SIXTH DIVISION
November 22, 2017

No. 1-17-0697
2017 IL App (1st) 170697-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNETTE ELMORE, Plaintiff-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 16 L 1716 Honorable Brigid Mary McGrath, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff forfeited argument that she was a third-party beneficiary of a collective bargaining agreement; plaintiff failed to follow the requirements of the Illinois Educational Labor Relations Act; there were no disputed questions of fact for a jury to decide; appellate court will not intervene in administrative decision of circuit court; affirmed.

¶ 2 Plaintiff, Annette Elmore, appeals *pro se* from orders of the circuit court that dismissed her complaint with prejudice under section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)) and denied her motion to reconsider. Plaintiff had alleged that

defendant, the Board of Education of the City of Chicago (Board of Education), violated its collective bargaining agreement (CBA) with the Chicago Teachers Union (CTU). On appeal, plaintiff contends that the court improperly dismissed her complaint where: (1) she was a third-party direct beneficiary of the CBA; (2) she had standing to sue the Board of Education; (3) the Board of Education incorrectly pled the doctrine of laches in its motion to dismiss; and (4) the court ignored the parties' jury demand. Plaintiff further asserts that her case should not have been assigned to the commercial calendar of the Law Division of the circuit court. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The dispute between plaintiff and the Board of Education centers on plaintiff's contention that after she was laid off, she should have been placed in the reassigned teacher pool, but was not. The record reveals that on February 18, 2016, plaintiff filed a complaint for breach of contract and stated as follows. Previously, plaintiff was a bargaining unit member and tenured high school teacher for the Board of Education. On July 15, 2011, the Board of Education sent a letter to plaintiff's school, stating that the school would be closed effective August 12, 2011. Plaintiff was laid off effective August 31, 2011. Plaintiff filed a grievance with the CTU, asserting that the Board of Education violated the CBA. Initially, on December 6, 2011, the Board of Education concluded that it had indeed violated the CBA and plaintiff should have been placed in the reassigned teacher pool. However, two weeks later, the Board of Education sent an amended letter that stated that plaintiff did not have the right to be placed in the reassigned teacher pool. Plaintiff asserted that the Board of Education violated the CBA by not placing her in the reassigned teacher pool and/or not placing her in a vacancy position after plaintiff prevailed in her grievance on December 6, 2011. Plaintiff also sought back pay and benefits retroactive to August 28, 2011.

¶ 5 On the accompanying civil action cover sheet for the complaint, plaintiff checked "yes" in the box next to "Jury Demand" and checked "Breach of Contract" under the "Commercial Litigation" heading. Plaintiff's case was assigned to the commercial calendar of the Law Division.

¶ 6 The record contains several documents related to the complaint's allegations. We summarize each in turn.

¶ 7 On August 24, 2011, the CTU filed a grievance to the Board of Education on behalf of bargaining unit members at plaintiff's former school. The grievance stated that the teachers at plaintiff's former school had received letters dated July 15, 2011, that informed them that their positions were no longer available due to reallocation of funds and they could become day-to-day substitutes. The grievance asserted that the Board of Education violated the teachers' rights under the CBA by removing them from their full-time teaching positions without due process.

¶ 8 On September 2, 2011, the CTU filed a grievance on plaintiff's behalf, which referenced the July 15, 2011, letter that stated that her position was no longer available due to reallocation of funds. The grievance maintained that according to plaintiff, the Board of Education should have given plaintiff the option of being placed in the reassigned teacher pool. Only the first page of this grievance is in the record.

¶ 9 On September 22, 2011, the Board of Education responded to the grievance filed on behalf of the former teachers. The response stated that the teachers were laid off and honorably dismissed due to reallocation of funds, and so the teachers were not entitled to be placed in the reassigned teacher pool. On October 5, 2011, the CTU filed a grievance appeal.

¶ 10 On December 6, 2011, the Board of Education sent a letter to the CTU, noting that a conference had been held on November 2, 2011, related to the grievance filed by the CTU on

behalf of plaintiff and other teachers at her former school. The letter stated that according to the Department of Human Capital, the teachers were laid off due to the closing of the attendance center. Thus, the teachers would be staffed as reassigned teachers and were entitled to back pay. The letter concluded that the grievance was resolved.

¶ 11 On December 19, 2011, the Board of Education sent a letter to the CTU that amended its previous decision. The letter stated that according to the Department of Talent, plaintiff and the other teachers were laid off due to reallocation of funds as stated in the July 15 notice. The letter further stated that the July 15 notice superseded any information that erroneously referenced the closing of the attendance center. The letter concluded that no contract violation occurred and the grievance was denied in its entirety.

¶ 12 On January 24, 2012, the CTU sent the Board of Education a demand for arbitration. The demand asserted that the Board of Education violated the teachers' rights by rescinding its original decision, not placing the teachers in the reassigned teachers pool, and not issuing retroactive back pay. On the same day, the CTU also sent a request for mediation.

¶ 13 On January 30, 2012, the Board of Education sent the CTU the following letter:

> "This will acknowledge receipt of your request for mediation/demand for arbitration in connection with this matter. Please be advised that we **do not agree** to mediate this case. Thank you." (Emphasis in original.)

¶ 14 Returning to the circuit court proceedings, on March 9, 2016, plaintiff filed a motion that asserted that the court did not have subject matter jurisdiction over her lawsuit. Plaintiff contended that because the court dealt with commercial litigation, it could not adjudicate her dispute. Plaintiff asserted that she inadvertently checked a box under "Commercial Litigation" on her civil action cover sheet. Plaintiff requested that her case be assigned to a judge who was

not part of the commercial calendar. The court struck plaintiff's motion on March 16, 2016. On March 22, 2016, plaintiff filed a re-noticed motion that opposed a court on the commercial calendar presiding over her case. Plaintiff's motion was subsequently denied.

¶ 15 On March 24, 2016, the Board of Education filed a motion to dismiss the complaint under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2014)). The Board of Education contended that under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), plaintiff's claim was barred by the doctrine of laches. The Board of Education also asserted that under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2014)), plaintiff did not have standing. The Board of Education stated that to sue for breach of the CBA, plaintiff had to first obtain a court finding that the CTU breached its duty of fair representation, but plaintiff did not allege that the CTU committed such a breach or that she had obtained a court finding to that effect.

¶ 16 On April 19, 2016, plaintiff filed a motion for substitution of judge as a matter of right. In part, plaintiff again asked for her case to be assigned to a court that was not part of the commercial calendar. On April 27, 2017, plaintiff's case was assigned to a different judge on the commercial calendar.

¶ 17 On May 9, 2016, plaintiff filed another motion that sought to have her case assigned to a court that was not part of the commercial calendar. The court denied the motion on May 12, 2016.

¶ 18 On May 23, 2016, plaintiff responded to the Board of Education's motion to dismiss. Plaintiff asserted in part that the Board of Education tried to blame the CTU for breaching its duty of fair representation, but it was the Board of Education that refused the CTU's request for mediation/arbitration. Plaintiff stated that she saw no reason to accuse the CTU of violating the

duty of fair representation and the CTU did not handle plaintiff's grievance in an arbitrary or perfunctory manner. Plaintiff further contended that the Board of Education violated section 14(a)(1) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/14(a)(1) (West 2014)) when it told the CTU it would not arbitrate plaintiff's grievance.

¶ 19 On June 6, 2016, the Board of Education filed a reply in support of its motion to dismiss. The Board of Education stated in part that it did not refuse to arbitrate in the letter sent to the CTU on January 30, 2012.

¶ 20 On September 13, 2016, the court entered a written order that dismissed plaintiff's complaint with prejudice. The court stated that plaintiff did not have standing and therefore the court did not have jurisdiction, citing *Matthews v. Chicago Transit Authority*, 2016 IL 117638, and *Stahulak v. City of Chicago*, 184 Ill. 2d 176 (1998). The court also found that there was no just cause to delay the enforcement or appeal of the order.

¶ 21 Plaintiff filed a motion to reconsider and vacate on September 30, 2016. Plaintiff contended in part that she had standing because she was a third-party direct intended beneficiary of the CBA. Among the documents attached to the motion were excerpts from the CBA.

¶ 22 In its response, the Board of Education asserted that an individual employee represented by a union cannot sue to overturn the outcome of a grievance procedure. The Board of Education further stated that plaintiff did not allege any facts in her complaint or her motion to reconsider to establish that her remedies under the CBA were exhausted. The Board of Education also asserted that plaintiff did not present any newly discovered evidence that the CTU's conduct in processing her grievance was arbitrary, discriminatory, or in bad faith.

¶ 23 On February 24, 2017, the court entered a written order that denied plaintiff's motion to reconsider. The court found that plaintiff was not a third-party beneficiary of the CBA.

¶ 24 Plaintiff subsequently timely filed a notice of appeal, seeking to reverse the orders that dismissed her complaint and denied her motion to reconsider.

¶ 25 II. ANALYSIS

¶ 26 Before we turn to plaintiff's arguments on appeal, we summarize our standard of review. Section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2014)) allows a party to combine in one motion a motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) and a motion for involuntary dismissal under section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)). A motion under section 2-615 of the Code admits all well-pleaded facts and attacks the legal sufficiency of the complaint. *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (2003). A motion under section 2-619 of the Code admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim. *Wilson v. Molda*, 396 Ill. App. 3d 100, 104 (2009). Dismissals under either section are reviewed *de novo*. *Jenkins*, 345 Ill. App. 3d at 674.

¶ 27 As a preliminary matter, plaintiff asserts that the Board of Education improperly makes several new arguments in its response brief that were not raised in the trial court. We find that the Board of Education was entitled to raise these arguments on appeal. While an appellant who does not raise an issue in the trial court forfeits that issue, an appellee—here, the Board of Education—may raise an issue on review that was not presented to the trial court to sustain the judgment, as long as the factual basis for the issue was before the trial court. *Cain v. Joe Contarino, Inc.*, 2014 IL App (2d) 130482, ¶ 114. Further, this court " 'may affirm the trial court for any reason supported by the record, regardless of the particular basis relied upon by the trial court.' " *Baumgartner v. Greene County State's Attorney's Office*, 2016 IL App (4th) 150035, ¶ 41.

¶ 28 Turning to plaintiff's other arguments, plaintiff first contends that she has standing to sue the Board of Education for breach of the CBA because she is a third-party direct intended beneficiary of the CBA. In response, the Board of Education asserts that plaintiff waived this argument because she raised it for the first time in a motion to reconsider. The Board of Education's point is well-taken, but the situation calls for forfeiture rather than waiver because forfeiture is the "failure to make the timely assertion of the right," while waiver is "an intentional relinquishment of a known right." (Internal quotation marks omitted.) *Gallagher v. Lenart*, 226 Ill. 2d 208, 229 (2007). We find that plaintiff forfeited her argument that she is a third-party beneficiary of the CBA. Arguments raised for the first time in a motion to reconsider in the trial court are forfeited on appeal. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 134 (2008). We acknowledge that a party may raise an issue for the first time in a motion to reconsider when the party has a reasonable explanation for why the issue was not raised earlier in the proceedings. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 41. Here, although plaintiff characterizes the third-party beneficiary argument as new evidence, she does not explain why she could not have raised the argument earlier. As a result, the argument is forfeited.

¶ 29 Plaintiff also asserts that the circuit court was incorrect to rely on *Matthews v. Chicago Transit Authority*, 2016 IL 117638, and *Stahulak v. City of Chicago*, 184 Ill. 2d 176 (1998). The court in *Matthews* recalled the principle that individual members of a collective bargaining unit may bring suit against an employer to challenge an arbitration award only if the court finds that the union, as bargaining agent, breached its duty of representation. *Matthews*, 2016 IL 117638, ¶ 44. Otherwise, the union members do not have standing. *Id.* However, the court found that retirees have standing to pursue claims for enforcement of benefits under a CBA because they are not represented in collective bargaining. *Id.* ¶ 46. In *Stahulak*, 184 Ill. 2d at 184, the court

also held that individual employees represented by a union should only be allowed to seek judicial review of an arbitration award if they can show that the union breached its duty of fair representation. The court also stated that Illinois case law supports the principle that individual employees represented by a union cannot sue to overturn the outcome of a grievance procedure or arbitration. *Id.* at 180. Here, the circuit court likely concluded that plaintiff did not have standing to sue the Board of Education because she did not allege that the CTU breached its duty of fair representation.

¶ 30 Plaintiff asserts that *Matthews* involved an attempt to modify retiree health benefits and *Stahulak* involved a grievance that went to arbitration, whereas plaintiff did not receive an arbitration award. Still, the principles stated in *Matthews* and *Stahulak* apply even where there is no arbitration award. In *Mahoney v. City of Chicago*, 293 Ill. App. 3d 69, 72 (1997), the court considered whether the plaintiffs had standing to sue their employer even though they did not challenge their union's failure to pursue arbitration. The court found that the plaintiffs did not have standing because they never alleged or attempted to prove that the union "was derelict in its duty of fair representation by failing to pursue arbitration of their grievances." *Id*. at 74. Under *Mahoney*, an employee does not have standing to sue an employer unless the employee alleges or proves that the union breached its duty of fair representation, whether or not the grievance went to arbitration.

¶ 31 Yet, there is a different reason why plaintiff's complaint was properly dismissed. The plaintiffs in *Matthews*, *Stahulak*, and *Mahoney* were all public employees subject to the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2014)). Plaintiff is an educational employee, and therefore subject to the Act. See 115 ILCS 5/1 (West 2014) (purpose of Act is to regulate labor relations between educational employers and educational employees); 115 ILCS

5/2(a), (b) (West 2014) (definitions of "educational employer" and "educational employee"). Under the Act, plaintiff should not have filed a complaint in the circuit court in the first place.

¶ 32 Plaintiff contends that the Board of Education violated the CBA and refused to arbitrate, and that this refusal violated section 14(a)(1) of the Act (115 ILCS 5/14(a)(1) (West 2014)). To challenge the Board of Education's actions, including how her grievance was handled, plaintiff was limited to the procedures outlined in the Act. The Act " 'revolutionizes Illinois school labor law.' " *Board of Education of Warren Township High School District 121 v. Warren Township High School Federation of Teachers, Local 504*, 128 Ill. 2d 155, 166 (1989). The Act states that educational employees are treated differently than other public employees:

> "It is the purpose of this Act to regulate labor relations between educational employers and educational employees, including the designation of educational employee representatives, negotiation of wages, hours and other conditions of employment and resolution of disputes arising under collective bargaining agreements. The General Assembly recognizes that substantial differences exist between educational employees and other public employees as a result of the uniqueness of the educational work calendar and educational work duties and the traditional and historical patterns of collective bargaining between educational employers and educational employees and that such differences demand statutory regulation of collective bargaining between educational employers and educational employees in a manner that recognizes these differences." 115 ILCS 5/1 (West 2014).

¶ 33 Our supreme court has stated that the legislature intended to vest " '*exclusive* primary jurisdiction over arbitration disputes' " with the Illinois Educational Labor Relations Board (Board). (Emphasis in original.) *Board of Education of Warren Township High School District 121*, 128 Ill. 2d at 163. If plaintiff believed that the Board of Education interfered, restrained, or coerced employees in the exercise of the rights guaranteed under the Act (115 ILCS 5/14(a)(1) (West 2014)), plaintiff or the CTU could file a charge of an unfair labor practice with the Board (115 ILCS 5/15 (West 2014)). Judicial review of a Board decision takes place in the appellate court of a judicial district in which the Board maintains an office. 115 ILCS 5/16(a) (West 2014). What plaintiff could not do was file an action in the circuit court. Under the Act, the circuit courts' only roles are to enforce Board-issued subpoenas, enjoin or prevent strikes by educational employees where such strikes pose a danger to public health or safety, and enforce Board orders during and after unfair labor practice hearings. *Board of Education of Warren Township High School District 121*, 128 Ill. 2d at 165. Indeed, our supreme court has stated that "to allow the parties in school labor disputes to freely seek circuit court intervention would disrupt the statutory scheme." *Id*. See also *Proctor v. Board of Education, School District 65, Evanston, Illinois*, 392 F. Supp. 2d 1026, 1031 (N.D. Ill. 2005) (court did not have subject matter jurisdiction over a teacher's claim for breach of a CBA due to Illinois's statutory scheme).

¶ 34 Here, plaintiff did not follow the procedure under the Act for challenging an alleged breach of the CBA. Rather than filing an unfair labor practice charge with the Board, she filed a complaint in the circuit court, which was impermissible. As a result, the circuit court correctly dismissed plaintiff's complaint.

¶ 35 Although we do not reach any conclusions about whether the Board of Education violated the CBA, we include one point of clarification because plaintiff has misrepresented the

record. As noted above, plaintiff insists that the Board of Education refused arbitration, relying on one of the letters in the record. The CTU sent the Board of Education a demand for arbitration and a separate request for mediation on January 24, 2012. The Board of Education sent the CTU a response on January 30, 2012. Plaintiff incorrectly asserts that the response states that the Board of Education did not agree to arbitration. This is incorrect and the response actually states:

> "This will acknowledge receipt of your request for mediation/demand for arbitration in connection with this matter. Please be advised that we **do not agree** to mediate this case. Thank you." (Emphasis in original.)

¶ 36 Arbitration and mediation are separate avenues. Section 3-8 of the CBA states in part that the CTU, simultaneously with a demand for arbitration, may submit a request for mediation. The CBA further states that the grievance will proceed to mediation unless the CTU is notified that the Board of Education does not agree to submit the grievance to mediation. Here, the Board of Education did not agree to mediate, but the record is silent about the Board of Education's willingness to arbitrate. The record does not contain further correspondence between the CTU and the Board of Education about plaintiff's grievance. Thus, we cannot determine what happened next, including whether the CTU or the Board of Education declined to pursue arbitration.

¶ 37 Because we affirm the dismissal on other grounds, we will not address plaintiff's arguments about laches.

¶ 38 Next, plaintiff contends that she is entitled to a jury trial where both parties demanded one. Plaintiff also asserts that there are many disputed facts that the trial court failed to address.

¶ 39 Here, because plaintiff's entire complaint was dismissed with prejudice, there was no role for a jury to play. A section 2-619 motion should be granted by the trial court if, after construing

documents supporting the motion in the light most favorable to the opposing party, it finds no disputed issues of fact and concludes that the affirmative matter negates the plaintiff's cause of action completely or refutes critical conclusions of law or conclusions of material, unsupported fact. *Turner v. 1212 S. Michigan Partnership*, 355 Ill. App. 3d 885, 892 (2005). Further, the function of a jury is to decide disputed questions of fact, and where no such issue is presented, there is no denial of the right to a jury trial. *Belmar Drive-In Theater Co. v. Illinois State Toll Highway Comm'n*, 34 Ill. 2d 544, 549 (1966). When plaintiff's complaint was dismissed with prejudice, there was no cause of action left and nothing for a jury to determine. As a result, plaintiff was not denied a right to a jury trial.

¶ 40 Lastly, we address plaintiff's contention that her case should have been heard by a court that is not part of the commercial calendar of the Law Division. Plaintiff argues that courts on the commercial calendar hear cases between parties that are corporations with business contracts.

¶ 41 We decline to intervene in the circuit court's assignment of this case. The circuit court of Cook County is a court of general jurisdiction. *Droen v. Wechsler*, 271 Ill. App. 3d 332, 336 (1995). Generally, the organization of the court into divisions is for administrative purposes only. *In re Estate of Olsen*, 120 Ill. App. 3d 744, 747 (1983). The fact that the court is administratively divided into different divisions does not affect the power of any of its judges to hear any matter properly pending in the circuit court. *Droen*, 271 Ill. App. 3d at 336-37. Further, "[t]he transfer of cases to specialized divisions within a judicial circuit is a matter committed to the administrative authority of the chief judge of the circuit." *Fulton-Carroll Center, Inc. v. Industrial Council of Northwest Chicago, Inc.*, 256 Ill. App. 3d 821, 823 (1993). The circuit court has provided in General Order 1.3 that an action should not be dismissed because the action was filed in the wrong department, division or district, and moreover, there is a procedure

for transferring actions that are improperly filed. General Orders of the Circuit Court of Cook County, nos. 1.3(b), (c) (eff. Aug. 1, 1996). The appellate court does not intervene in that process. The assignment of a case to a division within the circuit court is "merely an administrative matter committed to the circuit court itself," and "it is not the function of the reviewing court to direct that cases be heard in one division of a circuit court as opposed to another." *Fulton-Carroll Center, Inc*, 256 Ill. App. 3d at 823-24. By extension, we find that it would be improper for this court to direct that a case should or should not be heard by a court that is part of a particular calendar.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 44 Affirmed.