2017 IL App (1st) 170525-U
No. 1-17-0525

SECOND DIVISION
December 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNETTE ELMORE, Plaintiff-Appellant, v. CITY OF CHICAGO and CHICAGO POLICE DEPARTMENT, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 L 4216 The Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

¶ 1 Plaintiff, Annette Elmore, appeals from the dismissal with prejudice of her second amended complaint against defendants, City of Chicago ("City") and the Chicago Police Department ("CPD"), pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure ("Code") (735 ILCS 5/2-615 (West 2016); 735 ILCS 5/2-619 (West 2016)). For the reasons that follow, we affirm.

¶ 2 Plaintiff's second amended complaint purported to sound in a claim of intentional infliction of emotional distress. In support of that claim, plaintiff alleged the following. On June

18, 2014, CPD intentionally issued an illegal parking ticket to plaintiff when it ticketed her for parking in a street cleaning zone when no street cleaning actually took place that day. Plaintiff's vehicle was later booted, towed, and impounded.

¶ 3 At the hearing contesting the street cleaning ticket, plaintiff attempted to show the administrative law judge ("ALJ") a copy of the City's 2014 Department of Streets and Sanitation Sweeper schedule as proof that no street cleaning took place on June 18, 2014, at the location where her vehicle was parked. Instead of reviewing the schedule, the ALJ continued the matter for 60 to 90 days to allow plaintiff to gather additional evidence, including a letter from the alderman's office stating that no street cleaning occurred on the day of the ticket. The alderman's office refused to provide the plaintiff with any such letter. Plaintiff claims that the ALJ's continuance and the alderman's refusal to provide a letter were at the behest of the City's mayor, in retaliation for a race and discrimination lawsuit filed by plaintiff against the City's mayor following plaintiff's termination from the City's school board.

¶ 4 Plaintiff also alleged that in retaliation for her discrimination suit, the mayor placed plaintiff under illegal surveillance by CPD, interfered in her job prospects, took out a murder contract on her life, attempted to pick up her cell phone signal, and infiltrated her home computer network.

¶ 5 According to the plaintiff, the "stealing" of her vehicle has caused her "many, many unpleasant mental[,] physical, psychological and emotional reactions," including, but not limited to, fear, depression, humiliation, weight gain, financial difficulties, worry, etc. In addition, the ongoing surveillance of the plaintiff has been "a mental, emotional, horrible nightmare" and caused her "severe and extreme emotional distress."

¶ 6 Plaintiff alleged that at the time the street cleaning ticket was issued, the City knew that she was under the care of a mental health professional to treat her clinical depression. She also alleged that she suffered from hypertension at that time. As part of the federal suit, counsel for the Chicago Board of Education sought a protective order against the disclosure of this medical information about plaintiff. In addition, plaintiff mentioned her mental health issues in the grievance she filed with the Chicago Teachers' Union in 2011.

¶ 7 Other than requesting that the trial court award her $250,000.00 for her emotional distress and that the trial court order CPD to remove her from its surveillance list, the remedies requested by plaintiff relate solely to compensating her for all fines, fees, and damages arising out of the ticketing, booting, towing, and impoundment of her vehicle.

¶ 8 The City brought a section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)) motion to dismiss plaintiff's second amended complaint, arguing that it should be dismissed under section 2-615 for failure to allege extreme and outrageous conduct by defendants, that the City intended to cause plaintiff severe emotional distress or knew that its actions would result in severe emotional distress to plaintiff, or that the City's actions actually caused plaintiff severe emotional distress. The City also argued that plaintiff's second amended complaint should be dismissed under section 2-619, because plaintiff's claim was barred by the applicable statute of limitations, the City was immunized against plaintiff's claim under the Tort Immunity Act (745 ILCS 10/1-101 *et seq.* (West 2016)), and the trial court was barred from reviewing the issues related to the ticketing, booting, towing, and impoundment of plaintiff's vehicle except as provided under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)).

¶ 9 Following full briefing by the parties, the trial court granted the City's motion to dismiss, concluding that plaintiff failed to include well-pleaded facts demonstrating extreme and

outrageous behavior by defendants, because the ticketing, booting, towing, and impoundment of plaintiff's vehicle did not qualify as extreme and outrageous to a reasonable person under existing caselaw. The remaining allegations of plaintiff's second amended complaint, the trial court found, consisted of rhetorical questions, argument, and conclusory allegations, all of which prevented the trial court from identifying a comprehensible claim. In addition, the trial court concluded that although plaintiff labeled her claim as one for the intentional infliction of emotional distress, it ultimately amounted to no more than a request that the trial court revisit the validity of the street cleaning ticket and booting, towing, and impoundment of plaintiff's vehicle. With respect to plaintiff's allegations regarding the ticketing, booting, towing, and impoundment of her vehicle, the trial court concluded that it lacked jurisdiction to review those issues, because the relief plaintiff sought could only be granted by the City's department of administrative hearings. To the extent that plaintiff sought review of the administrative decision, the trial court found that her request was untimely.

¶ 10 Plaintiff now appeals the trial court's dismissal of her second amended complaint, arguing that she did, in fact, sufficiently allege all of the elements for a claim of intentional infliction of emotional distress, the City failed to present any evidence refuting plaintiff's allegations, the trial court failed to discuss in its order the basis for its dismissal pursuant to section 2-619, and the trial court improperly concluded that it lacked jurisdiction where the City did not argue lack of jurisdiction in its motion to dismiss and where the trial court had previously denied the City's request to transfer the case to the municipal department. We conclude that the trial court properly dismissed plaintiff's second amended complaint for failure to state a cause of action and a lack of jurisdiction.

¶ 11 Under section 2-619.1 of the Code, motions to dismiss a complaint pursuant to sections 2-615 and 2-619 may be brought in a single motion, although they must be separate within the single filing. 735 ILCS 5/2-619.1. Under both section 2-615 and section 2-619 motions, we must take all well-pleaded facts in the complaint as true, and we must draw all reasonable inferences in favor of the non-moving party. *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). Our standard of review for both types of motions is *de novo*. *Id.* We may affirm the dismissal of a complaint on any grounds that are in the record. *Golf v. Henderson*, 376 Ill. App. 3d 271, 275 (2007).

¶ 12 First, plaintiff's second amended complaint contains a large number of allegations regarding the propriety of ticketing, booting, towing, and impounding her vehicle. In addition, with the exception of requesting that she be removed from the CPD's surveillance list and that she be awarded $250,000.00 in damages for her alleged emotional distress, all of plaintiff's alleged damages and requested relief relates to her vehicle, *e.g.*, fines and fees related to the ticketing, booting, towing, and impoundment of her vehicle and physical damage to the vehicle while impounded. To the extent that plaintiff seeks review of the propriety of the ticketing, booting, towing, and impoundment of her vehicle, along with the assessment of fines, fees, and damages related to those matters, the trial court correctly found that it lacked jurisdiction to review those matters as a result of plaintiff's failure to exhaust her administrative remedies and properly dismissed those claims pursuant to section 2-619(a)(1) (735 ILCS 5/2-619(a)(1) (West 2016)).

¶ 13 It is well established that where administrative remedies are available to a litigant, the litigant must exhaust them before seeking review by the trial court. 735 ILCS 5/3-102 (West 2016) ("Unless review is sought of an administrative decision within the time and in the manner

provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision."); *Arvia v. Madigan*, 209 Ill. 2d 520, 531-32 (2004) ("Generally, a party may not seek judicial relief from an administrative action unless the party has exhausted all available administrative remedies."). The City provides for administrative adjudication of disputed parking tickets, vehicle immobilizations, and impoundments. See Municipal Code of Chicago, Ill. §§ 9-100-070, 9-100-080, 9-100-090. Here, there is no dispute that although plaintiff requested and attended an initial administrative hearing regarding the parking ticket she was issued, she never returned to complete the process after the ALJ granted her a continuance to gather more evidence. In addition, there does not appear to be any dispute that plaintiff never sought any sort of administrative review with respect to the booting and impoundment of her vehicle. The trial court has no statutory authority to entertain independent causes of action regarding the agency's actions. *Arvia*, 209 Ill. 2d at 532. Therefore, because plaintiff failed to exhaust her administrative remedies by seeking review in the trial court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)), the trial court lacked authority to address plaintiff's claims regarding the propriety of the ticketing, booting, towing, and impoundment of her vehicle.

¶ 14 Plaintiff contends that dismissal on this basis was improper because the City did not raise section 2-619(a)(1) in its motion to dismiss and because the trial court had previously denied the City's motion to transfer the case to the First Municipal Department. Neither of these contentions alters our conclusion. First, although the City might not have specifically cited section 2-619(a)(1), which permits dismissal based on a lack of jurisdiction, it very clearly argued a lack of jurisdiction on the part of the trial court for the same reasons as those stated above. Second, the City's motion to transfer was not based on a contention that the trial court

lacked jurisdiction because plaintiff failed to exhaust her administrative remedies. Rather, it was based on the City's apparent initial belief that plaintiff was requesting that the trial court review the administrative agency's determination. Accordingly, the City requested that the matter be transferred to the First Municipal District where all such matters are to be venued.

¶ 15 We also conclude that plaintiff's complaint was properly dismissed under section 2-615 of the Code, because plaintiff failed to state a cause of action for intentional infliction of emotional distress. A motion to dismiss brought pursuant to section 2-615 of the Code attacks the legal sufficiency of a claim and "should not be dismissed under section 2-615 unless it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the [claimant] to recover." *Maglio v. Advocate Health and Hospitals Corp.*, 2015 IL App (2d) 140782, ¶ 19. To plead a cause of action for intentional infliction of emotional distress, plaintiff was required to allege the following three elements: (1) the defendant's conduct was extreme and outrageous, (2) the defendant either intended its conduct to inflict severe emotional distress or knew that there was a high probability that its conduct would cause emotional distress, and (3) the defendant's conduct must have, in fact, caused plaintiff severe emotional distress. *McGrath v. Fahey*, 126 Ill. 2d 78, 86 (1988). The trial court concluded that plaintiff failed to allege conduct on the part of the City that qualified as extreme and outrageous under Illinois law. We do not address the accuracy of the trial court's conclusion in this respect, as we conclude that plaintiff failed to allege the second element of her cause of action.

¶ 16 In her complaint, plaintiff makes no allegations that the City intended to cause her severe emotional distress, nor does she allege any facts from which that inference may reasonably be drawn. With respect to whether the City knew that there existed a high probability that its conduct would cause plaintiff severe emotional distress, plaintiff simply alleges that she suffered

from and was being treated for clinical depression and hypertension. She also alleges that the City would have known that she had such conditions because the Board of Education requested a protective order for plaintiff's medical records in plaintiff's federal discrimination suit and because plaintiff mentioned her depression in the grievance she filed with the Chicago Teachers' Union following her 2011 lay off.

¶ 17 These allegations do not sufficiently allege that the City knew that there was a high probability its actions would cause plaintiff severe emotional distress for several reasons. First, allegations that the City knew of plaintiff's medical conditions, without more, are not the same as alleging that the City knew that its actions had a high probability of causing severe emotional distress to the plaintiff. There are no allegations that plaintiff's medical conditions somehow made her more susceptible to severe emotional distress and that the City was aware of that heightened susceptibility. Second, plaintiff's conclusion that the City was aware of her medical conditions cannot reasonably be inferred from the facts alleged. Although plaintiff alleges the Board of Education requested a protective order to obtain plaintiff's medical records in plaintiff's discrimination suit, the protective order attached to plaintiff's complaint is not signed, nor does it identify the type of medical records sought. Moreover, as the City points out, the Board of Education is an entity separate from the City (see 105 ILCS 5/34-2 (West 2016)) and, thus, knowledge imputed to the Board of Education cannot necessarily be imputed to the City. Likewise, the fact that plaintiff might have mentioned her depression in a grievance filed with the Chicago Teachers' Union does not, without more, reasonably lead to the conclusion that the City was aware of her depression.

¶ 18 Because plaintiff failed to allege that the City intended to cause her severe emotional distress or that it knew that there existed a high probability that its actions would cause severe

emotional distress to plaintiff, the trial court properly dismiss plaintiff's complaint pursuant to section 2-615 of the Code. We note that the trial court chose to dismiss plaintiff's complaint with prejudice after several attempts by plaintiff to remedy the deficiencies in her complaint failed. The decision whether a dismissal is to be with or without prejudice rests in the sound discretion of the trial court. *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 141576, ¶ 22. Although plaintiff took issue with the trial court's decision to dismiss her complaint, she has made no argument on appeal that the trial court abused its discretion in making that dismissal with prejudice. Accordingly, we see no basis to disturb that determination.

¶ 19 Affirmed.