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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NATIONAL PRIVATE CLIENT GROUP, INC.,)	
a Washington Corporation, and JULIE ANN)	Appeal from the Circuit Court
HEPBURN)	of Cook County.
)	
Plaintiffs-Appellants,)	
)	No. 14 CH 9431
v.)	
)	
FATWALLET, INC., a Delaware Corporation)	The Honorable
)	Mary Mikva,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court's dismissal of Illinois Supreme Court Rule 224 petition that lacked proper verification affirmed, because verification is a prerequisite for proceeding under Rule 224.
- ¶ 2 National Private Client Group, a financial services company, and Julie Ann Hepburn, its president, filed an amended petition under Illinois Supreme Court Rule 224 (eff. May 30, 2008) to obtain the identities of anonymous individuals who they claim tortiously interfered with their prospective economic advantage by manipulating internet search results for their names and website. The alleged interference originated in an online forum hosted on defendant Fatwallet, Inc.'s website.

¶ 3 The trial court dismissed the amended petition with prejudice, finding it failed to state a claim for tortious interference. We affirm, though on a different ground. Petitioners' amended petition does not meet the requirements under Illinois Supreme Court Rule 224 that the petition be verified. Thus, the trial court properly dismissed the amended petition.

¶ 4 NPCG and Hepburn's Rule 224 Petition

¶ 5 NPCG and Hepburn filed a verified petition under Illinois Supreme Court Rule 224 (eff. May 30, 2008) to discover the identities of 12 people who posted negative comments about them on Fatwallet's website. Petitioners argued they needed the identities to bring claims for defamation and tortious interference with prospective economic advantage. Fatwallet filed a motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), arguing that petitioners failed to state a claim. The trial court dismissed the defamation claim as time-barred and granted leave to amend the claim for tortious interference.

¶ 6 NPCG and Hepburn then filed an amended Rule 224 petition alleging only tortious interference. Fatwallet again moved to dismiss the amended petition under section 2-615 of the Code. 735 ILCS 5/2-615 (West 2014). The trial court granted Fatwallet's motion with prejudice, finding the amended petition failed to state a claim for tortious interference. Moreover, the trial court determined that there were no additional facts that would allow plaintiffs to survive a section 2-615 motion to dismiss.

¶ 7 At oral argument, counsel for NPCG and Hepburn was asked about the validity of Hepburn's "Verification" of the amended petition due to the lack of both the signature and official seal of a notary. Not surprisingly, counsel had no cogent response.

¶ 8 Standard of Review

¶ 9 Rule 224 allows plaintiffs to discover the identity of unidentified individuals who may be liable to them. *Hadley v. Doe*, 2015 IL 118000, ¶ 25 (citing Ill. S. Ct. R. 224, Committee Comments (Aug. 1, 1989)). To succeed, a Rule 224 petition must state a cause of action that would survive a section 2-615 motion to dismiss. *Id.* at ¶ 27. Where the trial court’s basis for dismissing a Rule 224 petition under section 2-615 is a conclusion of law, the standard of review is *de novo*. *Id.* at ¶ 29 (citing *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009)).

¶ 10 Rule 224

¶ 11 Rule 224 petitions “shall be initiated by filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought.” Ill. S. Ct. R. 224 (eff. May 30, 2008). A properly verified petition is a petition sworn under oath or penalty of perjury.

¶ 12 A verification on oath requires a notary public to determine, from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the verification is the person whose true signature is on the verified statement. § 13:11. *Jurat*; verification upon oath or affirmation; certificate, 1A Nichols Ill. Civ. Prac. § 13:1. The verification then must be evidenced by a certificate signed and dated by the notary public, and the certificate must include identification of the jurisdiction in which the notarial act is performed and the official seal of office. *Id.*; 5 ILCS 312/6-103 (West 2014).

¶ 13 An alternative procedure is provided by section 1-109 of the Code (735 ILCS 5/1-109 (West 2014)), in which the affiant must subscribe to a certification in substantially the form prescribed by section 1-109. Instead of appearing before a notary, the affiant certifies his or her signature under penalty of perjury.

¶ 14 Petitioners' original petition contains a verification from Julie Ann Hepburn, bearing the signature and seal of a notary. The trial court dismissed the original petition for failure to state a claim, but granted petitioners leave to amend.

¶ 15 Petitioners' amended petition contains a verification in which Julie Ann Hepburn swore to "being first duly sworn on oath" and believing the amended petition to be "true, correct, and complete to the best of [her] knowledge." Absent is either a notary's approval or section 1-109's prescribed language. Accordingly, the amended Rule 224 petition is not verified as required by the rule. See, e.g., *Country Mutual Insurance Co. v. Millers National Insurance Co.*, 178 Ill. App. 3d 1012, 1019 (1989) (complaint was unverified where only deputy circuit clerk and plaintiff's representative signed it); *Cintuc, Inc. v. Kozubowski*, 230 Ill. App. 3d 969, 974 (1992) (verification valid where multiple notaries notarized the *jurat* to the affidavit, but observing that "[s]ection 6-103(a) of the Illinois Notary Public Act states that a notarial act must be *** signed and dated by the notary public."). Although the trial court did not address the verification's infirmity, our review is *de novo*, and in the absence of a properly verified petition, the petition must be dismissed.

¶ 16 Waiver

¶ 17 Fatwallet did not raise the issue of verification. Ordinarily a party's failure to argue constitutes waiver. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996). But, parties cannot waive this express requirement—it is a necessary prerequisite for obtaining the discovery before suit. *Maxon v. Ottawa Pub. Co.*, 402 Ill. App. 3d 704, 711, 929 N.E.2d 666, 673 (2010) ("the protections offered by Rule 224 are significant. First, the petition must be verified"). In addition, even if waiver were possible, it is the posters, and not Fatwallet, whose anonymity is at stake. Fatwallet cannot waive the legal rights of another. *Gorin v.*

McFarland, 80 Ill. App. 2d 398, 422 (1967). Without a proper verification, the petition does not meet the basic eligibility requirements for proceeding under Rule 224. Thus, we affirm the trial court's dismissal.

¶ 18 Affirmed.