2013 IL App (2d) 121144-U
No. 2-12-1144
Order filed July 12, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WILLANTHA COLLINS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-AR-400
	)	
	)	Honorable
BRIAN BEMIS HYUNDAI,	)	Eugene G. Doherty and
	)	Lisa R. Fabiano,
Defendant-Appellee.	)	Judges, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Because the trial court dismissed plaintiff's contract claims, plaintiff was not entitled to a jury trial on those claims; (2) we declined to sanction plaintiff under Rule 375: plaintiff's willful rules violations were minor under Rule 375(a), and, although the appeal was frivolous under Rule 375(b), it was based on a mistake of law rather than an improper purpose, and forfeiture was deemed to be enough of a sanction under the facts and circumstances of the case.

¶ 2 Plaintiff, Willantha Collins, appeals after the disposition of all counts of her complaint against defendant, Brian Bemis Hyundai. The court dismissed several counts of the complaint on the basis that those counts failed to state a claim upon which relief could be granted, leaving one

count remaining. It moved that count to the small claims-call and, after a bench trial, awarded her $70. Plaintiff asserts that this procedure deprived her of her right to a jury trial on the full complaint. Plaintiff's appeal is based on a misunderstanding of her right to a jury trial. She fails to recognize that the court can decide whether a claim is legally sufficient to receive a jury trial. Because plaintiff has based her argument entirely on this misunderstanding, that argument fails, and we must affirm. Defendant has moved for sanctions against plaintiff. We deem sanctions inappropriate under the circumstances, and we deny the motion.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed a complaint against defendant on June 9, 2011. All her claims were based on what she asserted was the improper repossession of a Hyundai Elantra that she had bought from defendant. Defendant filed an appearance. Plaintiff, on July 28, 2011, filed a demand for a jury of 12. The court initially placed the matter on the arbitration call, but later sent it to the law division on the basis that the primary relief that plaintiff sought was injunctive, making the matter inappropriate for arbitration.

¶ 5 Defendant moved under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)) to dismiss the complaint for failure to state a claim upon which relief could be granted. The court dismissed the complaint, but without prejudice. Plaintiff responded by filing a series of documents. Defendant interpreted several of the documents as amended complaints, but plaintiff rejected that characterization in another filing. We cannot tell what plaintiff intended many of these filings to be, and we note that they do not fit well in any standard category. In any event, defendant responded by filing another motion under section 2-615 to dismiss for failure to state a

claim upon which relief could be granted. It argued that plaintiff's filings failed to raise a coherent claim to which it could respond.

¶ 6 On February 22, 2012, the court entered an order stating:

"1. Defendant's motion to dismiss with respect to Plaintiff's claim for conversion of personal property left inside the vehicle is granted, without prejudice;

2. Defendant's motion to dismiss with respect to all other claims is granted, with prejudice;

* * *

6. Plaintiff is granted leave to file an amended complaint for conversion of personal property only."

¶ 7 On July 25, 2012 (after a further series of filings by plaintiff), the court ruled that the amount that remained at issue on the conversion claim was less than $10,000. It therefore transferred the matter to the small-claims call.

¶ 8 On July 30, 2012, the court entered an order that stated that the "[c]ause [was] set for trial on October 17, 2012." After more filings from plaintiff, the court, on October 17, 2012, entered an order awarding plaintiff $70; the order stated that this was "after trial." Plaintiff filed a notice of appeal that day.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff asserts that the court erred when it denied her a jury trial on all issues. She argues that the order assigning the matter to the law division entitled her to a jury, and that this order could not be overruled by later rulings. She further asserts that the court acted improperly when it "remove[d]" the "Breach of Contract" issues by means of a "silent bench trial." Instead, according to her argument, defendant should have filed an answer and a jury should have decided

all issues. As relief, she requests that we remand this matter "for full litigation of a breach of contract under all legal procedures adhered to by the bench and litigants." We understand plaintiff to mean by this that she is requesting the reversal of the dismissal, and not any change to the disposition of her conversion claim.

¶ 11 Defendant's response rejects these arguments as without basis in law. Defendant has also filed a motion in this court for sanctions against plaintiff, as Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994) authorizes. In this motion, it asserts that the appeal was frivolous and not reasonably well grounded in law or fact. It notes that plaintiff filed more than one notice of appeal, and that we dismissed an earlier appeal for failure to pay the filing fee. It also notes that plaintiff missed several deadlines in this court and that her brief contains multiple defects including a failure to support her claim of error in the manner required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2012).

¶ 12 Plaintiff's claim of error is produced by a basic misunderstanding of civil procedure. Several readings of her brief persuade us that she does not understand that no right to a jury exists when the court has decided that the complaint is legally insufficient.

¶ 13 We first explain why plaintiff's appeal is based on a misunderstanding. This discussion shows why plaintiff's claim of error fails and is also the background for our resolution of defendant's motion for sanctions.

¶ 14 Plaintiff's discussion of the "Breach of Contract" issues shows a basic misunderstanding of when the right to a jury trial exists. No right to a jury trial exists when the only issues that must be decided are ones of law. *Alamo Rent A Car, Inc. v. Ryan*, 268 Ill. App. 3d 268, 277 (1994) ("Before the right to a jury trial is implicated, there must be an issue of fact to be determined."). Under section 2-615, the trial court has the power to dismiss a complaint either when the cause of action

set out in the complaint is not one that the law recognizes or when the facts alleged in the complaint are insufficient to show the plaintiff's right to relief under a recognized cause of action. *E.g.*, *In re T.P.S.*, 2012 IL App (5th) 120176, ¶ 3. These are both issues of whether the complaint is sufficient as a matter of law; thus, no conflict exists between a court's ability to dismiss claims under section 2-615 and the right to a jury.

¶ 15 Plaintiff is also incorrect that the order assigning the matter to the law division was a ruling that defendant was entitled to a jury trial. If anything, the order had the opposite effect. That order found that the relief plaintiff sought was primarily injunctive. The right to a jury trial does not apply when the issue is whether an injunction should be granted. *City of Girard v. Girard Egg Corp.*, 87 Ill. App. 2d 74, 75 (1967); see also *Kaplan v. Kaplan*, 98 Ill. App. 3d 136, 144 (1981).

¶ 16 This discussion shows that this appeal is based on a misconception of law and inasmuch as plaintiff provides no authority for reversing the trial court's order that ruling will stand. The remaining issue is whether we should impose sanctions against plaintiff based on the flaws in her brief and her actions in this court. We do not deem sanctions to be appropriate here.

¶ 17 Illinois Supreme Court Rule 375(a) (eff. Feb. 1, 1994) allows us to impose sanctions on a party to an appeal "[i]f after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules." Imposition of sanctions under Rule 375(a) is a matter for our discretion. See *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 692 (1992) (recognizing our discretion under this section). The violations here that appear to us to be willful are also minor. Other violations appear to be the result of misunderstanding what the rules required.

¶ 18 Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) allows us to impose sanctions "[i]f, after consideration of an appeal or other action pursued in a reviewing court, it is determined that

the appeal or other action itself is frivolous." Further, "[a]n appeal *** will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). Here too, the imposition of sanctions is a matter for this court's discretion. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 182 (2011). We agree with defendant that plaintiff's appeal was frivolous under the standard of Rule 375(b). However, as a matter of discretion, we decline to impose sanctions.

¶ 19 As we noted, plaintiff based her appeal on an obvious misunderstanding of the right to a jury trial. An appeal that is based on an obvious mistake may be deemed frivolous. However, an obvious mistake gives an appellee an obvious response. Indeed, it may choose to do nothing. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976) (even when the appellee does not file a brief, a reviewing court should not reverse unless the appellant makes at least a *prima facie* case for reversal). Moreover, being truly mistaken is not something we can easily discourage by imposing sanctions. Such an appeal is different from an appeal filed for an improper purpose, such as to harass the appellee. Here, we do not deem the various problems associated with this appeal to be sufficient reason to impose sanctions.

¶ 20 That said, we sympathize with defendant's reasons for requesting sanctions. Plaintiff has made proceedings here and in the trial court far more complicated than they ought to have been. Reviewing courts are entitled to require appellants, even those proceeding *pro se*, to define the issues clearly and to support their claims with cohesive arguments. *E.g.*, *Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79. Plaintiff has not done that. We find in her brief sentences such as, "The trial court implemented an attempt to cause the issues within this complaint to be estoppled." We can only guess what plaintiff means here. Part of the problem might be an ill-advised attempt at

elegance. For instance, we guess that "implemented an attempt" means "tried." The lack of clarity goes deeper, however. On rereading the brief, we have come to suspect that plaintiff is trying to make an argument that relates to *res judicata* and collateral estoppel. Our problem, beyond the jury argument addressed above, is that we cannot tell specifically what plaintiff intended the argument to be. When, as here, we cannot understand an appellant's argument, he or she forfeits it. See, *e.g.*, *Sexton*, 2012 IL App (1st) 100010, ¶ 79. Although we recognize the burden that an incoherent appellant's brief places on the opposing party, here the forfeiture is the automatic penalty for that lack of clarity. Again, we deem no formal sanction to be appropriate.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the trial court's judgments on plaintiff's claims.

¶ 23 Affirmed.