2014 IL App (1st) 130425-U

No. 1-13-0425

Order filed March 21, 2014

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES L. BERNARD,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County.
	)	
v.	)	No. 12 L 10216
	)	
THE CITY OF CHICAGO,	)	The Honorable
	)	John C. Griffin,
Defendant-Appellee.	)	Judge Presiding.
	)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissal of plaintiff's complaint is affirmed where plaintiff was expressly excluded from the class of persons entitled to paid health insurance premiums and, therefore, was unable to state a cause of action for breach of contract.

¶ 2 The instant appeal arises from the dismissal of plaintiff James Bernard's complaint pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2010)). Plaintiff, a retired firefighter, filed a complaint for breach of contract against defendant City of Chicago (the City), alleging that he was entitled to paid health insurance premiums under a collective bargaining agreement between the City and the firefighters'

union. The City filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)) and the trial court dismissed plaintiff's complaint on the basis of standing due to the fact that plaintiff had not exhausted the grievance procedure set forth in the collective bargaining agreement. On appeal, plaintiff argues that he has standing to pursue his claim. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 10, 2012, plaintiff filed a complaint for breach of contract against the City. The complaint alleges that plaintiff was employed by the City as a firefighter from February 1980 until his retirement on June 19, 2008, at age 55. Plaintiff, as a firefighter working for the City, was represented by the Chicago Fire Fighters Union, Local No. 2, International Association of Fire Fighters (the union), the recognized collective bargaining entity for such firefighters. The union and the City entered into a collective bargaining agreement (CBA), effective from July 1, 2007, through June 30, 2012.

¶ 5 The complaint alleges that plaintiff qualified for early retirement under the CBA when he left his firefighter position in June 2008. Plaintiff submitted a written " 'Irrevocable Notice of Intent to Retire' " to the City on June 18, 2008, which the City accepted, approved, and made effective June 19, 2008. The complaint alleges that, as an early retiree who left the Chicago Fire Department at age 55 during the term of the CBA, "the Plaintiff was entitled to have the cost of his family health insurance premiums paid for fully by the Defendant until Plaintiff reached the age of sixty-five (65) or qualified for Medicare coverage."

¶ 6 The complaint alleges that "[p]laintiff relied on the agreement of the Defendant to provide family health insurance benefits and pay full family monthly premium costs

described in the Collective Bargaining Agreement when the Plaintiff tendered his written and irrevocable notice of intent to retire from the Chicago Fire Department on June 18, 2008."

¶ 7 The complaint further alleges that in the spring of 2011, the pension board informed plaintiff that the City would provide plaintiff a paycheck for back pay and would increase his future pension payments as a result of a new CBA entered into between the union and the City. However, "[w]ithout written notice, the Defendant continued to charge the Plaintiff monthly premiums for family health insurance coverage despite newly negotiated contract terms granting free family health insurance premiums to Chicago Fire Department retirees who were approved to leave their positions on or after reaching age fifty-five (55) rather than age sixty (60)." Additionally, since plaintiff's retirement in 2008, the City had not paid the cost for plaintiff's family health insurance premiums "as agreed in the Collective Bargaining Agreement."

¶ 8 The complaint alleges that the City's failure to pay the cost of family health insurance premiums for plaintiff constitutes a breach of the CBA, and requests the City to reimburse plaintiff for all family health insurance premiums paid since the date of plaintiff's retirement on June 19, 2008, and for the City to pay all of plaintiff's health insurance premiums covered by the CBA in the future.

¶ 9 Attached to the complaint is the portion of the CBA pertaining to health care benefits. Section 12.1 of the CBA provides, in relevant part:

> "A. The Employer's medical, dental, prescription drug, life insurance and vision plans for eligible employees and eligible dependents are incorporated by reference into this Agreement. ***

B. The Employer also agrees to make available to the following other persons the above described hospitalization and medical program, the dental plan, and the optical plan: employees who retire on or after age sixty (60) and their eligible dependents; widows and children or employees killed in the line of duty; former employees on pension disability (both duty and occupational) and their eligible dependents; widows and children of deceased employees who were formerly on pension disability. The Employer will contribute the full cost of coverage for any of the above enumerated persons who elect coverage under any plan or plans. However, coverage under a plan for such persons shall terminate when a person either reaches the age for full Medicare eligibility under federal law or ceases to be a dependent as defined in a plan, whichever occurs first. After a person reaches the age for full Medicare eligibility, the person shall be covered under the medical program for annuitants provided the person pays the applicable contributions.

C. Employees who retire on or after ratification of this Agreement, pursuant to the pension statute, but before attainment of age sixty (60), and their eligible dependents, shall be covered under the PPO hospitalization and medical program in effect for annuitants until they reach the age of full Medicare eligibility and become eligible for Medicare under federal law, provided they pay the contributions otherwise applicable to annuitants. After reaching the age of full Medicare eligibility, and becoming Medicare eligible, they shall be covered under the medical program for annuitants eligible for Medicare provided they pay the applicable contributions."

¶ 10 Also attached to the complaint is a memorandum of understanding, dated October 22, 2010, between the City and the union regarding retiree health care benefits, which provides

that "the health care benefits provided to employees who retire on or after age sixty (60) pursuant to Section 12.1B of the parties' collective bargaining agreement ('Agreement') shall be extended to employees who retire on or after age fifty-five (55), subject to the following terms and conditions." Section A of the memorandum of understanding is entitled "Applicability" and provides:

> "This memorandum of understanding applies only to an employee who retires on or after age fifty-five (55) with a retirement date on or after November 1, 2011, and who intends to avail himself/herself of the health care benefit provided to employees who retire on or after age sixty (60) by Section 12.1B of the Agreement."

¶ 11 On October 16, 2012, the City filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code. The City claimed that plaintiff's claim should be dismissed under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) because he did not cite contractual language that would support his entitlement to the benefits alleged in his complaint and, in fact, the CBA plainly excluded plaintiff from the category of persons entitled to those benefits. Additionally, the City claimed that even if plaintiff was entitled to some benefits, he lacked standing to assert such a claim because he had not exhausted the remedies specified in the CBA and so his claim should be dismissed under section 2-619 of the Code.

¶ 12 Attached to the City's motion to dismiss was the complete CBA between the City and the union. The CBA was entered into on March 18, 2011, and covered the period from July 1, 2007, through June 30, 2012. Article X of the CBA is entitled "Grievance Procedure" and sets forth the procedure to be followed in the event of "[a]ny grievance or dispute which may arise between the parties, including the application, meaning or interpretation of" the CBA,

culminating in binding arbitration. The CBA incorporates several "letters of agreement" into the CBA, including the memorandum of understanding at issue here.

¶ 13 On January 2, 2013, the trial court entered a written order dismissing plaintiff's complaint with prejudice on the basis of lack of standing. The court found that plaintiff's claim would constitute a grievance under the CBA and was subject to the CBA's grievance procedure. The court was also "not persuaded" by the argument that plaintiff had standing as a third-party beneficiary to the CBA, finding that even if he was, he would still be bound by the CBA's grievance procedure.

¶ 14 Plaintiff timely filed a notice of appeal, and this appeal follows.

¶ 15 ANALYSIS

¶ 16 On appeal, plaintiff argues that the trial court erred in dismissing his complaint on the basis of standing. The City, on the other hand, argues that not only did the trial court properly dismiss the complaint on the basis of standing, but also could have dismissed the complaint for failure to state a cause of action, the City's other basis for the motion to dismiss.

¶ 17 In the case at bar, the City filed a combined motion to dismiss pursuant to section 2-619.1 of the Code, alleging defects to the complaint pursuant to both sections 2-615 and 2-619 of the Code. A section 2-615 motion to dismiss "tests the legal sufficiency of a complaint," while a section 2-619 motion to dismiss "admits the sufficiency of the complaint, but asserts affirmative matter that defeats the claim." *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. "In ruling on motions to dismiss pursuant to either section 2-615 or 2-619 of the Code, the trial court must interpret all pleadings in the light most favorable to the nonmoving party" (*Doe v. Chicago Board of Education*, 213 Ill. 2d 19, 23-24 (2004)), and a cause of action should not be dismissed under either section unless it is clearly apparent that no set of facts can be

proved that would entitle the plaintiff to relief (*Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009) (section 2-615 motion); *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003) (section 2-619 motion)). Our review of a motion to dismiss under either section is *de novo* (*Carr v. Koch*, 2012 IL 113414, ¶ 27), and we may affirm the dismissal of a complaint on any ground that is apparent from the record (*Golf v. Henderson*, 376 Ill. App. 3d 271, 275 (2007)). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 18 As an initial matter, plaintiff argues that we should not consider the City's arguments concerning failure to state a cause of action, since the trial court dismissed the complaint on standing grounds and did not consider the City's other basis for dismissal. However, contrary to plaintiff's assertion, we may affirm the trial court's decision on any basis supported by the record regardless of whether it was relied upon by the trial court, even in cases involving motions to dismiss. See, *e.g.*, *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (noting that "this court may affirm the circuit court's judgment on any basis contained in the record" and finding grounds for affirming the decision of the circuit court dismissing a *habeas corpus* complaint); *Burton v. Airborne Express, Inc.*, 367 Ill. App. 3d 1026, 1033 (2006) ("this court may affirm the circuit court's dismissal for any reason appearing in the record"); *AIDA v. Time Warner Entertainment Co.*, 332 Ill. App. 3d 154, 158 (2002) (same); *Joseph v. Collis*, 272 Ill. App. 3d 200, 206 (1995) (despite the lack of clarity as to whether a complaint was dismissed pursuant to section 2-615 or 2-619, "a reviewing court may affirm a correct decision for any reason appearing in the record regardless of the basis relied upon by the trial court"); *Geick v. Kay*, 236 Ill. App. 3d 868, 873 (1992) (same). Thus, we may properly consider the argument raised in the City's motion to dismiss, even if it was left unaddressed

by the trial court. Indeed, we agree with the City's claim that the complaint failed to state a cause of action, and affirm the dismissal of the complaint on that basis with no need to consider the standing issue.

¶ 19 In his complaint, plaintiff alleges that, as an early retiree who left the Chicago Fire Department at age 55 during the term of the CBA, "the Plaintiff was entitled to have the cost of his family health insurance premiums paid for fully by the Defendant until Plaintiff reached the age of sixty-five (65) or qualified for Medicare coverage." However, the portions of the CBA and the memorandum of understanding attached to plaintiff's complaint demonstrate that plaintiff was expressly excluded from the class of retirees eligible for paid health insurance premiums.

¶ 20 Section 12.1B of the CBA provides that the City would pay for health insurance premiums for those employees "who retire on or after age sixty (60)"; under section 12.1C, employees retiring prior to age 60 are eligible for health insurance benefits "provided they pay the contributions otherwise applicable to annuitants." The memorandum of understanding extended the benefit under section 12.1B, providing that "the health care benefits provided to employees who retire on or after age sixty (60) pursuant to Section 12.1B of the parties' collective bargaining agreement ('Agreement') shall be extended to employees who retire on or after age fifty-five (55), subject to the following terms and conditions." However, section A of the memorandum of understanding is entitled "Applicability" and provides:

> "This memorandum of understanding applies only to an employee who retires on or after age fifty-five (55) *with a retirement date on or after November 1, 2011*, and who intends to avail himself/herself of the health care benefit provided to employees who

> retire on or after age sixty (60) by Section 12.1B of the Agreement." (Emphasis added.)

Thus, the memorandum of understanding expressly limited the extended benefit to those employees retiring on or after November 1, 2011. Plaintiff, an employee who retired on June 19, 2008, plainly retired prior to November 1, 2011, meaning that the extended benefit did not apply to him. Instead, plaintiff was eligible for the benefits provided in section 12.1C, for which he was required to pay. Thus, we cannot find any way that plaintiff has stated a cause of action for breach of contract.

¶ 21 On appeal, plaintiff makes limited argument concerning this issue, but does claim that he stated a cause of action for breach of contract "as evident in his complaint." While plaintiff does allege that he was entitled to paid health insurance premiums, the exhibits attached to his complaint contradict his allegations. While we must interpret all pleadings in the light most favorable to the nonmoving party on a motion to dismiss (*Doe*, 213 Ill. 2d at 23-24), "[w]here an exhibit contradicts the allegations in a complaint, the exhibit controls" (*Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18 (citing *In re Estate of Casey*, 222 Ill. App. 3d 12, 19 (1991))). Here, the exhibits demonstrate that plaintiff does not have any right to paid health insurance premiums, and, accordingly, we cannot accept plaintiff's unsupported contention otherwise. We also note that plaintiff's allegation that in the spring of 2011, the pension board informed plaintiff that the City would provide plaintiff a paycheck for back pay and would increase his future pension payments as a result of a new CBA entered into between the union and the City does not change this result. Even taking plaintiff's allegations as true, an increased pension payment does not mean that plaintiff is no longer required to

pay for health insurance. Accordingly, we find that the trial court properly dismissed plaintiff's complaint, because plaintiff did not state a cause of action for breach of contract.

¶ 22 We also note that before the trial court, and in arguing the standing issue in his brief on appeal, plaintiff appears to believe that requiring him to pay for his health insurance premiums has somehow altered his vested right to paid health insurance premiums. In support, plaintiff relies on *Haake v. Board of Education for Glenbard Township High School District 87*, 399 Ill. App. 3d 121 (2010). However, plaintiff's use of that case overlooks the main difference between his situation and the one at issue in *Haake*: there, the defendants changed already-existing rights provided to retirees under their CBA. *Haake*, 399 Ill. App. 3d at 122 ("This case presents the question of whether a school board can decrease the health insurance benefits provided to retirees under certain collective bargaining agreements, after the expiration of those agreements."). Here, by contrast, plaintiff's already-existing right under the CBA was the right to health insurance *if he paid for it*. That has not changed---that is still his right. A change to the benefits of employees who retire later does not have an impact on the rights of plaintiff. Thus, we cannot find that *Haake* bears any similarity to plaintiff's situation here.

¶ 23 As a final matter, we note that the complaint alleges that "[p]laintiff relied on the agreement of the Defendant to provide family health insurance benefits and pay full family monthly premium costs described in the Collective Bargaining Agreement when the Plaintiff tendered his written and irrevocable notice of intent to retire from the Chicago Fire Department on June 18, 2008." However, the memorandum of understanding that extended the benefit of paid health insurance premiums to those under age 60 was dated October 22,

2010, over two years after plaintiff retired. Thus, we see no way that plaintiff could have relied on benefits that were not in existence at the time of his retirement.

¶ 24 CONCLUSION

¶ 25 Since plaintiff was expressly excluded from the class of persons entitled to paid health insurance premiums, plaintiff did not state a cause of action for breach of contract and, consequently, his claim was properly dismissed.

¶ 26 Affirmed.