2024 IL App (1st) 231096-U

SECOND DIVISION
March 29, 2024

No. 1-23-1096

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAIME GUZMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 20 L 1470
	)	
JESUS "CHUY" GARCIA,	)	
	)	
Defendant-Appellee,	)	
	)	
(Jose Luis Torrez, Linda Coronado, and Guadalupe Lozano,	)	Honorable
	)	Karen L. O'Malley,
Defendants).	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; the trial court properly dismissed plaintiff's amended complaint with prejudice for failure to state a claim for relief for defamation *per se*; plaintiff failed to plead sufficient factual support or circumstantial evidence on which to base required allegation of who said what to whom to plead a claim of defamation *per se*; and defendant's motion to dismiss the appeal for failure to timely file the record is denied.

¶ 2 Plaintiff, Jaime Guzman, filed an amended complaint ("complaint") against defendant, Jesus "Chuy" Garcia, seeking damages for defamation *per se*. Defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2022)). The circuit granted the motion with prejudice. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On March 22, 2021, plaintiff filed an amended complaint ("complaint") against defendants, Jesus "Chuy" Garcia, Jose Luis Torrez, Linda Coronado, and Guadalupe Lozano for defamation *per se*. (Torrez, Coronado, and Lozano are not parties to this appeal. References to "defendant" are to defendant Garcia only, unless otherwise indicated.) The complaint states it is for defamation *per se* arising from false statements which imputed the crime of domestic battery to plaintiff.

¶ 5 The complaint alleged, in pertinent part, that defendants were all "close friends and political allies." The complaint goes on to allege several ways in which defendants relied upon one another that are not germane to the issues on appeal.[1] It will suffice to say, plaintiff alleges the defendants all worked closely together on political matters. Plaintiff's complaint alleges he has never been physically abusive toward his one-time girlfriend now wife and that plaintiff "does not have a criminal record because he has never been arrested, charged, or convicted of a crime."

¶ 6 The complaint alleges that the "source material" for the alleged defamatory statement imputing the crime of domestic battery to plaintiff is a 2007 Chicago Police Department Original Case Incident Report which documents a verbal argument between plaintiff and his then

[1] We strive to avoid any political overtones this decision may generate by limiting our discussion of politics to only those that are necessary to a complete understanding to our disposition.

girlfriend who is now his wife. Plaintiff alleges he informed defendant Garcia about this report in a meeting between the two in February 2017, ten years after the report was allegedly created. The purpose of the February 2017 meeting was to discuss defendant's endorsement of plaintiff in a political campaign by plaintiff during which plaintiff would become an electoral adversary of codefendant Torrez and another of defendant's allies (not Torrez). The complaint alleges plaintiff told defendant the incident report is not evidence of wrongdoing because the argument never became physical and neither person involved was arrested or charged, and that "it was very unlikely if not impossible that anyone would uncover the incident report for two reasons. First, no one outside of [plaintiff, his wife, and defendant] even knew that this incident report existed. Second, it was only accessible by incident report number which only [plaintiff] knew."

¶ 7 The complaint alleges that after the political campaigns began, in November 2018, "Defendant Torrez told his co-worker *** not to support Plaintiff Guzman's campaign because he [(Torrez)] had heard that [plaintiff] had a criminal record for committing 'domestic violence' against his wife." The complaint alleges various ways in which the rumor spread which again, are not necessary to recount here. The complaint next alleges, in pertinent part, that defendant urged Torrez to drop out of the political race in favor of the third party in the race. Then, a few days after a January 10, 2019, forum, "Defendant Lozano [allegedly] told her close friend *** not to support [plaintiff's] campaign because [plaintiff] had a criminal record for beating his wife." The complaint alleges that plaintiff first learned of this rumor on or about February 5, 2019, and that this was his first opportunity to learn of the rumor.

¶ 8 Again, plaintiff's complaint alleges various ways in which the rumor spread and his reaction thereto, which we have considered but have no need to detail to understand our disposition. The complaint does allege that on the same day defendant first learned of the alleged

publication of the rumor, "[o]n that same day [(February 9, 2019),] [plaintiff] concluded, upon information and belief, that is was more likely than not that Defendant Garcia was the source of the slanderous rumor and that [defendant] personally told Defendants Coronado and Lozano *** on or about November 3, 2018, that [plaintiff] had a criminal record for beating his wife or something to that effect." The complaint alleges this belief "was grounded on the following facts" (which we have paraphrased for purposes of this disposition):

1. The rumor is closely related to the incident report plaintiff disclosed to defendant in 2017.
2. Defendant had a meeting in November 2018 related to the political race in which plaintiff became a rival to defendant's interests.
3. Everyone who spread the rumor made the same allegations and had political ties to defendant.

The complaint goes on to allege various dates and ways in which the codefendants in this case allegedly learned of and spread the rumor and plaintiff's first opportunity to learn of their alleged publication.

¶ 9 Plaintiff's complaint alleges defendants Garcia, Coronado, Lozano, and Torrez all communicated to third parties statements that impute the crime of domestic battery to plaintiff. The complaint alleges the communications are false because plaintiff "has never hit, beat, battered, or caused bodily harm to his wife, nor has he ever been arrested, charged, or convicted of having hit, beaten, battered, or caused bodily harm to his wife." Plaintiff alleges all of the defendants should have known these allegations to be false "but nonetheless published the rumor that Plaintiff has a criminal record for beating his wife, that he committed domestic violence or battery against his wife, that he was a wife beater, or something to that effect to harm [plaintiff's]

reputation." Defendants allegedly did not make "any effort to ascertain the truth of said rumor before communicating it to harm [plaintiff's reputation]" resulting in humiliation and "great emotional and physical distress" to plaintiff.

¶ 10 Counts I and II are specifically directed to defendant and state the acts and omissions detailed in the complaint "constitute Defamation *Per Se* because the false statements that Defendant Garcia communicated with actual malice to [defendant] Coronado [(count I) and Locano (count II)] imputed the commission of a Class A misdemeanor, Domestic Battery, to Plaintiff; thereby, publicly humiliating Plaintiff and causing him great emotional and physical distress." Counts III, IV, V, and VI of the complaint are specifically directed to defendants Torrez, Coronado (IV and V), and Lozano (count VI), respectively, and make essentially the same claims except to whom publication was made—none of which are subjects of this appeal. Plaintiff's complaint prays for declaratory, compensatory, punitive, and injunctive relief, including fees and costs and "such other relief in law and equity to which Plaintiff may be entitled."

¶ 11 On April 19, 2021, defendant filed a section 2-615 motion to dismiss counts I and II of plaintiff's amended complaint. We note that, on May 24, 2021, plaintiff filed a response to defendant's section 2-615 motion to dismiss counts I and II of the first amended complaint that argued:

> "Plaintiff Guzman has now rectified the shortcomings of his Complaint by alleging in his First Amended Complaint that on or about November 3, 2018, at a campaign meeting during which the upcoming aldermanic race in the 14th Ward was discussed, Defendant Garcia told Defendant Coronado and Defendant Lozano with actual malice that Plaintiff Guzman had a criminal record for beating his

> wife or something to that effect, which was a false statement that imputed the crime of domestic battery to Plaintiff Guzman as well as publicly humiliated him causing him great emotional and physical distress."

¶ 12 On March 2, 2022, the trial court entered a written order on defendant's section 2-615 motion to dismiss counts I and II of plaintiff's amended complaint granting the motion. The trial court's order states:

> "Counts I and II are dismissed with prejudice and without costs for failure to state a cause of action pursuant to 735 ILCS 5/2-615. Plaintiff's amended complaint suffers the same deficiency as his original complaint with respect to its allegations against Defendant Jesus "Chuy" Garcia. It does not satisfy the heightened pleading standard of defamation *per se* because as to Counts I and II against Defendant Garcia, it fails to plead facts as to what was said, when it was said, and to whom it was said. Counts I and II being the only counts pled against Defendant Garcia, judgment is entered in favor of Defendant Garcia and against plaintiff, Jaime Guzman."

¶ 13 By order of the trial court on May 24, 2023, pursuant to Illinois Supreme Court Rule 304(a), this appeal from the March 2, 2022, order followed.

¶ 14 ANALYSIS

¶ 15 This is an appeal from a trial court judgment granting a motion to dismiss with prejudice a complaint for failure to state a claim upon which relief may be granted. 735 ILCS 5/2-615 (West 2020). "Our review of a dismissal under *** section 2-615 is *de novo*." *Davis v. Village of Maywood*, 2023 IL App (1st) 211373, ¶ 14. In this context *de novo* review means that this court will "perform the same analysis as the circuit court." *Mathis v. Yildiz*, 2023 IL App (1st) 221703,

¶ 17. The analysis used to decide the motion is well-established. "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint by alleging defects that are apparent on the face of the complaint. [Citation.] In ruling on such a motion, a court must *** determine whether the facts alleged *** *** state a cause of action upon which relief may be granted. [Citation.] A court should not dismiss a complaint pursuant to section 2-615 unless no set of facts can be [alleged] that would entitle the plaintiff to recovery." *Yildiz,* 2023 IL App (1st) 221703, ¶ 16.

¶ 16 In ruling on the motion, we must take all well-pleaded facts and reasonable inferences that may be taken from those facts as true and interpret all pleadings and supporting documents in the light most favorable to the plaintiff. *Id.* ¶¶ 16-17, *Village of Arlington Heights v. City of Rolling Meadows,* 2024 IL App (1st) 221729, ¶ 18. We do not, however, accept as true "conclusions of law or conclusions of fact unsupported by allegations of specific facts." *Talbert v. Home Savings of America, F.A.*, 265 Ill. App. 3d 376, 379 (1994). Indeed, Illinois is a fact-pleading jurisdiction, and a plaintiff must allege sufficient facts to bring the claim within the cause of action. *Reuter v. MasterCard Int'l, Inc.*, 397 Ill. App. 3d 915, 928 (2010). Often times, a claim is not susceptible to direct proof. In those situations, the claim "must be established from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 134 (1999).

¶ 17 In *Green v. Rogers*, 234 Ill. 2d 478 (2009), our supreme court addressed a 2-615 motion to dismiss a claim of defamation that was granted in the trial court and reversed by another district of this court. *Green*, 234 Ill. 2d at 490-91. Our supreme court ultimately reversed "that portion of the appellate court's judgment [that] revers[ed] the dismissal of [the] plaintiff's

defamation *per se* claims." *Id.* at 490-91, 503. *Green* reminds us of what is needed to plead a claim of defamation *per se*:

> "To state a defamation claim, a plaintiff must present facts showing that the defendant made a false statement about the plaintiff, that the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages. [Citation.] *** A statement is defamatory *per se* if its harm is obvious and apparent on its face. [Citation.] In Illinois, there are five categories of statements that are considered defamatory *per se* [including]*:* (1) words that impute a person has committed a crime; ***; and (4) words that impute a person lacks ability or otherwise prejudices that person in her or his profession. [Citation.]" *Green*, 234 Ill. 2d at 491-92.

¶ 18 The question presented by the plaintiff's pleading in that case was "whether [the] plaintiff's amended complaint *** sets forth the substance of those statements with sufficient specific precision and particularity so as to permit both initial judicial review and the formulation of an answer and potential affirmative defenses." *Green*, 234 Ill. 2d at 492. One problem with the plaintiff's complaint in *Green*, as in this case, was that "[the] plaintiff's first amended complaint sets forth both the publication and content of defendant's allegedly defamatory statements strictly 'on information and belief.' " *Green*, 234 Ill. 2d at 494. The court noted that although it had "never been called upon to consider the conditions under which the essential elements of defamation *per se* may be pled 'on information and belief,' [it has] addressed the issue in relation to the analogous tort of common law fraud."

¶ 19 The court found that "[d]efamation is analogous to common law fraud." *Green*, 234 Ill. 2d at 494-95. The court went on to hold that, like common law fraud,

> "defamation *per se* *** demands a 'higher standard' when it comes to pleading. [Citation.] Specifically, [t]he facts which constitute an alleged fraud must be pleaded with sufficient specificity, particularity and certainty to apprise the opposing party of what he is called upon to answer. [Citation.] The reason for this higher standard is to protect against baseless complaints and to protect [ ] defendants from the harm to their reputations that follows charges of serious wrongdoing. [Citations.] Given this higher standard, this court has held that an allegation of fraud upon information and belief cannot be sustained, unless the facts, upon which the belief is founded, are stated in the pleadings. [Citation.]" (Internal quotation marks and citations omitted.) *Green*, 234 Ill. 2d at 494-95.

¶ 20 The court held that "a defamation *per se* claim must be pled with a heightened level of precision and particularity." *Green*, 234 Ill. 2d at 495. This "heightened level of precision" requires the plaintiff to "plead the relevant facts on something more than his mere 'belief.' " *Green*, 234 Ill. 2d at 495.

> "This does not mean that the facts constituting defamation *per se* may never be pled on information and belief. On the contrary, we recognize that pleading on information and belief will often be necessary, especially in cases such as this where the allegedly defamatory statements were made outside the plaintiff's presence and therefore without the plaintiff's direct knowledge. We are holding only that, when the relevant facts *are* so pled, the factual basis informing the plaintiff's belief must also be pled. Unlike the facts relating to the allegedly defamatory statements themselves, the facts informing plaintiff's belief will

> always be within plaintiff's direct knowledge and therefore fully capable of being pled with the requisite precision and particularity." *Green,* 234 Ill. 2d at 495-96.

¶ 21 It is clear that "[a] fact may be proved by circumstantial evidence." *Walsh v. Dream Builders, Inc.*, 129 Ill. App. 2d 280, 287 (1970). When a claim "is shown by circumstantial evidence, [that] evidence must be clear and convincing." *McClure,* 188 Ill. 2d at 134. "[C]lear and convincing evidence *** is defined as a degree of proof that leaves no doubt in the mind of the fact finder as to the veracity of the proposition in question." *In re Torry G.*, 2014 IL App (1st) 130709, ¶ 31.

> "[A] fact cannot be established through circumstantial evidence unless the circumstances are so related to each other that it is the only probable, and not merely possible, conclusion that may be drawn. [Citation.] That is, where the proven facts demonstrate that the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that [it] exists is a matter of speculation, surmise, and conjecture, and the trier of fact cannot be permitted to make that inference." *Argueta v. Krivickas,* 2011 IL App (1st) 102166, ¶ 10 (citing *Keating v. 68th & Paxton L.L.C.,* 401 Ill. App. 3d 456, 473 (2010)).

¶ 22 Plaintiff has attempted to frame the question in this case this way: whether or not "the evidence informing [plaintiff's] belief that [defendant] Garcia told [codefendants] Lozano and Coronado that [plaintiff] was a wife beater at a campaign meeting in November of 2018 must be in the form of direct—not circumstantial—proof to pass muster under the heightened pleading standard [articulated in *Green,* 234 Ill. 2d at 491-92."] We disagree.

¶ 23 We find the question we must decide in this case is whether, upon our own examination of the pleadings, the facts upon which plaintiff's belief, as to "what was said, when it was said, and to whom it was said," is founded are stated in the complaint clearly and convincingly because those facts are based on circumstantial evidence. *Green*, 234 Ill. 2d at 491, 494-95, *Krivickas*, 2011 IL App (1st) 102166, ¶ 10. See also *Wanless v. Rothballer*, 115 Ill. 2d 158, 169 (1986) (first amendment standard required "the court to conduct a *de novo* review of the record and find upon its own examination of the facts whether clear and convincing evidence of actual malice was presented").

¶ 24 That is, does the complaint plead the facts with the requisite precision and particularity (*Green*, 234 Ill. 2d at 495-96)—accruing from direct or circumstantial evidence—forming the basis of plaintiff's belief as to what was said, to whom it was said, and when it was said (see *Green*, 234 Ill. 2d at 496-98[2]); and because the facts are circumstantial, are the circumstances pled in the complaint so related to each other that plaintiff's belief about them is the only probable, and not merely possible, conclusion that may be drawn and, taken as true, leave no doubt as to the veracity of plaintiff's belief. *Green*, 234 Ill 2d at 495, *Krivickas*, 2011 IL App (1st) 102166, ¶ 10.

¶ 25 The sole contention at issue in this case is plaintiff's "information and belief" that "[defendant] allegedly published defamatory statements about [plaintiff] to [defendant's] political cronies at a private meeting" on November 3, 2018. Plaintiff has conveniently

[2] We note defendant does not argue nor does plaintiff contest whether plaintiff is a "public figure" (see *Costello v. Capital Cities Communications, Inc.*, 125 Ill. 2d 402, 418 (1988) ("A public official may not obtain redress in a libel action unless he proves that the allegedly defamatory statements were made with actual malice."); nor does defendant assert the alleged statements are subject to an "innocent construction" (see *Green*, 234 Ill. 2d at 499-500 (discussing innocent discussion rule)).

enumerated the specific "circumstantial facts" upon which his belief is allegedly based.[3] Those facts, stated summarily, are:

1. Defendant possessed the information that an argument was documented in a police incident report and that information is the source of the rumor.
2. The similarity of the defamatory statements plaintiff allegedly heard at different times suggests a common source for the rumor and that source must be defendant because defendant possessed the source data for the rumor—namely, the police incident report.
3. Everyone who allegedly repeated the rumor had close ties and aligned motives to defendant.
4. Garcia had political motivations to harm plaintiff. (Again, the substance of which we do not need to repeat.)
5. Plaintiff was aware that defendant had used similar tactics—defaming an indirect political "opponent"—in the past.
6. The meeting at which defendant allegedly started the allegedly defamatory rumor took place shortly after plaintiff became one such indirect political "opponent" of defendant but before anyone publicized the allegedly defamatory rumor.

¶ 26 Plaintiff argues these facts in connection with each other, viewed in a light most favorable to plaintiff, could have lead any person to find that defendant defamed plaintiff by publishing "the slanderous rumor to Coranado and Lozano at the campaign meeting held on or about November 3, 2018";[4] and, therefore, plaintiff's complaint meets the heightened pleading

[3] To quote plaintiff: "the following six circumstantial facts informing [plaintiff's] belief on February 9, 2019, that it was more likely than not that [defendant] defamed [plaintiff] to [codefendants] Coronado and Lozano at the campaign meeting on November 3, 2018, adequately meet the 'heightened pleading' standard required of defamation *per se* cases for the following reasons."

[4] To again quote plaintiff: "[t]he circumstantial case against [defendant] is compelling because it established not only that [defendant] had a close connection to the rumor's source material and to every

standard of defamation *per se* cases and permits defendant to formulate an answer and to identify potential affirmative defenses. We disagree.

¶ 27 What are the facts allegedly forming the basis of plaintiff's belief defendant defamed him that are stated on appeal is irrelevant; our focus is on what plaintiff stated in the complaint. *Yildiz*, 2023 IL App (1st) 221703, ¶ 17 ("this court will perform the same analysis as the circuit court"). As we previously stated, the complaint alleged, in pertinent part, that defendants were all "close friends and political allies." The complaint alleged that the "source material" for the alleged defamatory statement imputing the crime of domestic battery to plaintiff is a 2007 Chicago Police Department Original Case Incident Report which documents a verbal argument between plaintiff and his then girlfriend who is now his wife. Plaintiff alleged he informed defendant about this report in a meeting between the two in February 2017, ten years after the report would have been generated.

¶ 28 The complaint alleged "it was very unlikely if not impossible that anyone would uncover the incident report for two reasons. First, no one outside of [plaintiff, his wife, and defendant Garcia] even knew that this incident report existed. Second, it was only accessible by incident report number which only [plaintiff] knew." The complaint alleged that on the same day defendant first learned of this alleged "publication" of the rumor: "On that same day [(February 9, 2019),] [plaintiff] concluded, upon information and belief, that it was more likely than not that defendant Garcia was the source of the slanderous rumor and that [defendant] Garcia personally told Defendants Coronado and Lozano *** on or about November 3, 2018, that [plaintiff had a criminal record for beating his wife or something to that effect."

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individual known to have spread the rumor, but also that [defendant] had the most to gain from defaming [plaintiff,] that [defendant] had a recent history of defaming other candidates, and that [defendant] had the opportunity to publish the rumor to his codefendants before they reportedly defamed [plaintiff.]"

¶ 29 The complaint alleged this belief "was grounded on the following facts" (the relevant facts of which we have paraphrased for purposes of this disposition):

1. The rumor is closely related to the incident report plaintiff disclosed to defendant in 2017.
2. Defendant had a meeting in November 2018 related to the political race in which plaintiff became a rival to defendant's interests.

The complaint alleged that everyone who spread the rumor made the same allegations and had political ties to defendant.

¶ 30 Because plaintiff's claim "is shown by circumstantial evidence, [that] evidence must be clear and convincing." *McClure*, 188 Ill. 2d at 134. Based on our review of the pleadings in a light most favorable to plaintiff, we find the complaint fails to state facts as to what was said, when it was said, and to whom it was said. We find that the "circumstantial facts" upon which plaintiff's belief is based fail to "leave no doubt" that plaintiff's belief is true. The circumstantial facts that plaintiff told defendant about the police report and the information in the police report—which, based on defendant's own allegations, is only *similar* to the allegedly defamatory statements—leading to plaintiff's belief defendant was the source of the rumor are not so related to each other that plaintiff's belief is the only probable, and not merely possible, conclusion that may be drawn.

¶ 31 Plaintiff's "circumstantial facts" come down to this: plaintiff was a political rival of defendant, so defendant spread a false rumor to hurt plaintiff's political campaign; and it had to be defendant who started the rumor because he was the only person plaintiff told about the incident report and defendant was motivated to harm plaintiff because of the political campaign. Accepting that as fact, we cannot say we have no doubt that plaintiff is correct. A significant but

not exclusive reason for that doubt is plaintiff's belief that defendant had to be the source of the offending information. We agree with defendant that the belief that no one else knew about the incident documented in the incident report is not the "probable and not just likely" conclusion to be drawn from the facts that (a) police incident reports are not generally accessible by the public, especially without knowing the incident number; (b) the age of the incident; and (c) that plaintiff told defendant about the incident just as plaintiff's political campaign was beginning. We agree with defendant that "many more people would have had access to information about Plaintiff's domestic incident beyond [plaintiff, his wife, and defendant.]"

¶ 32 Defendant argues that plaintiff's argument that he told only defendant about the police incident report "does not meaningfully or logically limit the pool of people who might have originated the rumor ***." We agree that that complaint does not *factually* limit the pool of potential sources. *Grundhoefer v. Sorin*, 2014 IL App (1st) 131276, ¶ 23 (finding insufficient pleading that defendant was the source of the allegedly defamatory statement by a newspaper where the newspaper's publication included an additional fact known by the defendant because the additional information was discoverable from other sources). There are any number of sources of the information that plaintiff "believes" is the precursor to the rumor. The report may not even be a source of the rumor. It could be any individual knowledgeable of the events that led to the incident report including friends, family members, or neighbors. See *id*. Once this fact is called into question, all of plaintiff's beliefs become a house of cards that falls short of erasing any question about the veracity of plaintiff's beliefs. But we are here concerned only with this defendant. We find plaintiff failed to plead facts stating circumstances so related to each other that plaintiff's belief about them is the only probable, and not merely possible, conclusion that

may be drawn and taking the pleaded circumstantial facts as true, leaves no doubt as to the veracity of plaintiff's belief.

¶ 33 Plaintiff's complaint fails to sufficiently plead that defendant made the false statement about plaintiff to a third party. *Green*, 241 Ill. 2d at 491-92. Therefore, we find the complaint fails to state a claim for defamation *per se*. *Id.* Moreover, we do not believe, given the circumstances—particularly questions about the source of the alleged rumor—that plaintiff will ever be able to adequately plead a cause of action for defamation *per se*. Accordingly, dismissal with prejudice is appropriate. *Yildiz*, 2023 IL App (1st) 221703, ¶ 16 ("A court should not dismiss a complaint pursuant to section 2-615 unless no set of facts can [alleged] be that would entitle the plaintiff to recovery.").

¶ 34 Finally, on November 1, 2023, this court ordered defendant's motion to dismiss this appeal for failure to timely file the record on appeal taken with the case. Based on our disposition, that motion is denied.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 37 Affirmed.