in the trial court are waived and cannot be raised for the time on appeal).

¶ 13 Waiver aside, we turn to the merits of plaintiff's contention that the trial court erred in upholding the settlement agreement and granting Walmart's section 2-619 motion to dismiss.

¶ 14 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint and raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Neppl v. Murphy*, 316 Ill. App. 3d 581, 584 (2000). Section 2-619(a)(6), in particular, allows dismissal when "the claim set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy." 735 ILCS 5/2-619(a)(6) (West 2012).

¶ 15 Walmart acknowledges that the standard of review on a section 2-619 motion is typically *de novo* (*Neppl*, 316 Ill. App. 3d at 583), but maintains that an abuse of discretion standard should apply here because plaintiff appears to argue unfairness, lack of comprehension, and mistake as grounds for avoiding the settlement agreement. See *Reede v. Treat*, 62 Ill. App. 2d

120, 131 (1965) (a trial court's determination of mutual mistake will not be disturbed unless it is against the manifest weight of the evidence). In addition, Walmart notes that because the avoidance of a release is an equitable form of relief, a decision whether or not to avoid a release is evaluated under an abuse of discretion standard. See *Ruggles v. Selby,* 25 Ill. App. 2d 1, 12 (1960) (it is a question "for the chancellor in equity who is vested with that degree of discretion and flexibility necessary to the doing of justice under the circumstances of each individual case."). Under either a *de novo* or abuse of discretion standard of review, we affirm the judgment of the trial court for the reasons set forth below.

¶ 16 "When determining the validity of a release, the controlling issue is whether the circumstances surrounding the settlement clearly indicate that the release was executed under a mutual mistake of fact as to plaintiff's injuries so that the trial court, in the exercise of its equitable powers, should set aside the release in order to prevent an unconscionable result." *DeMarie v. Baltimore & O.C.T.R. Co.*, 79 Ill. App. 3d 50, 53 (1979). The first part of the test, *i.e.*, determining whether the parties were acting under mutual mistake of fact regarding the extent of the plaintiff's injury, is a question for the trier of fact, as are other circumstances surrounding the release such as the mental capacity of the releasor. *Id*. During the second part of the test, the trial court reviews as a matter of law whether the release should be set aside in order prevent an unconscionable result. *Id*. at 53-54. The party urging the invalidity of the release bears the burden of proving that the release should be set aside. *Gray v. National Restoration Systems, Inc.*, 354 Ill. App. 3d 345, 370 (2004).

¶ 17 Here, to the extent plaintiff alleges that the settlement agreement should be invalidated based upon mistake, she fails to show how said agreement was based on mutual mistake. Instead, she only presents argument regarding *her* errors in entering into the agreement, such as signing

the agreement without understanding it and underestimating the extent of her injuries. See *Barth v. Reagan*, 146 Ill. App. 3d 1058, 1067-68 (1986) (a unilateral mistake is generally insufficient to invalidate an agreement). Neither the pleadings nor plaintiff's motions in the trial court set forth any facts from which it may be inferred that there was a mutual mistake of fact regarding the nature and extent of her injuries.

¶ 18 Furthermore, although plaintiff maintains in her brief on appeal that she lacked the mental capacity to enter into the settlement agreement and states that she was diagnosed with a mental illness and hospitalized as a result, she provides no dates or context relative to the settlement agreement. Plaintiff specifically asserts "[a]t one time she was in an acute care psychiatric hospital for a year and a half, at which time she was [*sic*] a guardian, eventually appointed to manage her estate." She claims, without providing any time reference, she was "unable to enter into any contract *** because she does not understand the meaning of the words spoken to her." As Walmart argues in its brief on appeal, however, plaintiff's statements are insufficient to allow the court to draw any conclusions regarding her mental state on the date the settlement agreement was executed. Moreover, as indicated above, the record is devoid of any information regarding plaintiff's mental capacity as this was not an issue in the trial court.

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

¶ 20 Affirmed.