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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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BRENDA RICE-DAVIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 15 CH 1955
	)	
LAKISHA BANNISTER AND	)	Honorable
HOUSING AUTHORITY OF COOK	)	Mary Lane Mikva,
COUNTY (HACC),	)	Judge, presiding.
	)	
Defendants-Appellees.	)	

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JUSTICE COBBS delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court did not err in granting defendants' motion to dismiss where plaintiff's complaint failed to state a legally cognizable claim. Trial court properly dismissed plaintiff's petition for relief from judgment.

¶ 2 This case is before us on appeal of the trial court's order granting defendants' motion to dismiss plaintiff's public disclosure of private facts, false light, and nuisance claims pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2014). Plaintiff also filed a section 2-1401 petition for relief from the judgment (735 ILCS

5/2-1401(West 2014)), which was denied. On appeal, plaintiff contends that the trial court erred by granting defendants' motion to dismiss and denying her section 2-1401 petition. We affirm.

¶ 3

### BACKGROUND

¶ 4

On December 1, 2014, plaintiff notified the Housing Authority of Cook County (HACC) that she elected not to renew her lease at the Turlington West Apartments (TWA) located in Harvey, Illinois for the 2015-2016 lease-term. In response, on December 15, 2014, the HACC sent plaintiff a letter stating that it "would have been agreeable to renewing your lease, but since you indicated that you are not willing to enter into a new lease agreement at recertification time, your tenancy will end at the conclusion of your current lease period, which runs through January 31, 2015." The letter further informed plaintiff that she would need to vacate the premises at that time.

¶ 5

On March 9, 2015, plaintiff filed a complaint against HACC in the circuit court of Cook County. In the complaint, plaintiff alleged constructive eviction and requested injunctive relief to prevent HACC from taking possession of the premises where plaintiff had been residing. Within the complaint, plaintiff stated, "On December 1, 2014, Plaintiff elected not to renew the lease agreement with HACC." She also acknowledged the responsive letter she received from the HACC dated December 15, 2014. In addition, plaintiff filed an emergency motion for a temporary restraining order. On March 12, 2015, the court denied the emergency motion, determined that plaintiff was not a tenant of the TWA, and gave plaintiff leave to file an amended complaint.

¶ 6

On March 26, 2015, plaintiff filed an amended complaint. In the amended complaint, plaintiff removed the constructive eviction allegation and alleged three new counts: public

disclosure of private facts, false light, and nuisance. Each of these claims related to an incident that occurred on March 10, 2015. Plaintiff alleged that on that date, a political event was held at the TWA. She further alleged that she was dining with non-tenants and tenants of the TWA at the event when defendant Lakisha Bannister, an employee of the HACC, made a statement that she was not a resident and unlawfully ejected her.

¶ 7 In support of the public disclosure of private facts claim, plaintiff alleged that defendants "communicat[ed] to the public at large (more than a few people) a private fact about the Plaintiff's life without her permission when the fact was not a matter of public record or a legitimate public concern." Specifically, plaintiff alleged that Bannister "disclosed a private fact to 100+ attendees \*\*\* that Plaintiff was a "guest" and announced that "no guests were allowed at the event ... only tenants." Plaintiff further alleged, without more, that announcing that she was not a tenant was highly offensive. In regard to the false light claim, plaintiff alleged that defendants made a false statement in "the public eye" that she was a "guest" when in fact, it was not legally determined at that time that she was a "guest." Plaintiff's nuisance claim alleged that defendants' comment interfered with her use and enjoyment of a common area and "disturbed [her] **PEACE OF MIND.**"

¶ 8 Subsequently, defendants filed a section 2-619.1 motion to dismiss plaintiff's complaint. 735 ILCS 5/2-619.1. In that motion, defendants contended that plaintiff failed to state a claim for public disclosure of private facts, false light, and nuisance. Defendants further asserted that plaintiff's claims must fail because she did not properly join Bannister as a defendant and the HACC was immune under the Tort Immunity Act. 745 ILCS 10/2-107 (West 2014). The court granted defendants' motion and dismissed the claims with prejudice. Although it agreed with plaintiff that she properly joined Bannister, the court found that plaintiff failed to state a

legally cognizable claim. Thereafter, plaintiff filed a section 2-1401 petition for relief from the court's judgment. 735 ILCS 5/2-1401. In the petition, plaintiff alleged that the court erred in determining that she was not a tenant. The court denied the petition and plaintiff appealed.

¶ 9

#### ANALYSIS

¶ 10

Plaintiff's argument regarding how the trial court erred below is unclear from her brief. From the argument she provided, however, we are able to ascertain her contentions that the court erred in granting defendants' motion to dismiss and in denying her section 2-1401 petition. We admonish plaintiff that on appeal parties are required to clearly define their arguments and support those arguments with citation to the record. Ill. S. Ct. R. 341 (h)(7) (eff. Feb. 6, 2013). Failure to do so results in forfeiture. *Id.*; *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36. Nevertheless, because the record provides us with sufficient information to review the propriety of the court's dismissal of plaintiff's complaint, we choose to address plaintiff's appeal on the merits. "A reviewing court has the choice to review the merits, even in light of multiple Rule 341 mistakes." *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 12.

¶ 11

A section 2-619.1 motion to dismiss permits parties to present grounds to dismiss a claim pursuant to both sections 2-615 and 2-619 of the Code. 735 ILCS 5/2-619.1; *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 20. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects apparent on its face. *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 15. In reviewing a section 2-615 motion to dismiss, the court takes all well-pleaded facts as true and draws all reasonable inferences in favor of the plaintiff. *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 156-57 (2003). A claim may only be dismissed when the facts, viewed in the light

most favorable to the plaintiff, are insufficient to state a cause of action upon which relief may be granted. *Id.* A trial court properly grants a judgment on the pleadings when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 157-58 (2010). By contrast, a section 2-619 motion to dismiss admits the legal sufficiency of a complaint but asserts that an affirmative matter outside of the complaint that defeats the claim. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). Motions to dismiss should only be granted if it is clearly apparent that there is no set of facts under which the plaintiff would be entitled to recover. *DeBruler Co.*, 2015 IL 117962, ¶ 15. We review *de novo* a dismissal under sections 2-615 and 2-619 of the Code. *Edelman*, 338 Ill. App. 3d at 156-57.

¶ 12

#### A. Motion to Dismiss

¶ 13

Plaintiff contends that the court erred in granting defendants' motion to dismiss. Defendants respond that plaintiff's complaint was legally insufficient. Specifically, they assert that plaintiff did not plead sufficient facts to state a claim for her public disclosure of private facts, false light, and nuisance claims. They do not argue on appeal that there is an affirmative matter that defeats the claims. Therefore, we will only address the legal sufficiency of the complaint.

¶ 14

#### 1. Public Disclosure of Private Facts

¶ 15

A claim alleging public disclosure of private facts is a branch of the invasion of privacy tort. *Doe v. TCF Bank Illinois, FSB*, 302 Ill. App. 358, 376 (1999). To state a cause of action for public disclosure of private facts, a plaintiff must plead: "(1) defendant gave publicity; (2) to plaintiff's private, not public life; (3) the matter publicised was highly offensive to a reasonable person; and (4) the matter published was not of legitimate public concern." *Id.*

Thus, for a successful claim, private facts must be alleged. See *Id.* Matters of public record, such as name, address, date of birth, and marital status are not considered "private" facts. *Busse v. Motorola*, 351 Ill. App. 3d 67, 72 (2004). Here, the alleged "private" fact was that plaintiff was not a tenant of TWA. A person's address, however, is generally considered part of the public record. *Id.* Furthermore, plaintiff stated in her initial complaint, which was filed on March 9, 2015, that she elected not to renew her lease with the HACC. Thus, she affirmatively put the fact that she was not a tenant of TWA into the public record. Therefore, plaintiff failed to allege that "private" facts were publicized, a necessary element of her public disclosure of private facts claim.

¶ 16 Additionally, for a successful public disclosure of private facts claim, the disclosure of the "private" facts must be highly offensive to a reasonable person. *Cooney v. Chicago Public Schools*, 407 Ill. App. 3d 358, 367 (2010). In addressing another invasion of privacy tort, this court has explained that "for a statement to be highly offensive, a defendant must have known that a plaintiff, *as a reasonable person*, would have been justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. (Emphasis in original.) *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶ 20. Plaintiff did not state why commenting that a person was not a tenant of TWA was highly offensive. The allegation itself does not demonstrate why a member of the community would feel seriously offended and aggrieved if their tenancy status was known. Accordingly, this court properly dismissed plaintiff's public disclosure of private facts claim.

¶ 17

## 2. False Light

¶ 18

For a successful false light invasion of privacy claim, a plaintiff must allege that she "(1) was placed in a false light before the public as a result of the defendant's actions; (2) the false

light would be highly offensive to a reasonable person; and (3) the defendant acted with actual malice." *Id.* ¶ 17. Inherent in this offense is that the statement made to the public be false. See *Id.* In the instant case, plaintiff voluntarily elected not to renew her lease. She informed the HACC of her decision on December 1, 2015. The HACC responded with a letter that stated her tenancy would end on January 31, 2015. The HACC also informed her that she would need to vacate the premises by that date. In her complaint, plaintiff acknowledged receiving that letter. Thus, plaintiff voluntarily relinquished her tenancy and she was not a tenant of the TWA on March 10, 2015. In addition, as discussed above, plaintiff cannot show that the alleged statement was highly offensive to a reasonable person. Therefore, plaintiff cannot establish a false light claim and it was properly dismissed.

¶ 19

### 3. Nuisance

¶ 20

A nuisance cause of action is a tort alleging an invasion of a person's interest and use and enjoyment of her land. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 689 (2010). A " 'nuisance must be physically offensive to the senses to the extent that it makes life uncomfortable.' " *Id.* (quoting *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 375–76 (2010)). Thus, a nuisance claim involves the disruption in a person's use of her real property. It has no application here, where plaintiff alleged that her peace of mind was disrupted. Moreover, plaintiff did not have a legal interest in a common area where she was neither the owner nor a tenant of the building. Accordingly, the court properly dismissed plaintiff's nuisance claim.

¶ 21

### B. Section 2-1401 Petition

¶ 22

Plaintiff next contends that the court erred in denying her section 2-1401 petition for relief from the court's judgment. See 735 ILCS 5/2-1401. For relief under section 2-1401, "the

petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). The decision to grant a section 2-1401 petition lies within the sound discretion of the circuit court. *Id.*; *Robinson v. Ryan*, 372 Ill. App. 3d 167, 173 (2007). We will not disturb the trial court's denial of a section 2-1401 petition absent an abuse of discretion. *Ryan*, 372 Ill. App. 3d at 173. In plaintiff's petition she contended that the court erred in determining that she was not a tenant of the TWA. As noted above, plaintiff stated in her complaint that she elected not to renew her lease at the TWA. Thus, she was not a tenant of the building as of February 1, 2015. Accordingly, the court did not abuse its discretion in denying plaintiff's section 2-1401 petition.

¶ 23

#### CONCLUSION

¶ 24

Plaintiff failed to state a legally cognizable claim as she failed to establish sufficient facts to support a claim for public disclosure of private facts, false light, or nuisance. We affirm the circuit court of Cook County's dismissal of the complaint and denial of plaintiff's section 2-1401 petition.

¶ 25

Affirmed.