

2018 IL App (2d) 170359-U  
No. 2-17-0359  
Order filed October 5, 2018

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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LAURIE RAYMOND and WILLIAM	)	Appeal from the Circuit Court
RAYMOND, Individually and as Operators	)	of Winnebago County.
and Beneficial Owners Under Trust	)	
Agreement #03-15073,	)	
	)	
Plaintiffs-Appellants,	)	No. 16-L-136
	)	
v.	)	
	)	
DANIEL BARNES, MARTIN &	)	
COMPANY EXCAVATING, INC., MARK	)	
STOCKMAN, CITY OF ROCKFORD,	)	
JASON VAN RITE, BITCO INSURANCE	)	
COMPANY, JACKIE ALBERTSON, and	)	Honorable
PMA COMPANIES,	)	Lisa R. Fabiano and
	)	Joseph G. McGraw,
Defendants-Appellees.	)	Judges, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
PRESIDING JUSTICE HUDSON and JUSTICE BURKE concurred in the judgment.

**ORDER**

¶ 1 *Held:* In this appeal from the dismissal of plaintiffs' complaint and the imposition of sanctions against them, plaintiffs' arguments were undeveloped and therefore forfeited.

¶ 2 *Pro se* plaintiffs, Laurie Raymond and William Raymond, allege various errors in the proceeding below that resulted in dismissal of their complaint and the imposition of sanctions against them under Supreme Court Rule 137 (eff. July 1, 2013). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiffs were *pro se* throughout the proceedings below. In May 2016, they filed a six-count complaint against multiple defendants for damage to real property held in a land trust of which plaintiffs were beneficiaries. The named defendants were Martin & Company Excavating, Inc. (Martin), Daniel Barnes, the City of Rockford (the City), Mark Stockman, BITCO Insurance Company, Jason Van Rite, PMA Companies, and Jackie Albertson. In count one, a claim for “tortuous [*sic*] negligence causing property damage,” plaintiffs alleged as follows. In 2014, Martin contracted with the City to provide services relating to the City’s “West State Street Expansion Project.” The City and Martin made the contract through their respective agents and employees, Stockman and Barnes. Pursuant to the contract, Martin entered the property, where it cut down trees and removed both stumps and a cement foundation. Neither the City nor Martin received plaintiffs’ permission to enter their property. Count one also sought relief from BITCO, Van Rite, PMA, and Albertson, but did not mention any of these parties in the allegations themselves.

¶ 5 Each of the remaining five counts incorporated the allegations of the preceding count(s). Count two claimed a violation of procedural due process. Specifically, plaintiffs alleged that they filed a claim with Martin’s insurer, BITCO, for property damage relating to the 2014 incursion and that, in August 2015, BITCO denied the claim through its claim representative, Van Rite.

¶ 6 Count three alleged an equal protection violation but added no new allegations.

¶ 7 Count four alleged a violation of procedural due process. Count four added the allegation that plaintiffs filed a claim with the City's insurer, PMA, for property damage relating to the 2014 incident and that, in July 2015, PMA denied the claim through Albertson, its claim representative.

¶ 8 Count five alleged another equal protection violation but added no new allegations. Count six was titled "Quantum Meruit" and added no new allegations.

¶ 9 The case was assigned to the Honorable J. Edward Prochaska. After plaintiffs moved successfully for substitution as a matter of right, the case was reassigned to the Honorable Judge Lisa R. Fabiano. Subsequently, in July 2016, plaintiffs moved to substitute Judge Fabiano out of the case for cause. Plaintiffs alleged that Judge Fabiano was biased against them based on her conduct in a prior case, No. 15-AR-330, which plaintiffs initiated and which Judge Fabiano ultimately dismissed. The substitution motion was set for hearing on August 17.

¶ 10 Also in July 2016, all defendants filed motions to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2016)). The City argued, *inter alia*, that plaintiffs' claims against it were time-barred because they were filed outside the one-year limitations period specified by section 8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2016)). For his part, Van Rite contested the matter of personal jurisdiction by submitting an affidavit attesting that he was a resident of Wisconsin and that he conducted no continuous, systematic business in Illinois except as BITCO's claim representative. All parties but the City and Stockman moved for sanctions against plaintiffs pursuant to Rule 137.

¶ 11 On August 15, plaintiffs moved to postpone the August 17 hearing on their substitution motion so that they could obtain transcripts of the proceedings in No. 15-AR-330.

¶ 12 At the August 17 hearing, the Honorable Joseph G. McGraw denied plaintiffs' motion to continue the hearing. Judge McGraw instead considered the substitution motion based on plaintiffs' representations of Judge Fabiano's conduct in No. 15-AR-330. Judge McGraw denied the motion for substitution.

¶ 13 On August 19, plaintiffs moved for a stay of proceedings and for certification of the substitution question for an interlocutory appeal (Ill. S. Ct. R. 308 (eff. Jan. 1, 2016)). That same day, the trial court denied the request for certification because an immediate appeal of the substitution issue "would not dispose of a claim or claimant." Plaintiffs subsequently filed a motion to vacate the trial court's ruling on its motion for stay and certification. The trial court denied the motion.

¶ 14 In late August and early September, plaintiffs requested and were granted extensions of time to respond to the motions to dismiss.

¶ 15 On September 10, Martin and Barnes filed a motion to compel discovery, alleging that plaintiffs had not responded to a July 26 discovery request.

¶ 16 On September 28 and 30, plaintiffs filed motions to amend their complaint and strike defendants' motions to dismiss. Plaintiffs submitted that the proposed amendments to their complaint would cure the defects on which defendants based their motions to dismiss.

¶ 17 On October 4, plaintiffs filed a notice of interlocutory appeal as a matter of right (see Ill. S. Ct. R. 307 (eff. Jan. 1, 2016)). Plaintiffs sought review of the trial court's August 17 and 19 orders.

¶ 18 At a hearing on October 6, the trial court denied plaintiffs' motions to amend and to strike defendant's motions to dismiss. The court subsequently continued the matter several times for status on the interlocutory appeal.

¶ 19 On December 22, this court dismissed the interlocutory appeal for lack of jurisdiction because it was not filed within 30 days of the appealed orders as required by Supreme Court Rule 307(a) (eff. Nov. 1, 2016).

¶ 20 On January 3, 2017, plaintiffs filed a motion a “Motion for Partial Summary Judgment And for a Finding of a Genuine Issue of Material Fact.” Plaintiffs appeared to seek a legal determination that their current claims against the City were not time-barred because plaintiffs had previously brought them within the limitations period, namely in their complaint in No. 15-AR-330, which had been dismissed. Plaintiffs also sought a ruling that “an issue of material fact exists as to whether the facts alleged in the original complaint failed to properly state a claim against [Martin and Barnes].”

¶ 21 Notably, even after the denial of their motion to strike defendants’ motions to dismiss, plaintiffs never filed a substantive response to the motions.

¶ 22 On January 6, 2017, the trial court held a hearing on defendants’ motions to dismiss and for sanctions. The court took the motions under advisement.

¶ 23 On January 26, while the motions were still under advisement, plaintiffs made their own motion for sanctions for “false statements” made by defendants in moving to dismiss plaintiffs’ complaint.

¶ 24 On January 27, the trial court issued its written order granting defendants’ motions to dismiss. The trial court’s written order provided the following reasons for the dismissal:

“(a) The Plaintiffs cannot proceed in a *pro se* fashion on behalf of a land trust, the land trustee, or any other person or entity other than themselves. Illinois law is clear that any non-individual must be represented by counsel, only individuals can represent themselves *pro se*;

(b) To the extent the Plaintiffs filed this case as individuals, they lack standing to bring the suit;

(c) Pursuant to 745 ILCS 10/8-101, there is a clear one year statute of limitations in bringing an action against a local entity of government or its employee, and based on any way the dates are calculated, the Complaint is barred for being filed outside the statute of limitations period allowed by Illinois law;

(d) The City of Rockford is an indispensable party, and with the Complaint being filed after the statute of limitations had run, the Plaintiffs cannot bring suit against the other parties due to their inability to maintain an action against an indispensable and necessary party;

(e) A plaintiff cannot bring a claim against a third-party insurance company in Illinois in an attempt to enforce a contract of which it is not a party to; stated differently, a third-party claimant has no standing to bring suit against an insurer for an alleged breach of duty, as an insurer owes no duty to third-party claimants under Illinois law;

(f) There is no personal jurisdiction over Jason Van Rite; and

(g) The Plaintiffs failed to state a cause of action against all Defendants and have no ability to properly plead a cause of action against any of the Defendants for the relief sought in the Complaint.”

The court also denied plaintiffs’ motions for summary judgment and for sanctions.

¶ 25 The trial court granted sanctions in favor of BITCO, Van Rite, PMA, and Albertson. The court found “no basis” for the claims against those defendants and determined that plaintiffs’ subsequent filings in the case “were intended to delay and harass” those defendants. The court

awarded BITCO and Van Rite \$8,740 in sanctions and PMA and Albertson \$11,840. The court postponed to February 2017 its decision on the request of Martin and Barnes for sanctions.

¶ 26 At a hearing on February 20, the court ruled on the sanctions request by Martin and Barnes. First, the court clarified—pertaining to all requests for sanctions—that it was not in itself sanctionable for plaintiffs to bring a *pro se* lawsuit on behalf of the land trust. The court considered the law “unclear” and “opaque” as to whether plaintiffs had the authority to initiate the lawsuit while representing themselves. The court found, however, “sufficient other behavior” by plaintiffs on which to base sanctions. First, the court found that five out of six counts in the complaint were frivolous. For instance, count six was a claim for *quantum meruit*, which “clearly doesn’t apply in this situation.” Also frivolous were the counts alleging constitutional violations by individuals and entities that were not governmental actors.

¶ 27 Sanctionable as well, in the court’s view, were plaintiffs’ (1) failure to respond to discovery; (2) motion for continuance to obtain transcripts in No. 15-AR-330, where apparently plaintiffs never ordered the transcripts; (3) filing of an interlocutory appeal that was not permitted under Rule 307 but which led to several status hearings while it was pending; (4) successive motions to extend time to respond to defendant’s motions to dismiss, where plaintiffs never intended to respond to the motions; (5) motion to amend, which did not address the fatal defects in the complaint, which were that the claims against the City was time-barred and that the remainder of the claims therefore failed for plaintiffs’ inability to join a necessary party; and (6) motion for sanctions, which “had no basis in law [or] fact.” The foregoing conduct, found the court, was intended to “harass Defendants and/or delay the proceedings without merit.” Again, though the court was technically addressing the sanctions request by Martin and Barnes, the

conduct cited by the trial court impacted the other defendants as well. The court awarded Martin and Barnes \$6,632.50 in sanctions.

¶ 28 Plaintiffs filed a motion to reconsider, which was denied. This timely appealed followed.

¶ 29 **II. ANALYSIS**

¶ 30 We agree with defendants' general assessment that plaintiffs' arguments on appeal are difficult, and often impossible, to follow. Nearly all of them, as we explain, are forfeited under Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017)), which provides that points raised on appeal are forfeited for review unless supported by "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."

¶ 31 The issues statement in plaintiffs' opening brief identifies 22 issues for review, many of which overlap. Plaintiffs' argument is divided into five sections, but the first and fourth headings have, curiously, no analysis following them. The first heading asserts that the trial court erred in failing to hear plaintiffs' June 28, 2016, motion for default judgment. The fourth heading claims that the trial court "committed an act of judicial prejudice" against plaintiffs when it relied on defendants' "perjured testimony" in denying plaintiffs' motion for substitution for cause. Devoid as they are of supporting argument, these contentions are forfeited for review.

¶ 32 We turn to the remaining argument sections. The fifth section of plaintiffs' argument challenges Judge McGraw's denial of their petition to substitute Judge Fabiano out of the case for cause. Plaintiffs base their argument for substitution on Judge Fabiano's treatment of them in No. 15-AR-330. Plaintiffs provide several pages of analysis on this point, but throughout it all they neglect to cite any of the statutory or decisional law on substitutions for cause. See, e.g., 735 ILCS 5/2-1001(a)(3) (West 2016) (governing motions for substitution for cause); *In re*

*Marriage of O'Brien*, 2011 IL 109039, ¶ 30 (construing section 2-1001(a)(3) and explaining the requisites for substitution for cause). They rely instead on general principles of due process and—for reasons unclear to us—standing. Consequently, their contention is forfeited for failure to cite pertinent authority.

¶ 33 Plaintiffs' second argument section attacks the dismissal of their complaint. Here plaintiffs do develop an argument, supported by pertinent authority, that the trial court erred in holding that they lacked the capacity to bring the action. This ground, however, was but one of several on which the court based the dismissal. The other grounds were: (1) plaintiffs failed to bring their claims against the City within the applicable statute of limitations (see 745 ILCS 10/8-101(a) (West 2016)), and since the City was an indispensable party, plaintiffs could not bring claims against the remaining parties; (2) the insurers, BITCO and PMA, owed no duty of care to plaintiffs as third-party claimants; (3) the trial court lacked personal jurisdiction over Van Rite; and (4) constitutional claims could not be alleged against non-governmental actors (the court first mentioned ground (4) in ruling on defendants' motions for sanctions) The court did not specify which parties it considered non-governmental actors for purposes of plaintiffs' claims, but presumably the court meant all parties except the City and possibly Martin.

¶ 34 These four grounds were, on their face, sufficient of themselves to support the dismissal, yet plaintiffs fail to develop any challenge to them.

¶ 35 Regarding ground (4), plaintiffs assert at points in their brief that defendants (the City aside) acted under "color of law." However, plaintiffs cite no authority for when private action constitutes public action and therefore triggers constitutional protections. See, e.g., *Williams v. Nagel*, 251 Ill. App. 3d 176, 182 (1993) ("For an action to rise to the level of 'State action' triggering constitutional protection, there must be a sufficiently close nexus between the State

and the action, so that the action may be fairly treated as that of the State.”). Consequently, their point is forfeited.

¶ 36 As for ground (1), plaintiffs appear to assert that their claims against the City should be considered timely because they brought the same claims in an earlier action, No. 15-AR-330, within the limitations period. They also dispute ground (2) by asserting that they became the “assigned of the insured” when the insurers denied their third-party claims for property damage. Plaintiffs forfeit both challenges by failing to cite legal authority for them.

¶ 37 Pertaining to ground (3), plaintiffs claim that the trial court had personal jurisdiction over Van Rite because BITCO has an office in Illinois and Van Rite “attest[e]d to the fact that he is an insurer who contracts to insure persons, properties, and various risks[] located within this State[.]” From these assertions, plaintiffs conclude that “pursuant to [section 2-209 of the Code of Civil Procedure (735 ILCS 5/2-209 (West 2016)], it was mandatory \*\*\* that the Trial Court[] had to assume jurisdiction over the subject matter in the instant complaint[.]” Plaintiffs do not develop the argument further. They make no attempt to explain the standards of section 2-209 (governing personal jurisdiction of nonresident defendants) and apply them to demonstrate that the trial court had personal jurisdiction over Van Rite. Contrary to plaintiffs’ representation, Van Rite did not aver that he was himself an “insurer,” but rather that he worked for an insurer, BITCO. The whole point of Van Rite’s affidavit was that, *despite* BITCO’s business presence in Illinois and *despite* Van Rite’s employment with BITCO, the court lacked personal jurisdiction over Van Rite, who resided in Wisconsin. The trial court evidently accepted Van Rite’s position, and plaintiffs fail to articulate an argument against it.

¶ 38 Plaintiffs’ third argument section challenges the award of sanctions under Rule 137. The trial court sanctioned plaintiffs for five of the six counts they brought and also for their

subsequent filings. Plaintiffs' argument on sanctions adds nothing on the merits of the five counts beyond the forfeited points they present in challenging the dismissal of their complaint. Plaintiffs also claim that "it was the Trial Court who ordered [plaintiffs] to file subsequent pleadings," but they do not elaborate. For these reasons, we uphold the sanctions award.

¶ 39 In the course of their main arguments on appeal, plaintiffs make several miscellaneous assertions such as (1) the trial court erred in denying their motion to amend; (2) material questions of fact exist as to their claims; and (3) the City's filing of a condemnation complaint (which plaintiffs reference as No. 15-ED-38) provided plaintiffs "a pathway to litigate" the claims in this case. Plaintiffs provide no pertinent legal authority or coherent analysis in support of these assertions. Consequently, we reject them.

¶ 40

### III. CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 42 Affirmed.