FOURTH DIVISION
December 14, 2017

Nos. 1-16-0281 & 1-16-0282 (consolidated)



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| SHARON PERIK, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 L 3606 |
| | ) | |
| JP Morgan Chase Bank, U.S.A., N.A., | ) | |
| Washington Mutual Bank, Early Warning | ) | |
| Services, L.L.C., and TCF National Bank, | ) | |
| Defendants, | ) | |
| | ) | |
| EARLY WARNING SERVICES LLC. and TCF | ) | |
| NATIONAL BANK, | ) | Honorable |
| | ) | William Gomolinski |
| Defendants-Appellees. | ) | Judge Presiding. |

JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held*: Circuit court's judgment affirmed. Trial court properly granted summary judgment to consumer reporting agency and financial institution on plaintiff's defamation claim, as plaintiff failed to come forth with any facts showing malice to negate affirmative defenses of qualified privilege and preemption under the Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.* (2006)). Plaintiff failed to show that trial court failed to properly apply discovery rules.

¶ 2 This consolidated appeal involves a defamation action. Plaintiff, Sharon Perik, appeals from the trial court's grant of summary judgment in favor of defendants, Early Warning Services, LLC (Early Warning) and TCF National Bank (TCF).

¶ 3 Perik alleged that Early Warning made libelous statements and acted with malice when it transmitted a consumer report, obtained from a database on which banks shared information about their customers, to TCF stating that Perik was suspected of passing fraudulent checks. Perik claimed that TCF defamed her when it closed her checking account after receiving the consumer report from Early Warning.

¶ 4 Perik also argues that the trial court committed reversible error when it denied her motion to strike TCF's second amended affirmative defenses, denied her motion to strike and compel TCF's answers to interrogatories, and failed to properly apply the rules of discovery. Finally, she claims the court committed reversible error when it denied her motion to substitute judge for cause.

¶ 5 For the reasons that follow, we affirm.

¶ 6 I. BACKGROUND

¶ 7 Because this is the fourth time this matter has been before this court, many of the underlying facts may be found in this court's previous decisions in this case. See *Perik v. JP Morgan Chase Bank* (*Perik I*), 2011 IL App (1st) 093088-U; *Perik v. JP Morgan Chase Bank* (*Perik II*), 2015 IL App (1st) 132245; and *Perik v. JP Morgan Chase Bank* (*Perik III*), 2017 IL App (1st) 151593-U. Of the prior three appeals, two (*Perik II* and *Perik III*) concerned only defendant J.P. Morgan Chase, N.A. (Chase). We will discuss the facts and trial court proceedings only to the extent necessary to understand Perik's arguments in this appeal.

¶ 8 As we explained in *Perik I*, to assist financial institutions in detecting and eliminating fraud, Early Warning facilitates the secure exchange of information and knowledge of consumer activity between financial organizations. *Perik I*, 2011 IL App (1st) 093088-U, ¶ 5. Early Warning maintains a shared database. *Id*. Financial institutions (the "furnishers") can contribute

current information regarding the activities of their former depositors. *Id*. Other financial institutions (the "inquirers") considering whether to enter into a business relationship with a depositor may make a request for information from the database that Early Warning maintains. *Id*.

¶ 9 When Early Warning receives a request for information about a potential depositor from an inquirer, it generates a consumer report based only on the information maintained in its database. *Id*. After Early Warning generates the consumer report, it provides it to the inquiring financial institution. *Id*. In particular, the inquirers may use the consumer report in determining the risk involved in establishing a business relationship with the depositor. *Id*. Early Warning relies on the information and representations made by the furnishers and informs them that the information they contribute to the database may be used to generate a consumer report. *Id*. As part of its business practices, Early Warning complies with FCRA regulations. *Id*.

¶ 10 In February 2008, two blank checks were stolen from Perik, from an account she held at Chase, and were used to purchase items. *Perik III*, 2017 IL App (1st) 151593-U, ¶ 6. Perik reported the stolen checks to the police and to Chase. *Id*. Chase reimbursed Perik. *Id*.

¶ 11 Soon after the theft, Chase sent a fraud alert to the database operated by Early Warning saying that Perik had participated in fraudulent activity involving the checks. *Id*., ¶ 7. Two other banks, Washington Mutual Bank (Washington Mutual) and TCF Bank (TCF), requested information about Perik from Early Warning and received a copy of the alert. *Id*. There is no dispute that the alert falsely claimed that Perik had committed fraud. *Id*. After receiving the fraud alert from Early Warning, TCF advised Perik it would not maintain a banking relationship with her.

¶ 12 Perik filed a complaint against Chase, Early Warning, Washington Mutual (whose assets and liabilities were later acquired by Chase), and TCF alleging that the transmission constituted libel *per se*. Perik filed a second amended complaint on March 2, 2010.[1]

¶ 13 In *Perik I*, which also involved Chase, we ruled that Early Warning had established its affirmative defenses of qualified privilege and preemption under the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 *et seq.* (2006)), but we reversed the trial court's dismissal of the count against Early Warning because Perik had sufficiently pleaded actual malice. Thus, in Perik's defamation action against Early Warning, the only question remaining on remand after *Perik I* was whether Early Warning acted with malice. Malice would negate both of Early Warning's affirmative defenses: qualified privilege and FCRA preemption.

¶ 14 The case was remanded and the parties engaged in discovery. When discovery closed, Early Warning moved for summary judgment, arguing that no evidence existed to support Perik's allegation that Early Warning acted with malice when it transmitted the consumer report concerning Perik to TCF. Early Warning argued that the undisputed evidence affirmatively established that Early Warning could not have acted with malice because it had no contact with, or knowledge of, Perik until after the allegedly libelous communications, and that it had no reason to doubt the accuracy of the information it transmitted about Perik.

¶ 15 On March 13, 2014, the circuit court granted summary judgment in favor of Early Warning. The court found that the law-of-the-case doctrine applied and adopted this court's decision in *Perik I*, including our conclusion that, barring any evidence of malice, Early

[1] Chase and Perik proceeded to arbitration pursuant to the arbitration clause in Perik's account agreement. The arbitrator found that Chase had transmitted information that Perik "was a fraud 'suspect,' instead of a 'victim' of fraud," due to "a computer programming error." The arbitrator issued an award denying Perik's claim against Chase. The trial court denied Perik's motion to vacate the arbitration award and this court affirmed that judgment. *Perik III*, 2017 IL App (1st) 151593-U, ¶ 114, *pet. for leave to appeal pending*, No. 122373 (filed Jun. 14, 2017).

Warning's transmissions of the consumer report were protected by the qualified privilege as well as the FCRA preemption. But the trial court also found that, independent of the law of the case, Early Warning had established these affirmative defenses. The court also found that there was no evidence of malice in the record.

¶ 16 On March 3, 2015, TCF filed its motion for summary judgment. Perik was granted leave of court to issue additional discovery. On October 29, 2015, Perik filed a petition for substitution of judge for cause. On November 12, 2015, the petition was denied. On January 8, 2016, the trial court granted TCF's motion for summary judgment.

¶ 17 Perik filed timely notices of appeal against both Early Warning and TCF. We consolidated the appeals.

¶ 18 II. ANALYSIS

¶ 19 At the outset, we must note our frustration in disposing of these appeals. As both Early Warning and TCF have noted, Perik's briefs are exceedingly difficult to follow. Arguments are dropped in almost in passing, in scatter-shot fashion, often without citation to supporting case law or the record. It was often difficult for us to parse through the language to know where one argument stopped and a new one began.

¶ 20 It is not our intention to criticize counsel so much as to reiterate what we have said so many times before: It is not our function to play the role of advocate and take the briefest mention of an issue and turn it into a fully-blossomed legal argument, complete with legal research and record citation. See *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (reviewing court is "not merely a repository into which an appellant may dump the burden of argument and research, nor is it our obligation to act as an advocate or seek error in the record."). This court is "entitled to have the issues on appeal clearly defined with pertinent authority cited

and reasoned, cohesive legal argument." *Cwik v. Giannoulias*, 237 Ill. 2d 409, 423 (2010). A failure to adequately argue a claim of error results in forfeiture of that claim. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Points not argued are waived ***."); *Wilson v. County of Cook*, 2012 IL 112026, ¶ 25 (claims supported by "little or no argument" forfeited under Rule 341(h)(7)).

¶ 21 That said, we have done our best—at times, with the assistance of the defendants' briefs—to identify and address the arguments properly before us, and to refrain from finding forfeiture except where no other outcome is possible.

¶ 22 A. Summary Judgment in Favor of Early Warning

¶ 23 Perik's first argument is that the trial court committed reversible error when it granted summary judgment to Early Warning.

¶ 24 Summary judgment is proper only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). The court must strictly construe the pleadings, depositions, admissions, and affidavits against the movant and liberally construe them in favor of the opponent. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. Because summary judgment is a drastic means of disposing of litigation, it should be granted only when the moving party's right is clear and free from doubt. *Id*.

¶ 25 The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). A genuine issue of material fact exists when the material facts are disputed, or when the material facts are undisputed but reasonable persons might draw different inferences

from those undisputed facts. *Carney v. Union Pacific Railroad Co*., 2016 IL 118984, ¶ 25. The nonmoving party need not prove her case at the summary judgment stage, but must present a factual basis that would arguably entitle her to a judgment at trial. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. We review *de novo* the trial court's grant of summary judgment. *AMA Realty Group of Illinois v. Melvin M. Kaplan Realty, Inc*., 2015 IL App (1st) 143600, ¶ 18.

¶ 26 1. *Perik I*

¶ 27 Because Perik appears to misconstrue our previous decision in this matter, we begin by explaining what issues have already been decided. In *Perik I*, we held that Early Warning had successfully established both of its defenses to defamation. First, it had successfully established its defense of qualified privilege. See *Perik I*, 2011 IL App (1st) 093088-U, ¶ 55 ("Early Warning adequately asserted as a matter of law a qualified privilege in response to Perik's defamation allegations because Early Warning provided the report in good faith, it had a duty or interest to uphold, the publication was limited in scope and the statement was published on a proper occasion in a proper manner and to proper parties.").

¶ 28 And second, Early Warning successfully established its defense of preemption under the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 *et seq.* (2006)). *Perik I*, 2011 IL App (1st) 093088-U, ¶ 56 ("as a credit reporting agency, Early Warning's business activities are protected by the FCRA, which also presents a defense to Perik's defamation claim," and thus "[p]ursuant to section 1681h of the FCRA, Early Warning, as a consumer reporting agency, is immune from a state law defamation claim, unless it acted with malice.").

¶ 29 It is true that, in *Perik I*, we reversed the dismissal of the defamation count against Early Warning, but not because Early Warning failed to establish these defenses. Rather, we held that Perik had sufficiently alleged malice, which would defeat either of those affirmative defenses if

proven. *Id*., ¶¶ 57-59 (noting that finding of malice would "negate[] both of Early Warning's affirmative defenses of qualified privilege and FCRA preemption" and that "Perik did plead actual malice sufficiently" in her complaint; thus, dismissal of count against Early Warning was improper). Thus, the only question remaining on remand was whether plaintiff could prove that Early Warning acted with malice.

¶ 30 The trial court ruled that *Perik I*'s recognition of these defenses became the law of the case. That ruling was correct. Questions of law decided in an appeal become the law of the case for the trial court on remand, conclusively settling that question for the trial court. *In re Christopher K.*, 217 Ill. 2d 348, 364-65 (2005); *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 38; *Norris v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, 368 Ill. App. 3d 576, 580 (2006). Our holdings regarding the existence and validity of these defenses were clearly questions of law. See *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 166 (2003) (existence of qualified privilege is question of law for court); *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 18 (statutory interpretation is question of law). The trial court thus correctly determined that the law-of-the-case doctrine applied to *Perik I*'s holdings regarding the defenses.

¶ 31 Just as the law-of-the-case doctrine binds lower courts upon remand, likewise the general rule is that questions of law decided in a previous appeal are the law of the case in a subsequent appeal. *Christopher K.*, 217 Ill. 2d at 365; *Norris*, 368 Ill. App. 3d at 580. The exceptions to this doctrine are if there have been material changes in the facts supporting a different legal outcome (*Christopher K*, 217 Ill. 2d at 365), a higher court has reached a different outcome (*Norris*, 368 Ill. App. 3d at 581), or a successor appellate panel finds the original holding "palpably erroneous." *Id*.

¶ 32 Perik does not, in any meaningful sense, challenge the application of the law-of-the-case doctrine on any of those grounds. Her argument, instead, is that the Rule 23 Order in *Perik I* was "void from its inception[,] a complete nullity and without legal effect." Her reasoning is this: the trial court's original dismissal of the defamation claim against Early Warning under section 2-619 was void, because the defenses on which Early Warning had prevailed—qualified privilege and the FCRA—had not yet been pleaded by Early Warning as affirmative defenses. So the trial court's order was void, and thus so was this court's Rule 23 Order in *Perik I*.

¶ 33 For many reasons, that is not a serious argument. A party moves for dismissal under section 2-619 as a responsive pleading *in lieu of* an answer and affirmative defenses. See 735 ILCS 5/2-619(a) (West 2010) ("Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief ***."). Among other things, a defendant may move for dismissal on the basis that "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim," such as qualified privilege or FCRA preemption. 735 ILCS 5/2-619(a)(9) (West 2010). The rule specifically contemplates that an answer may later follow, if the dispositive motion is unsuccessful. See 735 ILCS 5/2-619(d) (West 2010) ("The raising of any of the foregoing matters by motion under this Section does not preclude the raising of them subsequently by answer unless the court has disposed of the motion on its merits ***."). Early Warning was not required to file affirmative defenses *before* moving to dismiss on those grounds.

¶ 34 Even if the trial court's order were erroneous for that reason—and it surely was not—there would still be no basis for deeming it "void." The term "void," in the sense that Perik uses it, refers to the trial court's jurisdiction over the person or the subject matter. *LVNV Funding,*

*LLC v. Trice*, 2015 IL 116129, ¶ 48. A mere error in a ruling does not render that judgment void; "[o]nly the absence of jurisdiction renders a circuit court's judgment void." *Id.*

¶ 35 And if the trial court's original dismissal order was void, the proper venue to make that argument was before the appellate court on direct review in *Perik I*, where no such argument was made. Plaintiff forfeited that argument years ago by not raising it on direct appeal. She has no basis for raising that claim in a later appeal that challenges only the trial court's later grant of summary judgment.

¶ 36 For all of these reasons, we reject Perik's argument and find the law-of-the-case doctrine applicable.

¶ 37 Though the trial court correctly found the law-of-the-case doctrine applicable, out of an abundance of caution, the trial court went on to determine, "independent of the law of the case and [*Perik I*], that Early Warning has established its affirmative defenses of qualified privilege and FCRA preemption." Notwithstanding the law-of-the-case doctrine, and even though Perik has not asked us to reconsider *Perik I*'s holding as "palpably erroneous" (*Norris*, 368 Ill. App. 3d at 581), we would reach the same conclusion today as we did in *Perik I* regarding these defenses.

¶ 38 First, as a matter of law, Early Warning established its affirmative defense of qualified privilege. A defamatory statement is not actionable if it is privileged. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 585 (2006); *Dobias v. Oak Park & River Forest High School District 200*, 2016 IL App (1st) 152205, ¶ 106. In determining whether a statement is subject to a qualified privilege, also known as a conditional privilege, "a court looks only to the occasion itself for the communication and determines as a matter of law and general policy whether the occasion created some recognized duty or interest to make the communication so as

to make it privileged." *Kuwik v. Starmark Star Marketing & Administration, Inc*., 156 Ill. 2d 16, 27 (1993).

¶ 39 The qualified privilege in Illinois defamation law is based on "the policy of protecting honest communications of misinformation in certain favored circumstances in order to facilitate the availability of correct information." *Kuwik*, 156 Ill. 2d at 24. "A qualified privilege generally applies where society's interest in compensating a person for loss of reputation is outweighed by a competing interest that demands protection." (Internal quotation marks omitted.) *Dobias*, 2016 IL App (1st) 152205, ¶ 107 (quoting *Solaia Technology*, 221 Ill. 2d at 599 (Freeman, J., concurring in part and dissenting in part) (quoting J.D. Lee & Barry A. Lindhal, Modern Tort Law § 36:32, at 36-47 (2d ed. 2002))). As a matter of law and general policy, when a financial institution (*i.e.*, an "inquirer"), considering whether to enter into a business relationship with a depositor, makes a request for information from Early Warning's database, this creates a recognized interest (the prevention of fraud) that makes Early Warning's transmission of a consumer report in that situation conditionally privileged.

¶ 40 We thus fully agree today with what we said several years ago in *Perik I*, 2011 IL App (1st) 093088-U, ¶ 55:

> "By responding to Washington Mutual's and TCF's request for information, Early Warning provided the report to proper parties, in a proper manner and in a limited scope by transmitting the information in response to a request by the inquiring banks. Pursuant to its contract with Washington Mutual and TCF, Early Warning had a duty to provide the fraud related information to the requesting financial institutions. Based on these facts, Early Warning adequately asserted as a matter of law a qualified privilege in response to Perik's defamation allegations because Early Warning provided the report in good faith, it

> had a duty or interest to uphold, the publication was limited in scope and the statement was published on a proper occasion in a proper manner and to proper parties. Furthermore, the finding that Early Warning sufficiently proved its affirmative defense of qualified privilege is consistent with the privilege's 'policy of protecting honest communications of misinformation in certain favored circumstances in order to facilitate the availability of correct information.' *Kuwik*, 156 Ill.2d at 24. Providing fraud related information to a financial institution to assist with its determination of whether to enter into a banking relationship with a potential depositor upholds the privilege's policy."

¶ 41 We likewise agree with *Perik I*'s holding that Early Warning established its second affirmative defense, FCRA preemption. As we noted there, under the FCRA, "no *consumer* may bring any action or proceeding in the nature of *defamation*, invasion of privacy, or negligence with respect to the reporting of information against any *consumer reporting agency*, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer." (Emphases added.) 15 U.S.C.A. § 1681h(e) (2006).

¶ 42 Here, plaintiff was a "consumer" under the FCRA, defined as "an individual." 15 U.S.C.A. § 1681a(c) (2006). Early Warning was a "consumer reporting agency," as the evidence is undisputed that "its business consists of assembling consumer credit information and then providing consumer reports to third parties in return for a fee." *Perik I*, 2011 IL App (1st) 093088-U, ¶ 55; see 15 U.S.C.A. § 1681a(f) (2006) (defining "consumer credit reporting

agency" as "any person which, for monetary fees *** regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."). Early Warning is thus protected under the FCRA for its "reporting of information" to Washington Mutual and TCF, unless plaintiff can demonstrate that Early Warning furnished the information "with malice or willful intent to injure" the consumer, Perik. 15 U.S.C.A. § 1681h(e) (2006).

¶ 43 Perik says, however, that the affidavits establishing Early Warning's status as a "consumer reporting agency" were not based on personal knowledge and should have been stricken. She argues that the trial court committed reversible error by denying her motions to strike the declarations of Donald C. Overlock (Early Warning's Compliance Support Director) and Glen Sgambati (Early Warning's Chief Risk and Security Officer) on that basis.

¶ 44 At least part of this argument—the attack on the Overlock affidavit—is also barred by the law-of-the-case doctrine, as this court previously rejected that very challenge. See *Perik I*, 2011 IL App (1st) 093088-U, ¶ 49 (trial court did not err in refusing to strike Overlock affidavit, as "Overlock was Early Warning's compliance officer" responsible for compliance with the FCRA and "had personal knowledge of Early Warning's business, as well as the role that furnishers and inquirers played in Early Warning's business and the respective reports that were generated."). We find nothing palpably erroneous in that early holding and, in fact, agree with it. Likewise, the Sgambati affidavit showed that Sgambati was the chief risk and security officer, with knowledge of the consumer-information sharing agreements into which Early Warning entered in

compliance with the FCRA. Both of these affidavits easily established the requisite personal knowledge.

¶ 45 We also note, as did Early Warning, that Perik fails to identify the statements in the declarations that she believes were made without sufficient knowledge. We thus reject Perik's claim that either of these affidavits should have been stricken for lack of personal knowledge.

¶ 46 Thus, whether by the application of the law-of-the-case doctrine or our independent review of those decisions, the trial court properly ruled that both defenses—FCRA preemption and qualified privilege—were available to Early Warning. That leaves only the question whether Perik could defeat those defenses by establishing that Early Warning had acted with malice, or by at least showing the existence of an issue of material fact on that question. We turn to that issue next.

¶ 47 2. No Evidence of Malice

¶ 48 Perik claims that the trial court erred in granting summary judgment on the question of malice, "an issue of material fact specifically reserved to the jury." Although the abuse of a privilege is generally a question of fact for the jury, the defendant is entitled to a judgment as a matter of law if the pleadings and attached exhibits present no genuine issue of material fact. *Anderson v. Beach*, 386 Ill. App. 3d 246, 253 (2008); *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1057 (1999). The trial court found that there was no evidence of malice in the record. We agree.

¶ 49 As previously noted, Perik was not required to prove her case at the summary judgment stage, but she was required to present a factual basis that would arguably entitle her to a judgment at trial; she was required to "come forward with actual evidence creating an issue of fact." *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 404 (1999). She failed to do so.

¶ 50 A plaintiff claiming a defendant abused a qualified privilege must show either a direct intention to injure another or a reckless disregard of the plaintiff's rights and of the consequences that may result to the plaintiff. *Kuwik*, 156 Ill. 2d at 30.

¶ 51 The undisputed facts showed that Early Warning received the information concerning Perik in March 2008 from Chase, a member participant in the shared database maintained by Early Warning. Early Warning transmitted two consumer reports containing the defamatory statements, one to Washington Mutual on April 1, 2008, and one to TCF on August 22, 2008. TCF sent a letter to Perik, telling her TCF would not be able to maintain an account for her based on the information it received from a consumer reporting agency (Early Warning). TCF's letter informed Perik that she had a right to a free copy of the consumer report from Early Warning and provided her with contact information for Early Warning.

¶ 52 On August 26, 2008, Perik requested a copy of her consumer report from Early Warning. That was the first contact that Early Warning had with Perik—August 26, 2008.

¶ 53 Perik did not come forth with any facts whatsoever to support her allegations that Early Warning had either a direct intention to harm her or a reckless disregard of her rights. There is no evidence in the record that Early Warning knew that the information it transmitted was false, and thus there is no evidence that Early Warning directly intended to harm Perik.

¶ 54 Nor did Perik come forth with facts showing reckless disregard on the part of Early Warning. Reckless disregard has been defined as "publishing the defamatory matter despite a high degree of awareness of probable falsity or entertaining serious doubts as to its truth." (Internal quotation marks omitted.) *Kuwik*, 156 Ill. 2d at 24-25 (quoting *Mittelman v. Witous*, 135 Ill. 2d 220, 237-38 (1989)). Best practices or even reasonableness is not the standard; "the essence of malice is not lack of prudence, but actual awareness of probable falsity." *Weinel v.*

*Monken*, 134 Ill. App. 3d 1039, 1043–44 (1985). "[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

¶ 55 Perik presented no factual basis for any reckless act on the part of Early Warning. She presented no evidence that Early Warning had any reason whatsoever to doubt the accuracy of the information it had received from Chase in the ordinary course of its business—at least, not *before* it published the information to Washington Mutual and TCF.

¶ 56 The record shows that Early Warning received the information from Chase in March 2008, and Early Warning transmitted the consumer report to TCF in August 2008. During that five-month period, Early Warning had no contact from plaintiff, Chase, Washington Mutual, TCF, or anyone regarding the validity, accuracy, truth, falsity or substance of the information. Even during plaintiff's first contact with Early Warning, she did not tell Early Warning anything about the substance of the information and only requested a copy of the report. Not until September 19, 2008 did Early Warning learn that Perik was upset with the contents of the consumer report. Thus, the earliest point in time where Early Warning would have had notice that the information in the consumer report may not have been true and accurate was long *after* the transmission of the defamatory statements.

¶ 57 The only evidence of malice put forth by Perik was her own testimony—statements in her affidavit and deposition—that Early Warning intended to harm her. But these self-serving statements were merely Perik's opinion and had no factual basis. Her deposition testimony consisted of her opinion that Early Warning intended to injure her because it did not investigate

the truth of the information it received from Chase before publishing it. Thus, Perik's "evidence" of malice is limited to the fact that Early Warning did not verify the information it was furnished by Chase. It is true that Early Warning did not investigate the information provided from Chase. But this falls far short from showing facts to support reckless disregard on the part of Early Warning—*i.e.*, that Early Warning "publish[ed] the defamatory matter despite a high degree of awareness of probable falsity or entertaining serious doubts as to its truth." *Kuwik*, 156 Ill. 2d at 25. Perik cites no case law for the proposition that Early Warning had a duty to investigate before publishing the report.

¶ 58 Though we have said enough to affirm the grant of summary judgment in favor of Early Warning based on qualified privilege, the same result would obtain under the safe-harbor provision of the FCRA. That language, again, provides that no claim for defamation "or negligence" may lie against a consumer credit reporting agency (like Early Warning) absent "malice or willful intent to injure such consumer." 15 U.S.C.A. § 1681h(e) (2006).

¶ 59 Many courts have interpreted "malice" and "willful intent to injure" under the FCRA much as Illinois does with regard to defamation law. See, *e.g.*, *Beuster v. Equifax Information Services*, 435 F.Supp.2d 471, 480 (D. Md. 2006) (under section 1681h(e) of FCRA, "Plaintiff must allege that a defendant published material while entertaining serious doubts as to the truth of the publication or with a high degree of awareness of probable falsity"); *Wiggins v. Equifax Services, Inc.*, 848 F. Supp. 213, 223 (D.D.C. 1993) ("malice" under section 1681h(e) requires proof that "the speaker entertained actual doubt about the truth of the statement").

¶ 60 Whatever "malice" and "willful intent to injure" may include or exclude, it certainly must rise above mere negligence; indeed, that the fact that a common-law claim for "negligence" is barred under section 1681h(e) shows, in and of itself, that the malice standard under the FCRA

requires more than mere lack of prudence or failure to investigate—which is the most Perik could possibly establish here. Thus, the safe-harbor provision in FCRA would likewise bar Perik's claim against Early Warning.

¶ 61 We affirm the grant of summary judgment in Early Warning's favor.[2]

¶ 62 B. Summary Judgment in Favor of TCF

¶ 63 Next, Perik contends that the trial court committed reversible error when it granted summary judgment to TCF. We disagree.[3]

¶ 64 TCF filed its motion for summary judgment on March 3, 2015. TCF argued that it had properly pleaded affirmative defenses and asserted protection under the FCRA regarding the consumer report it received from Early Warning. TCF further claimed that summary judgment was proper because Perik was unable to sustain her burden to prove that TCF intentionally or

[2] Briefly, Plaintiff also claims, without citation to case law, that the trial court committed reversible error in denying, as untimely, her motion to strike Early Warning's Answer and Affirmative Defenses based on their insufficiency, claiming only that her motion was not governed by Illinois Supreme Court Rule 182. (Ill. S. Ct. R. 182). But as Early Warning correctly notes: "Contrary to [Perik's] assertion, Rule 182(c) does in fact govern the timing for a party seeking to dismiss a pleading other than the complaint." See Ill. S. Ct. 182(c) ("A motion attacking a pleading other than the complaint must be filed within 21 days after the last day allowed for the filing of the pleading attacked."). Perik filed her motion nearly three weeks after her deadline. The trial court properly denied it as untimely under Rule 182(c). That aside, the "sufficiency" of Early Warning's affirmative defenses—qualified privilege and protection under the FCRA—was conclusively determined by *Perik I*'s holding that they were valid and operative defenses. Thus, untimeliness aside, it is impossible to imagine how Perik could have prevailed on that motion.

[3] As one of her arguments that summary judgment should not have been granted, Perik claims that the trial court committed reversible error when it denied her motion to strike and dismiss TCF's second amended affirmative defenses. TCF correctly notes that Perik has forfeited this issue by failing to set forth any argument or support her claim with any legal authority in violation of Illinois Supreme Court Rule 341(h)(7). See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). But again, we would note that we had already affirmed the validity of those defenses in *Perik I*, so we cannot imagine how Perik could have expected the trial court on remand to strike those defenses.

knowingly published false material regarding Perik. The court granted TCF's motion for summary judgment on January 8, 2016.

¶ 65 Perik's contention on appeal is that TCF's arguments concerning the FCRA and malice are irrelevant, because a question of fact existed as to whether TCF had a permissible purpose for obtaining the consumer credit report from Early Warning. See 15 U.S.C. § 1681b(f)(2) (2006) (requiring that consumer report be used for permissible purpose).

¶ 66 We find no question of material fact here. As we noted in *Perik I*, to which TCF was not a party: "According to *** TCF's contract with Early Warning, [TCF] may request a report from Early Warning provided that [it has] a permissible purpose for requesting the report. *A permissible purpose exists when a financial institution requests the information to assist it in its determination of whether to enter into a banking relationship with a potential depositor*." (Emphasis added.) *Perik I*, 2011 IL App (1st) 093088-U, ¶ 55. It is undisputed that this was precisely why TCF obtained the information from Early Warning. Thus, we already held, in *Perik I*, that TCF had a permissible purpose for using the information from Chase.

¶ 67 As we explained, the FCRA protected Early Warning's business activities and presented a defense to Perik's defamation claim because Early Warning was a "credit reporting agency." *Perik I*, 2011 IL App (1st) 093088-U, ¶ 56. Though TCF was not a party to the appeal in *Perik I*, the same FCRA provision protecting a credit reporting agency protects a "user of information" such as TCF:

> "no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, *any user of information*, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to

> section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report *except as to false information furnished with malice or willful intent to injure such consumer*." (Emphases added.) 15 U.S.C.A. § 1681h(e).

¶ 68 Contrary to Perik's assertions in this appeal, the FCRA protected TCF's business activities and presented a defense to Perik's defamation because TCF was a "user of information." And contrary to Perik's claim, TCF did have a permissible purpose for using that information. *Perik I*, 2011 IL App (1st) 093088-U, ¶ 55. Finally, we would note that, during the application process with TCF, Perik signed an account agreement *authorizing* TCF to obtain consumer reports and to use the information in making decisions in its banking business such as whether to maintain an account with her.

¶ 69 That leaves only the question of whether TCF acted with malice, which would defeat TCF's FCRA defense. As TCF has noted, despite years spent deposing witnesses, examining documents, and pursuing written discovery in an attempt to uncover some facts that would support her allegations of malice, Perik cannot point to a single piece of evidence that TCF acted maliciously in obtaining information from Chase before deciding whether to open an account with Perik.

¶ 70 Briefly and finally, Perik claims that TCF "published the defamation *per se* to its employees and agents." Her citation to the record for this contention is a citation to her motion to strike TCF's motion for summary judgment, in which she claimed—without any citation or support whatsoever—that "TCF has admitted it published the defamation per se about the Plaintiff internally to its employees and agents." TCF has responded by denying this claim and

citing to a portion of its employees' testimony in the record in support of that denial, but suffice it to say, we will not comb the 22-volume record in this matter to chase down an unsubstantiated claim made by Perik. As we said at the outset, we are not an advocate for one side or the other, and we will not undertake the burden of legal research or searching the record for support of a claim. *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18; see also *Lindsey*, 397 Ill. App. 3d 437, 459 (2009). This argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Points not argued are waived ***."); *Wilson v. County of Cook*, 2012 IL 112026, ¶ 25 (claims supported by "little or no argument" forfeited under Rule 341(h)(7)).

¶ 71 For all of these reasons, the trial court properly granted summary judgment to TCF.

¶ 72 C. Discovery Orders

¶ 73 The next issue raised by Perik is that the trial court committed reversible error when it failed to follow the rules governing discovery. We review this issue under the abuse-of-discretion standard. *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 22; see also *Leeson v. State Farm Mutual Automobile Insurance Co.*, 190 Ill. App. 3d 359, 366 (1989) (rules governing discovery give great discretion to trial court, and its exercise of discretion will not be disturbed on appeal absent abuse of discretion).

¶ 74 As to Early Warning, Perik's "argument" in her opening brief consists of conclusory statements: (1) "[t]he court's Orders reduced substantially or otherwise eliminated Perik's right to discovery in the lawsuit"; (2) "[t]he court contravened the express language of the discovery Rules"; and (3) "[t]he court committed reversible error by not following the holdings in *Kaiser* and *Gambino*" when it "granted TCF $190 as a fee sanction and Early [Warning] $1000 as a fee sanction."

¶ 75 The discovery arguments related to written discovery appear to be that (1) the trial court sustained various objections to Perik's requests to admit and interrogatories, (2) the court disallowed various additional discovery requests by Perik; and (3) the net result was that Perik was not allowed her allotted number of requests or interrogatories under the rules.

¶ 76 As for interrogatories: The parties agree that, overall, Perik issued 57 interrogatories to Early Warning. Early Warning objected, successfully so in the trial court's eyes (and without complaint on appeal by Perik) to many of them, leaving only 15 valid interrogatories for Early Warning to answer. That, in the end, is Perik's only argument, a pure numbers argument—that after the invalid interrogatories are subtracted out, Perik was only allowed to issue 15 interrogatories to Early Warning, when Supreme Court Rule 213 permits 30 interrogatories. See Ill. S. Ct. R. 213(c) (eff. Jan. 1, 2007).

¶ 77 We have no basis for finding an abuse of discretion. First, Perik does not challenge the rulings invalidating certain interrogatories. Second, the trial court has great discretion in controlling discovery, including the scope of discovery. *Leeson*, 190 Ill. App. 3d at 366; *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 43. The record shows that Perik served one set of interrogatories after another and seemed to miss more often than she hit with proper questions. The circuit court was well within its discretion to stop the volley of discovery requests. Third, Perik cites no authority for the proposition that only interrogatories that are proper, and are thus answered by the opposing party, count against the 30-interrogatory limit in Rule 213. And even if she could establish that legal proposition, it does not follow that a trial court would have no control over a party lobbing one set of interrogatories after another at a party until thirty "proper" ones made the cut; it would run against the trial court's traditional discretion in overseeing discovery.

¶ 78 Stripped down to its essence, Perik's arguments about her requests to admit propounded on Early Warning are of the same fashion, a pure numbers argument. Overall, she served 31 requests to admit on Early Warning. Nineteen of those were objected to by Early Warning and stricken by the trial court—and plaintiff does not challenge a single one of those rulings. Perik says she was entitled to 30 requests under Supreme Court Rule 216(f) (eff. Jan. 1, 2011).

¶ 79 Again, she does not provide any basis for us to find an abuse of discretion, any legal support for the proposition that improper requests to admit should not count against the 30-request limit, or any reason why it would be outside the trial court's traditionally "wide discretion" (*In re Estate of Hoellen*, 367 Ill. App. 3d 240, 249 (2006) in overseeing discovery to put a stop to a back-and-forth of discovery requests that, more and often than not, contained improper requests.

¶ 80 Finally, and perhaps most importantly, Perik has not explained how *any* of these discovery rulings prejudiced her ability to prosecute the case in general, much less oppose the motion for summary judgment, and thus we are at a loss as to how these rulings could have prejudiced her in any way in avoiding summary judgment. In other words, even if Perik were correct that the trial court's discovery rulings were in error, without a bridge between that error and the entry of summary judgment in Early Warning's favor, this argument is moot; it would not change the outcome of the summary judgment rulings.

¶ 81 As to TCF, the only discernible argument we can extract is that the trial court erred in limiting the deposition of Eshunda Blackman to one hour. Perik says nothing more than this mere fact, without explaining how this was error or how it prejudiced her. For what it's worth, TCF has explained that Ms. Blackman had previously been deposed twice, and was being

deposed a third time for the limited purpose of the affirmative defenses. We think it is enough to say that Perik's meager argument is forfeited.

¶ 82 The final discovery-related order Perik challenges is the award of attorney fees against Perik arising out of counsel's defense of Perik's deposition. Both Early Warning and TCF had moved for sanctions for Perik's refusal to answer certain non-privileged questions and otherwise obstructionist conduct at her deposition. The trial court granted the request for sanctions, ordered a second deposition of Perik, and invited fee petitions from the defendants. Early Warning requested over $18,000 in fees for the preparation and taking of both depositions and for preparing its motion for sanctions and fee petition. The trial court reasoned that the defendants should only be reimbursed for the time of taking the second deposition and for the preparation of the motion for sanctions and fee petition. Ultimately, the court ordered Perik to pay Early Warning $1,000, finding anything over and above that amount excessive for a single-count lawsuit.

¶ 83 Perik makes brief reference to two decisions, *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 66 (2009), and *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 983 (1987), for the proposition that fee petitions should not be granted absent sufficient underlying documentation. The record shows here that Early Warning provided a list of expenses supported by an attorney affidavit and offered to provide a print-out of its invoice *in camera* for the court's review. Ultimately, however, as the trial court decided to significantly trim back the award given the size of the case, the court merely set the sanction award at an even $1,000.

¶ 84 Perik is hard-pressed to argue that the trial court, after finding that sanctions were warranted, abused its discretion in reducing the fee far below what Early Warning had requested.

And she has given us nothing, save a brief citation to that case law, to support her position. We reject this argument.

¶ 85 For all of these reasons, we reject the discovery arguments raised by Perik.

¶ 86 D. Substitution of Judge

¶ 87 Perik also briefly argues that the circuit court erred in denying her motion for substitution of judge. The entirety of Perik's argument in the opening brief is as follows:

> "On October 29, 2015 Perik moved for an Order granting a substitution of judges for cause. [Citation to record.] TCF responded on November 6, 2015. [Citation to record.] Perik replied on November 11, 2015. [Citation to record.] The court denied the motion to substitute judges for cause. [Citation to record.] The Order constitutes reversible error."

¶ 88 In her reply brief, Perik elaborated, so to speak: "The circuit court acted with bias and prejudice against Perik. The apparent prejudice is documented in the case record regarding the misuse of the Supreme Court Rules governing oral and written discovery in the case, and the unsupported grant of a monetary fee sanction, while Perik could not get any court order under Rule 219(c) to obtain answers to interrogatories."

¶ 89 The prejudice is not "apparent" to us. It is well settled that " 'rulings by the circuit court, even if erroneous, " 'are insufficient reasons to believe that the court had personal bias or prejudice for or against a litigant.' " *Levaccare v. Levaccare*, 376 Ill. App. 3d 503, 510, 876 N.E.2d 280, 287 (1st Dist. 2007) (quoting *Hoellen*, 367 Ill. App. 3d at 249) (in turn quoting *In re Marriage of Hartian*, 222 Ill.App.3d 566, 569 (1991)). Beyond that, Perik has given us no reason to find bias, other than general statements about the record and various rulings. Another judge

heard the motion for substitution of judge based on prejudice, and we can find no basis to reverse that judge's decision denying the motion. We affirm that ruling.

¶ 90 III. CONCLUSION

¶ 91 For the reasons stated, we affirm the trial court's judgment in all respects.

¶ 92 Affirmed.