

2019 IL App (1st) 172796-U

No. 1-17-2796

Order filed January 25, 2019

Fifth Division

**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  
FIRST DISTRICT

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FRATERNAL ORDER OF POLICE, CHICAGO )  
LODGE NO. 7, )  
 )  
Plaintiff-Appellant, )  
 )  
and )  
 )  
THE CHICAGO POLICE SERGEANTS ASSOCIATION, ) Appeal from the  
PBPA UNIT 156A; THE CHICAGO POLICE CAPTAINS ) Circuit Court of  
ASSOCIATION, PBPA UNIT 156C; and THE CHICAGO ) Cook County.  
POLICE LIEUTENANTS ASSOCIATION, PBPA UNIT 156B, )  
 )  
Plaintiffs-Intervenors, )  
 )  
v. ) No. 14 CH 17454  
 )  
and )  
 )  
CITY OF CHICAGO and DEPARTMENT OF POLICE OF ) Honorable  
THE CITY OF CHICAGO, ) Peter Flynn,  
 ) Judge, Presiding.  
Defendants-Appellees, )  
 )  
CHICAGO TRIBUNE COMPANY, )  
 )  
Defendant-Intervenor.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

### ORDER

¶ 1 *Held:* We dismiss plaintiff's appeal seeking to enjoin the release of the Chicago Police Department's complaint registry files as moot.

¶ 2 Plaintiff Fraternal Order of Police, Chicago Lodge No. 7 appeals from an order of the circuit court of Cook County granting defendants' motion to dismiss count 4 of its amended complaint. For the following reasons, we dismiss the appeal as moot.

¶ 3 BACKGROUND

¶ 4 This case was previously before us on interlocutory appeal when we considered whether, under counts 1 and 2 of its complaint, plaintiff was entitled to a preliminary injunction to enjoin defendants from releasing files under a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)) request. See *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 1 (*Fraternal I*).

¶ 5 The following facts were adduced from the record.

¶ 6 On October 23, 2014, the Chicago Police Department (CPD) notified plaintiff that it intended to release lists of complaint registry (CR) files against all CPD officers initiated on or after January 1, 1967, pursuant to FOIA requests by the Chicago Tribune and the Chicago Sun-Times. In response, plaintiff filed a four-count complaint against defendants City of Chicago (the City) and CPD seeking to enjoin the release of the information requested under the FOIA relating to CR files and a motion for a preliminary injunction. In its complaint, plaintiff alleged that the release: violated section 8 of the Illinois Personnel Record Review Act (Review Act) (820 ILCS 40/8 (West 2012) (count 1); violated the collective bargaining agreement between

CPD and plaintiff (count 2); violated the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2012)) by changing the terms of the parties' collective bargaining agreement (count 3); and violated section 6 of the Review Act (820 ILCS 40/6 (West 2012)) (count 4). Several units of the Policeman's Benevolent and Protective Association (PBPA) and the Chicago Tribune were allowed to intervene as plaintiffs and defendant respectively. Defendants moved to dismiss the complaint.

¶ 7 On December 19, 2014, the circuit court granted plaintiff's request for a preliminary injunction to bar the release of the CR files and issued an accompanying order addressing the preliminary injunction and defendants' motion to dismiss. With respect to plaintiff's four-count complaint, the court stayed the claims of counts 1 and 2 pending proceedings before the Illinois Department of Labor and a previously scheduled arbitration, respectively; dismissed count 3 with prejudice and struck count 4 with leave to replead. In the section of the order that granted plaintiff's preliminary injunction, the court preliminarily enjoined defendants from releasing the requested FOIA information "without first removing, redacting or otherwise deleting any information that is more than four years old as of the date of the Freedom of Information Act requests." The order included a statement that it constituted a preliminary injunction and was immediately appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

¶ 8 Also on December 19, 2014, defendants and the Chicago Tribune filed separate interlocutory appeals, contending that the preliminary injunction motion was improperly granted, which we consolidated.

¶ 9 While the appeal was pending, plaintiff filed a second request for preliminary injunction to bar the release of CR files that were more than four years old under a new FOIA request,

which the circuit court granted on May 27, 2015. Defendants filed second interlocutory appeals, which were consolidated with the pending appeal.

¶ 10 Also during the pendency of the appeal on May 13, 2015, plaintiff moved for leave to file an amended complaint with the same allegations in counts 1 and 2, a notation that count 3 was dismissed with prejudice and a new count 4.<sup>1</sup> Count 4 acknowledged that CR files relating to on-duty police conduct were *per se* subject to disclosure; section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2014)) exempted "personal information contained within public records" from release; and the requested CR files were not reviewed to determine if any off-duty conduct within the files had bearing on the officers' public duties. Plaintiff again sought to enjoin the release of the CR files pursuant to a FOIA request unless CPD was required to: (1) expunge any personal information regarding off-duty conduct that had no bearing on an officer's public duties; (2) delay releasing the requested lists until information regarding off-duty conduct that had no bearing on an officer's public duties was expunged; and (3) delay releasing the lists until plaintiff conducted its own review to ensure the files did not contain personal off-duty conduct that had no bearing on an officer's public duties was expunged.

¶ 11 On July 8, 2016, we vacated the circuit court's orders granting plaintiff's preliminary injunctions, finding that although the parties' collective bargaining agreement mandated arbitration and destruction of CR files that were more than four years old, it was unenforceable because it was contrary to public policy. *Fraternal I*, 2016 IL App (1st) 143884, ¶ 35. We also found that the Review Act did not categorically exempt CR files from disclosure under a FOIA

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<sup>1</sup> No action took place on plaintiff's amended complaint until the appeal in *Fraternal I* was resolved.

request because they were not disciplinary records or personnel files. *Fraternal I*, 2016 IL App (1st) 143884, ¶¶ 50-53.

¶ 12 Upon issuance of this court's opinion in the interlocutory appeal, proceedings continued in the court below on count 4, the sole remaining unresolved claim. On February 10, 2017, defendants filed a section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)) motion to dismiss the amended count 4, contending that it should be dismissed because CPD's rules and regulations mandate that an officer's off-duty conduct which is related to his public duties is properly included in a CR file. Defendants further contended under section 2-615 that an officer's off-duty conduct was subject to disclosure because CPD could be held liable for that conduct. Defendants argued that CPD had a practice of redacting purely private information and other exempt information before releasing records. After argument, the circuit court entered and continued defendants' motion, requesting a stipulation regarding CPD's procedures for reviewing and redacting CR files under an FOIA request. The record does not indicate that the parties provided such stipulation to the court. On October 6, 2017, the circuit court granted defendants' motion to dismiss count 4, finding that this court had previously found no FOIA exemptions that apply to CR files. It is this order that is now before us on appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff contends that there are some CR files that may be withheld under FOIA because they concern off-duty conduct that does not bear on police officers' public duties. Plaintiff also contends that the circuit court erred in granting defendants' motion to dismiss on the basis of this court's holding that there are no FOIA exemptions that apply to CR files.

¶ 15 Defendants filed a combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (735 ILCS 619.1 (West 2016)). The circuit court's order does not specify if it granted defendants' motion based on their section 2-615 or section 2-619 contentions, but this court reviews the grant of a motion to dismiss *de novo* under either section. *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶15. A section 2-615 motion challenges the legal sufficiency of a complaint and a section 2-619 motion assumes the facts within the complaint are true, but alleges an affirmative matter that defeats its claims. *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶15. A motion to dismiss under either section 2-615 or section 2-619 admits all well-pled allegations in the complaint and reasonable inferences to be drawn from the facts. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772 (2009). A reviewing court must interpret all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Kopchar*, 395 Ill. App. 3d at 772. The question on appeal from a section 2-615 dismissal is whether the complaint states a cause of action upon which relief could be granted. *Kopchar*, 395 Ill. App. 3d at 772. The questions on appeal from a section 2-619 dismissal are whether a genuine issue of material fact exists and whether the defendant is entitled to a judgment as a matter of law. *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 12.

¶ 16

A. Mootness

¶ 17 As a preliminary matter, we note that there are currently no pending FOIA requests at issue. A footnote in defendants' brief states that count 4 of plaintiff's amended complaint is moot because after this court's decision in *Fraternal I*, CPD released the CR lists requested by the Chicago Tribune and Chicago Sun Times under the FOIA which were the subject of this suit. Defendants also note that plaintiff cites no pending FOIA requests to which its request for

injunctive relief were directed, but acknowledges that it is highly likely that CPD will respond to FOIA requests for CR files in the future that relate to officers' off-duty conduct.

¶ 18 A case must remain a legal controversy from the time it is filed in the appellate court until the moment of disposition. *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634,

¶ 10. Generally, reviewing Illinois courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Moreover, this court will not decide actual controversies by a judgment which has no effect. *Schnepper v. American Information Technologies, Inc.*, 136 Ill. App. 3d 678, 680 (1985). Where there are changed circumstances which render the issue on appeal moot, the appeal will be dismissed. *Schnepper*, 136 Ill. App. 3d at 681. Changed circumstances are events that prevent the court from granting plaintiff the relief he originally sought. *Schnepper*, 136 Ill. App. 3d at 681.

¶ 19 As defendants point out, after our decision in *Fraternal I*, CPD released all of the requested CR files. A reviewing court may take judicial notice of events which reveal that an actual controversy no longer exists between the parties. *Schweickart v. Powers*, 245 Ill. App. 3d 281, 286-87 (1993). As there are no outstanding FOIA requests as described in count 4 of plaintiff's amended complaint, there is no outstanding controversy between the parties, and plaintiff's issue in this appeal related to the dismissal of count 4 is moot. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10.

¶ 20 Plaintiff additionally raises the issue of whether there are some circumstances in which the content of CR files may be withheld from a FOIA request because they contain information unrelated to the performance of officers' public duties. In this case, plaintiff sought to enjoin

CPD from releasing CR files requested under FOIA until there was a procedure in place for review of the files and verification that no personal files having no bearing on officers' public duties were released. As noted by defendants, although there are no pending FOIA requests for CR files, it is highly likely that CPD will respond to FOIA requests for CR files in the future that relate to officers' off duty conduct.

¶ 21 However, we find that the mootness doctrine also precludes review of plaintiff's second issue, namely whether there are some circumstances in which the content of CR files may be withheld from a FOIA request because they contain information unrelated to the performance of officers' duties. We have already determined that there is no actual controversy remaining between the parties as the CR files in question in the underlying action were already released. While there are exceptions to the mootness doctrine that allow a court to resolve an otherwise moot issue (*In re Lance H.*, 2014 IL 114899, ¶ 13)), plaintiff has not argued that any exceptions to the mootness doctrine apply. A reviewing court is entitled to have all issues clearly defined with relevant authority cited, cohesive arguments presented and is not a repository into which an appellant may impose the burden of research and argument; it is neither the obligation nor the function of this court to serve as an advocate or inspect the record for error and the issue is forfeited. *Country Mutual Insurance Co. v. Styck's Body Shop, Inc.*, 396 Ill. App. 3d 241, 254-255 (2009). Accordingly, we decline to address plaintiff's argument as it is moot.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we dismiss this appeal as moot.

¶ 24 Appeal dismissed.