SECOND DIVISION
July 29, 2014

No. 1-13-2559



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| ALICIA FLESOR and DEAN FLESOR, | ) | |
| | ) | Appeal from the |
| Plaintiffs-Appellants, | ) | Circuit Court of |
| | ) | Cook County. |
| v. | ) | |
| | ) | No. 10 L 9174 |
| UNISOURCE WORLDWIDE, INC. and | ) | |
| ELIZABETH RIM, | ) | Honorable |
| | ) | Daniel T. Gillespie, |
| Defendants-Appellees, | ) | Judge Presiding. |

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JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

**O R D E R**

¶ 1 *HELD*: Dismissal of plaintiffs' amended complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure affirmed. Plaintiff failed to exhaust her administrative remedies under the Illinois Human Rights Act prior to bringing her claims of pregnancy discrimination and retaliation. Her claim of intentional infliction of emotional distress against former supervisor and company was inextricably linked to a civil rights violation and thus preempted by the statute. Plaintiff's husband failed to support his derivative claim for loss of consortium with a viable, underlying tort claim.

¶ 2 Plaintiffs, Alicia and Dean Flesor, appeal from an order of the circuit court of Cook County dismissing their first amended complaint (amended complaint) with prejudice pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). On appeal, they contend that the circuit court erred in ruling: (1) that Alicia failed to exhaust her administrative remedies under the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2012) prior to bringing claims of pregnancy discrimination and retaliation; (2) that Alicia's claim of intentional infliction of emotional distress was preempted by the Act; and (3) that Dean's claim for loss of consortium failed for lack of an underlying tort claim. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 A. The Underlying Allegations

¶ 5 According to the amended complaint, Alicia was hired by defendant Unisource Worldwide Inc. (Unisource) in May of 2007. Her job responsibilities involved reviewing applications of customers who were seeking lines of credit in order to obtain Unisource products. She claimed that she was capable of fully performing her duties, that she "received nothing but positive reviews for her work during her tenure at Unisource," and that she was never subject to discipline during her employment.

¶ 6 On April 6, 2009, Unisource hired defendant Elizabeth Rim to manage Alicia's department. Rim became Alicia's immediate supervisor and soon learned of Alicia's pregnancy. Rim apparently began questioning Alicia about her ability to perform her duties, and, further, asked Alicia whether she would be able to continue working after the birth of her child. At one point, Rim purportedly said to Alicia, "I understand you are a wife and mother, but how do you plan to balance that with work?"

¶ 7 Over time, Rim purportedly "undertook a degrading and demeaning style of management," which "grew more abusive" over time. As a result, Alicia went to see a psychiatrist in June, 2009. The psychiatrist recommended a decrease in Alicia's workload to prevent psychological harm. Meanwhile, her obstetrician also made the same recommendation "to prevent medical harm to Alicia or Alicia's unborn child."

¶ 8 When Alicia notified defendants of her doctors' recommendations, Rim responded by "further degrad[ing] Alicia in front of Alicia's co-workers and increas[ing] Alicia's level of work." As an "accommodation" to the obstetrician's request, Rim simply gave Alicia a laptop computer, in order "to enable Alicia to work from home during the weekends and even during holidays." Rim "continued to degrade Alicia in front of co-workers and continued to enquire [*sic*] regarding how [she] was going to be able to balance the demands of family and work at the same time." Rim also gave Alicia's work heightened scrutiny compared to the work of other employees. Eventually, Rim stated that "the demands of Alicia's duties were too much for Alicia to handle during the pregnancy and that Alicia should resign."

¶ 9 Alicia's psychiatrist eventually advised a leave of absence and wrote her a prescription limiting her to 40 hours of work per week. Alicia contacted Unisource's human resources department about Rim's conduct and the accommodation recommended by her psychiatrist; however, Unisource merely re-directed the issue to Rim. Rim responded by addressing Alicia's medical issues in front of her co-workers. Rim "repeatedly told [her] that if [she] could not handle the responsibilities imposed on [her] *** [she] should find another job." During a meeting, when Alicia told Rim that her work requirements were a source of stress, Rim allegedly said "that it was 'My way or the highway,' " which was a message to Alicia that "her job could be terminated."

¶ 10 In July 2009, Alicia contacted Unisource's human resources department again about her problems with Rim. A human resources representative advised her to speak directly with Rim about her issues. Alicia subsequently had a two-hour conversation with Rim "in the middle of the office, with coworkers looking on." During the conversation, Rim told Alicia that she "should quit if she could not handle the job."

¶ 11 On September 8, 2009, Alicia went on leave "in anticipation of the birth of her child." She eventually went into early labor and alleged that it was a result of the "extreme stress of [her] workplace." On the advice of her doctors, Alicia tendered a letter of resignation effective December 11, 2009, "because she could no longer endure the conditions of employment the Defendants placed her under."

¶ 12 B. Administrative Proceedings

¶ 13 On May 27, 2010, Alicia filed a charge of sex discrimination with the Equal Employment Opportunity Commission (EEOC) and requested a notice of right to sue. Her charge was simultaneously filed with the Illinois Department of Human Rights (IDHR) pursuant to a cooperative agreement between the agencies, and the EEOC issued her a notice of right to sue on June 2, 2010.

¶ 14 On June 23, 2010, the IDHR sent Alicia a letter, stating that it had automatically filed her EEOC charge and was "keeping a copy of [it] on file to preserve jurisdiction under Illinois law." In this letter, the IDHR also informed Alicia that if she wanted to proceed on her discrimination charge with the department, she was required to notify it in writing within 35 days of receiving the letter. The IDHR also warned of the consequence of not complying with the 35-day window for the notification requirement, by stating, "Your failure to timely notify the Department of your decision will result in the Department closing your file."

¶ 15 Alicia did not notify the IDHR in writing or otherwise respond to the IDHR's June 23 letter, and, therefore, the IDHR closed Alicia's case file. No dispute exists between the parties over the issue of whether the IDHR closed the file.

¶ 16 C. Proceedings in the Circuit Court

¶ 17 On August 10, 2010, plaintiffs filed a complaint in the circuit court of Cook County alleging, *inter alia*, that Alicia was subject to pregnancy discrimination by defendants in violation of Title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000e *et seq.* (2006)) and the Act.

¶ 18 On September 16, 2010, defendants removed the action to the United States District Court for the Northern District of Illinois, citing the district court's federal question jurisdiction over Alicia's Title VII claim (28 U.S.C. § 1446(d) (West 2006)).

¶ 19 On October 7, 2011, plaintiffs filed an amended complaint in the district court. In the amended complaint, Alicia alleged pregnancy discrimination by Unisource in violation of the Act (Count I); retaliation by Unisource in violation of the Act (Count II); intentional infliction of emotional distress by defendants (Count III); and negligent training and supervision of Rim by Unisource (Count V). Specifically, Alicia alleged that Rim's conduct "placed extraordinary amounts of stress" on her and that she feared that she would be terminated or that "harm would befall her unborn child." She alleged that when she discussed Rim's conduct at night with her husband Dean, she would "cry uncontrollably, tremble and feel physically ill." Her resignation from her job at Unisource, she claimed, "constituted a constructive discharge and the direct result of the hostile and discriminatory work environment at UNISOURCE created by RIM." Alicia's husband, Dean, brought a derivative claim for loss of consortium against defendants (Count IV).

¶ 20 On February 14, 2013, the district court granted plaintiffs' motion for remand, and remanded the case back to the circuit court. Defendants filed a motion to dismiss plaintiffs' amended complaint pursuant to sections 2-615 and 2-619 of the Code. On July 30, 2013, the circuit court granted defendants' motion to dismiss the amended complaint, with prejudice. In its written order, the court found that Alicia had failed to exhaust her administrative remedies prior to bringing her pregnancy discrimination and retaliation claims. Specifically, it found that Alicia never received a final order from the IDHR and that "said order is an absolute necessity for any individual seeking to bring suit seeking damages for violation of the IHRA." The court additionally found that Alicia's tort claims for intentional infliction of emotional distress and negligent supervision were preempted by the Act. Finally, Dean's claim for loss of consortium was dismissed for lack of a viable, underlying tort claim.

¶ 21 Plaintiffs timely appealed the circuit court's dismissal of their amended complaint. Accordingly, this court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. May 30, 2008).

¶ 22 ANALYSIS

¶ 23 A. Standard of Review

¶ 24 A section 2-615 motion to dismiss tests the legal sufficiency of the complaint, whereas a section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but asserts other affirmative matter that defeats the cause of action. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). We review *de novo* the dismissal of a complaint under either section. *Id.*

¶ 25 B. Human Rights Act Claims (Counts I and II)

¶ 26 Plaintiffs first contend that the circuit court erred in dismissing Alicia's pregnancy discrimination and retaliation claims under the Act (Counts I and II). They claim that Alicia

exhausted her administrative remedies by filing a charge with the IDHR and waiting 365 days.

¶ 27 The exhaustion of remedies doctrine provides that a party must first pursue all administrative remedies before turning to review in the courts. *People v. NL Industries*, 152 Ill. 2d 82, 95 (1992). "Requiring the exhaustion of administrative remedies 'allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary.' " *Arvia v. Madigan*, 209 Ill. 2d 520, 531 (2004).

¶ 28 In the case at bar, Alicia filed a charge of discrimination with the EEOC on May 27, 2010. At that time, the Act provided:

> "A charge filed with the [EEOC] within 180 days after the date of the alleged civil rights violation shall be deemed filed with the Department on the date filed with the [EEOC]. Upon receipt of a charge filed with the [EEOC], the Department shall notify the complainant that he or she may proceed with the Department. *The complainant must notify the Department of his or her decision in writing within 35 days of receipt of the Department's notice to the complainant and the Department shall close the case if the complainant does not do so.*" (Emphasis added.) 775 ILCS 5/7A-102(A-1) (West 2010).

¶ 29 As evidenced by its June 23 letter to Alicia, the IDHR satisfied its statutory obligation under section 7A-102(A-1), by notifying Alicia of her right to proceed with the Department on her discrimination charge. The contents of the letter indicate also that the IDHR informed Alicia that she had 35 days to notify the Department, in writing, of her decision as to whether she

wanted to proceed on her claim.

¶ 30 It is undisputed that Alicia never responded to this notice. By failing to notify the IDHR of her decision, Alicia failed to pursue her administrative remedies, and forfeited her opportunity to "proceed with the Department" on her claims. The IDHR was never presented with the charge in accordance with the Act. As a result, the IDHR closed her file, and did not proceed with an investigation into her discrimination claims (see 775 ILCS 5/7A-102(C) (West 2010)). Based on Alicia's failure to comply with the Act's notice requirements, we agree with the circuit court's conclusion that Alicia failed to exhaust her administrative remedies. See *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998) (noting that a court of review may affirm the trial court on any basis that appears in the record).

¶ 31 Plaintiffs claim that a civil action was appropriate because the IDHR took no action within 365 days of the conclusion of the EEOC's investigation. They rely on section 7A-102(G) of the Act, which provides that "[w]hen a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof ***, shall issue its report as required ***." 775 ILCS 5/7A-102(G)(1) (West 2010). Plaintiffs note that if the IDHR fails to issue its report within 365 days of a charge being filed, a complainant has "90 days to either file his or her own complaint with the Human Rights Commission or commence a civil action in the appropriate circuit court." 775 ILCS 5/7A-102(G)(2) (West 2010).

¶ 32 We address this argument by observing the well-settled principle that "[w]hen construing a statute, the primary objective is to ascertain and give effect to the intent of the legislature, the language of the statue being the best indicator of such intent." *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 37. "[W]ords and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation." *Brucker v. Mercola*,

227 Ill. 2d 502, 514 (2007). "Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *Id.* Moreover, in determining the legislature's intent, we many properly consider the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved. *Id.* We naturally presume that the legislature did not intend to produce an absurd, inconvenient, or unjust result. *Id.*

¶ 33 Here, plaintiffs' interpretation of section 7A-102(G), essentially, is that a complainant may commence a civil action in the circuit court whenever the IDHR does not issue a report within 365 days of a charge being filed. In other words, even if the complainant fails to give the requisite written notice to IDHR of her intention to pursue her civil rights violation charge and the Department closes her case file, the complainant need only wait 365 days and can then bring a civil action for the same Human Rights Act claims in the circuit court.

¶ 34 Plaintiffs' proposed interpretation of section 7A-102(G) would lead to the absurd result that the complainant whose case file is closed due to her own inaction is left waiting 365 days for a report to be issued before filing suit in the circuit court, even though no such report will ever be issued because her case file is closed. Had the legislature truly intended to allow a complainant to file a civil action after her case file was closed, we cannot believe that it would impose such an arbitrary 365 day waiting period on her before she could bring suit. We find that section 7A-102(G) can only be reasonably interpreted as allowing a civil action in the circuit court when a complainant properly pursues her claim with the IDHR and *then* the IDHR fails to issue a report within 365 days. Because Alicia failed to satisfy her statutory obligation to provide proper notice to the IDHR in the first instance, the Department's obligation to issue a report within 365 days, following notice from the claimaint, was not triggered. Accordingly, we find that section 7A-102(G) did not authorize her to bring a civil suit under the Act in this case.

¶ 35 Plaintiffs, nonetheless, maintain that an exception to the exhaustion of remedies doctrine applies in this case. We observe that the supreme court has recognized several exceptions that allow an aggrieved party to seek judicial review of an administrative decision without exhausting her remedies, including: (1) a statute, ordinance, or rule is challenged as unconstitutional on its face; (2) multiple administrative remedies exist and at least one has been exhausted; (3) the agency cannot provide an adequate remedy or it is patently futile to seek relief before the agency; (4) no issues of fact are presented or agency expertise is not involved; (5) irreparable harm will result from further pursuit of administrative remedies; or (6) the agency's jurisdiction is attacked because it is not authorized by statute. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308-09 (1989).

¶ 36 Here, plaintiffs argue that multiple administrative remedies were available because either the EEOC or the IDHR could have processed Alicia's charge of pregnancy discrimination under the Act. Because Alicia exhausted one of these remedies, *i.e.*, the EEOC, plaintiffs argue she was entitled to bring suit under the Act in the circuit court. Plaintiffs' have not cited any authority holding that the EEOC is a viable administrative remedy for pursuing claims asserted under the Act. They merely rely on *Hong v. Children's Memorial Hospital*, 936 F.2d 967 (7th Cir. 1991), which discusses the worksharing agreement between the EEOC and the IDHR, not whether proceedings with the EEOC are a remedy for an alleged violation of the Act.

¶ 37 We find, contrary to plaintiffs' claim, that the EEOC is not a viable administrative remedy for a pregnancy discrimination claim brought pursuant to the Act. Although the EEOC and the IDHR both process workplace discrimination claims, the EEOC is tasked with enforcing the provisions of Title VII (see 42 U.S.C. § 2000e-5(a) (2006)), while the IDHR enforces the provisions of the Act (see generally 775 ILCS 5/7A-102 (West 2010)). The only administrative

remedy for Alicia's pregnancy discrimination claim brought pursuant to the Act was proceedings with the IDHR. Alicia failed to exhaust this remedy and, therefore, the circuit court properly dismissed Counts I and II of the amended complaint.

¶ 38 Plaintiffs request that the dismissal of their amended complaint be without prejudice so that Alicia could properly pursue administrative remedies on remand. They have not, however, identified what administrative remedies Alicia could pursue now that her IDHR file is closed due to her inaction. Because plaintiffs have not shown that Alicia could exhaust her administrative remedies on remand, we affirm the circuit court's order dismissing her the Act claims with prejudice.

¶ 39 C. Tort and Loss of Consortium Claims (Count III and IV)

¶ 40 Plaintiffs also contend that the circuit court erred in dismissing Alicia's intentional infliction of emotional distress claim against Rim and Unisource (Count III) and Dean's claim for loss of consortium (Count IV). They argue that Alicia's tort claim was not "inextricably linked" to her civil rights claims and that the circuit court thus erred in concluding that it was preempted by the Act. They argue, further, that because the tort claim against Rim was proper, Dean's derivative claim for loss of consortium should have survived dismissal as well.

¶ 41 Defendants respond that Alicia's intentional infliction of emotional distress claim was properly dismissed as preempted by the Act. Specifically, they argue that "every single allegation of alleged wrongdoing by Rim to support [Alicia's] IIED claim relates to [Alicia's] work and her assertions that Rim harassed her and retaliated against her because of her pregnancy and purported complaints."

¶ 42 The Illinois Human Rights Act provides that "[e]xcept as otherwise provided by law, no court of this 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 2010). Our supreme court has held that "whether the circuit court may exercise jurisdiction over a tort claim depends upon whether the tort claim is inextricably linked to a civil rights violation such that there is no independent basis for the action apart from [the Act] itself." *Maksimovic v. Tsogalis*, 177 Ill. 2d 511, 517 (1997). "[A] common law tort claim is not inextricably linked with a civil rights violation where a plaintiff can establish the necessary elements of the tort independent of any legal duties created by the Illinois Human Rights Act." *Id.* at 519. We note that "[t]he 'fundamental nature' of a claim is not altered solely because a plaintiff's complaint frames the issue as that of a common law tort." *Schroeder v. RGIS, Inc.*, 2013 IL App (1st) 122483, ¶ 26 (citing *Geise v. Phoenix Co. of Chicago, Inc.*, 159 Ill. 2d 507, 517-18 (1994)).

¶ 43 To state a cause of action for intentional infliction of emotional distress, a plaintiff must plead facts establishing: (1) that defendant engaged in extreme and outrageous conduct; (2) that defendant knew there was a high probability her conduct would cause severe emotional distress; and (3) that her conduct caused severe emotional distress. *Id.* ¶ 27. "In determining whether conduct is outrageous and extreme, we use an objective standard based on all the facts and circumstances of the case." *Id.* " '[M]ere insults, indignities, threats, annoyances, petty oppressions or trivialities' do not constitute extreme and outrageous conduct." *Id.* (quoting *Public Finance Corp. v. Davis*, 66 Ill. 2d 85, 89-90 (1976)). " 'Rather, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community.' " *Id.* (quoting *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 21 (1992)).

¶ 44 Here, Alicia alleged in the background facts of her complaint that Rim, her supervisor at work, created a hostile and discriminatory work environment that led to her constructive

discharge. She alleges that Rim, with knowledge of her pregnancy, questioned her ability to perform her duties; questioned her ability to balance her work and family life; degraded her in front of her co-workers; increased her workload during her pregnancy; subjected her work to heightened scrutiny; repeatedly told her that she should resign if she could not handle the job; addressed her medical issues in front of co-workers; and told her that it was "My way or the highway" suggesting that Alicia's job could be terminated. The crux of her tort claim is the alleged discrimination that Rim demonstrated against Alicia because of Alicia's pregnancy. The Act provides that it is a civil rights violation for an employer to act with respect to privileges or conditions of employment on the basis of pregnancy, childbirth, or related medical conditions. 775 ILCS 5/2-102(I) (West 2010). Alicia has not established elements of a claim for intentional infliction of emotional distress that is independent of the duties created by the Act. We therefore conclude that her tort claim is inextricably linked with a civil rights violation and preempted by the Act. Because there are no other viable, underlying tort claims remaining, we find that Dean's derivative claim for loss of consortium was also properly dismissed. *Plocar v. Dunkin' Donuts of America, Inc.*, 103 Ill. App. 3d 740, 748-49 (1981).

¶ 45 For the reasons stated, we affirm the dismissal of plaintiffs' amended complaint by the circuit court of Cook County.

¶ 46 Affirmed.