2016 IL App (3d) 140304-U

Order filed March 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

JOSEPH KRIER,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-14-0304
	)	Circuit No. 13-L-65
ANDREW DOWDING,	)	
	)	The Honorable
Defendant-Appellee.	)	Barbara Petrungaro,
	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: (1) Trial court properly granted defendant's emergency motion to seal the court file.
(2) Trial court did not err in allowing defendant to file a second motion to dismiss after the first motion to dismiss was denied.
(3) Trial court did not err in dismissing the case before discovery was completed.
(4) Trial court did not err in allowing defendant to file his answer more than 30 days after plaintiff filed his complaint.
(5) Trial court did not rely on facts or exhibits outside of the complaint in granting defendant's section 2-615 motion to dismiss.
(6) Trial court properly granted defendant's motion to dismiss with prejudice.

¶ 2 Plaintiff, Joseph Krier, appeals from an order of the circuit court dismissing his complaint with prejudice for alienation of affection against defendant, Andrew Dowding. On appeal, he claims that the trial court erred as a matter of law and abused its discretion in (1) granting defendant's emergency motion to seal the file; (2) allowing defendant to file a second amended motion to dismiss; (3) granting the motion to dismiss before discovery was completed; (4) allowing defendant to file a late answer; (5) relying on extrinsic facts and exhibits in granting defendant's section 2-615 motion to dismiss; and (6) granting defendant's motion to dismiss with prejudice. We affirm.

¶ 3 FACTS

¶ 4 Plaintiff and his ex-wife, Christine Krier, dated for five years and married on February 19, 2005. They had one child together, born in April of 2008. During the first few years of their marriage, the parties had a strong and loving relationship. Around 2008, Christine met defendant through her place of employment. Shortly after they met, defendant and Christine engaged in a personal and allegedly sexual relationship. Christine filed for divorce on February 18, 2011. At that time, defendant's wife informed plaintiff that she believed Christine and defendant had been having an extra-marital affair for a few years.

¶ 5 On January 23, 2013, plaintiff filed a complaint under the Alienation of Affections Act (Act) (740 ILCS 5/1 *et seq*. (West 2012)), alleging that he and Christine had a loving marriage, that defendant sought the affection of Christine and that defendant willfully and intentionally encouraged Christine to divorce plaintiff through slanderous remarks, emotional manipulation, sexual enticement and gifts. Plaintiff claimed that defendant's intentional acts destroyed Christine's affection for him and caused him to suffer actual damages. Specifically, plaintiff sought damages for (1) deprivation of the society, companionship, financial support and marital

harmony; (2) loss of his wife as a mother to his child; (3) loss of Christine's future income; (4) endangering the financial support of his child; (5) treatment from medical specialists for acute emotional and physical distress; (6) extreme emotional and physical stress of his child; (7) deprivation of time with his child; (8) extreme financial liability caused by the dissolution of his marriage; and (9) "loss of consortium, mental agony and anguish, humiliation, damage to his honor, destruction of his family life and wounded sensibility." Plaintiff demanded judgment against defendant in the amount of $2,500,000.

¶ 6 On February 1, 2013, defendant, through counsel, waived service and filed his appearance. That same day, defendant also filed an emergency motion to seal all documents contained in the court file. In his motion, defendant claimed that some of the information contained in the file placed him and Christine at risk due to their professional positions. The motion was made to the trial court by defense counsel. Plaintiff was not present. The trial court granted defendant's request. The court found that irreparable injury, including physical harm to defendant, could occur and that the essence of time required the motion to be executed without prior notice to plaintiff. It ordered the file temporarily sealed, with notice to plaintiff, and scheduled a full hearing on the matter for February 7, 2013.

¶ 7 On February 6, 2013, plaintiff filed a motion to strike the motion to seal, arguing that the record should not be sealed because defendant's personal information was also available in defendant's divorce case, which had not been sealed. At the hearing on February 7, the court set a briefing schedule and rescheduled the hearing on plaintiff's motion to strike for a later date.

¶ 8 On June 5, 2013, plaintiff served defendant a notice to produce certain documents that he claimed were relevant to the case. The notice requested (1) employment records from 2005 to the current date, including defendant's work schedule, training dates, and any cases that he

worked on with Christine; (2) financial documents, such as credit card statements, bank statements, and the dates and locations of any vacations taken; and (3) online account information from defendant's Amazon.com, Facebook, MSN Messenger and other email accounts. Defendant did not respond to plaintiff's requests.

¶ 9 On June 14, 2013, defendant filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2012)). In his motion, defendant claimed that plaintiff's complaint was barred by the two-year statute of limitations applicable to personal injury suits.

¶ 10 The trial court held a hearing on defendant's motion to dismiss and plaintiff's earlier motion to strike the motion to seal. Four weeks later, the court issued a written order finding that the five-year statute of limitations applied and denied defendant's section 2-619 motion to dismiss. The order also granted plaintiff's motion to strike the motion to seal but instructed that the parties' addresses and places of employment be redacted from all pleadings.

¶ 11 Meanwhile, plaintiff subpoenaed the Illinois State Police for records that he believed would show that defendant used the State Police database while employed with the New Lenox Police Department to run reports and inquiries regarding plaintiff's personal history.

¶ 12 On August 16, 2013, plaintiff received a response to his June 5 notice to produce. In his response, defendant refused to produce the information. He claimed that the requests were overly broad and over burdensome and were not likely to lead to any relevant information.

¶ 13 On September 24, 2013, defendant filed a motion to quash the Illinois State Police subpoena. The trial court granted that motion.

¶ 14 On October 4, 2013, defendant filed a motion to dismiss under section 2-615 of the Code, claiming that plaintiff's complaint failed to state a cause of action recoverable under the Act and failed to properly allege actual damages as required by statute.

¶ 15 Before a hearing was held on defendant's motion to dismiss, plaintiff filed a request for admissions pursuant to Illinois Supreme Court Rule 216 (Ill. S. Ct. R. 216 (eff. July 1, 2011)). In the request, plaintiff demanded that defendant answer, among other things, questions regarding his former marriage to Rachel Dowding, personal purchases he made on Amazon.com, dates he had with Christine while she was married to plaintiff, and where and when he had sexual intercourse with Christine while plaintiff and Christine were married.

¶ 16 Defendant filed a motion to strike plaintiff's request to admit and a response to plaintiff's complaint. The trial court set matter for a full hearing on January 17, 2014.

¶ 17 On November 20, 2013, plaintiff issued a subpoena to the New Lenox Police Department seeking information regarding defendant's personnel records and professional conduct. The subpoena requested (1) any and all department records, including LEADS and criminal history reports, for plaintiff from 2007 to present; (2) any and all employment history and disciplinary records for defendant; and (3) any and all work schedules for defendant during 2007-2012. Plaintiff claimed that the records he sought supported his contention that defendant and his ex-wife had been engaged in a sexual relationship since 2008. In response, the Village of New Lenox filed a limited appearance and a motion to quash. In its motion to quash, the village stated that LEADS and criminal history reports are contained in a database that is not maintained by the New Lenox police department. It also maintained that the requests made for employment history and work schedules over a six-year period were oppressive, unreasonable and overbroad, and that most of the material plaintiff sought to discover was privileged and confidential. The

court ordered a briefing schedule and set the matter for hearing, in conjunction with defendant's motion to strike plaintiff's requests to admit, on January 17, 2014.

¶ 18 The trial court held a hearing on defendant's 2-615 motion to dismiss on December 6, 2013. In a written order issued on December 12, the court granted defendant's motion to dismiss with prejudice. The court noted that, by statute, plaintiff could not recover damages for any of the alleged injuries he sustained and that the complaint failed to allege any facts in support of recoverable damages under the Act.

¶ 19 On December 16, 2013, the court entered an order finding that the Village of New Lenox's motion to quash was moot in light of the prior order of dismissal and striking the hearing date of January 17.

¶ 20 Plaintiff filed a motion to reconsider, arguing that, pursuant to section 2-619 of the Code, defendant was barred from filing another motion to dismiss attacking the complaint. He also claimed that cases relied on by the trial court in granting the motion to dismiss were decided after plaintiff filed his complaint. Plaintiff maintained that the court should have allowed him time to amend his complaint to address those rulings before granting a dismissal. Plaintiff did not attach an amended complaint. The trial court denied the motion to reconsider.

¶ 21 ANALYSIS

¶ 22 I

¶ 23 Plaintiff first argues that the trial court erred in granting defendant's emergency motion to seal the court file.

¶ 24 Generally, parties who have properly appeared in an action are entitled to notice of an impending motion or hearing. *Gredell v. Wyeth Laboratories, Inc.*, 346 Ill. App. 3d 51, 62 (2004). Pursuant to Will County Circuit Court Rule 4.05(A), "[e]mergency motions *** may, in

the discretion of the court, be heard without giving prior notice and without calling the motion for hearing." Will Co. Cir. Ct. R. 4.05(A) (eff. June 23, 2010). If a motion is heard without prior notice, "written notice of the hearing of the motion showing *** the ruling of the court thereon, shall be served *** upon all parties who have appeared *** within two (2) court days after the hearing." Will Co. Cir. Ct. R. 4.05(B) (eff. June 23, 2010). Decisions on matters committed to the discretion of the court will only be reversed on appeal if the trial court clearly abused its discretion or applied impermissible legal criteria. *Boatmen's National Bank v. Martin*, 155 Ill. 2d 305, 314 (1993).

¶ 25 Here, defendant presented an emergency motion to the trial court on February 1, 2013. The trial court made the appropriate findings in support of an emergency proceeding without prior notice. The court then entered an emergency order sealing the file and set a full hearing on the matter for February 7, 2013. Plaintiff received notice of the hearing and the court's ruling within two days after the proceeding and successfully moved to strike the motion to seal. The trial court properly applied the circuit court rules regarding emergency motions. Its decision to grant the emergency motion was not an abuse of discretion.

¶ 26 II

¶ 27 Plaintiff claims that the trial court improperly allowed defendant to file a second motion to dismiss after his section 2-619 motion to dismiss was denied.

¶ 28 A circuit court has the discretion to allow multiple motions to dismiss and to permit the filing of subsequent motions to dismiss beyond the time for pleading. *Inland Real Estate Corp. v Lyons Savings & Loan*, 153 Ill. App. 3d 848, 853 (1987). Although defendant's first motion to dismiss was denied, the grounds raised in that motion solely addressed the statute of limitations under section 2-619(a)(5) of the Code. Accordingly, the trial court did not abuse its discretion in

allowing defendant to file another motion to dismiss, which alleged that the underlying complaint failed to state a cause of action under section 2-615.

¶ 29 III

¶ 30 Next, plaintiff argues that the trial court erred in dismissing the case before the New Lenox Police Department complied with his subpoena and before discovery was complete.

¶ 31 Supreme Court Rule 341 requires that the appellant clearly set forth the issues raised and the legal support for those issues with relevant authority. Ill. S. Ct. R. 314(h)(7) (eff. Feb. 6, 2013). Thus, we have the authority to hold that the appellant has forfeited his or her argument by failing to develop it or cite any authority to support it. *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 465 (2007); see also *Velocity Investments, LLC v. Alston,* 397 Ill. App. 3d 296, 297 (2010) (reviewing court is not a repository into which an appellant may foist the burden of argument and research).

¶ 32 In his brief, plaintiff claims that the police department has "information readily available" but that it refuses to comply with the issued subpoena. He insists that the information will support his allegation that defendant conducted illegal searches of his personal records and then used those documents to influence Christine. Plaintiff's contentions, however, are without citation or support in the record.

¶ 33 Plaintiff also argues that the court erred in granting defendant's motion to dismiss prior to hearing all discovery pleadings. But he follows the argument with citation to cases involving destruction of evidence and failure to preserve evidence. See *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112 (1998); *People ex rel. Terry v. Fisher*, 12 Ill. 2d 231 (1957). Again, he cites these cases without any reference to the record showing the police department committed

such acts or that the information would have been useful in sustaining a cause of action for alienation of affections against defendant. Plaintiff has therefore forfeited this argument.

¶ 34 IV

¶ 35 Plaintiff's fourth argument also fails to provide this court with any meaningful basis of review. Plaintiff argues that the trial court erred in allowing defendant to file an answer nine months after plaintiff filed his complaint, citing Illinois Supreme Court Rule 181 (Ill. S. Ct. R. 181 (eff. Jan. 4, 2013)). However, he fails to set forth a standard of review or provide any citation to the record showing that the issue of the timeliness of defendant's answer was ever raised before the trial court.

¶ 36 Moreover, plaintiff's reliance on Illinois Supreme Court Rule 181 for the proposition that a defendant is required to file an answer within 30 days of the complaint is misplaced. Rule 181 governs the time and method for filing an appearance. It sets no limits on the time for filing an answer. See Ill. S. Ct. R. 181 (eff. Jan. 4, 2013) ("The defendant may make his or her appearance by filing a motion within the 30-day period, in which instance an answer or another appropriate motion shall be filed within the time the court directs in the order disposing of the motion.")

¶ 37 V

¶ 38 Next, plaintiff claims that defendant improperly relied on exhibits and other items to support his section 2-615 motion to dismiss. Plaintiff's brief states that "motions under Section 2-615 may not be supported by reference to any facts or exhibits that are not alleged in or attached to the complaint under attack."

¶ 39 The logical argument we assume plaintiff is making is that the *trial court* erred in granting defendant's section 2-615 motion to dismiss by relying on extrinsic facts and exhibits

rather than the pleadings. But, again, plaintiff fails to make a cogent legal connection and fails to cite any page in the record that would support his claim. We have carefully reviewed defendant's section 2-615 motion and have found only one reference to an exhibit: exhibit "A," which is plaintiff's complaint. The complaint is properly considered in a motion to dismiss pursuant to section 2-615. See 735 ILCS 5/2-615 (West 2012). Further, the trial court's December 12, 2013, order dismissing the case did not rely on any facts or exhibits that were not alleged in or attached to the complaint. The trial court evaluated the elements under the Act, compared those elements to the allegations contained in plaintiff's complaint, and concluded that the pleading failed to state a cause of action upon which relief could be granted. We find no error in the court's decision to dismiss the case on that basis. See *Murphy v. Colson*, 2013 Il App (2d) 130291, ¶ 31 (noting that a plaintiff cannot recover damages for loss of marital assets and other financial obligations from divorce, defamation, humiliation, anguish, emotional distress, unspecified loss of spouse's services, loss of spouse's future income without evidence of actual amount, loss of consortium, loss of sexual intercourse, medical expenses, loss of profits, or damages from maintaining a separate household).

¶ 40 VI

¶ 41 Last, plaintiff argues that the trial court erred as a matter of law, abused its discretion and "acted prejudicially" by not allowing him to amend his complaint.

¶ 42 The right to file an amended complaint under section 2-616 of the Code is broad and is permitted at any time before final judgment upon "just and reasonable terms." 735 ILCS 5/2-616 (West 2012). Generally, plaintiffs are granted at least one opportunity to amend their pleadings. *Sinclair v. State Bank*, 226 Ill. App. 3d 909, 910 (1992). However, a trial court may dismiss a complaint with prejudice under section 2-615 where it is clearly apparent that the plaintiff can

prove no set of facts that entitles him or her to recovery. *Bellik v. Bank of America*, 373 Ill. App. 3d 1059, 1065 (2007). We review *de novo* the court's decision to dismiss a case for that reason. *Id*.

¶ 43 Here, plaintiff never articulated to the circuit court any potential amendments to his complaint prior to its dismissal. Instead, after the trial court dismissed his complaint, he filed a motion to reconsider urging the court to, among other things, give him time to amend his complaint to address *Murphy v. Colson*, 2013 IL App (2d) 130291, a case relied on by the trial court that was decided after he filed his complaint. However, plaintiff proposed no amendments to his complaint that would prevent its dismissal, even in light of that recent decision. Based on our determination that the complaint was properly dismissed pursuant to section 2-615, and because plaintiff offered no amendments to his original complaint to cure its defects, we hold that the trial court did not err in dismissing plaintiff's complaint with prejudice.

¶ 44 CONCLUSION

¶ 45 The judgment of the circuit court of Will County is affirmed.

¶ 46 Affirmed.

¶ 47 JUSTICE HOLDRIDGE, dissenting.

¶ 48 I dissent. In my view, the trial court erred in dismissing the plaintiff's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). The trial court found that the plaintiff had failed to state a cause of action because he failed to allege facts in support of any damages recoverable under the Alienation of Affections Act (Act) (formerly 740 ILCS 5/1 *et seq.* (West 2012))[1] and because "the vast majority of damages sought in the

[1] The Act was repealed by Public Act 99-90, effective January 1, 2016. The legislature's repeal of the Act does not affect the plaintiff's claim, which was filed in 2014 and accrued before the

Complaint are specifically barred by case law and the statute." Contrary to the trial court's assertion, however, the plaintiff did allege facts in support of at least some damages that were recoverable under the Act. Specifically, the plaintiff alleged that his former wife provided for him financially and that the defendant's unlawful actions deprived the plaintiff of much of the income his wife would earn in the future. The loss of a spouse's future income was recoverable under the Act. See, *e.g.*, *Coulter v. Renshaw*, 94 Ill. App. 3d 93, 95-96 (1981); *Murphy v. Colson*, 2013 Il App (3d) 130291, ¶ 31.

¶ 49 Contrary to the majority's conclusion, *Murphy* did not hold or imply that such damages were not recoverable under the Act. See *infra* ¶ 39. To the contrary, *Murphy* acknowledged that *Coulter* had held that such damages were recoverable. *Murphy*, 2013 Ill App (3d) 130291, ¶ 31. In any event, the application and scope of the Act's provision excluding certain types of damages was not addressed in *Murphy*; only the constitutionality of that statutory exclusion was at issue. *Id.* ¶ 6, n.1.

¶ 50 Accordingly, I would reverse the trial court's judgment and remand for further proceedings.

Act was repealed. 740 ILCS 5/7.1 (West 2016).