2013 IL App (1st) 123107-U

FOURTH DIVISION
December 12, 2013

No. 1-12-3107

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VICKI PALES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 8859
	)	
HENRY X. CARRILLO,	)	Honorable Judge
	)	Sanjay Tailor,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ *1* *HELD*: The trial court's dismissal with prejudice of plaintiff's third amended complaint for failure to state a claim is affirmed because there is no private cause of action for the unauthorized practice of law or for violating mediation standards contained within the American Arbitration Association's rules.

¶ 2 On June 25, 2012, plaintiff Vicki Pales filed a third

amended complaint against defendant Henry X. Carrillo. The complaint alleged that Carrillo engaged in the unauthorized practice of the law and negligently performed mediation services of behalf of plaintiff in her divorce proceedings thus resulting in damages. On October 3, 2012, the trial court granted defendant's motion to dismiss and dismissed plaintiff's third amended complaint in its entirety with prejudice on the grounds that there is no private cause of action for the unauthorized practice of law or for violations of mediation rules. Plaintiff now appeals the trial court's October 3, 2012 order dismissing her third amended complaint with prejudice. For the reasons that follow, we affirm the trial court's findings.

¶ 3 BACKGROUND

¶ 4 On June 25, 2012, plaintiff filed her third amended complaint. The third amended complaint contains two counts: "Unauthorized Practice of Law" and "Mediator Negligence." Count I, titled "Unauthorized Practice of the Law", alleges that in 2007, defendant obtained financial instruments on behalf of plaintiff and her husband, and ultimately became a family friend. When plaintiff and her husband were having marital difficulties, defendant informed plaintiff that "a licensed lawyer would charge at least $30,000.00 each to do the parties' divorce, but he would act as her legal representative and obtain a fair and equitable

settlement from her husband, Jeffrey Pales, at a lesser cost." The claim further alleges that "Defendant, Henry X. Carrillo, represented plaintiff, VICKI PALES, and hired an attorney to represent Jeffrey A. Pales, in his divorce and draft the Marital Settlement Agreement." Ultimately, the claim alleges that defendant was negligent in accurately calculating and reporting the parties' assets in "violation of 705 ILCS § 205/1 and Rule of Professional Conduct 5.5." As a result of such violations, plaintiff alleges she lost approximately $350,000 in assets.

¶ 5 Count II, titled "Mediator Negligence," alleges that defendant is not a licensed mediator yet told plaintiff "that he would NEGOTIATE AND MEDIATE the property settlement and distribution in her divorce for less money than an attorney would charge and would then hire the necessary lawyer to do the paperwork for the divorce." The claim goes on to allege that defendant breached the standard of care for mediators as established by the American Arbitration Association (AAA), and that as a result of those breaches, plaintiff lost approximately $350,000 in assets.

¶ 6 The third amended complaint also attaches the Marital Settlement Agreement (MSA), which was filed in March 2009. The MSA is signed by both plaintiff and her husband and states: "Wife has elected to proceed pro-se and has not had the benefit of

advice and counseling, although urged and beseeched to seek private counsel by [husband's counsel] each and every time negotiations, recommendations or modifications to this Agreement were received, offered or discussed."

¶ 7 Defendant filed a motion to dismiss plaintiff's third amended complaint pursuant to section 2-615 of the Code. See 735 ILCS 5/2-615 (West 2010). The motion argues that there is no private cause of action for damages for the unauthorized practice of law in Illinois and that the mediator negligence count in the third amended complaint is identical to the mediator negligence count contained in the second amended complaint, which was already dismissed by the trial court for failing to state a cause of action. Defendant also sought sanctions in his motion.

¶ 8 In response, plaintiff argued that she stated two valid causes of action and further requested that in the event the trial court was inclined to grant defendant's motion to dismiss, "a finding of 'no just cause' should be included in the Order allowing the appeal of these issues."

¶ 9 On October 3, 2012, the trial court granted defendant's motion to dismiss and dismissed plaintiff's third amended complaint in its entirety with prejudice. Plaintiff timely filed her notice of appeal appealing the trial court's October 3, 2012 ruling. For the reasons that follow, we affirm the trial court's

ruling.

¶ 10 ANALYSIS

¶ 11 A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint, and presents the issue of whether the complaint states a cause of action upon which relief can be granted. 735 ILCS 5/2-615 (West 2010); *Flournoy v. Ameritech*, 351 Ill. App. 3d 583, 586 (2004). In ruling upon a section 2-615 motion to dismiss, the court must determine whether the allegations of the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a claim upon which relief can be granted. *Givot v. Orr,* 321 Ill. App. 3d 78, 84 (2001). In reviewing the sufficiency of a complaint, we accept all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true while viewing all allegations in the light most favorable to the plaintiff. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007). The standard of review for granting a section 2-615 motion to dismiss is *de novo*. *Flournoy*, 351 Ill. App. 3d at 586.

¶ 12 Motion To Strike Appellant's Brief

¶ 13 Prior to addressing the merits of this appeal, we must first address defendant's request that this court use its discretion to strike plaintiff's appellate brief for noncompliance with Illinois Supreme Court Rule 341. Ill. Sup. Ct. R. 341 (eff.

1970). Defendant argues that because plaintiff's appellate brief makes incoherent arguments, fails to attach a table of points and authorities, does not contain all the relevant facts for this appeal, and does not have citations for other facts, this court should strike plaintiff's appellate brief. Our supreme court's rules are mandatory rules of procedure, not mere suggestions. *Menard v. Illinois Workers' Compensation Commission*, 405 Ill. App. 3d 235, 238 (2010). A party's failure to abide by Rule 341 makes appellate review of his or her claim more onerous and may result in waiver. *Id.* This court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77 (2013). While we recognize that there are some deficiencies in plaintiff's appellate brief, we choose not to take such a harsh measure in striking the brief as we are sufficiently able to address the merits of the claims presented in the appeal. However, in doing so, we caution that our decision not to strike plaintiff's brief "should not be interpreted as a signal that we are willing, as a matter of course, to overlook violations of the Supreme Court Rules in briefs filed with this court. We are not." *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999). Simply put, we find no useful purpose would be served by striking plaintiff's appellate brief for purposes of this appeal.

¶ 14 Third Amended Complaint

¶ 15 Plaintiff argues that the trial court erred when it dismissed her claim of unauthorized practice of law based on the holding in *Torres v. Fiol*, 110 Ill. App. 3d 9 (1982). Defendant in turn argues that the Attorney Act does not allow for a private cause of action for damages, and relies on *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1 (2005) as well as the language of the Attorney Act (705 ILCS 205/1 (West 2010)) and the Illinois Rules of Professional Conduct in making this argument.

¶ 16 In *Torres*, the case relied on by plaintiff, the court recognized that the Attorney Act did not "circumscribe other theories of recovery against a non-attorney who is retained and mishandles the matter" and held that "plaintiffs are not prevented from proceeding against defendant upon a negligence theory for his alleged improper activity." *Torres*, 110 Ill. App. 3d at 11-12. Thus, the court in *Torres* allowed the plaintiffs to proceed on their claim of negligence against the defendant. Here, plaintiff claims violations of the Attorney Act and the Illinois Rules of Professional Conduct based on the unauthorized practice of law, not negligence. Thus, the holding in *Torres* is inapplicable here.

¶ 17 Further, neither the Illinois Code of Professional Responsibility nor the Attorney Act provide for a private cause

of action for damages for the unauthorized practice of law, making plaintiff's citation to each within the third amended complaint perplexing. With respect to the Illinois Code of Professional Responsibility, paragraph 20 of the preamble to the Illinois Rules of Professional Conduct states:

> "Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary

> authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct." Illinois Rules of Professional Conduct, ¶ 20 (2010).

As such, the Illinois Rules of Professional Conduct cannot serve as the basis of civil liability for plaintiff's allegation that defendant engaged in the unauthorized practice of law.

¶ 18 With respect to plaintiff's claims that defendant violated the Attorney Act, *King* held that "there exists no private right of action under the Attorney Act for damages." *King*, 215 Ill. 2d at 27. In coming to this conclusion, the *King* court stated:

> "[T]he statute permits a contempt sanction for the unauthorized practice of law. Its plain language does not provide for any other remedy for a violation of the statute, although it does say that the contempt remedy is 'in addition to other remedies permitted by law.' Thus, any remedies provided in

> other statutes or by the common law are not foreclosed by the existence of the contempt remedy in the Attorney Act. Had the legislature intended to provide a cause of action for damages for violation of the Attorney Act, it could have easily done so. Accordingly, we hold that there exists no private cause of action under the Attorney Act for damages." *King*, 215 Ill. 2d at 27.

Further, the *King* court cites to *Rathke v. Lidisky*, 59 Ill. App. 3d 560, 562 (1978), in support of its holding. In *Rathke*, the court stated: "We believe that the [Attorney Act] is intended to prevent the practice of a profession by one who has not first complied with the licensing requirements rather than an attempt to legislate a standard of conduct. We decline to construe the statute as including within its remedies an action for damages." *Rathke*, 59 Ill. App. 3d at 562. Thus, there is no private cause of action for violating the Illinois Rules of Professional Conduct or the Attorney Act.

¶ 19 Moreover, there are severe deficiencies in plaintiff's third amended complaint that prevent her from making a valid claim for damages based on defendant's unauthorized practice of law. First, plaintiff failed to allege that defendant performed legal

work on her behalf in her third amended complaint. While the third amended complaint argues that defendant allegedly gave faulty advice regarding marital assets, it does not allege that such advice was given in a legal capacity and plaintiff concedes that she knew defendant was not an attorney when he gave her such advice.[1] Further, the third amended complaint states that defendant hired a lawyer for the purpose of drafting the MSA. And, the MSA, which is signed by plaintiff, specifically states that plaintiff elected to proceed *pro se* and did not seek the benefit of legal advice throughout the divorce proceedings despite being advised by her husband's attorney to retain counsel. Moreover, the third amended complaint does not even state that plaintiff paid defendant for any services that he is alleged to have provided, whether they were legal services or not. As such, besides the fact that the Attorney Act and the Illinois Rules of Professional Conduct do not provide for a

[1] The third amended complaint states that "Defendant, Henry X. Carrillo, thereafter engaged in the unauthorized practice of law, would not allow Plaintiff, VICKI PALES, to obtain an attorney nor even meet her husband's[.]" However, the bare assertion that defendant "engaged in the unauthorized practice of law" is not sufficient to defeat a section 2-615 motion to dismiss. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 35 (2013) ("Because Illinois is a fact-pleading state, however, bare conclusions of law or conclusory factual allegations unsupported by specific facts are not deemed admitted for the purposes of a section 2-615 motion to dismiss.").

private cause of action for damages for the unauthorized practice of law, plaintiff has failed to allege that defendant performed legal work on her behalf and, accordingly, the trial court did not err when it dismissed plaintiff's unauthorized practice of law claim with prejudice.

¶ 20 The trial court also dismissed plaintiff's "Mediator Negligence" claim with prejudice. Plaintiff's "Mediator Negligence" claim argues that the standard of care for mediators is contained within the AAA, that defendant breached those standards, and that as a result of that breach she suffered $350,000 in damages. However, the AAA explicitly states: "Neither the AAA not any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under AAA rules or procedures." As such, because plaintiff's complaint only makes claims that defendant's actions were in violation of the rules and regulations created by the AAA, she has failed to plead a proper cause of action. While violations of the AAA rules and regulations could have served as evidence of a breach of a duty in a negligence action, they cannot form the sole basis for a claim, which is how plaintiff has pled her claim here.

¶ 21 Moreover, even though plaintiff uses the word "negligence" in her claim and alleges that defendant failed to properly

calculate certain assets, she failed to state a duty and a breach of that duty and, therefore, failed to state a cause of action for negligence. *Indlecoffer v. Village of Wadsworth*, 282 Ill. App. 3d 933, 940 (1996) (to state a cause of action in negligence, the plaintiff must plead sufficient facts to establish that the defendant owed the plaintiff a duty of care, that the defendant breached that duty, and that the breach was the proximate cause of injuries to the plaintiff.).

¶ 22 Further, plaintiff's claim of "Mediator Negligence" fails because plaintiff alleges that defendant is not a licensed mediator while arguing that he breached numerous standards that apply to licensed mediators. Such allegations are contradictory on their face. Plaintiff further admits and alleges that: "The standards of care for mediators and arbitrators are suggested by the American Arbitration Association and attached hereto as Exhibit 'C'. These establish a standard of care for persons acting as mediators." As such, plaintiff admits that the standards of care that she seeks to apply in this case do not apply to defendant, who is not a licensed mediator.

¶ 23 Additionally, there is no allegation in the third amended complaint that a mediation was ever conducted in this matter. The AAA rules, which are attached to plaintiff's third amended complaint, defines mediation as "a process by which parties

submit their dispute to a neutral third party (the mediator) who works with the parties to reach a settlement of their dispute." Based on the allegations in the third amended complaint, there are no facts alleged that would support a finding that a mediation, as defined under the AAA rules attached to plaintiff's complaint, occurred.[2] As such, we do not find that the trial court erred when it dismissed plaintiff's "Mediator Negligence" claim with prejudice.

¶ 24 We note that in plaintiff's reply brief, plaintiff argues that the cases she cites allow for a negligence cause of action based on the facts of this case. We do not disagree with plaintiff that a negligence claim might have been possible. We further acknowledge that this case was dismissed with prejudice even though it could potentially permit a negligence cause of action, and a complaint should only be dismissed with prejudice pursuant to section 2-615 of the Code where there are no possible set of facts that could entitle plaintiff to relief. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). However, we emphasize that plaintiff here did not seek leave to amend her pleadings and, accordingly, does not claim that the trial court erred by not granting her leave to amend. Rather, plaintiff

[2] There is no allegation that a mediation, even one that does not fit the AAA definition, occurred in this case.

clearly decided to stand on the allegations in her third amended complaint and requested that the trial court's order be made final and appealable. See *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1156 (2001) (plaintiff may elect to stand on his complaint rather than amend, and if an order dismissing the action is entered, it is final and appealable); see also *Cerniglia v. Farris*, 160 Ill. App. 3d 568, 574 (1987) (plaintiff that did not request leave to amend her complaint had "therefore elected to stand on her complaint" and "waived her right to amend"). As it stands, plaintiff's third amended complaint requests money damages for defendant's unauthorized practice of law and violation of mediation regulations. As stated above, there is no private cause of action for damages for either claim. Accordingly, we cannot say that the trial court erred when it dismissed plaintiff's third amended complaint with prejudice.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the trial court's dismissal of plaintiff's third amended complaint with prejudice.

¶ 27 Affirmed.