

No. 1-14-1792

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 JUDICIAL DISTRICT

MARK TORRES,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 13 M1 11792
)	
VILLAGE OF SAUK VILLAGE, a Municipal Corporation;)	Honorable
DAVID HANKS, Acting Mayor; ENOCH BENSON IV,)	Cynthia Y. Cobbs,
Trustee; DERRICK BURGESS, Trustee; EDWARD)	Judge Presiding.
MYERS, Trustee; ROSIE WILLIAMS, Trustee;)	
TIMOTHY HOLEVIS, individually and in his official)	
capacity of Deputy Chief of Police, Village of Sauk)	
Village,)	
)	
Defendants-Appellees.)	

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed an employee's complaint seeking payment of his final compensation where there is no statutory right to the payment of accumulated sick days and no support in the record to find that a collective bargaining agreement did not govern the employee's compensation claim.

¶ 2 Plaintiff-appellant Mark Torres filed a complaint alleging defendants-appellees the Village of Sauk Village and other city representatives (collectively "the Village") violated the Illinois Wage Payment and Collection Act, (820 ILCS 115/1, *et seq.* (West 2012)) by failing to

pay 80 hours of his final compensation relating to his use of accumulated sick days in lieu of reporting to work. The trial court granted the Village's motion to dismiss pursuant to section 2-619(a)(1) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2012)) on the ground that the court lacked subject matter jurisdiction over the claim. Torres appeals asserting the trial court had subject matter jurisdiction because the Wage Payment Act governs his compensation claim and not the terms of a collective bargaining agreement (CBA). Based on the record before us, we affirm.

¶ 3

BACKGROUND

¶ 4

The Village employed Torres as a police officer until his resignation effective October 15, 2012. The Village and Torres—through the Fraternal Order of Police—were parties to a CBA. Prior to his resignation, Torres accumulated 10 unused sick days—equivalent to 80 hours of wages. According to Torres, the Village's former police chief authorized his use of the 10 sick days in lieu of reporting to work for his last 10 days of employment. But Torres's final paycheck did not include 80 hours of wages reflecting his use of the accumulated 10 sick days. Torres does not claim that he was actually ill during his last 10 days of employment.

¶ 5

Because the Village failed to pay Torres for the final 80 hours of his employment, he filed a verified complaint in the trial court asserting the Village violated the Wage Payment Act, which requires employers to pay an employee's final compensation at the time of separation, but in no case later than the employee's next payday. 820 ILCS 115/5 (West 2012). The Village filed a section 2-619(a)(1) motion to dismiss asserting the trial court lacked subject matter jurisdiction because the Illinois Public Labor Relations Act confers exclusive jurisdiction on the Local Panel of the Illinois State Labor Relations Board over matters involving a CBA and between employee organizations and local governments. 5 ILCS 315/5(b) (West 2012). Torres

responded that the Wage Payment Act applied to his breach of contract claim because he entered into an agreement with his former supervisor authorizing Torres to use 80 hours of his accumulated sick time in lieu of reporting for work. The trial court dismissed Torres's complaint with prejudice based on the lack of subject matter jurisdiction. Torres timely appealed.

¶ 6 Inexplicably, the Village has failed to file a brief in this court. On the court's own motion, we entered an order taking the case on the record and Torres's brief only. Where the record is not complex and the claimed errors can be decided without the aid of an appellee's brief, a reviewing court can decide the merits of an appeal on the appellant's brief alone. *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 357, 388 (2004).

¶ 7 ANALYSIS

¶ 8 Torres's sole contention is that the trial court erred in dismissing his complaint based on the lack of subject matter jurisdiction. Torres claims the Wage Payment Act and not the CBA governs his claim for final compensation.

¶ 9 The Village filed its motion to dismiss pursuant to section 2-619(a)(1) on the ground that the trial court lacked subject matter jurisdiction. A section 2-619 motion "admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim." *Relf v. Shatayeva*, 2013 IL 114925, ¶ 20; *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). We review the trial court's ruling on a section 2-619 motion to dismiss *de novo*. *Id.*

¶ 10 Torres asserts that the CBA's provisions dictate the accrual of sick days, but are silent regarding the payout or use of accumulated sick days. Given the nature of Torres' claim, the issue of whether it could proceed in the trial court requires an examination of the terms of the CBA between the Village and Fraternal Order of Police. Importantly, the record filed on appeal

does not include the CBA for our review. Torres referenced the CBA in his verified complaint as "Exhibit A." Accordingly, on November 24, 2105, on the court's own motion, we ordered Torres to file the CBA ("Exhibit A") as a certified supplemental record within 14 days from the date of our order. Torres has failed to do so.

¶ 11 Because we do not have the CBA, we do not know: (1) whether Torres's claim involves an interpretation of the CBA's provisions, which arguably would fall under the Local Panel's exclusive jurisdiction or (2) whether the CBA specifically addresses Torres's claim for payment of accumulated sick leave on termination (either by deeming it forfeited or requiring a payout), which would require Torres to exhaust the remedies provided in the CBA. See *The Board of Education of the City of Chicago v. The Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 22 (stating that the CBA must be examined to determine whether a dispute between an employee and employer falls within the CBA's terms). What we do know is that the trial court had the CBA before it and given Torres's failure to provide us with the CBA, we will indulge every assumption in favor of affirmance. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (absent an adequate record, a reviewing court must presume the trial court had a sufficient factual basis for its holding and that its order conforms with the law); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) (appellant must present a sufficiently complete record of the proceedings at trial to support a claim of error and any doubts arising from the incompleteness of the record will be resolved against the appellant). Notably, other cases addressing police officers' compensation claims for accumulated sick leave have found that the respective CBA's involved governed the issue and required arbitration of the grievance. See *City of Northlake v. Illinois Fraternal Order of Police Labor Council, Lodge 18*, 333 Ill. App. 3d 329, 331 (2002) (the CBA provided that "accrued, unused sick leave will be forfeited" unless the employee had 90 or more days of

accumulated sick leave and required arbitration of grievances relating to the payment of accrued sick leave); *Fraternal Order of Police Lodge No. 108 v. Village of Washington Park*, 123 Ill. App. 3d 26, 29 (1984) (the CBA governed the police officer's claim for payment of sick leave). Thus, because some CBA's do, in fact, contain provisions regarding the use of accumulated sick leave on termination, and Torres has not provided us with the CBA at issue here, we cannot accept Torres's representation that the CBA does not govern his claim. For these reasons, we conclude that the trial court did not err in dismissing Torres's complaint.

¶ 12 We are also not persuaded by Torres's claim that the trial court erred in dismissing his complaint because he raised a claim entirely independent from the CBA's provisions and based on the statutory right to payment under the Wage Payment Act. Torres's reliance on *Daniels v. Board of Education of City of Chicago*, 277 Ill. App. 3d 968 (1996), to support his position is misplaced. *Daniels* determined that the employees' compensation claim relating to accumulated vacation days did not arise entirely under the applicable CBA because even though the agreement addressed the accrual of vacation days, no provision addressed compensation for the accrued vacation days on separation from employment. *Id.* at 973-94. The court held that the Wage Payment Act directly addressed the plaintiffs' issue and required compensation for accumulated vacation days. *Id.* at 973. Thus, the court reinstated the plaintiffs' complaint, finding the trial court had subject matter jurisdiction based on an independent, statutory right to payment under the Wage Payment Act. *Id.*

¶ 13 *Daniels* is inapposite because this case involves compensation for accumulated sick days, not accumulated vacation days. This difference is critical because the Wage Payment Act

requires an employer to pay accumulated vacation days,¹ but it includes no comparable provision requiring the payment of accumulated sick leave. *Grant v. Board of Education of City of Chicago*, 282 Ill. App. 3d 1011, 1022 (1996).

¶ 14 Moreover, we cannot presume that Torres's asserted agreement with the former police chief regarding his use of accumulated sick days provides him with an independent statutory right to payment under the Wage Payment Act because we would likewise be required to presume that the CBA did not govern his compensation claim. See *id.* at 369-70. As stated, we must presume that the CBA governs Torres's claim based on the record before us. Consequently, we find that the trial court did not err in dismissing Torres's complaint on the basis that his claim was governed by the CBA and compliance with its terms was a pre-condition to his ability to sue.

¶ 15 CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's order dismissing Torres's complaint.

¶ 17 Affirmed.

¹ The Wage Payment Act defines "final compensation" as: "wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties." 820 ILCS 115/2 (West 2012).