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2015 IL App (3d) 140090-U

Order filed November 2, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

|                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| JULIE M. WEBBER,                  | ) | Appeal from the Circuit Court |
|                                   | ) | of the 10th Judicial Circuit, |
| Plaintiff-Appellant,              | ) | Peoria County, Illinois,      |
|                                   | ) |                               |
| v.                                | ) |                               |
|                                   | ) | Appeal No. 3-14-0090          |
| JOHN E. HATZER, MICHAEL           | ) | Circuit No. 10-CH-388         |
| NORDSTROM, Individually and d/b/a | ) |                               |
| HATZER & NORDSTROM CO., and       | ) |                               |
| LARRY'S METAL COMPANY, INC.,      | ) |                               |
|                                   | ) | Honorable Michael Brandt,     |
| Defendants-Appellees.             | ) | Judge, Presiding.             |

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JUSTICE SCHMIDT delivered the judgment of the court.  
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

**ORDER**

- ¶ 1       *Held:* The court did not abuse its discretion in dismissing plaintiff's suit wherein plaintiff filed the same claim against the same parties in Henry County.
- ¶ 2       Plaintiff, Julie M. Webber, filed complaints against defendants, John Hatzer, Michael Nordstrom, Individually and d/b/a Hatzer & Nordstrom Co., and Larry's Metal Company, Inc., in both Henry County and Peoria County seeking to recover the same damages. The circuit court of Peoria County dismissed her claim pursuant to section 2-619 of the Code of Civil Procedure

(the Code) (735 ILCS 5/2-619(3) (West 2010)); another claim between the same parties for the same cause was pending in Henry County.

¶ 3 Plaintiff appeals, arguing that the trial court erred in dismissing her claim against defendants. We affirm.

¶ 4 BACKGROUND

¶ 5 Camp Grove State Bank filed a replevin action against plaintiff's son, Jeffrey Webber, in Stark County. The Stark County circuit court entered an order of replevin. Plaintiff filed a motion to intervene in the Stark County case, alleging that defendants trespassed on and damaged plaintiff's property while effectuating the order of replevin. The court denied plaintiff's motion to intervene.

¶ 6 Plaintiff filed a case against defendants in Henry County, seeking relief against defendants for trespass and conversion while defendants effectuated the order of replevin. The Henry County circuit court dismissed plaintiff's case for want of prosecution. Plaintiff appealed. This court dismissed plaintiff's appeal; we lacked jurisdiction to hear the appeal where the Henry County circuit court did not issue a final order. *Webber v. Camp Grove State Bank, Hatzler & Nordstrom Equipment Co. & Larry's Scrap Metal, a/k/a Larry's Metal Co., Inc.*, 2014 IL App (3d) 130885-U. Within one year of the trial court's dismissal, plaintiff refiled her suit in Henry County.

¶ 7 Plaintiff also filed a case in Peoria County against the same defendants, seeking the same damages. Defendants filed a motion to dismiss based, in part, on the existence of an identical case in Henry County. The court granted defendants' motion to dismiss. Plaintiff filed a motion to reconsider, which the court denied.

¶ 8 Plaintiff appeals. We affirm.

¶ 9

## ANALYSIS

¶ 10

Initially we note that plaintiff failed to comply with Illinois Supreme Court Rules governing appellant's briefs. Ill. S. Ct. R. 341(h) (eff. July 1, 2008). Plaintiff neither supported her statement of facts with citations to the record nor provided us with a standard of review. Ill. S. Ct. R. 341(h)(3)(6) (eff. July 1, 2008). Notwithstanding plaintiff's failure to comply with Illinois Supreme Court Rules, we will address the merits of her claim.

¶ 11

Plaintiff argues that the trial court erred in dismissing her claim. Defendants argue that the court did not abuse its discretion in granting their motion to dismiss pursuant to section 2-619(3).

¶ 12

We will only reverse a trial court's decision to dismiss a claim pursuant to section 2-619 where the court abused its discretion. *Village of Mapleton v. Cathy's Tap, Inc.*, 313 Ill. App. 3d 264 (2000). A court abuses its discretion where its ruling was arbitrary or unreasonable, ignored principles of law, or if no other reasonable person would agree with the court's position. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 13

Section 2-619, which grants the court authority to dismiss a plaintiff's case, in relevant part, states:

“Involuntary dismissal based upon certain defects or defenses. (a)

Defendant may, within the time for pleading, file a motion for

dismissal of the action or for other appropriate relief upon any of

the following grounds. If the grounds do not appear on the face of

the pleading attacked the motion shall be supported by affidavit:

\* \* \*

(3) That there is another action pending between the same parties for the same cause.” 735 ILCS 5/2-619(3) (West 2010).

Section 2-619(3) attempts to prevent duplicative litigation. *Village of Mapleton*, 313 Ill. App. 3d at 266.

¶ 14 The circuit court of Peoria County dismissed plaintiff’s claim based on the existence of an identical suit pending in Henry County. Plaintiff does not contest the fact that the actions seek the same recovery against the same parties. The trial court did not abuse its discretion in dismissing the Peoria County case.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 17 Affirmed.