THIRD DIVISION
March 30, 2016

No. 1-15-0786

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VALERIE MITCHELL, Plaintiff-Appellant, v. LINDSAY A. PARKHURST, Esq., and THE LAW OFFICES OF LINDSAY A. PARKHURST, P.C., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 12 L 6069 The Honorable John Callahan, Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

HELD: Trial court's dismissal of plaintiff's third amended complaint was proper where plaintiff's complaint failed to sufficiently plead the proximate cause element required sustain a cause of action for legal malpractice.

¶ 1 Plaintiff-appellant Valerie Mitchell (plaintiff) filed a cause of action against defendants-appellees Lindsay A. Parkhurst, Esq., and the Law Offices of Lindsay A. Parkhurst, P.C. (defendants) sounding in legal malpractice. Following several amendments to her suit and motions to dismiss filed by defendants, the trial court dismissed plaintiff's third amended complaint for the failure to set forth sufficient facts to state a cause of action. Plaintiff appeals, contending that the trial court erred in dismissing her cause. She asserts that her third amended complaint stated sufficient facts because she needed to only plead facts and not evidence, she was not required to plead facts not in her possession or control, and defendants should be "equitably estopped" from asserting as a defense any factual deficiencies caused by their own negligence. She asks that we reverse the trial court's dismissal of her cause and remand it for discovery and trial. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff was employed by Coca-Cola Enterprises, Inc. (Coca-Cola) from June 1995 to February 2003. In May 2002, she hired defendants to represent her and pursue an employment discrimination and harassment suit she wanted to bring against Coca-Cola.[1] In March 2003, defendants filed a charge of discrimination on plaintiff's behalf with the Equal Employment Opportunity Commission (EEOC), alleging sexual discrimination based upon unequal pay in violation of the Equal Pay Act (Act). After reviewing her claim, the EEOC issued a right to sue letter, informing plaintiff it would not pursue her cause but allowing her to pursue private

[1]Plaintiff was joined in her suit by another female Coca-Cola employee, Terry Atkins. Atkins, however, is not a party to this appeal.

litigation.

¶ 4 In December 2006, defendants consulted attorneys Michael V. Marsh and Marc S. Mayer, along with their firm of Marc S. Mayer & Associates (collectively, Mayer)[2] with respect to bringing a federal suit against Coca-Cola. Mayer agreed to do so and, in February 2007, filed an appearance and complaint in federal court on plaintiff's behalf. This federal suit set forth plaintiff's claims against Coca-Cola for a violation of the Act; sexual discrimination, harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964 (Title VII); and a state law claim for intentional infliction of emotional distress. In November 2007, the federal court dismissed plaintiff's suit. In its Memorandum Opinion and Order, the court discussed each of plaintiff's counts. First, with respect to her claim under the Act, the court dismissed it with prejudice, finding it was barred by the statute of limitations since a potential claim for a violation, even were it to have occurred on her last day of employment in February 2003, must have been filed in February 2005 (or February 2006 if asserting a willful violation) and, thus, her February 2007 filing was too late. Next, with respect to her Title VII claims, the court found that her count for unequal pay under this section was not sufficient because it failed to allege any "specific discrete act" to support her allegations; however, it dismissed this count without prejudice, providing plaintiff the opportunity to file an amended complaint. The court then dismissed her remaining Title VII claims of refusal to transfer, retaliation and hostile work environment with prejudice, declaring that they fell outside plaintiff's EEOC charge, as she never raised them before that body. Finally, with respect to plaintiff's claim for intentional infliction of

[2]Mayer is not a party to the instant appeal.

emotional distress, the court noted that it, too, was barred by the statute of limitations since it was required to have been filed by February 2005, and it dismissed this count with prejudice. Accordingly, having dismissed all but one of her counts with prejudice, the federal court gave plaintiff until December 2007 to file an amended complaint as to her Title VII count for unequal pay. Plaintiff, however, did not do so.

¶ 5 In November 2009, plaintiff filed a complaint for legal malpractice against defendants.[3] However, she voluntarily dismissed this in June 2011. Then, in May 2012, plaintiff refiled her lawsuit. In her complaint, plaintiff identified the parties and provided a procedural history of her cause and the details of the federal court's ruling. She alleged defendants were negligent in pursuing her lawsuit against Coca-Cola by, in part, failing to timely file her claims, include all her claims, prosecute her claims, and supervise Mayer. Plaintiff insisted that her underlying cause of action was "meritorious" and concluded that, as a direct and proximate result of defendants' negligence, she "lost" that cause and "suffered damages." Defendants filed their appearance in August 2012, as well as a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), contending that plaintiff's complaint was factually deficient as it contained only conclusions and that certain of

[3]Plaintiff suit for legal malpractice also included Mayer, and she retained Mayer as a defendant in her subsequent refiled complaint, and in her first amended and second amended complaints. However, when she filed her third amended complaint (her last one in this cause and the basis for this appeal), plaintiff did not name Mayer and effectively dismissed that firm and its attorneys as defendants. At this point, defendants sought and were granted leave to file a counterclaim for contribution against Mayer. However, and as we have pointed out, Mayer is not a party to this appeal, nor is that counterclaim at issue herein. Any reference to Mayer within our decision, then, is for the purpose of context only.

her claims were barred by statute. The trial court granted defendants' motion and dismissed plaintiff's complaint, but allowed her leave to replead.

¶ 6 In March 2013, plaintiff filed a first amended complaint. In this, plaintiff included a section entitled "The Underlying Incident," wherein she provided for the first time some information regarding her suit against Coca-Cola. She averred that she was "treated less favorably than similarly situated male employees" in various instances. She alleged that Coca-Cola refused to provide her equal pay as "similarly situated male employees;" did not give her timely job performance reviews, favorable reviews or pay raises as compared to "similarly situated male employees" whom she "out-performed;" rejected her for other positions despite her qualifications and filled these positions with "less qualified male employee[s];" transferred her to a less desirable position "even though similarly situated ma[l]e employees were better suited;" and assigned her to duties and responsibilities that "no other similarly situated male employee was required to perform." She further alleged that she was sexually discriminated and retaliated against, which created a hostile work environment and eventually "forced [her] to take a medical leave." She concluded that, as a result of Coca-Cola's actions, she suffered damages including "pain and suffering, medical bills, stress, embarrassment, humiliation, lost wages and attorney's fees." The remainder of her first amended complaint cited her retention of and representation by defendants as well as the federal court's determination, and reasserted the same allegations of negligence against defendants as her original (refiled) complaint, with the inclusion of a new assertion, namely, that defendants "misled" her as to the consequences of the federal court's decision and did not inform her that she could replead the singular count that was dismissed

without prejudice. Again, plaintiff insisted that, as a direct and proximate cause of defendants' acts, she "lost" her underlying cause against Coca-Cola and suffered damages.

¶ 7 Defendants again filed a section 2-615 motion to dismiss, asserting a failure to plead factually sufficient allegations. The trial court granted defendants' motion. In its colloquy, the court stated that plaintiff's complaint "lacks specific detail," particularly in her failure to attach numerous documents the court needed in order to make a ruling, including, among others, the EEOC charge of discrimination, the federal court's ruling, and her contracts with defendants and Mayer. The court noted that, "in a legal malpractice [cause], the plaintiff has to prove a case within a case," and it could not "figure out what is what" without more information. Accordingly, as it did not "have enough details to say this is a concise [c]omplaint," it dismissed plaintiff's first amended complaint, but allowed her to replead with directions to "be specific in regards to the allegations."

¶ 8 In November 2013, plaintiff filed a second amended complaint. This complaint was substantively the same as plaintiff's first amended complaint, alleging the same assertions against Coca-Cola in the underlying matter and against defendants in the legal malpractice cause. The only differences were some formatting changes, as well as plaintiff's attachment of several exhibits, including her contracts for legal services with defendants and Mayer, the EEOC charge of discrimination and right to sue letter, and the federal court's decision in the underlying cause *i.e.*, the documents which the trial court in its prior dismissal of her complaint had mentioned were missing. She also included as an exhibit a list of names of alleged "similarly situated male employees" from Coca-Cola. Defendants again filed a motion to dismiss pursuant

to section 2-615, and the trial court granted their motion, with leave to replead.

¶ 9 In May 2014, plaintiff filed a third amended complaint against defendants. This complaint was substantively the same as plaintiff's second amended complaint. The only difference was her inclusion of a paragraph in the body of this complaint wherein she listed several names of the allegedly "similarly situated male employees at Coca-Cola who were paid more *** for performing equal work in jobs that required equal skill, effort, and responsibility performed under similar working conditions." Defendants again filed a motion to dismiss, and the trial court granted their motion. In its colloquy, the court noted that "this most recent complaint" had been changed only to include in its actual body the names of the certain individuals plaintiff had appended as an exhibit to the last complaint and concluded that this was not "a substantive change to try and get [plaintiff] over the hurdle" of section 2-615's pleading requirements. The court asked plaintiff what she had done "since the last complaint was dismissed to try and secure other information that might provide more detail." Plaintiff responded that, other than reviewing her notes and recollection and adding the names of the male employees to her complaint, she had "no opportunity to obtain" any more information without discovery. The court replied that it believed there were "things that [she] could or should be doing to try" to obtain more facts. Ultimately, the court declared it was "pretty clear" that plaintiff's third amended complaint "is not sufficient" because it was "lacking in sufficient detail." While it acknowledged that plaintiff did not have to prove her "whole case" at this point, it noted that "a lot of [her complaint] is conclusory," and what she presented as of "right now doesn't cut it, quite frankly." The court, therefore, dismissed count II (intentional infliction of

emotional distress) of the complaint with prejudice, but dismissed counts I (Equal Pay Act) and III (sexual discrimination, hostile work environment and failure to promote under Title VII) without prejudice, allowing plaintiff to replead.

¶ 10 However, instead of filing another amended complaint against defendants, plaintiff filed a motion to reconsider the trial court's dismissal of her third amended complaint. The trial court denied plaintiff's motion, declaring that "[e]nough is enough." It concluded that there had "been ample opportunity for re-pleading and amending," but there was before it "still a complaint that is not sufficient." Accordingly, the court dismissed plaintiff's cause against defendants "in its entirety with prejudice."

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff's main argument is that her third amended complaint presented sufficient facts to state a cause of action for legal malpractice against defendants. She reminds us that she needed to plead only facts and not evidence, insists that she did not have to plead facts that are not in her possession or control, and proposes that defendants should be equitably estopped from asserting as a defense any factual deficiencies in the pleadings as they themselves were negligent in pursuing her underlying cause against Coca-Cola. Based upon our review of the record before us, we disagree.

¶ 13 A motion to dismiss pursuant to section 2-615 of the Code attacks the legal sufficiency of the complaint by alleging defects on its face. See *In re Estate of Powell*, 2014 IL 115997, ¶ 12; *Bunting v. Progressive Corp.*, 348 Ill. App. 3d 575, 580 (2004). Upon review of the grant of a section 2-615 motion, we examine the allegations of the complaint in the light most favorable to

the plaintiff and accept as true all well-pled facts and reasonable inferences therefrom. See *Powell*, 2014 IL 115997, ¶ 12; *Bunting*, 348 Ill. App. 3d at 380. However, if these are not sufficient to state a cause of action upon which relief may be granted, then dismissal of the cause is appropriate. See *Powell*, 2014 IL 115997, ¶ 12 (dismissal is proper where no set of facts, as apparent from the pleadings, can be proven that would entitle the plaintiff to recover); *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028, 1033 (2008); see also *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007) (to survive dismissal, complaint must allege facts that set out all essential elements of cause of action). Notably, a plaintiff's conclusions of law and factual conclusions that are not supported by allegations of specific facts will not be considered as supportive of her cause of action. See *Visvardis*, 375 Ill. App. 3d at 724; accord *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878 (2001); see also *Powell*, 2014 IL 115997, ¶ 12 ("a court cannot accept as true mere conclusions unsupported by specific facts"). Our review follows a *de novo* standard. See *Powell*, 2014 IL 115997, ¶ 12 (appeal from dismissals pursuant to section 2-615 is reviewed *de novo*).

¶ 14 It is well established that Illinois is a fact-pleading jurisdiction that requires a plaintiff to present a legally and factually sufficient complaint, alleging sufficient facts to state all the elements of the cause of action she raises. See *Purmal v. Robert N. Wadington and Associates*, 354 Ill. App. 3d 715, 720 (2004). In the context of an action for legal malpractice, a plaintiff must plead and prove that counsel owed her a duty arising from the attorney-client relationship, that counsel breached that duty, and that, as a proximate result, she suffered injury. See *Powell*, 2014 IL 115997, ¶ 13; *Purmal*, 354 Ill. App. 3d at 720-21.

¶ 15 These elements are clear. With respect to duty, the plaintiff must show that she was counsel's client, on whose behalf counsel was to act and to whom counsel was liable. See *Powell*, 2014 IL 115997, ¶ 14. With respect to breach of this duty, the plaintiff must demonstrate a negligent act or omission on the part of counsel in pursuing her underlying cause of action. See *Powell*, 2014 IL 115997, ¶ 23; *Purmal*, 354 Ill. App. 3d at 721. Next, to satisfy the element of proximate cause, the plaintiff must plead and prove a "case within a case." See *Fabricare Equipment Credit Corp. v. Bell, Boyd & Lloyd*, 328 Ill App. 3d 784, 788 (2002). This is because, since a legal malpractice claim is wholly predicated upon an unfavorable result in the plaintiff's underlying suit, no malpractice can exist unless counsel's negligence resulted in the loss of that underlying suit. See *Fabricare*, 328 Ill. App. 3d at 788, citing *Ignarski v. Norbut*, 271 Ill. App. 3d 522, 525-26 (1995). Accordingly, in her complaint, the plaintiff must plead sufficient facts to prove that, "but for" counsel's negligent act or omission, she would have been successful in the underlying action. See *Fabricare*, 328 Ill. App. 3d at 788; *Ignarski*, 271 Ill. App. 3d at 525-26 (the plaintiff "is required to establish that but for the negligence of counsel, [s]he would have successfully prosecuted *** the claim in the underlying suit"); accord *Powell*, 2014 IL 115997, ¶ 24. And, finally, with respect to the element of damages, these are never presumed in the context of legal malpractice actions. See *Powell*, 2014 IL 115997, ¶ 13; accord *Ignarski*, 271 Ill. App. 3d at 526. Rather, the plaintiff must demonstrate that she sustained a monetary loss as a result of counsel's negligence and, even if counsel's negligence is established, no cause will lie against counsel unless that negligence proximately caused actual damage to the plaintiff. See *Powell*, 2014 IL 115997, ¶ 13 (alleged damages cannot be speculative as to their existence); *Ignarski*, 271

Ill. App. 3d at 526 (the plaintiff bears the burden of proving she suffered a loss as a result of counsel's alleged negligence).

¶ 16 In the instant cause, plaintiff's third amended complaint did not allege sufficient facts to properly plead and prove all the elements of legal malpractice, namely, proximate cause. That is, she was unable to plead and prove her underlying claims against Coca-Cola, as her assertions were completely conclusory and lacked any essential and necessary facts. Unable to plead and prove those claims, and even assuming the other elements of her cause at play here, plaintiff could not demonstrate that "but for" defendant's negligence, she would have been successful in the underlying action. In turn, then, unable to demonstrate this, she could not maintain a cause of action against defendants. Thus, dismissal of her third amended complaint against defendants was proper.

¶ 17 We begin with a review of plaintiff's claims against Coca-Cola, which comprised the underlying cause here the "case within a case." As we noted earlier, plaintiff asserted several federal claims against her former employer, including a violation of the Act and violations of Title VII with respect to sexual discrimination, harassment and retaliation, as well as a state law claim for intentional infliction of emotional distress. It is these underlying claims that plaintiff failed to plead and prove. For example, to establish a claim alleging a violation of the Act, a plaintiff must show that different wages were paid to an employee of the opposite sex, that the employee performed equal work requiring equal skill, effort and responsibility, and that the employee had similar working conditions. See *Cullen v. Indiana University Board of Trustees*, 338 F.3d 693, 698 (2003). Plaintiff here, however, did not provide adequately specific facts to

demonstrate these elements. While she finally added a paragraph to her third amended complaint providing a nonexclusive list of "similarly situated male employees" who were allegedly paid more for performing equal work in jobs requiring equal skill under equal conditions, plaintiff never specifies any information regarding their job duties, working conditions or pay rates, or how they compared to her duties, working conditions or pay rate information which was also not specified. The only information she provided was her conclusion that she was not paid as much as a nonexclusive list of alleged employees. This, alone, was not sufficient to satisfy the requirement that she plead and prove a violation of the Act against Coca-Cola in the underlying matter.

¶ 18 The same is true of her three Title VII claims. Plaintiff alleged that Coca-Cola created a hostile work environment, failed to transfer and promote her, and retaliated against her due to her disputes. For a claim of hostile work environment, a plaintiff must plead and prove that she was subjected to unwelcome sexual conduct, advances or requests, because of her sex, that were severe or pervasive enough to create a hostile work environment, and that there is a basis for employer liability. See *Lapka v. Chertoff*, 517 F.3d 974, 982 (2008); accord *Turner v. The Saloon, Ltd.*, 595 F.3d 679, 684 (2010). However, in her third amended complaint, plaintiff alleges only that "continuing sexually discriminatory conditions of her employment" led her to "conclude[] that Coca-Cola did not want her employed, and, thus, allowed the continuance of a work environment so hostile an intolerable that no reasonable-minded person could continue to work effectively in such an environment." Plaintiff never mentions what the "sexually discriminatory conditions" were; or how they were severe or pervasive; or that, other than her

own mere conclusion that Coca-Cola did not want her employed, Coca-Cola terminated her employment because of this or was somehow liable for this alleged discriminatory environment as her employer. Similarly, claims for the failure to transfer or promote under Title VII require a plaintiff to plead and prove that she belongs to a minority group, was qualified for the promotion or transfer, was not promoted or transferred, and that the position remained open or was filled with a nonminority. See *Amro v. Boeing Co.*, 232 F.3d 790, 796 (2000). In her third amended complaint, plaintiff alleges she did not receive a promotion on four occasions, and concludes only that she "was qualified" for these positions, that "[d]espite her qualifications" Coca-Cola rejected her for the positions, and that the positions were "[e]ventually" filled by "a less qualified male employee." She also alleges that she was transferred to a "less desirable position *** against her wishes, even though similarly situated male employees were better suited for the position." Again, these are mere conclusions. Plaintiff provides no facts to show that she was qualified for the promotions or that the promotional positions or the transfer position were filled by a nonminority employee. Likewise, plaintiff's third amended complaint did not set forth an adequately sufficient cause for a Title VII retaliation claim, which required her to plead and prove that she engaged in a statutorily protected activity, she suffered materially adverse action by her employer, and either the existence of a casual connection between the two or that she was performing her job satisfactorily but was treated less favorably than a similarly situated employee who did not complain of discrimination. See *Argyropoulos v. City of Alton*, 539 F.3d 724, 733 (2008). Plaintiff failed to specify in her third amended complaint any materially adverse action taken by Coca-Cola against her, or that there was a connection between such action and her work

or that she was performing her job in a satisfactory manner but was treated less favorably than any other employee. She did not refer to any specific instances of retaliatory conduct to support her claims.

¶ 19 Finally, the same is true with respect to her state law claim of intentional infliction of emotional distress. The elements a plaintiff is required to plead and prove to sustain such an allegation include that the defendant's conduct was extreme and outrageous, the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so, and the defendant's conduct actually caused severe emotional distress. See *Schroeder v. RGIS, Inc.*, 2013 IL App (1st) 122483, ¶ 27. Liability does not extend to mere insults or annoyances; instead, there must be conduct so outrageous and extreme as to cross the boundaries of decency so that no reasonable person could be expected to endure it. See *Schroeder*, 2013 IL App (1st) 122483, ¶ 27, citing *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 21 (1992). In particular, our courts have made clear that a complaint alleging this tort "must be 'specific, and detailed beyond what is normally considered permissible in pleading a tort action;' " merely characterizing a defendant's conduct as severe is not sufficient. *Welsh v. Commonwealth Edison Co.*, 306 Ill. App. 3d 148, 155 (1999) (quoting *McCaskill v. Barr*, 92 Ill. App. 3d 157, 158 (1980)). In the instant cause, plaintiff's third amended complaint generally alleges that she suffered "severe emotional distress" and "pain and suffering" due to Coca-Cola's "extreme and outrageous" conduct. However, just as with her other claims, she provides no factual allegations from which the level of severity of the alleged emotion distress can even be inferred. Other than stating she was "forced to take medical leave" (when or why, is unknown),

her allegations do not state that she was required to seek medical care or that Coca-Cola's alleged actions afflicted her with actual emotional distress more specifically, emotional distress severe enough to support a claim.

¶ 20 Ultimately, here, plaintiff failed to set forth the necessary elements for any of the claims she alleged in her underlying suit against Coca-Cola. Simply put, a "pleading which merely paraphrases the elements of a cause of action in conclusory terms is not sufficient." *Welsh*, 306 Ill. App. 3d at 155. That is exactly what plaintiff has done throughout this litigation. Her third amended complaint paraphrases the general elements of the causes of action she sought to raise, but she did not plead and prove any of them with sufficient or specific facts. Other than including a nonexclusive list of the names of some allegedly male employees whom she insists were paid more than her, she provided no facts to support her conclusory assertions regarding employment transfers, promotions, work terms and conditions, job duties, salaries or rates of pay facts that are the basis of her claims against Coca-Cola. Nor does she describe in any detail the frequency of Coca-Cola's allegedly discriminatory conduct, its type, its severity or its effect on her again, facts that form the basis of her claims against the company. It is true that pleadings are to be liberally construed. See *Pelham v. Griesheimer*, 92 Ill. 2d 13, 18 (1982). However, in considering a motion to dismiss, they are also to be construed strictly against their pleader. See *Pelham*, 92 Ill. 2d at 18. Other than conclusory statements, there is just nothing here.

¶ 21 Unable to sustain her cause of action against Coca-Cola due to her lack of sufficient detail, plaintiff could not, in turn, state a valid cause of action against defendants for legal malpractice. Even assuming the elements of duty and breach, she failed to establish the essential

element of proximate cause her "case within a case" because she could not show that, but for defendants' negligent acts or omissions, rather than her own lack of sufficient pleading, she would have prevailed in her underlying suit. Unable to sufficiently allege a claim against Coca-Cola thus inherently renders her unable to maintain a claim against defendants here. Therefore, plaintiff's third amended complaint was properly dismissed.

¶ 22 Plaintiff insists that she could not plead more facts than she did against Coca-Cola because those facts were not in her possession or control. She is correct that our courts have recognized that a plaintiff need not plead facts with precision when the information needed to plead those facts is within the knowledge or control of the defendant rather than the plaintiff. See, *e.g.*, *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 110 (1996); *Lozman v. Putnam*, 328 Ill. App. 3d 761, 769-70 (2002). However, she misapplies this principle. True, in her cause of action against Coca-Cola, plaintiff may have been able to state the material facts with a bit less specificity than normally would be required because Coca-Cola, as the defendant, would have had the information that formed the basis of her allegations (such as the identities of the similarly situated male employees, their pay rates, promotions, transfers, working conditions, etc.; Coca-Cola's own treatment of plaintiff; any alleged retaliation, etc.) within its knowledge, possession and control. Yet, we are not dealing with plaintiff's cause against Coca-Cola but, rather, her cause against defendants here defendants who would not have had in their knowledge, possession or control the facts needed to sufficiently plead the underlying cause. Thus, while there may have been some leeway in her fact pleading requirements in her underlying suit, such was not the case with respect to her suit against defendants.

¶ 23 Finally, plaintiff also insists that defendants should be estopped from benefitting from her lack of sufficient fact-pleading because they were her attorneys of record when she filed her cause of action against Coca-Cola. However, whatever breach of duty defendants may have committed against plaintiff in the underlying action while they were her counsel is not for defendants to plead and prove, but for plaintiff's new counsel in the current legal malpractice cause. That is, when plaintiff filed the instant cause of action for legal malpractice against defendants, it was her burden to meet the pleading requirements of factual sufficiency, which required her to sufficiently plead and prove, among other elements, proximate cause her "case within a case." As we have already found, after filing four complaints, she has consistently been unable to do so. The trial court repeatedly noted throughout the amendment process that plaintiff simply was not providing enough facts and it warned her she needed to present something more substantive. Each time, the court dismissed her complaint pursuant to section 2-615 because she could not overcome the Code's pleading "hurdle." In fact, in its colloquy during its evaluation of her third amended complaint, the court asked plaintiff and her counsel what they had done since her second amended complaint was dismissed "to try and secure other information that might provide more detail." They responded that they did nothing. However, once defendants initially filed their appearance in this matter, namely, back in August 2012 in response to plaintiff's original (refiled) complaint against them, discovery in the matter could have been had. See, *e.g.*, *Yuretich v. Sole*, 259 Ill. App. 3d 311318 (1994) (citing Illinois Supreme Court Rule 201(d), and noting that discovery may be initiated after all defendants have appeared or are required to appear, or earlier with leave of court). At this point, then, and perhaps even earlier had they

sought leave of court, plaintiff and her new counsel could have begun to, at the very least, attempt to obtain the information necessary, from Coca-Cola or other employees, to amend their complaint with specific facts to plead and prove a factually sufficient cause of action against defendants. As the trial court commented, there were "things that [plaintiff] could or should" have been "doing to try" and obtain more facts.

¶ 24 However, after four attempts and two years of litigation, plaintiff has been unable to overcome even the most initial hurdles of pleading and proving a factually sufficient cause of action against defendants. She has been give three chances to amend her cause and warned to be more factually specific in her allegations, to no avail. Based on her own acknowledgment of how much time has passed since her employment and even her federal lawsuit, as well as her recognition that she has done nothing to gather any more facts to support her pleadings, it seems wholly unlikely that an additional opportunity to amend her third amended complaint which she was actually given by the trial court but chose not to pursue would now cure the factual insufficiencies she faces and has not yet even remotely come close to overcoming.

¶ 25 Just as the trial court found here, it is clear that plaintiff's third amended complaint against defendants was not sufficient because it was lacking in necessary, specific detail. Of course, plaintiff was not required to prove her whole case but, at the very minimum, she needed to plead and prove something more than the conclusory statements she has made. What she has presented is simply not enough to meet this threshold.

¶ 26 CONCLUSION

¶ 27 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court dismissing plaintiff's third amended complaint against defendants pursuant to section 2-615.

¶ 28 Affirmed.