2011 IL App (2d) 101005-U
No. 2—10—1005
Order filed August 12, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RAYMOND HOFFMAN, CHRISTOPHER HOFFMAN, and CHRISTIAN HOFFMAN, A Minor Child, by his father, Christopher Hoffman,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellants,	)	
v.	)	No. 10—L—79
JACQUELYNN HOFFMAN,	)	Honorable Robert B. Spence,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Bowman and Hutchinson concurred in the judgment.

ORDER

Held: Where some counts of plaintiffs' complaint failed to state a claim for which relief could be granted, some were barred by the applicable statute of limitations, and others were defeated by the existence of an absolute privilege, the trial court's dismissal with prejudice of all counts was affirmed.

¶ 1 Plaintiffs appeal from the trial court's grant of defendant's combined motion to dismiss and for summary judgment. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On February 16, 2010, plaintiffs, Raymond Hoffman, Christopher Hoffman, and Christian Hoffman, filed a complaint against defendant, Jacquelynn Hoffman, alleging intentional infliction of emotional distress, negligent infliction of emotional distress, defamation *per se*, and false light invasion of privacy. At the time plaintiffs filed their complaint, Christopher and Jacquelynn were involved in dissolution of marriage proceedings, which had been pending since September 2008. Christian is one of their three minor children. Although not a named plaintiff in the caption of the complaint, Christopher's and Jacquelynn's minor daughter, Lauren, was the subject of a count alleging negligent infliction of emotional distress. Raymond is Christopher's father. The complaint was based on defendant's allegedly false statements that Raymond and Christopher sexually abused Christian and Lauren. Defendant allegedly made the statements between March 2000 and September 2009 to various persons and entities: DCFS, the Elgin police, defendant's parents, Christopher's former sister-in-law, the guardian *ad litem* in the dissolution proceedings, Lauren's teacher, and members of a church social group. One statement was allegedly made during defendant's discovery deposition in the dissolution matter.

¶ 4 On March 23, 2010, defendant's attorney filed an appearance in the defamation case and a motion to consolidate it with the pending dissolution proceedings. The motion was noticed for hearing before the trial judge in the dissolution proceedings. On May 3, plaintiffs filed a motion for summary judgment. On May 6, the trial court in the present case continued defendant's motion to consolidate to May 27 and stayed the time for defendant to answer or otherwise plead. At the May 27 status hearing, the parties reported that the dissolution judge had denied defendant's motion to

consolidate. The court then stayed discovery in the present case and set a deadline for defendant to file a responsive pleading.

¶ 5 On June 4, 2010, plaintiffs filed a motion for default judgment or, in the alternative, to certify a question of law for interlocutory appeal, pursuant to Supreme Court Rule 308 (eff. Feb. 26, 2010), regarding the effect of defendant's filing a motion to consolidate instead of an answer or other responsive pleading. On June 8, the court heard and denied plaintiffs' motion for default judgment or Rule 308 certification, and continued plaintiffs' motion for summary judgment.

¶ 6 On June 30, 2010, defendant filed both a motion to strike plaintiffs' motion for summary judgment and a combined motion to dismiss and for summary judgment pursuant to section 2—619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2—619.1 (West 2010)). The combined motion was supported by an affidavit from defendant. Plaintiffs filed a response to defendant's combined motion (unsupported by affidavit), and defendant filed a reply.

¶ 7 On August 25, 2010, the court heard argument on defendant's combined motion and set it for entry of order on September 1, with defendant to draft and circulate a proposed order prior to that date. On August 31, in response to defendant's proposed order, plaintiffs filed a motion to clarify the proposed order. The motion to clarify was noticed for hearing on September 1; plaintiffs did not appear then. The court entered its order on September 1, disposing of all counts of the complaint by either dismissal with prejudice or entry of summary judgment in defendant's favor. Plaintiffs timely appealed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiffs argue that they were entitled to summary or default judgment as a matter of law and that dismissal and entry of summary judgment in defendant's favor was erroneous. They request that

we vacate the trial court's September 1, 2010, order, enter summary or default judgment in their favor, and remand for further proceedings on the issue of punitive damages.

¶ 10 Section 2—619.1 of the Code provides for combined motions with respect to pleadings under section 2—615 of the Code (735 ILCS 5/2—615 (West 2010)), involuntary dismissal under section 2—619 of the Code (735 ILCS 5/2—619 (West 2010)), and summary judgment under section 2—1005 of the Code (735 ILCS 5/2—1005 (West 2010)). 735 ILCS 5/2—619.1 (West 2010). "A section 2—615 motion attacks the legal sufficiency of the plaintiff's claims, while a section 2—619 motion admits the legal sufficiency of the claims but raises defects, defenses, or other affirmative matter, appearing on the face of the complaint or established by external submissions, that defeats the action." *Aurelius v. State Farm Fire & Casualty Co.*, 384 Ill. App. 3d 969, 972-73 (2008). In considering a motion to dismiss under either section, the court must construe all well-pleaded factual allegations in favor of the plaintiff. *Aurelius*, 384 Ill. App. 3d at 973. To survive a motion to dismiss based on section 2—615, a complaint must allege facts setting forth the essential elements of the cause of action; however, conclusions of law and conclusory allegations not supported by specific facts are not admitted. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). A complaint should not be dismissed pursuant to section 2—615 "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). Section 2—619 provides for dismissal where, *inter alia*, the statute of limitations has expired (735 ILCS 5/2—619(a)(5) (West 2010)) or the claim is "barred by other affirmative matter avoiding the legal effect of or defeating the claim" (735 ILCS 5/2—619(a)(9) (West 2010)). Summary judgment should be entered only when "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 2010); *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). We review *de novo* the trial court's dismissal of a complaint under section 2—619.1 of the Code. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402 (2009).

¶ 11 Here, accepting as true plaintiffs' allegations that defendant falsely told certain persons and entities that plaintiffs Christopher and Raymond sexually abused the minor plaintiffs, we conclude that the trial court properly granted defendant's combined motion to dismiss and for summary judgment. Before reviewing each of the counts of the complaint, we begin by briefly addressing two of plaintiffs' general arguments. Plaintiffs contend that the trial court erred in not granting their motion for summary judgment because, at the time plaintiffs filed their motion, defendant had not filed an answer or other responsive pleading such that defendant should have been deemed to have admitted all of the complaint's allegations. In a related argument, plaintiffs assert that the trial court abused its discretion in granting defendant's combined motion to dismiss and for summary judgment because it failed to view the allegations of the complaint in the light most favorable to plaintiffs and instead admitted the facts asserted in defendant's affidavit filed in support of the combined motion.

¶ 12 First, on the record before us, nothing was required to have been deemed admitted. Supreme Court Rule 183 (eff. Feb. 16, 2011) provides the trial court with discretion to extend the time for filing pleadings. See *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 344-45 (2007). Here, on May 6, 2010, the trial court stayed the time for defendant to answer or otherwise plead, and on May 27, set a schedule for the parties' pleadings. Plaintiffs, as appellants, bore the burden of providing the record on appeal sufficient for our review of the issues presented. *Foutch v. O'Bryant,* 99 Ill. 2d 389, 391-92 (1984); *Koppel v. Michael*, 374 Ill. App. 3d 998, 1008 (2007). Plaintiffs included no

reports of proceedings in the record; consequently, we will assume that the trial court acted in accordance with the law when it extended the time for defendant to answer or otherwise plead. *Foutch,* 99 Ill. 2d at 391-92; *Koppel*, 374 Ill. App. 3d at 1008.

¶ 13 Moreover, even assuming that defendant should be deemed to have admitted all the factual allegations in the complaint, a party moving for summary judgment must demonstrate not only that no genuine issue of material fact existed, but also that he was entitled to judgment as a matter of law. *Williams*, 228 Ill. 2d at 417. Plaintiffs did not establish that they were entitled to judgment as a matter of law because, as discussed in detail below, they either failed to state claims upon which relief could be granted or their claims were barred by other affirmative matter.

¶ 14 Finally, the trial court could properly admit the factual allegations contained in defendant's affidavit as plaintiffs were not entitled to rely on the allegations of their complaint to refute those in the affidavit. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 352-353 (2010) (a plaintiff may not rely on the allegations in his complaint to refute a motion to dismiss supported by an affidavit, but must file a counteraffidavit); *Myoda Computer Center, Inc. v. American Family Mutual Insurance Co.*, 389 Ill. App. 3d 419, 423 (2009) (failure to file counteraffidavit in opposition to a summary judgment motion supported by an affidavit is fatal). In any event, we may affirm the trial court's judgment for any basis supported by the record, regardless of the trial court's reasoning. *Goldberg v. Michael,* 328 Ill. App. 3d 593, 597 (2002).

¶ 15 We now turn to the specific counts of the complaint, beginning with counts V and VI, which allege negligent infliction of emotional distress on behalf of the minors, Lauren (count V) and Christian (count VI). Christopher concedes that, as a *pro se* litigant, he "technically" lacked standing to bring a claim on behalf of his minor children, but requests leave to replead as the minors' next

friend. "In Illinois, it is well established that only persons duly admitted to practice law in this state may appear on behalf of other persons." *Pratt-Holdampf v. Trinity Medical Center*, 338 Ill. App. 3d 1079, 1083 (2003). Moreover, a minor may not bring a suit in his own name. *Severs v. Country Mutual Insurance Co.*, 89 Ill. 2d 515, 520 (1982). In order for a minor to file a lawsuit, he or she must be represented by someone who has the capacity to bring a suit, usually a next friend. See *Morgan v. Hamlet*, 345 Ill. App. 107, 110 (1951). However, representation by a next friend surmounts only the capacity deficit, not the lack of legal representation. Thus, even if Christopher were to replead as the minors' next friend, the proscription on *pro se* persons representing others would still not be overcome. Accordingly, the trial court properly dismissed counts V and VI for lack of standing pursuant to section 2—619(a)(2) of the Code (735 ILCS 5/2—619(a)(2) (West 2010) (providing for involuntary dismissal where "the plaintiff does not have the legal capacity to sue")).

¶ 16 We next address counts I and III, alleging intentional infliction of emotional distress as to Raymond and Christopher, respectively. To state a claim for intentional infliction of emotional distress, a plaintiff must plead that (1) the conduct by the defendant is " 'truly extreme and outrageous,' " (2) the defendant intended that his conduct cause severe emotional distress or that he knew there was a high probability that it would cause severe emotional distress, and (3) the conduct did in fact cause " '*severe* emotional distress.' " (Emphasis in original.) *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 268-69 (2003) (quoting *McGrath v. Fahey*, 126 Ill. 2d 78, 86 (1988)). "[T]o qualify as outrageous, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized community." *Feltmeier*, 207 Ill. 2d at 274. Whether conduct rises to the level of outrageous depends on all of the facts and

circumstances of the case. *Feltmeier*, 207 Ill. 2d at 274. The severe distress element is met " 'only where the distress inflicted is so severe that no reasonable man could be expected to endure it.' " *McGrath*, 126 Ill. 2d at 86 (quoting Restatement (Second) of Torts § 46, comment j, at 77-78 (1965)).

¶ 17 Here, in counts I and III, plaintiffs merely alleged in conclusory fashion each of the elements of intentional infliction of emotional distress without specific facts to support them. Plaintiffs alleged that defendant's actions "in creating and repeatedly reporting false allegations of abuse *** were extreme and outrageous." Plaintiffs further alleged that defendant's statements were "performed with the intent to inflict severe emotional distress" or alternatively, that defendant "knew that there was a high probability that her actions would result in severe emotional distress." With respect to their injuries and damages, plaintiffs alleged that they "did, in fact, suffer severe emotional distress, thereby suffering damages." Because plaintiffs failed to allege specific facts in support of each of the required elements, they failed to state a cause of action. See *Chandler v. Illinois Central Railroad Co.*, 207 Ill. 2d 331, 348 (2003) (Illinois is a fact-pleading jurisdiction that requires a plaintiff to plead facts bringing the case within a particular cause of action); *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1092 (2010) (conclusions of law and conclusory allegations not supported by specific facts will not be admitted).

¶ 18 We note that a complaint should be dismissed only where no set of facts can be proved that would entitle the plaintiff to recover. *Tedrick*, 235 Ill. 2d at 161. Here, plaintiffs make no argument on appeal that, if permitted to replead, they could allege specific facts in support of each element, which, if proven, would entitle them to recover. Plaintiffs do argue that accusing a father of raping his three-year-old son is "as extreme and outrageous as any form of defamation could possibly get,"

but they offer no authority in support of their proposition. Although accusing someone of child sexual abuse, in some contexts, could be considered extreme and outrageous conduct, we are not convinced that it was outrageous in the present context. Defendant had a legitimate objective to protect her children when she reported suspected abuse to the appropriate authorities. Moreover, during the time leading up to the parties' filing for dissolution of marriage and the pendency of those proceedings, it was not outrageous to discuss the suspected abuse with family members, a teacher, or church members. See *Feltmeier*, 207 Ill. 2d at 274 (stating that "to qualify as outrageous, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized community"). Given the context, defendant's limited statements that Christopher and Raymond sexually abused the two minors were not outrageous, and therefore, cannot support a claim for intentional infliction of emotional distress. See *Layne v. Builders Plumbing Supply Co.*, 210 Ill. App. 3d 966, 973 (1991) (stating that "determining whether a complaint states a cause of action basically involves drawing a line 'between the slight hurts which are the price of a complex society and the severe mental disturbances inflicted by intentional actions wholly lacking in social utility' " (quoting *Knierim v. Izzo*, 22 Ill. 2d 73, 85 (1961))). Furthermore, plaintiffs make no argument regarding the intent and injury elements. Accordingly, the trial court did not err in dismissing counts I and III for intentional infliction of emotional distress under section 2—615 for failure to state a claim.

¶ 19 We next consider counts II and IV, alleging negligent infliction of emotional distress regarding Raymond and Christopher, respectively. Prior to 1983, a plaintiff alleging negligent infliction of emotional distress was governed by the impact rule, which required him to show that he suffered emotional distress and a contemporaneous physical injury or impact as a result of the

defendant's negligence. *Corgan v. Muehling*, 143 Ill. 2d 296, 303 (1991). In 1983, our supreme court held that a plaintiff who was a bystander to a defendant's negligence was not subject to the impact rule but could recover if he was within the zone of physical danger and, because of the defendant's negligence, had a reasonable fear for his own safety and suffered a physical injury or illness resulting from emotional distress. *Corgan*, 143 Ill. 2d at 303; *Rickey v. Chicago Transit Authority*, 98 Ill. 2d 546, 555 (1983). In *Corgan*, the court held that *Rickey*'s zone-of-danger rule applied only to bystander-plaintiffs, not to those plaintiffs who were direct victims of the defendant's negligence. *Corgan*, 143 Ill. 2d at 304. Instead, direct-victim plaintiffs alleging negligent infliction of emotional distress must show the elements essential to a negligence claim—duty, breach, and an injury proximately caused by the breach. *Parks v. Kownacki*, 193 Ill. 2d 164, 181 (2000) (citing *Corgan*, 143 Ill. 2d at 306).

¶ 20 Consequently, to decide whether plaintiffs in the present case stated a claim for negligent infliction of emotional distress, we must determine as a threshold matter their status as bystanders or as direct victims. In his dissent in *Lewis v. Westinghouse Electric Corp.*, 139 Ill. App. 3d 634 (1985), portions of which were cited with approval by the court in *Corgan*, Justice Linn explained the difference between the two types of negligent-infliction-of-emotional-distress plaintiffs. "The direct victim is the individual who is harmed as an immediate consequence of the accident itself; he is the person who sustains an injury as a result of being personally involved in the mishap." *Lewis*, 139 Ill. App. 3d at 639 (Linn, J., dissenting). Justice Linn continued,

> ¶ 21 "The bystander, on the other hand, is an observer of the accident which produces the direct victim's injury. The bystander does not suffer an injury as a result of being involved in the accident itself. Instead, the injury which the bystander suffers is that which he incurs

by observing the accident and the manner in which the accident produces an injury to the direct victim." *Lewis*, 139 Ill. App. 3d at 639 (Linn, J., dissenting).

¶ 22 Here, plaintiffs were neither direct victims nor bystanders because they were not present for the allegedly negligent conduct or mishap—the making of false statements of sexual abuse. In rejecting defendant's application of *Rickey*'s zone-of-danger standard, plaintiffs impliedly argue that they were direct victims, not bystanders. We agree that plaintiffs did not qualify as bystanders because their emotional distress was not the result of their observing an injury to a direct victim. We further conclude that plaintiffs did not qualify as direct victims because any emotional distress they suffered was not an immediate consequence of the mishap itself. See *Leonard v. Kurtz*, 234 Ill. App. 3d 553, 556 (1992) (rejecting the plaintiff's claim that she was a direct victim of a tort committed upon her—the defendant-funeral home's mishandling of her husband's remains—because "there [wa]s no contemporaneous physical injury to the plaintiff which [wa]s sufficient to make her a direct victim"); *cf.*, *Doe v. Surgicare of Joliet, Inc.*, 268 Ill. App. 3d 793, 796 (1994) (noting that the plaintiff "qualifie[d] as a direct victim due to the physical impact he suffered upon having unprotected sexual intercourse with his [coplaintiff] wife," who had been stuck with an unsterile needle); *Hayes v. Illinois Power Co.*, 225 Ill. App. 3d 819, 825 (1992) (stating that the plaintiff was a direct victim "because he suffered physical injuries" when he touched the decedent's body as it was being electrocuted). Because plaintiffs cannot be considered direct victims or bystanders to defendant's alleged negligence, even if they were to replead these claims, they still could not state a cause of action for negligent infliction of emotional distress. Accordingly, the trial court's dismissal of counts II and IV was proper pursuant to section 2—615 for failure to state a claim.

¶ 23 We next turn to counts VII through X. Counts VII and VIII allege defamation *per se* as to Raymond and Christopher, respectively. To state a claim for defamation, a plaintiff must plead that the defendant "(1) made a false statement about the plaintiff; (2) made an unprivileged publication of that statement to a third party; and (3) damaged the plaintiff by publishing the statement." *Morris*, 392 Ill. App. 3d at 404. When a statement is defamatory *per se*, *i.e.*, it is obviously harmful to the plaintiff's reputation, damages will be presumed. *Lowe Excavating Co. v. International Union of Operating Engineers Local No. 150*, 327 Ill. App. 3d 711, 721 (2002). Counts IX and X allege the closely related tort of false light invasion of privacy as to Christopher and Raymond, respectively. To state a claim for this tort, a plaintiff must plead that (1) the defendant placed him in a false light before the public, (2) a reasonable person would find the false light highly offensive, and (3) the defendant acted with actual malice. *Poulos v. Lutheran Social Services of Illinois, Inc.*, 312 Ill. App. 3d 731, 739 (2000). Both torts are governed by the one-year statute of limitations in section 13—201 of the Code. 735 ILCS 5/13—201 (West 2010); *Schaffer v. Zekman*, 196 Ill. App. 3d 727, 734 n.2 (1990).

¶ 24 In the instant case, plaintiffs' complaint was filed on February 16, 2010, and included allegations that defendant made several statements between March 2000 and September 15, 2009. All of the statements made prior to February 16, 2009, were barred by operation of section 13—201. Plaintiffs argue that their causes of action for defamation and false light invasion of privacy did not accrue until late September 2009, when plaintiff Christopher's "knowledge of any possible cause of action he might be entitled to, in this regard, was *** piqued" when his attorney in the dissolution proceedings advised him that he should investigate the issue.

¶ 25 The discovery rule upon which plaintiffs seek to rely alleviates the harsh results of a literal application of a statute of limitations. *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 414 (1981). Under the rule, the statute of limitations begins to run when a reasonable person has sufficient information about his injury and its cause; at that point he bears the burden of inquiry as to whether a cause of action exists. *Knox College*, 88 Ill. 2d at 415; *Benton v. Vonnahmen*, 288 Ill. App. 3d 199, 206 (1997). The rule does not, however, require an actual awareness of a legal cause of action. *Knox College*, 88 Ill. 2d at 415; *Benton*, 288 Ill. App. 3d at 205-06. The point at which the statute of limitations begins to run is usually a question of fact, but may be decided by the court as a matter of law where the facts are undisputed and only one conclusion may be drawn from them. *Knox College*, 88 Ill. 2d at 416-17; *Benton*, 288 Ill. App. 3d at 206. A plaintiff asserting the discovery rule in response to a statute-of-limitations defense bears the burden of demonstrating the rule's applicability. *Koelle v. Zwiren*, 284 Ill. App. 3d 778, 786 (1996).

¶ 26 In the present case, we reject plaintiffs' contention that the statute of limitations for their defamation and false light invasion of privacy claims did not begin to run until September 2009 when Christopher was advised by his dissolution attorney that he might have a cause of action. Awareness of a possible cause of action is not the critical point; rather, the relevant point in time was when plaintiffs should reasonably have been aware of their injury and its cause. *Benton*, 288 Ill. App. 3d at 205-06. Similarly, plaintiffs' argument that Christopher "was decidedly naive as to the legal definition of defamation" and their question, "What percentage of the general population is *ever* involved, over their full lifespan, in any civil cause of action such as the allegations *sub judice* describe?" are irrelevant to the application of the discovery rule. Plaintiffs offer no factual allegations in support of applying the rule. Given that it was plaintiffs' burden to demonstrate the

rule's applicability, the trial court did not err in rejecting the discovery rule and dismissing those portions of counts VII through X related to statements made prior to February 16, 2009, pursuant to section 2—619(a)(5) of the Code (735 ILCS 5/2—619(a)(5) (West 2010) (providing for involuntary dismissal where "the action was not commenced within the time limited by the law")). See *Koelle*, 284 Ill. App. 3d at 786 (plaintiff bears the burden of demonstrating the applicability of the discovery rule).

¶ 27 After applying the statute of limitations, one alleged statement remains in the complaint for our consideration under counts VII through X. Plaintiffs alleged that defendant made false reports of sexual abuse on September 15, 2009, during her discovery deposition in the parties' "Legal Separation cause of action." A party involved in private litigation has an absolute privilege to publish defamatory statements about another as part of the judicial proceeding, if the matter has some relation to the litigation. *Malevitis v. Friedman*, 323 Ill. App. 3d 1129, 1131 (2001) (citing Restatement (Second) of Torts, § 587, at 248 (1977)). Relevance to the litigation is not strictly applied and any doubts should be resolved in favor or relevancy. *Malevitis*, 323 Ill. App. 3d at 1131. Where the privilege applies, it applies regardless of the party's motive or the reasonableness of his conduct. *Malevitis*, 323 Ill. App. 3d at 1131. The privilege applies not only to defamation claims, but also to claims of false light invasion of privacy. See *Malevitis*, 323 Ill. App. 3d at 1132 (affirming the trial court's dismissal of the plaintiff's claims for defamation and false light invasion of privacy based on the application of the absolute privilege).

¶ 28 Here, according to plaintiffs' complaint, custody of the parties' three minor children was "the main issue being litigated" in the dissolution proceedings. Because the issue of sexual abuse of any of the minors by either Christopher or his father was certainly relevant to that issue in the litigation,

defendant had an absolute privilege to publish defamatory statements during her discovery deposition. See *Malevitis*, 323 Ill. App. 3d at 1131. Accordingly, the trial court's dismissal of counts VII through X alleging defamation and false light invasion of privacy with respect to the deposition statement was proper under section 2—619(a)(9) of the Code (735 ILCS 5/2—619(a)(9) (West 2010) (providing for involuntary dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim")).

¶ 29 Based on our holding that the trial court's dismissal of plaintiffs' complaint was proper, we need not address plaintiffs' argument regarding the availability of punitive damages.

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 31 Affirmed.