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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LISA J. GILLARD,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 16 L 10490
)	
BOARD OF TRUSTEES OF COMMUNITY)	
COLLEGE DISTRICT NO. 508, CITY COLLEGES)	Honorable James E. Snyder,
OF CHICAGO, and HAROLD WASHINGTON)	Judge presiding.
COLLEGE,)	
)	
Defendants-Appellees.)	

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court's dismissal of plaintiff's *pro se* discrimination complaint for lack of subject matter jurisdiction affirmed where plaintiff failed to file her complaint with the Department of Human Rights before bringing her action in court.
- ¶ 2 Plaintiff Lisa J. Gillard appeals *pro se* from an order of the circuit court of Cook County dismissing her discrimination complaint for lack of subject matter jurisdiction pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)). On appeal,

plaintiff contends that the court erred when it determined that it lacked jurisdiction because she alleged sufficient facts to establish a negligence tort for breach of duty. Plaintiff also contends that the motion to dismiss was defective on its face because it was not supported by an affidavit. We affirm.

¶ 3 On January 17, 2017, plaintiff was granted leave to file a *pro se* amended complaint in the circuit court of Cook County alleging discrimination in a place of public accommodation by defendants, the Board of Trustees of Community College District No. 508, the City Colleges of Chicago, and Harold Washington College (College). Plaintiff alleged that defendants discriminated against her based on her age, race, and gender in violation of section 5-102 of the Illinois Human Rights Act (Act) (775 ILCS 5/5-102 (West 2016)), and the United States and Illinois Constitutions.

¶ 4 Plaintiff stated therein that she was a 49-year-old African-American female with attention deficit disorder and dyslexia. From 1999 through 2007, plaintiff was employed off and on by defendants as an adjunct professor. Plaintiff asserted that she was a well-known civil and human rights activist and school community leader whose services were known by some campus security staff. From January 3, 2016, through April 15, 2016, plaintiff frequented the College to use the public computers for her research.

¶ 5 Plaintiff alleged that on April 15, defendants denied her entry into the College's building, an area of public accommodation, due to her alleged "inappropriate behavior" on campus. Defendants made note of her personal information and issued a notice barring her from the premises. That same day, plaintiff filed a complaint with the Illinois Attorney General's Office. She submitted a copy of her complaint to the College president, Margie Martyn. On April 22, 2016, Martyn notified plaintiff via email that the bar was rescinded.

¶ 6 Plaintiff alleged that defendants discriminated against her by denying her access to areas of public accommodation, specifically, the public computers located in the atrium and computer lab, in violation of section 5-102 of the Act. She claimed that she was barred from the public areas due to her age, race and gender. Plaintiff asserted that defendants acted intentionally, maliciously, with willful and wanton conduct, and without just cause. She further claimed that defendants maliciously distributed her personal information to various college staff, including building management and security personnel, which implied that she was involved in some type of criminal activity because of her race and gender. Plaintiff alleged that she suffered irreparable harm and injury to her reputation, and requested damages of \$1,000,900.

¶ 7 Defendants filed a motion to dismiss plaintiff's complaint with prejudice pursuant to section 2-619.1 of the Code. Defendants argued that prior to filing an action in the circuit court; plaintiff was required to file a discrimination complaint with the Department of Human Rights (Department). Thereafter, she was required to exhaust all of her remedies with the Human Rights Commission (Commission). Defendants argued that, because plaintiff did not file a complaint with the Department, and did not exhaust her remedies and obtain a final order from the Commission, the circuit court lacked subject matter jurisdiction to consider her claims, requiring dismissal under section 2-619 of the Code (735 ILCS 5/2-619) (West 2016).

¶ 8 Defendants further argued that dismissal was proper under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) because plaintiff failed to allege a sufficient cause of action under the Act. Defendants argued that plaintiff made conclusory statements without alleging facts that supported her claims.

¶ 9 Plaintiff filed a *pro se* response to defendants' motion in which she expressly stated that she "concedes to inadvertently missing the 180-day filing period to exhaust her administrative remedies" with the Department and the Commission under the Act. Plaintiff claimed, however, that because she inadvertently missed the deadline, she could establish "fact-pleading" jurisdiction in the court as an affirmative defense. Plaintiff stated that she pled sufficient facts to support her claims under the Act, thereby giving the court jurisdiction. She also asserted that defendants' motion was insufficient because it was not supported by an affidavit.

¶ 10 Defendants filed a reply maintaining that the circuit court did not have jurisdiction because plaintiff failed to file her complaint with the Department as required by the Act. Defendants further argued that there is no legal "defense" for failing to comply with the Act. Defendants also asserted that they were not required to submit an affidavit with their motion because the grounds for dismissal appeared on the face of plaintiff's pleading.

¶ 11 The circuit court found that plaintiff alleged violations of the Act, but that she did not file a complaint with the Department. The court found that because plaintiff did not seek relief through the required administrative process, it lacked jurisdiction to consider her claims. Accordingly, the court granted defendants' motion and dismissed plaintiff's complaint.

¶ 12 On appeal, plaintiff, *pro se*, first contends that the circuit court erred when it found that it lacked jurisdiction because she alleged sufficient facts in her complaint to establish a tort without relying on the legal parameters of the Act. Plaintiff argues that because she is a former employee of defendants, she has a negligence claim for breach of duty based on their false, malicious and wrongful allegations that she engaged in inappropriate behavior on campus. She claims that defendants' conduct constituted a public policy violation under the criminal perjury statute.

¶ 13 Defendants respond that the circuit court properly dismissed plaintiff's complaint because the court lacked jurisdiction where plaintiff failed to exhaust her administrative remedies as required by the Act. Defendants point out that plaintiff's claims were based on violations of the Act, and therefore, she was required to file a complaint with the Department before filing suit in court. Defendants argue that plaintiff's complaint does not raise any separate counts of common law torts, and that she cannot raise new claims on appeal.

¶ 14 Initially, we observe that issues not raised in the trial court are forfeited on appeal. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14. The purpose of the forfeiture rule is to encourage parties to raise their issues in the trial court to ensure that the trial court has an opportunity to correct any errors prior to appeal, and that a party does not obtain a reversal through her own inaction. *Id.*

¶ 15 Here, plaintiff did not argue, at the circuit court level, that any count of her complaint alleged an independent tort claim against defendants. Each of the three counts in her complaint specifically alleges discrimination in a place of public accommodation in violation of section 5-102 of the Act. Her response to defendants' Section 2-619.1 motion never argued that that the allegations of her complaint set forth a cause of action against defendants other than discrimination in violation of the Act. Plaintiff has therefore forfeited her contention that she raised a negligence claim against defendants. *Id.* ¶ 15.

¶ 16 Section 2-619.1 of the Code allows a party to file a combined motion to dismiss a complaint pursuant to sections 2-615 and 2-619 of the Code. 735 ILCS 5/2-619.1 (West 2016); *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. A motion filed under section 2-615 tests the legal sufficiency of the complaint. *Id.* A motion pursuant to section 2-619 admits the sufficiency of the complaint, but raises a defense outside the complaint which defeats

it. *Id.* Specifically, section 2-619(a)(1) allows for involuntary dismissal where the court does not have subject matter jurisdiction of the action. 735 ILCS 5/2-619(a)(1) (West 2016). When ruling on such motions, a court must accept as true all well-pleaded facts, and any reasonable inferences that may be drawn from them, but cannot accept mere conclusions that are not supported by specific facts. *Patrick Engineering*, 2012 IL 113148, ¶ 31. This court reviews a dismissal under either section 2-615 or 2-619 *de novo*. *Id.*

¶ 17 Article 5 of the Act governs unlawful discrimination in places of public accommodation. 775 ILCS 5/5-101 *et seq.* (West 2016). Under section 5-102(A), it is a civil rights violation for any person to deny or refuse to another the full and equal enjoyment of the facilities, goods and services of any public place of accommodation on the basis of unlawful discrimination. 775 ILCS 5/5-102(A) (West 2016). A non-sectarian undergraduate school and other places of education are places of public accommodation. 775 ILCS 5/5-101(11) (West 2016).

¶ 18 Pursuant to section 7A-102(A)(1) of the Act, a party claiming a violation under the Act must file a written charge with the Department within 180 days after the date on which the alleged civil rights violation occurred. 775 ILCS 5/7A-102(A)(1) (West 2016); *Vulpitta v. Walsh Construction Co.*, 2016 IL App (1st) 152203, ¶ 26. Compliance with the 180-day filing requirement is necessary to vest the Commission with subject matter jurisdiction of the charge, and is a condition precedent to a petitioner's right to seek a remedy. *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125, 141 (2009); *Vulpitta*, 2016 IL App (1st) 152203, ¶ 26.

¶ 19 Section 7A-102 further provides that after the Department has issued its determination of a charge of a civil rights violation, or if the Department fails to issue its report within 365 days after a charge has been properly filed, then an aggrieved party may pursue further proceedings

before the Commission, or commence a civil action in the circuit court. 775 ILCS 5/7A-102 (West 2016). Section 8-111 of the Act provides three scenarios under which a party may pursue proceedings in the circuit court: (A) a civil action commenced in the court pursuant to section 7A-102 described above; (B) judicial review of a final order of the Commission entered under the Act; and (C) a complaint for judicial enforcement of a valid order of the Commission. 775 ILCS 5/8-111(A-C) (West 2016). Subsection (D) provides an express limitation on the court's jurisdiction, stating "[e]xcept as otherwise provided by law, no court of the state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." 775 ILCS 5/8-111(D) (West 2016).

¶ 20 Under the doctrine of exhaustion of remedies, a party must pursue all administrative remedies provided for by the Act before filing an action in the circuit court. *People v. NL Industries*, 152 Ill. 2d 82, 95 (1992). Requiring a party to exhaust her administrative remedies allows an administrative agency to fully develop and consider the facts of the action before it, allows the agency to utilize its expertise, and allows an aggrieved party to succeed before the agency, rendering judicial review unnecessary. *Arvia v. Madigan*, 209 Ill. 2d 520, 531 (2004).

¶ 21 Here, the record shows that plaintiff based all three of the discrimination counts in her complaint on violations of section 5-102(A) of the Act. Consequently, plaintiff was required to file a complaint with the Department within 180 days after the alleged violation occurred on April 15, 2016. 775 ILCS 5/7A-102 (West 2016). Plaintiff conceded that she "inadvertently miss[ed] the 180-day filing period to exhaust her administrative remedies" with the Department and the Commission. Due to plaintiff's failure to file a complaint with the Department, she failed to vest the Commission with subject matter jurisdiction of her claim, and forfeited her right to seek a remedy for the alleged civil rights violations. *Sangamon County Sheriff's Department*,

233 Ill. 2d at 141; *Vulpitta*, 2016 IL App (1st) 152203, ¶ 26. It therefore follows that pursuant to section 8-111(D) of the Act, the circuit court lacked subject matter jurisdiction over her alleged civil rights violations. Accordingly, the court's dismissal of plaintiff's complaint pursuant to section 2-619.1 of the Code was proper.

¶ 22 In arriving at his holding, we reject plaintiff's contention that defendants' motion to dismiss was defective on its face because it was not supported by an affidavit. Section 2-619 of the Code provides that a motion must be supported by an affidavit if the grounds for dismissal do not appear on the face of the pleading being challenged. 735 ILCS 5/2-619 (West 2016). Here, the basis for dismissal, *i.e.*, the circuit court's lack of subject matter jurisdiction, was apparent on the face of plaintiff's amended complaint wherein she made no allegation or reference to filing a charge with the Department.

¶ 23 For these reasons, we affirm the judgment of the circuit court of Cook County dismissing plaintiff's complaint for lack of subject matter jurisdiction.

¶ 24 Affirmed.