2012 Il. APP (1st) 113679

FIFTH DIVISION
December 7, 2012

No. 1-11-3679

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JONIKKA Q. RAINES, Plaintiff-Appellant v. ILLINOIS BELL TELEPHONE COMPANY D/B/A AT&T ILLINOIS ("ILLINOIS"), Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 2009-L-003682 Honorable Joan E. Powell, Judge Presiding

JUSTICE TAYLOR, delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

¶1 *Held*: Where appellant did not provide a sufficient record of the proceedings below to evaluate the merits of the appeal, the order entered by the trial court dismissing the case was presumed to be in conformity with the law and have a sufficient factual basis.

¶ 2 Plaintiff Jonikka Q. Raines, *pro se*, appeals from an order of the circuit court of Cook County dismissing her complaint against her former employer, Illinois Bell Telephone Co., for breach of contract, violation of Title VII, lack of due process under the 14th amendment and

fraud for failure to state a cause of action. Plaintiff alleges that defendant wrongfully terminated her by falsely claiming that she had retired. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶4 Initially, we note that plaintiff has only provided us with a common law record, and has not included a transcript of the proceedings below. Moreover, the common law record is replete with gaps. Based on this limited record, we are only able to glean what appears to be the following facts and procedural history, which, as shall be more fully discussed below, are not sufficient to give us the facts on record pursuant to Illinois Supreme Court Rules 321 (S. Ct. R. 321 (eff. Feb. 1, 1994)) and 323 (S. Ct. R. 323 (eff. Dec. 13, 2006).

¶5 The following facts are undisputed. Plaintiff had been working for defendant as an administrative clerk since 1985. Her employment ended March 31, 2006. Defendant claims she retired, plaintiff claims she was involuntarily terminated. In any event, she subsequently released her pension fund and had a retirement dinner.

¶6 The common law record discloses that on March 27, 2009, plaintiff, filed a complaint for wrongful termination and slander. On October 27, 2009, plaintiff filed an amended complaint alleging breach of contract and slander. In that complaint plaintiff alleges she had a phone conversation with her boss on March 31, 2006. Defendant used this conversation as a pretext to fire her under the guise of retirement. Plaintiff seeks relief in two counts; breach of contract and slander. She claims her termination violated terms of the employee handbook by not following proper procedures. Plaintiff does not say what terms of the contract were breached. Plaintiff does not specify which part of the employee handbook has been violated not does she include a copy of the employee handbook, or pertinent parts of such. Her slander claim was dismissed as time barred and is not an issue on appeal. A second amended complaint was never filed.

¶7 On June 9, 2011, plaintiff filed a third amended complaint adding claims for Title VII violation and violation of 14th Amendment rights. Plaintiff alleges defendant discriminated against her based upon sex and race in violation of Title VII. She contends defendant also exhibited unlawful employment practices. She further alleges defendant illegally terminated her without a hearing before the human resource department as required by the 14th Amendment. A copy of the third amended complaint is not included in the record, however it is attached to defendant's brief as an appendix.

¶8 On July 18, 2011, defendant filed a section 2-619.1 motion to dismiss the third amended complaint. Before the trial court ruled on defendant's motion to dismiss, plaintiff filed a fifth amended complaint without leave of court. A fourth was never filed. The fifth amended complaint adds a count for fraud. Plaintiff alleges her boss acted willfully, maliciously and intentionally provided defendant's human resource department with false information about plaintiffs alleged retirement.

¶9 On November 15, 2011, the circuit court granted defendant's 2-619.1 combined motion to dismiss plaintiffs third amended cause of action and dismissed it with prejudice. The circuit court held plaintiff had failed to exhaust her administrative remedies under Title VII and that such action was time-barred. The circuit court also considered plaintiffs fifth amended complaint *sua sponte*, and held plaintiffs complaints did not state causes of action under section 2-615.

¶10 II. ANALYSIS

¶11 On appeal, *pro se* plaintiff contends that the trial court "abused its discretion" when it dismissed her third amended complaint for failure to state a cause of action. In particular, she contests the dismissal of her claims for breach of contract, employment discrimination in violation of Title VII, and fraud. In addition, for the first time on appeal, plaintiff raises claims

for civil conspiracy, claiming that the defendant conspired with various employees to terminate her employment. Finally, plaintiff contends that even if her complaint failed to state a cause of action, the trial court erred when it refused to allow her to correct that deficiency by filing a sixth amended complaint. At the outset, defendant contends that we should affirm the trial court's judgment because plaintiff has failed to comply with the Illinois Supreme Court rules regarding appellate briefs and she has failed to provide a proper record of the proceedings below. We agree on both counts.

12 We note initially, that plaintiff has failed to comply with the supreme court rules for appellate briefs set forth in Illinois Supreme Court Rule 341 (S. Ct. R. 341 (eff. Jul. 1, 2008)). Most importantly, plaintiff failed to state a cogent argument for reversal of the circuit courts rulings in her brief, or to cite to the record as required by Rule 341 (h)(7) (210 Ill. 2d. R. 341(h)(7) (eff. Jul. 1, 2008). See *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982)). Plaintiff merely restates the allegations made in her complaint, and, in so doing, she includes references to matters which are not of record and thus may not be considered on appeal. *American Savings Bank v. Robinson*, 183 Ill. App. 3d 945, 948 (1989). Plaintiff has also failed to include in her brief a concise statement of the applicable standard of review for each issue with citation to authority, as required by Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jul. l, 2008)). However, we are not inclined to dismiss the appeal on that basis alone. We are mindful that some deference is to be afforded a *pro se* litigant in presenting her arguments; however, there is a certain minimum standard which must be met before this court can adequately review the decision on appeal. *Rock Island County v Boalbey*. 242 Ill. App. 3d. 461, 462 (1993).

13 More significant is the fact that plaintiff has not provided us with a sufficient record of the proceedings below to permit us to properly evaluate the merits of this appeal, much less

decide this appeal in her favor. See *Loll Coal. Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). The supreme court held in *Foutch*, 99 Ill. 2d at 392, that an appellant has the burden to present a sufficiently complete record of the proceedings at the trial level to support a claim of error by the court. Moreover, in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record will be resolved against the appellant. *Id.* In that case, since appellant did not provide a transcript or bystander's report of the hearing on a motion to vacate, there was no basis for holding that the trial court committed an error in denying the motion. *Id*; see also *Corral v. Mervis Industries Inc.*, 217 Ill. 2d 144, 156 (2005) (holding that absent an adequate record preserving the claimed error, any doubts arising from the incompleteness of the record will be resolved against the appellant, and the order of the circuit court will be affirmed); see also *Cannon v. William Chevrolet/Geo, Inc.*, 341 Ill. App. 3d 674, 685 (2003) ("Without the transcript, we are unable to discern the trial court's reasoning and whether it abused its discretion."); see also *Coleman v. Windy City Balloon Port, Ltd*, 164 Ill. App. 3d 408, 419 (1987), citing *Mileke v. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 48-49 (1984), *In re marriage of Hofstetter*,102 Ill. App. 3d 392, 396 (1981) (“[i]t is not the obligation of the appellate court to search the record for evidence supporting reversal of the circuit court. *** When portions of the record are lacking, it will be presumed that the trial court acted properly in entry of the challenged order and that the order is supported by the part of the record not before the reviewing court"), but see *Walker v. Iowa Marine Repair Corp*., 132 Ill. App. 3d 621, 625 (1985) (reviewing court properly reached the merits of the case in the absence of a transcript

where it was clear from the circuit court's order that its ruling could only be based on the pleadings and affidavits in the record presented).

¶14 In this case, plaintiff has failed to provide us with a complete report of the proceedings below. She has failed to attach a copy of her third amended complaint to the common law record. Further, plaintiff has not included a transcript or bystander's report of the November 15, 2011 hearing. See S. Ct. R. 323(a) (eff. Dec. 13, 2005) (report of the proceedings, "may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal"). Nor is there a bystanders` report which is authorized under Illinois Supreme Court Rule 323 (c) (See S. Ct. R. 323 (c) (eff. Dec. 13, 2005) ("[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection"), nor are there any agreed statement of facts filed by the plaintiff which is authorized by Rule 323 (d) (See S. Ct. R. 323 (d) (eff. Dec. 13, 2005) (“[t]he parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings"). All that appears before us is the common-law record. Although a copy of the November 15, 2011 order is contained in the common law record, it does not include the trial court's reasoning or indicate what issues were raised at the hearing. As such without a record of the proceedings, we can only speculate as to the reasons for the circuit court’s findings. Such speculation is not an adequate basis upon which we may conclude that the circuit court erred in entering judgment in defendant’s favor. Therefore, under these circumstances, we must presume that the circuit court’s ruling has a sufficient factual basis and

was in conformity with the law. *Corral,* 217 Ill. App. 3d at 156; see also *Foutch,* 99 Ill. 2d at 392; *Coleman*, 160 Ill. App. 3d at 419.

¶15 Furthermore, plaintiff does not include a copy of her third amended complaint in the record. Although defendant has attached to its brief what purports to be a copy of the third amended complaint as an appendix, it is well established that this court may not consider documents that are not part of the certified record on appeal. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wines,* 392 Ill. App. 3d 1, 14 (2009). In fact, attachments to appellate briefs that are not contained in the certified record on appeal cannot be used to supplement that record and are, therefore, not properly before the reviewing court. *Id.*; see also *Ahn Bros. v. Buttitta,* 143 Ill. App. 3d 688, 690 (1986). In that case the court found it lacked jurisdiction to entertain the appeal even though a copy of an unsigned, written order which was presented to the trial judge was contained in the appendix to appellant's brief, because the alleged order was not contained in the record before the court. *Ahn Bros*., 143 III. App. 3d at 690. Thus, the purported copy of plaintiff's third amended complaint is not properly before this court, and may not be considered in our review of the circuit court's decision. Accordingly, since the common law record before us does not appear to be complete, in that it does not formally contain plaintiff's third amended complaint, we cannot review any of the issues raised or assess the trial court's findings and basis for its legal conclusion.

¶17 Moreover, even if we were to overlook the deficiencies in the record and consider plaintiff's contentions on their merits, we find no error. A motion to dismiss brought pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2000)), challenges the legal sufficiency of a complaint by alleging defects on its face. *Young v. Bryco Arms*, 213 Ill. 2d 433, 440 (2004). In reviewing the sufficiency of a complaint, a court must accept as true all well-

pleaded facts and all reasonable inferences that may be drawn from those facts while viewing all allegations in the light most favorable to the plaintiff. *Young*, 213 Ill. 2d at 441. Illinois is a fact pleading state, and conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted. *Time Savers Inc. v. LaSalle Bank; N.A.*, 371 Ill. App. 3d 759, 767 (2007). In addition, a pleading that merely paraphrases the elements of a cause of action in conclusory terms is insufficient. *Welsh v. Commonwealth Edison Co*., 306 Ill. App. 3d 148, 155 (1999), citing *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 423-27 (1981). We review *de novo* an order granting or denying a section 2-615 motion. *Wakulich v. Mraz*, 203 Ill.2d 223, 228 (2003). In a motion to dismiss brought under section 2-619, the movant may go beyond the allegations of the complaint and assert affirmative matters that would defeat the plaintiff's claim. 735 ILCS 5/2-619 (West 2006); *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485-86 (1994), *Alpha*, 391 Ill. App. 3d at 744. When ruling on a section 2-619 motion to dismiss, a court must view the pleadings and supporting documents in the light most favorable to the non-moving party. *Id.; Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). We review *de novo* a section 2-619 dismissal. *Id.* at 368; *Alpha*, 391 Ill. App. 3d at 744.

¶18 Plaintiff's first substantive contenion is that defendant breached her employment contract by terminating her. In that regard, plaintiff contends the employee handbook created enforceable contractual ritghts, binding defendant to a particular procedure for ending plaintiff's employment. Plaintiff has failed to attach the employee handbook or relevant pages or an affidavit indicating why the document was unavailable, as required by section 2-606. Section 2-606 of the Illinois Code of Civil Procedure provides that if a claim is "founded upon a written instrument, a copy thereof, or of so much of the same is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attached to his or her pleading an

affidavit stating facts showing that the instrument is not accessible to her." 735 ILCS 5/2-606 (West 2006). *Alpha School Bus Company, Inc., v. Wagner*; 391 Ill. App. 3d 722, 742 (2009).

¶19 The record before us does not reveal the contents of this employee handbook or copies of the relevant pages. As a result, plaintiff's assertion amounts to little more than a conclusory allegation, which must be rejected in deciding a motion to dismiss. See *Plocur v. Dunkin' Donuts of America, Inc*., 103 Ill. App. 3d , 740, 749 (1981) (holding that the dismissal of a breach of contract claim was proper in light of the plaintiff's failure to recite or attach a copy of the contract to the pleadings). Therefore, plaintiff has failed to properly plead her breach of contract claim.

¶20 Next, plaintiff contends that the trial court erred in dismissing her violations of Title VII pursuant to Section 2-619.1 with prejudice. Under Title VII a plaintiff in Illinois must file an employment discrimination charge with the EEOC within 300 days "after the alleged unlawful employment practice occurred." Sec. 2000e-5(e)(1); see also *National R. R. Passenger Corp. v. Morgan*, 536 U.S.101,104-05 (2002), *Stepney v. Naperville School District 203,* 392 F.3d 236, 239 (2004). Although, plaintiff's last day of employment was March 31, 2006, she did not file her first cause of action until March 27, 2009 nearly three years later. Accordingly, plaintiff's claim is time-barred and the circuit court did not err.

¶21 Plaintiff's next contention, contained in her fifth amended complaint filed without leave of court, is that defendant committed fraud. The elements of a claim for common law fraud are: (1) a false statement or omission of material fact; (2) knowledge or belief of the falsity by the party making it,(3) intention to induce the other party to act; (4) action by the other party resulting in reliance on the truth of the statements; (5) damage to the other party resulting from such reliance. *Board of Educatin of City of Chicago v. A, C & S, Inc*., 131 Ill. 2d 428,452 (1989),

Weidner v. Karlin, 402 Ill. App. 3d.1084, 1087 (2010). A successful common law fraud complaint must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made. *Id*.; *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496-497 (1996),. Plaintiff alleges her boss, Charles Wohland told the human resource department she had retired and that this statement was false. She further alleges this false statement was used to terminate her employment and was used to induce her to retire. Plaintiff fails to indicate how she relied on this false statement or to whom this statement was made. In this case, plaintiff has failed to allege sufficient specific facts to establish a fraud claim against defendant. The circuit court acting *sua sponte* correctly dismissed this claim with prejudice.

¶22 Additionally, we consider whether the circuit court erred by denying the plaintiff's request to file a sixth amended complaint, and dismissing the case with prejudice. Although it is true that courts should be liberal in allowing amendments (*Stringer Construction Co., Inc. v. Chicago Housing Authority*, 206 Ill. App. 3d 250 (1990)), a court may deny a plaintiff's request to amend if it is apparent that even after amendment no cause of action can be stated. (*Bowers v. DuPage County Regional Board of School Trustees District No. 4* (1989), 183 Ill. App.3d 367; *Plocar,* 103 Ill. App. 3d at *749* (1981)); *Terry v. Metropolitan Pier and Exposition Authority*, 271 Ill. App.3d 446, 451 (1995). The court's order dismissing a case with prejudice will only be reversed if there has been an abuse of discretion. *Bowers*, 183 Ill. App. 3d at 381. *Id.*

¶24 Here, the court previously allowed the plaintiff several opportunities to amend her complaint. More importantly, plaintiff did not submit amendments to show she could plead facts

that would state a claim upon which relief could be granted. Hence, we conclude that the circuit court properly denied the plaintiff's leave to file another amended complaint.

¶25 Plaintiff contends for the first time on appeal that the defendant was engaged in a civil conspiracy with multiple employees to terminate her employment. We note that plaintiff's claim of civil conspiracy is not subject to the rationale of *Foutch,* 99 Ill. 2d at 392, since it was never presented to the trial court. However, that does not inure to plaintiff's benefit because matters not raised at the trial level are deemed waived and cannot be raised for the first time on appeal. *In re Estate of Kirk,* 242 Ill. App.3d 68, 72 (1993). Here plaintiff alleges a conspiracy among defendant and several employees. However, she did not raise this issue in any of her responses to defendant's motion to dismiss. Plaintiff' also did not allege facts explaining the role of defendant in this conspiracy. As a result we cannot find these allegations to be either specific or factual in nature, and even if she had raised it before the circuit court, it would have been properly dismissed because it's a conclusory allegation not supported by specific facts. *Connick,* 174 Ill. 2d at 497 (1996).

¶ 27 III. CONCLUSION

¶28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶29 Affirmed.