2015 IL App (2d) 140759-U
No. 2-14-0759
Order filed August 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BRYAN ANTHONY GUTRAJ, Plaintiff-Appellant, v. DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, BRYAN A. SCHNEIDER, Secretary of the Department of Financial and Professional Regulation, JAY STEWART, Director of Professional Regulation, THE ILLINOIS STUDENT ASSISTANCE COMMISSION, and ERIC ZARNIKOW, Executive Director of the Illinois Student Assistance Commission, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 14-MR-4 Honorable Jorge L. Ortiz, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff forfeited his contentions by failing to develop them and by failing to provide a sufficient record.

¶ 2 Plaintiff, Bryan Anthony Gutraj, appeals from the dismissal of his *mandamus* complaint against the Department of Financial and Professional Regulation (Department), Manuel Flores,

the Department's Acting Secretary (for whom the Secretary, Bryan A. Schneider, is now substituted by action of law), Jay Stewart, the Department's Director of Financial Regulation, the Illinois Student Assistance Commission (ISAC), and Eric Zarnikow, the Executive Director of ISAC (collectively, defendants). He argues that the dismissal, made on several bases, was incorrect on all of them, or that, alternatively, the court erred in refusing to allow him to amend his complaint. Plaintiff has failed to address adequately the court's dismissal of his complaint for failure to state a claim; we need not address the court's other bases for dismissal. Further, plaintiff has failed to provide a record on appeal sufficient to support his claim that the court abused its discretion when it refused to allow him to amend his complaint. We therefore affirm.

¶ 3 I. BACKGROUND

¶ 4 This appeal is the second relating to plaintiff's dispute of with Department and ISAC over his two certified public accountant (CPA) licenses. In the earlier case, plaintiff asserted that the Illinois Public Accounting Act (Act) (225 ILCS 450/0.01 (West 2012)) required that he be provided with a hearing before the Department suspended his CPA licenses as consequence of his student loan default. An excerpt of the appellate disposition in the earlier case provides useful background to this appeal:

> "In June 2012, plaintiff filed a complaint [in Sangamon County] for administrative review against [the Department, its Secretary, and its Director]. [Citation.] Plaintiff requested review of two orders refusing to renew plaintiff's CPA licenses. The May 10, 2012, order stated (1) plaintiff holds CPA license No. 065027716 'which is in Not Renewed Status,' and (2) plaintiff's 'Illinois Educational Loan is in default.' The May 14, 2012, order stated (1) plaintiff holds CPA license No. 239015076 'which will expire on September 30, 2012,' and (2) plaintiff's 'Illinois Educational Loan is in

> default.' Both orders stated plaintiff's licenses 'SHALL NOT BE RENEWED' and '[t]he Department shall continue to refuse renewal until such time that a satisfactory repayment schedule is established with [ISAC] and approved by the [Department].'
>
> * * *
>
> In November 2012, the [Sangamon County] court entered a six-page written order affirming the Department's refusal[-]to[-]renew order. In its order, the court found section 20.01(e) of the *** Act (225 ILCS 450/20.01(e) (West 2012)) 'mandates that the Department is to refuse to renew the plaintiff's licenses, without a hearing, if he has defaulted on an educational loan' guaranteed by [ISAC], and the Department needs to make only one factual finding, 'whether the plaintiff was in default on his Illinois Educational Loan.' " *Gutraj v. Department of Financial & Professional Regulation*, 2013 IL App (4th) 121096-U, ¶¶ 5, 8.

The appellate court upheld the Sangamon County court's ruling:

> "[S]ection 20.01(e) of the *** Act provides '[t]he Department *shall* deny any application for a license, registration, or renewal, *without hearing*, to any person who has defaulted on an educational loan guaranteed by [ISAC]; however, the Department may issue a license, registration, or renewal if the person in default has established a satisfactory repayment record as determined by [ISAC]." (Emphases added.) [Citations.]
>
> *** [S]ection 20.01(e) specifically addresses student loan defaults and specifies the Department must deny renewal without a hearing. 'A fundamental rule of statutory construction is that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.' [Citation.] As section 20.01(e) is

> the specific statutory provision regulating actions taken in response to student loan defaults, it controls over the general provisions [relating to discipline]." *Gutraj*, 2013 IL App (4th) 121096-U, ¶¶ 18-19.

The appellate court also addressed plaintiff's claim that, because "he was provided no opportunity to respond to the allegations before disciplinary action was taken," he was denied due process of law. *Gutraj*, 2013 IL App (4th) 121096-U, ¶ 23. It held that no such due-process violation had occurred. *Gutraj*, 2013 IL App (4th) 121096-U, ¶¶ 23-41.

¶ 5 Plaintiff instituted this action on January 3, 2014, when he filed a *mandamus* complaint against defendants. As in the prior case, he asserted that he should have had a hearing before the suspension of the licenses. However, he also raised two matters that were not a part of the Sangamon County case. First, he asserted the existence of a repayment agreement that bound ISAC to certify to the Department that he was eligible for reinstatement. He and ISAC made the agreement on January 29, 2013, but subsequently ISAC refused to certify his eligibility unless he signed a consent order, something he declined in order to protect a due-process claim against ISAC. Second, he noted that, effective August 9, 2013, the legislature had amended section 20.1(b) of the Act (225 ILCS 450/20.1(b) (West 2014)) to require notice and a hearing "before revoking, suspending, placing on probation, reprimanding, or taking any other disciplinary or non-disciplinary action under Section 20.01 of this Act." (Section 20.01(e) continued to provide that "[t]he Department shall deny any application for a license, registration, or renewal, without hearing, to any person who has defaulted on an educational loan guaranteed by the Illinois Student Assistance Commission." 225 ILCS 450/20.01(e) (West 2014).

¶ 6 The relief plaintiff sought was (1) that ISAC be ordered to certify that plaintiff had entered into a satisfactory repayment plan, (2) that the Department be required to renew

plaintiff's licenses, (3) that the Department be required to expunge its records of the "disciplinary action," and (4) damages.

¶ 7 Defendants moved to dismiss, asserting that the claim was barred by the judgment in the Sangamon County case. They argued that that case had addressed the same facts such that *res judicata* and collateral estoppel applied. They further argued that plaintiff had failed to state a claim on which relief could be granted in that plaintiff had no basis for his assertion that ISAC acted improperly when it rejected plaintiff's proposed repayment plan. They also argued that, because the acceptance of a repayment plan was a matter for ISAC's discretion, its refusal could not be the basis for a *mandamus* complaint. Finally, they further argued that nothing in Illinois law gave plaintiff a right to a record clear of disciplinary proceedings.

¶ 8 Plaintiff responded to the motion to dismiss. He first asserted that he was attempting not to force defendants to exercise their discretion in any particular manner, but merely to require it to *use* its discretion. That is, he seemed to suggest that he was not, in fact, seeking to have ISAC certify his repayment plan, but seeking only to have it make a decision on its acceptability. He further asserted that ISAC had, on January 29, 2013, accepted his repayment plan and that he had made the first required payment. He claimed that ISAC had breached the agreement by demanding that, as a condition of having his licenses reinstated, he sign a consent order as to the repayment plan. He believed that the consent order would bar his suit raising a due-process challenge to the notice he had received and therefore refused to sign the order despite his willingness to make the payments.

¶ 9 Defendants replied. They conceded that plaintiff and ISAC had agreed to the terms of a repayment plan, but asserted that plaintiff had failed to make required payments. They further asserted that, although the repayment plan specified that it would entitle plaintiff to certain

benefits, reinstatement of his licenses was not one of them. Furthermore, acceptance of the consent decree had always been a condition of reinstatement of plaintiff's licenses.

¶ 10 The court granted defendants' motion on May 8, 2014, thus dismissing plaintiff's complaint with prejudice as barred by prior judgment (see 735 ILCS 2-619(a)(4) (West 2014)) and for failure to state a claim on which relief could be granted (see 735 ILCS 2-615 (West 2014)). A transcript of the May 8 hearing is a part of the record on appeal.

¶ 11 Plaintiff filed a timely motion to reconsider and for leave to file an amended complaint. The motion made no express argument, but rather pointed to the liberal standards for amendment of a complaint. In the first count of his proposed amended complaint, he alleged that ISAC had breached its contract with him by later insisting that the consent order was a precondition of its certification of the repayment plan. The second count of his proposed amended complaint was one for administrative review. He asserted that the amendments to the Act required notice and a hearing.

¶ 12 The court denied plaintiff's motion on the basis that he had failed to "apprise the Court of newly discovered evidence, a change in law or errors in the Court's application of law." The record on appeal does not contain a transcript or other proper record of the hearing on the motion to amend. Defendant filed a timely notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff argues that the court erred in ruling that his *mandamus* action was barred by the Sangamon County judgment. He claims that two things happened after the Sangamon County judgment that make his new claim different—ISAC's acceptance of his repayment plan and the legislature's amendment of the Act. Concerning the dismissal for failure to state a claim, he asserts that ISAC and the Department acted arbitrarily in refusing to reinstate

his licenses after ISAC's acceptance of his repayment plan and that the August 9, 2013, amendments to the Act required the Department to give plaintiff notice and a hearing. Finally, plaintiff asserts that the trial court erred in refusing to allow him to amend his complaint.

¶ 15 Defendants respond that, among other things, the complaint failed to state the elements of a *mandamus* claim in that plaintiff failed to allege a clear statutory right to the relief that he requested. They note that a *mandamus* action provides an avenue to compel a public official to exercise discretion, but assert that the relevant officials did indeed exercise discretion and that plaintiff seeks to reject the results of that exercise. Further, they argue that, because plaintiff's proposed amended complaint did not cure the defects in the complaint, the court did not err in denying plaintiff's motion to amend.

¶ 16 We will first address the court's dismissal of the complaint, holding that plaintiff has failed to show that his complaint stated a claim for *mandamus*. Because that was a sufficient basis to dismiss, we need not address whether the complaint was barred by the prior judgment. We will then address whether the court erred in refusing to allow plaintiff to amend his complaint; we will conclude that plaintiff has not provided a record on appeal sufficient to support that claim.

¶ 17 We hold that plaintiff has failed to address adequately the court's dismissal of his complaint for failure to state a claim on which relief could be granted—dismissal under section 2-615 of the Code of Civil Procedure (Code). "A section 2-615 motion to dismiss tests the legal sufficiency of a complaint," and the "question to be answered is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state sufficient facts to establish a cause of action upon which relief may be granted." *Hadley v. Subscriber Doe*, 2015 IL 118000, ¶ 29. Review is *de novo*. *Hadley*, 2015 IL 118000, ¶ 29. Plaintiff argues at length,

but fails to explain, how his complaint stated the elements of a *mandamus* claim, particularly his right to the relief that he requested.

> " 'For a complaint seeking *mandamus* to withstand a challenge to its legal sufficiency, it must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ.' [Citations.] Indeed, '[a] petitioner seeking a writ of *mandamus* to command an officer to perform a duty must show a clear right to the relief asked by allegation of specific facts.' " *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 32.

The relief that plaintiff sought was (1) that ISAC be ordered to certify that plaintiff had entered into a satisfactory repayment plan, (2) that the Department be required to renew plaintiff's licenses, (3) that the Department be required to expunge its records of the "disciplinary action," and (4) damages.

¶ 18 Nowhere in plaintiff's brief do we find any argument supporting his right to his first, second, and fourth forms of relief. Accordingly, plaintiff has forfeited those portions of his claim. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (requiring that an appellant's brief contain argument supported by citation to authority and to the record to avoid forfeiture of the argument); *Hollywood Boulevard Cinema, LLC v. FPC Funding II, LLC*, 2014 IL App (2d) 131165, ¶ 37 ("An appellant's failure to support his or her argument with citation to authority can forfeit consideration of the issue.").

¶ 19 As to the third form of relief, expungement of his record, plaintiff argues in some detail that the Act required the Department to hold a hearing before disciplining him. He asserts that the lack of a hearing now gives him the right to have the record of the action against him expunged. However, his only argument that he has a right to expungement is that because "there

can be no disciplinary action *** without notice nor hearing ***, *** no records of disciplinary action should exist." This does not necessarily follow, and, as with plaintiff's other points, it is not adequately supported by argument and citation to appropriate authority. The syllogism is an enthymeme that presumes the amendment to the statute somehow invalidated and abrogated all prior proceedings wherein no record was made nor hearing held. There is nothing in the statute that so indicates. The request for expungement is particularly illogical given that plaintiff, by conceding his student loan default, has conceded that a hearing would have left him with an identical disciplinary record. Having failed to establish that the proceedings were invalid either prior to or after the amendment, the plaintiff has failed to show a clear right to the expungment.

¶ 20 Plaintiff argues that the court erred in denying his motion to amend his complaint. He has failed to provide a record on appeal sufficient to support his claim of error and further has failed to make a cogent argument in support of that claim.

¶ 21 A complaint should be dismissed *with prejudice* under section 2-615 only if it is clearly apparent that no set of facts can be proven that will entitle the plaintiff to recover. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 488 (1994). The decision to deny leave to amend is within the sound discretion of the trial court (*Cantrell v. Wendling*, 249 Ill. App. 3d 1093, 1095 (1993); see also *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351 (2002)), but the trial court should exercise its discretion liberally in favor of allowing amendments if doing so will further the ends of justice, and any doubts should be resolved in favor of allowing amendments (*Cantrell*, 249 Ill. App. 3d at 1095).

¶ 22 Because the granting of the motion rested in the sound discretion of the trial court, our review is for an abuse of discretion. "An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would

agree with it." *People v. Rivera*, 2013 IL 112467, ¶ 37. In other words, an abuse of discretion occurs when a clear flaw exists in the court's rationale for its decision, such that the decision is arbitrary or divorced from the facts, or the nature of the decision is so unreasonable that the rationale *must* be flawed.

¶ 23 However, where, as here, the record lacks a transcript (or transcript substitute) that lays out the court's rationale, a reviewing court must indulge every presumption that the trial court exercised its discretion properly. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Where no transcript or other proper record exists of a hearing on a motion in which the movant asks the court to exercise its discretion, "there is no basis for holding that the trial court abused discretion in denying the motion." *Foutch*, 99 Ill. 2d at 392. Here, the record on appeal as presented by plaintiff includes a transcript of the hearing on the motion to dismiss, but no record of the hearing on his motion to amend his pleadings. Absent such a record, we must presume that the court exercised its discretion properly when it denied leave to amend.

¶ 24 In any event, plaintiff has failed to offer a cogent argument as to why the court should have allowed the amendment. He points to the liberal standards in favor of amendment, but, he does not address why the court should have allowed him amend the complaint to raise a breach-of-contract claim and an administrative-review claim. Plaintiff never explains why his new claims would succeed where his *mandamus* complaint would not.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the dismissal of plaintiff's complaint and the denial of leave to amend.

¶ 27 Affirmed.