

FOURTH DIVISION
May 14, 2015

No. 1-14-1770

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HORACE COLLINS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 14356
	)	
PHILLIP J. BARTOLEMENTI,	)	Honorable
	)	John H. Ehrlich,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in dismissing plaintiff's legal malpractice claim where plaintiff failed to plead any facts to support a finding of breach, proximate cause, or damages.
- ¶ 2 Plaintiff Horace Collins, acting *pro se*, appeals the trial court's order granting defendant Phillip J. Bartolementi's motion to dismiss plaintiff's second amended legal-malpractice complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). Plaintiff claims that he sufficiently pleaded a cause of action for legal malpractice.
- ¶ 3 We disagree. Plaintiff's conclusory allegations in his second amended complaint failed to state any facts from which a reasonable inference of malpractice may be drawn. Plaintiff failed to

specify what misconduct defendant engaged in or how any alleged misconduct resulted in plaintiff suffering damages. We affirm the trial court's dismissal of plaintiff's second amended complaint.

¶ 4

I. BACKGROUND

¶ 5 On November 8, 2010, defendant, on plaintiff's behalf, filed a complaint against the plaintiff's former employer, the Chicago Transit Authority (the CTA), in federal district court. The federal complaint alleged that plaintiff had been subjected to "repeated and pervasive sexual harassment" while he was employed with the CTA, including the "placement of items and signs in his workplace suggesting sexual innuendo." The complaint alleged that, as a result of this harassment, plaintiff was forced to resign.

¶ 6 On December 22, 2010, the CTA filed a motion to dismiss the federal complaint for failure to state a claim. On January 18, 2011, the federal district court granted "[p]laintiff's oral motion for voluntary dismissal."

¶ 7 On December 21, 2012, plaintiff filed a complaint in the circuit court of Cook County, complaining of defendant's handling of the federal lawsuit against the CTA. Plaintiff claimed that he had been harassed, physically assaulted, and "falsely arrested" while he worked for the CTA, forcing him to retire on August 12, 2010. Plaintiff claimed that he signed "a retainer agreement" with defendant on July 2, 2010, but that defendant failed to investigate his case, present evidence on his behalf, or communicate with him. Plaintiff claimed that, as a result of his "force[d] retirement," he "lost five hundred dollars in both job pension and Social Security payments." Plaintiff concluded, "I am asking for 5 *** million because of my suffering."

¶ 8 Defendant moved to dismiss plaintiff's complaint pursuant to section 2-615. The trial court granted defendant's motion, without prejudice, and allowed plaintiff leave to file an amended complaint.

¶ 9 On July 24, 2013, plaintiff filed an amended complaint. Plaintiff wrote, "Through a retainer agreement signed [July 2, 2010], [defendant's] austere attitude was to thwart my lawsuit, against sexual harassment and four *** physical assaults against me, on my job, at the [CTA]." Plaintiff alleged that defendant failed to investigate his claims, "reach-out [sic] to[] witnesses," obtain medical records detailing "assault injuries on the job," or "answer numerous letters of inquiry from the [Department] of Human Rights." Plaintiff also claimed that defendant did not investigate his "false arrest" at the CTA, during which he was confined and "compelled to accept psychotic drugs, by both ingestion *** and by syringe to keep [his] employment." Plaintiff claimed that, for 19 days, he could not reach defendant to obtain "advi[c]e on [his] legal rights or coaching."

¶ 10 Defendant filed another motion to dismiss plaintiff's amended complaint. The trial court granted defendant's motion without prejudice. In a written order, the court found that plaintiff failed to allege any breach of the duty of care defendant owed to plaintiff because plaintiff did not specify what witnesses or evidence defendant failed to uncover by failing to communicate with plaintiff. The court also noted that plaintiff failed to say how any of defendant's alleged misconduct "caused Plaintiff either to lose his case or prejudiced his future case." Finally, the court found that plaintiff failed to plead any "specific losses" resulting from defendant's actions.

¶ 11 On March 26, 2014, plaintiff filed the second amended complaint at issue in this appeal, claiming that defendant engaged in "fraudulence and perjury." Plaintiff wrote, "There was established duty through my payment of [\$2,500] for a retainer, then proceeded immediately

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following my retainer a breach of that duty, and proximate cause between the breach and the actual damage that resulted. *** The legal malpractice did result in economic loss."

¶ 12 Plaintiff claimed that defendant failed to communicate with him about his case. According to plaintiff, "Defendant neither gave me a discussion of my cases nor the one which he chose on his own to misrepresent me." He also claimed that defendant "exclud[ed]" him from "appear[ing] in court." Similarly, plaintiff said that defendant excluded him "from court appearance [sic] and his office and phone." Plaintiff again alleged that defendant did not return his phone calls, and that he "us[ed] his secretary to communicate a conveyed response."

¶ 13 Plaintiff also discussed other misconduct perpetrated against him, but he did not attribute it to defendant:

"I was robbed, I suffered through defamation. I continue to endure economic loss, to my household and its management. I suffered more harassment for exercising my civil right [sic] in court, being followed home after leaving court, also leaving home on my way too [sic] court, at times being verbally abused and assaulted.

I suffered the theft of my personal court (files) records. Both! Going through the metal detector in the Daly [sic] Plaza, while stooping to assist someone who intentionally dropped some coins, also! Out of my living residence, the receipt for my payment for next-day delivery, at the U.S.P.S., for the re-amended complaint, *** was stolen from my residence, Fri. Mar. 21st 14, when I returned home after leaving the *** Circuit Court of Cook County, the receipt was not where I left it."

¶ 14 Plaintiff concluded his second amended complaint with three requests for damages. First he asked for \$5 million "for sexual harassment, including wages lost." Second, he asked for \$5 million for "fraud, in a blatant devious disregard for [his] rights, and the increased pain,

suffering, harassment and discomfort, caused by [defendant's] neglect and malpractice." Third, plaintiff sought "punitive damages for tort liability with indisputable facts."

¶ 15 Defendant filed another section 2-615 motion to dismiss. The record does not contain a copy of defendant's motion. In plaintiff's response to defendant's motion, he claimed that defendant "did not do his homework, in connection with gathering the investigative reports and did not undertake the proper legal research, on my behalf, as a paying client under (contract) retainer, intentional wrongs, gross negligence." In a one-page order, the trial court granted defendant's motion to dismiss plaintiff's second amended complaint with prejudice. Plaintiff appeals that judgment.

¶ 16

II. ANALYSIS

¶ 17 A motion to dismiss under section 2-615 challenges the legal sufficiency of a complaint. *Kanerva v. Weems*, 2014 IL 115811, ¶ 33. In reviewing a trial court's decision to grant a section 2-615 motion, we ask whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state a cause of action upon which relief may be granted. *Id.* We take as true all well-pleaded facts in the complaint, as well as any reasonable inferences arising from those facts. *Id.* Although we liberally construe *pro se* pleadings, a plaintiff proceeding *pro se* is not excused from pleading sufficient facts to establish a cause of action. *Turner-El v. West*, 349 Ill. App. 3d 475, 479 (2004). We apply *de novo* review. *Id.*

¶ 18 To state a claim of legal malpractice, plaintiff was required to allege facts showing that his attorney owed him a duty of care arising from an attorney-client relationship, that his attorney breached that duty, and that, as a proximate result of the breach, he suffered actual damages. *In re Estate of Powell*, 2014 IL 115997, ¶ 13. While plaintiff's second amended complaint listed the necessary elements of a legal malpractice claim, these conclusory allegations were alone

insufficient. See *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009) (to survive section 2-615 motion to dismiss, plaintiff may not rely on mere conclusions of law or fact). Plaintiff was required to plead specific facts supporting each element of his cause of action. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App. 3d 325, 336 (2010).

¶ 19 Even assuming that defendant owed plaintiff a duty throughout the period of time discussed in plaintiff's second amended complaint, plaintiff failed to allege any facts demonstrating a breach, proximate cause, or damages. With respect to breach, most of plaintiff's allegations in his second amended complaint were bare accusations of wrongdoing, insufficient to state a claim of legal malpractice. For example, plaintiff claimed that defendant committed fraud and perjury, but offered no further detail regarding those accusations. Moreover, plaintiff failed to specify what action defendant should have taken with respect to his lawsuit against the CTA. Similarly, while plaintiff claimed to have paid defendant \$2,500, he did not allege any facts showing that defendant failed to provide any services covered by the fee or that defendant failed to return any unearned portion of that fee. Neither of the "theft[s]" recounted in the second amended complaint were ascribed to defendant.

¶ 20 Plaintiff also failed to plead proximate cause. Plaintiff did not allege that defendant's misconduct affected his lawsuit against the CTA in any way. Plaintiff's second amended complaint does not say why his federal suit was voluntarily dismissed. Plaintiff never explained how defendant's failure to communicate with him, or any other alleged misconduct, negatively impacted his lawsuit. See *Purmal v. Robert N. Wadington and Associates*, 354 Ill. App. 3d 715, 721 (2004) (plaintiff failed to plead proximate cause where she failed to allege how her attorney's failure to communicate with her prevented her from collecting settlement). Similarly, plaintiff's claim that defendant "exclud[ed]" him from court fails to explain how this alleged

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misconduct affected plaintiff's case. Consequently, plaintiff presented no facts which would support a conclusion that any of defendant's allegedly improper conduct caused plaintiff any damages.

¶ 21 Finally, defendant failed to allege actual damages. In a legal malpractice action, actual damages are not presumed. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 307 (2005). Plaintiff must show that he has sustained a monetary loss as a result of his attorney's negligent actions. *Id.* The mere possibility of harm or damages is insufficient. *Id.* Here, plaintiff failed to specify what monetary loss he suffered. Although he claimed that he experienced an economic loss, he did not go into further detail. He did not claim that, because of defendant's conduct, he lost his opportunity to pursue his lawsuit against the CTA. Viewing plaintiff's second amended complaint in the light most favorable to him, the only damage he suffered was not being able to reach defendant, having to speak to defendant's secretary, and not being able to attend court. None of these allegations support the notion that defendant suffered a monetary loss as a result of defendant's actions. Consequently, plaintiff failed to properly plead damages. Because plaintiff failed to state a claim of legal malpractice, the trial court did not err in granting defendant's motion to dismiss.

¶ 22 We do not lack sympathy for plaintiff, who proceeded *pro se* throughout this case and who obviously feels slighted by the court system and his attorney. We have excused his non-compliance with Supreme Court Rule 341 (eff. Feb. 6, 2013) in an effort to give a full hearing to his arguments. But however we may relax the rules for a *pro se* litigant, plaintiff must still state a viable cause of action to survive dismissal of his lawsuit. Plaintiff did not come close to doing so, after three opportunities in the trial court. The court properly dismissed the second amended complaint with prejudice.

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¶ 23

III. CONCLUSION

¶ 24 For the reasons stated above, we affirm the circuit court's dismissal of plaintiff's second amended complaint with prejudice.

¶ 25 Affirmed.