

NOTICE
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2012 IL App (4th) 120376-U

NO. 4-12-0376

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 2, 2012

Carla Bender

4th District Appellate
Court, IL

GINGER MABUS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
THE RANTOUL POLICE DEPARTMENT, a Law)	No. 11L190
Enforcement Agency; KURTIS BUCKLEY; and)	
JEREMY HEATH,)	Honorable
Defendants-Appellees.)	Michael Q. Jones,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff failed to file her complaint within the one-year statute of limitations period and did not set forth a proposed amended complaint, the trial court did not err in granting defendants' motion for summary judgment and in denying plaintiff's motion to amend the complaint.

¶ 2 In October 2011, plaintiff, Ginger Mabus, filed a *pro se* complaint against defendants, the Rantoul police department, Kurtis Buckley, and Jeremy Heath, alleging "abuse of power," false arrest, false imprisonment, and conspiracy. In March 2012, the trial court granted defendants' motion for summary judgment and denied plaintiff's motion to amend her complaint.

¶ 3 On appeal, plaintiff argues the trial court erred in granting summary judgment based on the statute of limitations and in not granting her request to amend her complaint. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2011, plaintiff filed a *pro se* complaint against defendants in connection with a domestic disturbance on October 10, 2009, in which Officers Buckley and Heath responded. The complaint alleged the officers responded to a domestic disturbance in which plaintiff's son had become violent in the home. While talking with her son, plaintiff claims the officers "maliciously contrived and intended to injure plaintiff's good name and to bring public disgrace and scandal on plaintiff." Thereafter, the officers grabbed plaintiff, told her not to resist, handcuffed her, forced her out of the house, and arrested her. Under count I, plaintiff claimed this amounted to an "abuse of power." Plaintiff also set forth claims of false arrest (count II), false imprisonment (count III), and conspiracy (count IV). Plaintiff requested a judgment "for an adequate and fair sum to compensate for damages sustained."

¶ 6 In December 2011, defendants filed an answer denying most of the allegations. Defendants also asserted two affirmative defenses, arguing plaintiff's claims were barred by the doctrine of qualified immunity and by provisions of the Local Governmental and Governmental Employee Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 to 10-101 (West 2010)).

¶ 7 In February 2012, defendants filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)). Defendants argued plaintiff's claims arose out of an incident that occurred on October 10, 2009, but she did not file her complaint within the one-year statute of limitations period set forth in section 8-101 of the Tort Immunity Act (745 ILCS 10/8-101 (West 2010)).

¶ 8 On March 7, 2012, plaintiff filed a *pro se* response and stated she first filed her complaint with the Rantoul police department on October 10, 2009. After following up on the complaint with requests for information, she did not receive an administrative report in response

until October 25, 2010. Plaintiff claimed the length of time it took for defendants to respond to the complaint should toll the statute of limitations period.

¶ 9 On March 27, 2012, plaintiff filed a *pro se* motion for leave to amend the complaint. On March 28, 2012, the trial court conducted a hearing on the motions for summary judgment and to amend the complaint. Following arguments, the court granted defendants' motion for summary judgment and denied plaintiff's motion for leave to amend the complaint. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 In her *pro se* appeal, plaintiff argues the trial court erred in granting defendants' motion for summary judgment and in not allowing her to amend her complaint. We disagree.

¶ 12 A. Motion for Summary Judgment

¶ 13 "Summary judgment is appropriate where '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.' " *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). "Summary judgment on statute of limitations grounds is appropriate." *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1008, 765 N.E.2d 116, 120 (2002). On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007).

¶ 14 Section 8-101(a) of the Tort Immunity Act (745 ILCS 10/8-101(a) (West 2010)) provides as follows:

"No civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued."

Section 8-101(c) states "the term 'civil action' includes any action, whether based upon the common law or statutes or Constitution of this State." 745 ILCS 10/8-101(c) (West 2010).

¶ 15 In the case *sub judice*, the incident leading to plaintiff's complaint took place on October 10, 2009. Plaintiff would have had to file her complaint in the trial court prior to October 10, 2010. However, plaintiff did not file her civil complaint for damages against defendants alleging "abuse of power," false arrest, false imprisonment, and conspiracy until October 7, 2011, almost two years later. Thus, plaintiff's cause of action was time barred because she filed it after the expiration of the one-year statutory filing requirement. See *Luciano v. Waubonsee Community College*, 245 Ill. App. 3d 1077, 1086, 614 N.E.2d 904, 910 (1993). Accordingly, the trial court did not err in granting defendants' motion for summary judgment.

¶ 16 B. Motion To Amend

¶ 17 A plaintiff has no absolute right to amend a complaint. *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1054, 918 N.E.2d 586, 597 (2009).

"Whether to allow the amendment of a pleading is a matter for the trial court's discretion in light of the following factors: (1) whether the proposed amendment would cure the defective pleading; (2) whether the proposed amendment would cause prejudice or sur-

prise to other parties; (3) whether the proposed amendment was timely; and (4) whether previous opportunities to amend the pleading could be identified." *Rusch v. Leonard*, 399 Ill. App. 3d 1026, 1036-37, 927 N.E.2d 316, 326 (2010).

As the decision to grant a motion to amend a complaint rests within the discretion of the trial court, a reviewing court will not overturn that decision absent an abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69, 955 N.E.2d 1110, 1129.

¶ 18 In this case, plaintiff did not submit a proposed amendment to the trial court or include it in the record on appeal. The failure to do so "waives the right to review the circuit court's denial of the motion to file an amended complaint." *Smith v. Chemical Personnel Search, Inc.*, 215 Ill. App. 3d 1078, 1085, 576 N.E.2d 340, 346 (1991). Moreover, plaintiff did not offer any explanation at the hearing on the motions or now on appeal how any amendment to her complaint would cure the defect therein, *i.e.*, the one-year statute of limitations barring her claims. Thus, the trial court's denial of plaintiff's motion to leave to amend her complaint was not an abuse of discretion.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment.

¶ 21 Affirmed.