2018 IL App (2d) 170924-U
No. 2-17-0924
Order filed October 23, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RHONDA LAYNE and LOUIS IACOVELLI,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellants,	)	
v.	)	No. 15-L-571
WILLIAM A. FEDA and TIMOTHY K. MAHONEY, indv. and d/b/a MCNAMEE & MAHONEY, LTD. and MCNAMEE & MAHONEY, LTD.,	)	Honorable Susan Clancy Boles,
Defendants-Appellees.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We affirm the trial court's dismissal of plaintiffs' third amended complaint pursuant to 725 ILCS 5/2-615 as plaintiffs failed to plead sufficient facts to state causes of action for legal malpractice against defendants.

¶ 2 I. BACKGROUND

¶ 3 Sometime prior to December 2009, appellants, Rhonda Layne ("Layne") and Louis Iacovelli ("Iacovelli") (collectively "plaintiffs"), retained appellees, William Feda, Timothy Mahoney, and McNamee and Mahoney, LTD. ("defendants"), to represent them in a lawsuit

against Adoption Ark, Ellen Taylor ("Taylor"), and Elina Filipova ("Filipova") (collectively "the Ark defendants"). On December 17, 2009, defendants filed a multi-count complaint (2009 L. 788, hereinafter "the underlying case") in the circuit court of Kane County on behalf of the plaintiffs against the Ark defendants. On June 17, 2011, defendants filed a first amended complaint in the underlying case against the Ark defendants. The first amended complaint against the Ark defendants alleged as follows.

¶ 4 Adoption Ark is a non-profit corporation that places orphaned minor children from Pakistan in adoptive American homes. It provides social services and adoption placement services to the adoptive families and assists in the adoption and placement of said children. Taylor and Filipova were employed by Ark Adoption as social workers qualified to render adoption advice, assistance, and counseling. In June 2009, plaintiffs contacted Adoption Ark for social services and adoption services. Sometime after, plaintiffs entered into a contract with Adoption Ark for consideration to adopt a child.

¶ 5 Layne met with Dr. Michael Sherry for a psychological evaluation on July 3, 2009, at the request of Adoption Ark, to assess her fitness to become an adoptive parent. Dr. Sherry concluded that Layne was not suffering from any psychological impairment. Dr. Sherry's evaluation concluded that Layne would provide excellent parenting for an adoptive child, and that she was fit to adopt.

¶ 6 Plaintiffs completed the requisite adoptive family training and were approved by the Ark defendants for a foster family license. On August 12, 2009, plaintiffs submitted the full report of Dr. Sherry to Ark Adoption and Taylor. On August 17, 2009, Ark Adoption and Taylor conducted a home study of plaintiffs, which was approved by Taylor. The home study report was mailed to Mary Donley, an adoption coordinator at the Department of Children and Family

Services ("DCFS"), which was received on August 25, 2009. The home study report concluded that Layne exhibited signs of an obsessive compulsive personality disorder. Layne underwent a follow-up examination with Dr. Sherry on September 11, 2009, due to Adoption Ark finding that she exhibited signs of obsessive compulsive personality disorder. Dr. Sherry concluded that Layne "was not suffering from any psychological impairment that would be a contraindication to her becoming a qualified adoptive parent." On September 21, 2009, Ark Adoption notified Mary Donley that it had rescinded its approval of plaintiff's home study; making plaintiffs no longer approved to adopt.

¶ 7 The first amended complaint included counts of defamation *per quod*, breach of contract, false light, and *respondeat superior*. On May 25, 2012, the trial court in the underlying case granted summary judgment in favor of the Ark defendants on the breach of contract claim. On March 27, 2013, summary judgment was granted in favor of the Ark defendants on the remaining counts in the underlying case. On April 29, 2013, plaintiffs filed a post-judgment motion seeking leave to amend their first amended complaint with additional causes of action. The trial court in the underlying case denied plaintiffs' motion as it was filed more than thirty days after the entry of summary judgment.

¶ 8 Plaintiffs filed a complaint alleging legal malpractice against defendants on February 17, 2015, in Cook County. The Cook County trial court granted a motion by defendants to transfer the case to Kane County. On May 18, 2016, the trial court granted defendants' motion to dismiss plaintiffs' complaint for failure to state a claim. The trial court allowed plaintiffs to file an amended complaint, which they did on June 15, 2016. Plaintiffs' first amended complaint was again dismissed for failure to state a claim. The trial court allowed plaintiffs to file a second amended complaint. The second amended complaint was also dismissed by the trial court for

failure to state a claim. The trial court allowed the plaintiffs another opportunity to file an amended complaint, which would become the subject of this appeal.

¶ 9 On May 10, 2017, plaintiffs filed a third amended complaint against defendants incorporating the facts of the underlying case. Relevant here, plaintiffs alleged that defendants failed to file a timely post summary judgment motion to amend the first amended complaint and assert the following legal theories: (1) "violation of the Illinois Mental Health and Developments Disabilities Confidentiality Act for [the Ark defendants] improperly disclosing fraudulent information about plaintiffs' mental condition without authorization or consent from the plaintiff causing damage to plaintiffs"; (2) "violation of the Illinois Clinical Psychologist Licensing Act for [the Ark defendants] improperly practicing clinical psychology by improperly interpreting a psychological evaluation, overruling a determination of a licensed clinical psychologist, making a clinical determination without being a licensed psychologist, and disclosing an improper, fraudulent and unlicensed determination in violation of the ICPLA causing damage to plaintiffs"; (3) "violation of the Illinois Consumer Fraud and Deceptive Business Practices Act for [the Ark defendants'] deceptive act of disclosing fraudulent recommendations undermining the adoption for plaintiffs while contracted to help plaintiffs adopt a child, and causing damage to plaintiffs"; (4) "civil conspiracy against [the Ark defendants] by their concerted action, for unlawfully and fraudulently disclosing confidential information and fraudulent determinations about plaintiffs to hinder and thwart plaintiffs ability to adopt a child causing plaintiffs damage"; and (5) "breach of fiduciary duty against [the Ark defendants]."

¶ 10 On June 7, 2017, defendants filed a motion to dismiss plaintiffs' third amended complaint pursuant to 725 ILCS 5/2-615. In their motion, defendants alleged that plaintiffs had stated no

facts in their complaint that "but for" defendants' action, plaintiffs would have recovered on their claims in the underlying case. Defendants' motion sought dismissal with prejudice.

¶ 11 On October 19, 2017, the trial court granted defendants' motion to dismiss plaintiff's third amended complaint with prejudice, finding that:

> "[T]he plaintiffs have failed to plead sufficient facts to support that any of the alleged loss claims under the Confidentiality and Licensing Acts, conspiracy, or a violation of the ICFA were truly viable or had a reasonable inference of success. Simply alleging these claims would have been successful is not enough ***.
>
> The stated complaints in the complaint lack factual support and are primarily based on legal conclusions. Plaintiffs have been given multiple attempts *** to sufficiently plead their legal malpractice cause of action. They have not been successful ** and the motion to dismiss is being granted with prejudice."

This timely appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiffs contend that the trial court erred in dismissing their third amended complaint (hereinafter "complaint") with prejudice pursuant to 725 ILCS 5/2-615. Plaintiffs argue that they plead sufficient facts to establish a cause of action for legal malpractice against defendants. More specifically, plaintiffs argue that their complaint alleged sufficient actual facts to show underlying causes of actions against the Ark defendants for: (1) violation of the Illinois Mental Health and Developmental Disabilities Confidentiality Act (the "Confidentiality Act") Act (740 ILCS 110/1 *et seq.* (West 2016)); (2) violation of the Illinois Clinical Psychologist Licensing Act (the "Licensing Act") (225 ILCS 15/1 *et seq.* (West 2016)); (3) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA") (815 ILCS 505/1 *et seq.* (West 2016));

(4) civil conspiracy; and (5) breach of fiduciary duty.

¶ 14 "The question presented by a motion to dismiss under section 2–615 is whether sufficient facts are contained in the pleadings which, if proved, would entitle the plaintiff to relief." *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 475 (1991). Our standard of review is *de novo*, and "we may affirm the trial court's order on any basis appearing in the record." *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282 (2006). In reviewing the legal sufficiency of the complaint, we take as true all well-pleaded facts, drawing all reasonable inferences therefrom in favor of the nonmoving party, but we disregard mere conclusions of law unsupported by specific factual allegations. *Krueger v. Lewis*, 342 Ill. App. 3d 467, 470 (2003). Moreover, "[i]n opposing a motion for dismissal under section 2-615 of the Code of Civil Procedure, a plaintiff cannot rely simply on mere conclusions of law or fact unsupported by specific factual allegations." *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action being asserted. *Id.* A complaint fails to state a cause of action if it does not contain factual allegations in support of each element of the claim that the plaintiff must prove in order to sustain a judgment; the complaint may not rest on mere unsupported factual conclusions. *Grund v. Donegan*, 298 Ill. App. 3d 1034, 1037 (1998).

¶ 15 To plead a viable legal malpractice claim under Illinois law, a plaintiff must plead facts that show: "(1) the existence of an attorney-client relationship which establishes a duty on the part of the attorney; (2) a negligent act or omission constituting a breach of that duty; (3) proximate cause establishing that 'but for' the attorney's negligence, the plaintiff would have prevailed in the underlying action; and (4) damages." *Timothy Whelan law Assocs. v. Kruppe*, 409 Ill. App. 3d 359, 363 (2011). A legal malpractice plaintiff is "required to plead a case within a case."

Ignarski v. Norbut, 271 Ill. App. 3d 522, 525-26. Specifically, a plaintiff is "required to plead ultimate facts." *Id*.

¶ 16 Plaintiffs and defendants were certainly engaged in an attorney-client relationship that established a duty on the part of defendants. The untimely post summary judgment motion filed by defendants on behalf of plaintiffs will be assumed to be a negligent act constituting breach of defendants' duty for the purposes of this appeal, although the reason for this untimely filing is never articulated by the parties or the record provided. Our focus here will be on whether 'but for' defendants' negligence, plaintiffs would have prevailed in the underlying action on any of the above-enumerated causes of actions.

¶ 17 We begin by examining plaintiffs' argument that they pled sufficient facts to establish a cause of action for legal malpractice against defendants for failing to assert a violation of the Confidentiality Act (740 ILCS 110/1 *et seq.* (West 2016)) against the Ark defendants. Plaintiffs argue that the Ark defendants acted as an interdisciplinary team when they retained the services of therapist, Dr. Sherry. Plaintiffs allege that the Ark defendants then rescinded its approval of plaintiffs' home study and sabotaged plaintiffs' adoption process by releasing plaintiffs' confidential information to third-parties without authorization.

¶ 18 The Confidentiality Act defines "Record" as "any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided." 740 ILCS 110/2 (West 2016). A "Therapist" is defined by the Confidentiality Act as "a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such person is permitted to do so." *Id*. An "Interdisciplinary

team" is defined as "a group of persons representing different clinical disciplines, such as medicine, nursing, social work, and psychology, providing and coordinating the care and treatment for a recipient of mental health or developmental disability services. The group may be composed of individuals employed by one provider or multiple providers." *Id.*

¶ 19 Section 3(a) of the Confidentiality Act provides that:

"All records and communications shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship." 740 ILCS 110/3(a) (West 2016).

¶ 20 With the foregoing definitions in mind, we turn to the actual pleadings by plaintiffs regarding the Confidentiality Act. Plaintiffs alleged the following facts. The Ark defendants provide social services and adoption placement services and were retained and contracted by plaintiffs for social services and adoption services. Taylor and Filippova held themselves out as qualified social workers to render adoption services, assistance, and counseling. Ark Adoption hired Dr. Sherry, a clinical psychologist with Affiliated Counseling Services, to conduct a psychological evaluation of Layne. The Ark defendants reviewed the data from one of the tests administered by Dr. Sherry and determined that Layne exhibited signs of obsessive compulsive disorder. Dr. Sherry conducted a follow-up evaluation of Layne and concluded that she was not suffering from any psychological impairment that would be a contraindication to her becoming an adoptive parent. Ark Adoption and Taylor then notified Mary Donley, the Inter-County Adoption Coordinator at DCFS, that Ark Adoption was rescinding its approval of plaintiffs' home study,

sabotaging plaintiffs' adoption process. Plaintiffs conclude in their pleadings that defendants "failed to timely file a motion to amend the complaint to add a cause of action for violation of [the Confidentiality Act] for [the Ark defendants'] improper disclosure of fraudulent information about plaintiffs' mental condition without authorization or consent from the plaintiff causing damage to the plaintiffs."

¶ 21 For the purposes of this appeal we will concede that plaintiffs' complaint brings defendants and their conduct within the above-recited definitions of the Confidentiality Act. Dr. Sherry is undoubtedly the Act's definition of a "Therapist," and his psychological evaluation of Layne and defendants' subsequent home study evaluation are undoubtedly what the Act defines as "Records." Further, the Ark defendants and Dr. Sherry could be interpreted to be an "Interdisciplinary team" under the Confidentiality Act as they comprised a group of persons representing social work and psychology as well as providing and coordinating the care and treatment for a recipient of mental health services. Plaintiffs' pleadings against defendants under the Confidentiality Act fail them, however, in their assertion that defendants' "improper disclosure of fraudulent information about plaintiffs' mental condition without authorization or consent from the plaintiff causing damage to the plaintiffs."

¶ 22 Attached to plaintiffs' complaint is the Adoption Services Agreement (the Agreement) between plaintiffs and Ark Adoption. Section E of the Agreement is titled "Confidentiality and Exclusivity." Paragraph 1 of that section provides "[w]hile this agreement is in effect and/or upon termination of the agreement, Adoption Ark agrees to keep all client information confidential with the exception of all third-party involvement in dossier processing or approval (translator, foreign government officials, and foreign representatives)." The only possible third-party recipient of Layne's psychological evaluation, based on the allegations contained in the complaint,

would be Mary Donley of DCFS. The record in this case shows that Mary Donley was involved in the "dossier processing or approval" of the adoption proceedings.

¶ 23 In the underlying case, the Ark defendants' motion for summary judgment contains excerpts from Donley's deposition testimony. Relevant here, Donley's deposition testimony stated as follows:

> "Q. *** [A]re you the person who decides whether Illinois is in agreement with the recommendation of the social worker, or is there anyone else who is involved in that decision making?
>
> A. I am, as the Inter-County Adoption Coordinator.
>
> Q. And if you decide that you are in agreement with recommendation, what does that mean for the perspective adoption *** parents?
>
> A. A letter is generated that is provided to immigration just stating that the State of Illinois is in agreement with the private agency's recommendation. ***
>
> Q. *** So in this situation, the fact that Ellen Taylor made the determination to rescind her prior favorable recommendation for Ms. Layne and Mr. Iacovelli by itself was the reason that DCFS could not recommend Ms. Layne and Mr. Iavocelli as prospective parents to the Department of Immigration, correct?
>
> A. Correct."

¶ 24 It is clear that Donley is an indispensible part of the "dossier processing or approval" of the adoption process in her position with DCFS. Pursuant to the Agreement plaintiffs agreed to the disclosure of confidential information to a third-party if that third-party is involved in dossier processing or approval. Donley's testimony makes clear that the adoption process could not proceed without DCFS's involvement stating to Illinois that it agrees with Ark Adoption's

recommendation. Therefore, based on the Agreement between plaintiffs and defendants regarding the disclosure of confidential information to third-parties which contemplated the involvement of DCFS, plaintiffs cannot establish that 'but for' defendants' negligence, plaintiffs would have prevailed in the underlying action had they plead a violation of the Confidentiality Act against the Ark defendants.

¶ 25 We now turn to plaintiffs' argument that they pled sufficient facts to establish a cause of action for legal malpractice against defendants for failing to assert a violation of the Licensing Act (225 ILCS 15/1 *et seq.* (West 2016)) against the Ark defendants. Plaintiffs argue that the complaint provided that the Ark defendants engaged in the practice of clinical psychology when they independently evaluated, classified, and diagnosed Layne with obsessive compulsive disorder.

¶ 26 Section 1 of the Licensing Act provides that:

> "The practice of clinical psychology in Illinois is hereby declared to affect the public health, safety and welfare, and to be subject to regulations in the public interest to protect the public from persons who are unauthorized or unqualified to *represent themselves as clinical psychologists or as being able to render clinical psychological services* as herein defined, and from unprofessional conduct by persons licensed to practice clinical psychology. This Act shall be known and may be cited as the 'Clinical Psychologist Licensing Act'." (Emphasis added) 225 ILCS 15/1 (West 2016).

Section 3(a) of the Licensing Act provides that:

> "No individual shall, without a valid license as a clinical psychologist issued by the Department, in any manner *hold himself or herself out to the public as a psychologist or clinical psychologist* under the provisions of this Act or render or offer to render clinical

> psychological services as defined in paragraph 7 of Section 2 of this Act; or attach the title "clinical psychologist", "psychologist" or any other name or designation which would in any way imply that he or she is able to practice as a clinical psychologist; or offer to render or render clinical psychological services as defined in paragraph 7 of Section 2 of this Act. No person may engage in the practice of clinical psychology, as defined in paragraph (5) of Section 2 of this Act, without a license granted under this Act, except as otherwise provided in this Act." (Emphasis added) 225 ILCS 15/3(a) (West 2016).

¶ 27 In construing a statute, the goal is to ascertain and effectuate the legislature's intent. *Fleissner v. Fitzgerald*, 403 Ill. App. 3d 355, 366 (2010). The best indication of legislative intent is the plain and ordinary meaning of the statutory language. *Fleissner*, 403 Ill. App. 3d at 366. Rather than read any portion of the statute in isolation, we must read the entirety of the statute while considering the subject it addresses as well as the legislature's apparent objective. *Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317, 325 (2009). Where the statute is clear and unambiguous, we apply it as written without resorting to tools of statutory construction. *Artisan Design Build*, 397 Ill. App. 3d at 325.

¶ 28 The legislature's intent with the licensing act is made quite clear in Section 1. The purpose of the Licensing Act is to protect the public from persons who are unauthorized or unqualified to represent themselves as clinical psychologists or as being able to render clinical psychological services. The language of Section 3 of the Licensing Act further bolsters the legislature's stated intent. In their complaint plaintiff's state that "Taylor and Filippova held themselves out as qualified social workers to render adoption advice, assistance, and counseling." They describe the Ark defendants as being "in the business of taking custody of and/or placing orphaned minor children from Pakistan in adoptive home[s] in the United States, and to provide

social services and adoption placement services to the adoptive families in the United States." The complaint then alleges that defendants failed to add a cause of action for violation of the Licensing Act due to the Ark defendants "improperly practicing clinical psychology by improperly interpreting a psychological evaluation, overruling a determination of a licensed clinical psychologist, and disclosing an improper, fraudulent and unlicensed determination in violation of the [Licensing Act] ***."

¶ 29 Plaintiffs' complaint does not plead any facts that would bring defendants under the auspices of this statute. At no point do plaintiffs allege in any way that the Ark defendants represented themselves as clinical psychologists or as being able to render clinical psychological services. As stated above, plaintiffs' complaint actually specifically states that Taylor and Filippova represented themselves as social workers while Ark Adoption represented itself as an adoption agency specializing in the adoption of Pakistani orphans. As Illinois is a fact-pleading jurisdiction, plaintiffs must allege facts sufficient to bring their claim within the scope of the cause of action being asserted. *Vanden Dorpel*, 172 Ill. 2d at 408. Due to the lack of specific allegations relating to a representation of the ability to practice or render clinical psychological services, Plaintiffs cannot show that 'but for' defendants' negligence, the plaintiff would have prevailed in a cause of action against the Ark defendants for a violation of the Licensing Act in the underlying action.

¶ 30 We next examine plaintiffs' argument that they pled sufficient facts to establish a cause of action for legal malpractice against defendants for failing to assert a violation of the ICFA (815 ILCS 505/1 *et seq.* (West 2016)) against the Ark defendants. Plaintiffs argue that the complaint alleged that the Ark defendants deceived plaintiffs into believing that they were assisting them with the adoption process and gathered privileged information from plaintiffs under the guise of

that deception. Plaintiffs also argue that they properly alleged that defendants intended that they rely on their deceptions, which occurred in the course of the adoption process, causing damages to plaintiffs.

¶ 31 The elements of a claim under the ICFA (815 ILCS 505/2 (West 2016)) are: (1) a deceptive act or practice by defendant; (2) defendants' intent that plaintiff rely on the deception; and (3) that the deception occurred in the course of conduct involving trade and commerce. *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 501 (1996). Plaintiffs' reliance is not an element of statutory consumer fraud, but a valid claim must show that the consumer fraud proximately caused plaintiffs' injury. *Id*. Furthermore, a complaint alleging a violation of consumer fraud must be pled with the same particularity and specificity as that required under common law fraud including "what misrepresentations were made, when they were made, who made the representations and to whom they were made." *Prime Leasing, Inc. v. Kendig*, 332 Ill. App. 3d 300, 309 (2002).

¶ 32 In plaintiffs' complaint, they make only vague, conclusory allegations that relate to the ICFA. Plaintiffs alleged that "the unauthorized disclosure of plaintiffs' confidential information by Taylor, Filippova and [Ark Adoption] was a deceptive act." Further "[the Ark defendants] intended the plaintiffs to rely on the deception that they were assisting plaintiffs in adopting a child when in fact they were sabotaging plaintiffs' adoption process." They conclude that "[t]he deception by [the Ark defendants] occurred in the course of conduct involving trade or commerce, and plaintiffs suffered actual damage caused by the deception because they were unable to adopt an orphan from Pakistan."

¶ 33 Missing from plaintiffs' allegations in their complaint are any facts related to how or why the Ark defendants' disclosure of their confidential information constituted a deceptive act or practice. Additionally, plaintiffs allege no facts as to how the Ark defendants intended that

plaintiffs rely on the deceptive act. It is unclear from the allegations of the complaint what confidential information disclosed was deceptive, and to whom it was disclosed. We can only assume from the complaint that plaintiffs are referring to Taylor "reinterpret[ing] [Dr. Sherry's] findings to purportedly indicate a possibility that [Layne] exhibited signs of obsessive compulsive disorder." We can only assume that the complaint means to allege that the unauthorized disclosure of this information occurred when it was relayed to Mary Donley at DCFS. But our assumptions of these allegations exist only because plaintiffs do not plead these facts with the requisite specificity to move them from assumptions to well-pleaded facts. As such, plaintiffs' complaint is not pled with the particularity and specificity as that required under common law fraud or, therefore, a viable claim under ICFA. See *Kendig*, 332 Ill. App. 3d at 309

¶ 34 Plaintiffs next argue that they pled sufficient facts to establish an underlying cause of action for civil conspiracy against the Ark defendants. Plaintiffs argue that their complaint against defendants alleged that the Ark defendants acted in concert as two or more individuals and that the Ark defendants, in violation of the Licensing Act and Confidentiality Act, disclosed confidential information to third parties.

¶ 35 To state a cause of action for civil conspiracy, plaintiffs must allege facts to establish the elements of civil conspiracy, which are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). However, the mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss. *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998),

¶ 36 Plaintiffs' complaint does not allege facts to establish a civil conspiracy. In their

complaint, plaintiffs merely state that defendants failed to amend the underlying complaint to add a cause for civil conspiracy against the Ark defendants "for unlawfully and fraudulently disclosing confidential information and fraudulent determinations about plaintiffs to hinder and thwart plaintiffs ability to adopt a child causing plaintiffs damage."

¶ 37 In order to connect defendant to an alleged civil conspiracy, the complaint must allege the necessary and important element of the existence of an agreement. *McClure v. Owens Corning Fiberglass Corp.*, 188 Ill. 2d 102, 134 (1999). The complaint must allege that the defendant knowingly and voluntarily participated in the common scheme at the heart of the alleged civil conspiracy. *Id*. at 133. Here, plaintiffs' complaint alleges no agreement between the Ark defendants to further some tortious scheme. Nor does the complaint allege that the Ark defendants knowingly and voluntarily participated in a common scheme. In actuality, their complaint precisely illustrates the mere characterization of a combination of acts as a conspiracy that is insufficient to withstand defendants' motion to dismiss. See *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d at 23.

¶ 38 Finally, plaintiffs argue that they pled sufficient facts to establish an underlying cause of action for breach of fiduciary duty. Plaintiffs argue that it can be inferred from the facts alleged in their complaint that the Ark defendants, retained for social services and adoption services, were placed in positions of trust with the plaintiffs. Plaintiffs further argue that by trusting the Ark defendants with their confidential information and subjecting Layne to psychological evaluation at the direction of the Ark defendants, established a fiduciary duty that was breached when the Ark defendants sabotaged plaintiffs' ability to adopt an orphan from Pakistan by disclosing said confidential information to third-parties without their consent.

¶ 39 A claim for breach of fiduciary duty must allege two elements: a fiduciary relationship, and

a breach of the duties imposed as a matter of law as a result of that relationship. *Miller v. Harris*, 2013 IL App (2d) 120512, ¶ 21. A fiduciary relationship may arise as a matter of law from the existence of a particular relationship, such as an attorney-client or principal-agent relationship, or come about when one party reposes trust and confidence in another, who thereby gains a resulting influence and superiority over the subservient party. *Id*. The mere fact that a contractual relationship exists is insufficient to support a finding of fiduciary duty. *State Sec. Ins. Co. v. Frank B. Hall & Co.*, 258 Ill. App. 3d 588, 597 (1994). The standard of review on a section 2–615 motion to dismiss limits our review to the face of the complaint and we must confine our review to the well-pleaded factual allegations in plaintiffs' complaint, together with reasonable inferences to be taken therefrom. *Khan v. Deutsche Bank AG*, 2012 IL 11219, ¶ 56

¶ 40 Whether plaintiffs' complaint contains sufficient well-pleaded factual allegations to reasonably infer that a fiduciary relationship was created when plaintiffs reposed trust and confidence in the Ark defendants, thereby resulting in the Ark defendants gaining influence and superiority over plaintiffs is of no consequence for the purposes of this analysis. Plaintiffs' complaint is deficient on the second element necessary to allege a breach of fiduciary duty: a breach of the duties imposed as a matter of law as a result of the fiduciary relationship. See *Miller*, 2013 IL App (2d), ¶ 21. Even if we were to agree with plaintiffs that it can be inferred from the facts alleged in their complaint that the Ark defendants were in such a position of influence and superiority by possessing plaintiffs' confidential information and subjecting Layne to psychological evaluation, plaintiffs do not sufficiently plead facts that illustrate a breach of that alleged duty.

¶ 41 The only third-party alleged to have received plaintiffs' confidential information from the Ark defendants is Mary Donley of DCFS. As established above, Donley was an indispensible

part of the adoption process in her position with DCFS. Sharing plaintiffs' confidential information with Donley would not itself constitute a breach of fiduciary duty if, in fact, a fiduciary relationship even existed. Further, it remains unclear what confidential information plaintiffs are alleging was shared with a third-party in breach of defendants' supposed fiduciary duty. Their complaint merely summarizes that defendants failed to "timely file a motion to amend the complaint and add a cause of action for breach of fiduciary duty against the [Ark defendants]." Therefore, as plaintiffs' complaint fails to state facts sufficient to allege a breach of the duties imposed as a matter of law as a result of a fiduciary relationship with the Ark defendants, they are unable to show that 'but for' defendants' negligence, the plaintiff would have prevailed in a cause of action against the Ark defendants for a breach of fiduciary duty.

¶ 42 In sum, plaintiffs' complaint was not pled with sufficiency to state causes of action for legal malpractice against defendants. The trial court did not err in dismissing their complaint pursuant to 725 ILCS 5/2-615 as plaintiffs had stated insufficient facts in their complaint that but for defendants' action, plaintiffs would have recovered on their claims in the underlying case.

¶ 43 Accordingly, we affirm the judgment of the circuit court of Kane County.

¶ 44 Affirmed.