2016 IL App (2d) 151269-U
No. 2-15-1269
Order filed September 26, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THEODOROS GIANNOPOULOS, THE ORIGINAL OMEGA RESTAURANT, INC., an Illinois Corporation,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs-Appellants,	)	
v.	)	No. 14-L-836
JOHN LAURENCE KIENLEN, P.C., JOHN KIENLEN, personally, GEORGE STAVROPOULOS, personally, and JAMES STAVROPOULOS, personally,	)	Honorable Ronald D. Sutter,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in dismissing plaintiffs' second amended complaint with prejudice; plain-error doctrine bore no relevance to this case.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiffs, Theodoros Giannopoulos and The Original Omega Restaurant, appeal a judgment of the circuit court of Du Page County dismissing their second amended complaint

against defendants, John Laurence Kienlen, P.C., John Kienlen, George Stavropoulos, and James Stavropoulos. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On August 20, 2014, plaintiffs filed a "Verified Complaint at Law"—a 224 page document alleging 13 counts of legal malpractice, civil conspiracy, fraud, embezzlement, "intentional misrepresentation," and breach of fiduciary duty (hereinafter the "refiled complaint"). All counts arose from business dealings involving The Original Omega Restaurant, Inc., including the legal representation plaintiffs received in connection with those dealings. In the second paragraph of this complaint, plaintiffs acknowledged that this complaint was a refiling of a complaint that had been filed earlier and dismissed, without prejudice, on August 22, 2013, pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007).

¶ 6 Defendants moved to dismiss. The introductory section of their motion states:

> "This lawsuit was originally filed on March 23, 2012 as Case Number 2012 L 388. The original pleading was 527 pages including exhibits, followed by a 338 page Amended Complaint (excluding exhibits), and a 236 page Second Amended Complaint (excluding exhibits). After multiple motions to dismiss (including a motion to dismiss for failure to plead plainly and concisely), defendants Kienlen and Kienlen, P.C., were dismissed pursuant to Rule 103(b), and the remaining defendant, Leigh R. Pietsch, was dismissed on February 18, 2014. The matter was dismissed on April 22, 2014, for want of prosecution and failure to file a third amended complaint as to Pietsch" (Pietsch is no longer a party).

Defendants asserted that the refiled complaint should be dismissed on various substantive grounds. They also claim that one count was barred by the applicable statute of limitations.

Furthermore, they asserted that the refiled complaint should be dismissed as its "cumbersome nature *** makes it difficult to locate key allegations as to elements of Plaintiffs' causes of action" and because it is "unnecessarily duplicative." Defendants asked that the refiled complaint be dismissed and plaintiffs be directed to "replead their allegations as a plain and *concise* statement" of their causes of action in accordance with section 2-603 of the Civil Practice Law (735 ILCS 5/2-603 (West 2014)). (Emphasis in original.) The trial court agreed that the refiled complaint did not comply with section 2-603 and dismissed on that basis. The dismissal was without prejudice, and the trial court directed plaintiffs' counsel to "file an amended complaint that complies with Section 2-603," "eliminate the repetition, eliminate the unnecessary allegations," and "[s]et out in a plain and concise fashion the allegations that *** meet the pleading requirements for the various cause of actions that you wish to file."

¶ 7 Plaintiffs filed their first amended complaint, which asserted 13 counts and was 110 pages long. Defendants again moved to dismiss, arguing, *inter alia*, that the first amended complaint violated section 2-603. The trial court granted defendants' motion. It explained, "At our last hearing on defendants' motion to dismiss, I instructed the plaintiff, I thought quite clearly, to file an amended complaint that complies with the requirements of section 2-603." It continued, "I instructed plaintiff to eliminate the repetition, to eliminate the unnecessary allegations, to set out in a plain and concise fashion the allegations that are necessary to meet the pleading requirements for the various causes of action the plaintiff wishes to pursue." The court noted that while the first amended complaint was shorter than the initial refiled complaint, it nevertheless "suffer[ed] from all of the same defects." The trial court granted defendants' motion. It acknowledged defendants' protest that allowing plaintiff to continue to amend was burdensome; however it made the dismissal without prejudice. It warned that if plaintiff again

failed to comply with section 2-603, the "complaint will be subject to dismissal with prejudice as a sanction for your failure to comply with my order that you are to file a complaint that complies with section 2-603."

¶ 8 Plaintiffs filed their second amended complaint. It was 79 pages long (without exhibits). Defendants again moved to dismiss in accordance with section 2-603. The trial court agreed with defendants. It found:

> "The plaintiff's second amended complaint, does not contain a plain and concise statement of the pleader's cause of action. And in some respects, it is even more confusing than the prior complaints that have previously been dismissed."

The trial court characterized the second amended complaint as "rambling" and noted that "[t]he allegations are not presented in an orderly fashion." It observed that plaintiffs, in an apparent effort to shorten the overall length of the complaint, incorporated various allegations by reference, which resulted in parts of the complaint being "rambling and nonsensical." The trial court then dismissed the second amended complaint with prejudice. Plaintiffs now appeal.

¶ 9 III. ANALYSIS

¶ 10 On appeal, plaintiffs make two main arguments. First, they argue that "[t]he plain error doctrine should be applied to plaintiffs' case because the prejudicial error was egregious and substantially impaired the integrity of the judicial process." Second, they contend that the trial court abused its discretion in dismissing their complaint as a sanction for failing to comply with section 2-603 of the Civil Practice Law (735 ILCS 5/2-603 (West 2014)).

¶ 11 A. PLAIN ERROR

¶ 12 Plaintiffs' invocation of the plain-error rule is puzzling. The plain-error doctrine allows a party to raise an argument on appeal despite having failed to object to the issue at trial where the

error is so grievous as to deprive the appellant of a fair trial. *Gillespie v. Chrysler Motor Corp.*, 135 Ill. 2d 363, 375 (1990). In the final paragraph of the section of their brief addressing plain error, plaintiffs state that they "did object in writing and in oral argument," albeit without citation to the record as to where the objection occurred. Nevertheless, defendants do not dispute this. Given a timely objection, it is unnecessary to invoke the plain-error rule. See *Id.*

¶ 13 The balance of this argument concerns defendants' alleged misrepresentation of the record. Plaintiffs point to three sentences in the background section of defendants' motion to dismiss:

> "On October 10, 2013 Plaintiffs filed a 305-page Second Amended Complaint (excluding exhibits). Kienlen, Kienlen, P.C. and Pietsch moved to dismiss the Second Amended Complaint including raising the argument that the Second Amended Complaint did not comply with Section 2-603.
>
> ***
>
> On February 18, 2014, Judge Dorothy French Mallen granted the motion to dismiss as to Pietsch but held that the claims against Kienlen and Kienlen PC had to be filed in a re-filed complaint."

According to plaintiffs, these statements give the false impression that Judge Mallen had considered plaintiffs' allegations against defendants (and not just Pietsch) and found they did not comport with section 2-603.

¶ 14 Plaintiffs filed a response to defendants' motion to dismiss vigorously contesting all of this and pointing out defendants' alleged mischaracterization of the record. Thus, the trial court was clearly made aware of plaintiffs' position that defendants were misstating the record. In the course of doing so, plaintiffs cited the evidence that Judge Mallen had not considered section 2-

603 in dismissing their complaint. To this end, plaintiffs pointed to the fact that in later clarifying that order, the trial court stated that plaintiffs had been directed to "refile" rather than "amend" the complaint that had been dismissed pursuant to rule 103(b). Plaintiffs assert that since they were not directed to amend the complaint, the trial court must not have considered it in terms of section 2-603 and found it deficient. The problem for plaintiffs is that the language they cite as misleading in defendants' motion to dismiss uses the term "refile" rather than "amend": "Judge Dorothy French Mallen held that the claims against Kienlen and Kienlen PC had to be filed in a re-filed complaint." It is incongruous to claim that the trial court's use of the term "refile" shows that it did not consider section 2-603 in dismissing the earlier complaint while maintaining that defendants' use of the very same term created the false impression that the court had considered section 2-603. In other words, defendants' statement was not misleading.

¶ 15 Plaintiffs point out that in ruling on defendants' motion to dismiss plaintiffs' first amended complaint, the trial court stated that "this is a refiled case and was previously dismissed on at least one prior occasion, if not more, based on a violation of [section] 2-603." Plaintiffs contend that this is "factually incorrect." First, a portion of the case was dismissed, as it pertained to Pietsch, on section 2-603 grounds, so it is not clear to us that the statement is incorrect. Second, this statement was made during the trial court's ruling on plaintiffs' first amended complaint. The result was a dismissal without prejudice, and plaintiffs availed themselves of the opportunity to amend their complaint. Thus, plaintiff was not prejudiced by this alleged misapprehension. Third, this purported misapprehension goes to the trial court's reasoning. It is axiomatic that we review the result to which the trial court came rather than its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). At issue here is

whether the trial court properly dismissed plaintiffs' second amended complaint with prejudice. If that result was not erroneous, it is of no consequence how the trial court reached it. *Id*. This brings us, then, to plaintiffs' second issue—whether the trial court abused its discretion in dismissing the second amended complaint.

¶ 16 B. THE DISMISSAL

¶ 17 Defendant next argues that the trial court erred in dismissing its second amended complaint with prejudice in accordance with section 2-603 of the Civil Practice Law (735 ILCS 5/2-603 (West 2016)). That section provides as follows:

> "(a) All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply.
>
> (b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.
>
> (c) Pleadings shall be liberally construed with a view to doing substantial justice between the parties." 735 ILCS 5/2-603 (West 2016).

The failure to comply with section 2-603 can lead to the dismissal of a complaint. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009). We review such a dismissal using the abuse-of-discretion standard of review. *Id*. at 19-20. Therefore, we will reverse only if no reasonable person could agree with the position taken by the trial court. *Whitten v. Whitten*, 292 Ill. App. 3d 780, 787 (1997).

¶ 18 Plaintiffs contend that the trial court's dismissal was effectively for stylistic reasons concerning the drafting of the complaint rather than for defects in the substance of the cause of actions asserted. They cite *Bond v. Dunmire*, 129 Ill. App. 3d 796, 804 (1984), which states: "Moreover, section 2-612(b) of the Code of Civil Procedure provides a test for defects of substance where a pleading is attacked. [Citations.] According to this test, allegations of legal conclusions and allegations of evidence constitute merely formal defects and not defects of substance." It is true that the trial court criticized plaintiffs' complaint for pleading evidence. However, the trial court's point was not simply that plaintiffs' complaint included allegations of evidentiary matter, it was that because of such allegations along with its "rambling" nature, the complaint was "confusing" and "not concise" The court stated, "[Plaintiffs'] second amended complaint does not *contain a plain and concise statement of the pleader's cause of action*." (Emphasis added.) The emphasized material tracks the language of section 2-603. 735 ILCS 5/2-603 (West 2016). Section 2-603 exists to put defendants on notice of the claims against them. *Cable America, Inc.*, 396 Ill. App. 3d at 19. Having reviewed plaintiffs' complaint, a reasonable person could agree with the trial court that plaintiffs' complaint failed in its essential purpose of providing notice to defendants.

¶ 19 Plaintiffs identify two paragraphs that might be sufficient to plead a breach of a duty. They do not address other elements of a cause of action for legal negligence. Moreover, they do not provide sufficient clarity to save the complaint from its other patent defects. In short, though certain allegations may be sufficient read in isolation, when read as a whole, a reasonable person could conclude that the complaint was a confusing document that did not provide adequate notice to defendants as to what they were supposed to be responding to.

¶ 20 Finally, plaintiffs cite two cases where actions were dismissed with prejudice in accordance with section 2-603 and the conduct of the parties was allegedly more egregious than plaintiffs' conduct here. In *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 63 (1995), the plaintiff failed to comply with numerous court orders, including repleading allegations that had been stricken from earlier complaints, ignoring deadlines, and failing to appear for hearings. Undoubtedly, the behavior in *Sanders* went far beyond what occurred in this case. In *Cable America*, 396 Ill. App. 3d at 16, the plaintiff was given five opportunities to amend before the complaint was dismissed with prejudice.

¶ 21 For the sake of argument (since plaintiffs dispute the import of some of the orders entered in the case filed in 2012), we will consider only what transpired since plaintiffs refiled their complaint on August 20, 2014, in assessing whether the trial court abused its discretion in dismissing with prejudice. Since that date, plaintiffs were allowed to amend their complaint twice, meaning they had three chances (including the initial refiling) to file a complaint that complied with section 2-603. While it is true that this is less than what was found to justify a dismissal with prejudice in *Cable America*, 396 Ill. App. 3d at 16, it nevertheless cannot be said that no reasonable person could conclude that three chances is enough for plaintiffs. This is particularly true given the trial court's finding concerning the second amended complaint that "in some respects, it is even more confusing than the prior complaints that have been previously dismissed." In other words, the trial court found that plaintiffs were showing no improvement in their attempts to comply with section 2-603. In such circumstances, a reasonable person could conclude that plaintiffs should not get another chance to amend their complaint.

¶ 22 In sum, we cannot conclude that the trial court abused its discretion in granting defendants' motion to dismiss plaintiffs' second amended complaint with prejudice.

¶ 23 IV. CONCLUSION

¶ 24 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.