2017 IL App (1st) 152778-U

SIXTH DIVISION
June 30, 2017

No. 1-15-2778

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KIMBALL LADIEN, M.D., individually and as Independent Administrator of the Estate of Sylvia Doucette-Ladien, deceased, Plaintiff-Appellant, v. PRESENCE RHC CORPORATION, d/b/a St. Joseph Health Centers and Hospital, Defendant-Appellee (Sister Mary Imler; Presence Saint Joseph Hospital – Chicago; Board of Directors of Saint Joseph Hospital; Saint Joseph Hospital Medical Executive Committee; Roberta Luskin-Hawk, M.D.; Raynelda Hidalgo, M.D.; Bruce Gober, M.D.; Patricia Foltz; Scott A. Rubinstein, M.D.; Mark Vexelman, M.D.; Nkem Irogbu, M.D.; Dennis O'Donnell, Starr Novak, Northwestern Memorial Hospital, and Northwestern Medical Faculty Foundation, Defendants).	)	Appeal from the Circuit Court of Cook County. No. 13 L 10084 Honorable Thomas R. Allen, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the circuit court's dismissal of three counts of the plaintiff's amended complaint, which had sought monetary damages and other relief stemming from the revocation of the plaintiff's staff privileges at the defendant hospital. We also affirm the circuit court's dismissal of another count, which sought reinstatement of the physician's privileges to practice at the hospital, but we modify the dismissal to be without prejudice to amending that count by attaching a copy of the hospital by-laws as an exhibit thereto.

¶ 2 BACKGROUND

¶ 3 For several years before her death in 2012, Sylvia Doucette-Ladien was treated for grave illness at defendant Presence St. Joseph Hospital (St. Joseph). Her husband, plaintiff Kimball Ladien, M. D., was a staff psychiatrist at St. Joseph until the hospital terminated his privileges to practice there. After Doucette-Ladien died, Dr. Ladien filed a 103-page complaint alleging a host of claims including medical negligence in the hospital's treatment of his late wife and seeking relief regarding the suspension and revocation of his practice privileges. The hospital moved to dismiss four counts of an amended version of that complaint, all of which related to Dr. Ladien's privileges, asserting both that the claims failed as a matter of law and that they were barred by various statutory immunities. The circuit court dismissed those counts with prejudice. The court found that the dismissal was final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). Ladien filed this appeal from the dismissal order. We affirm the dismissal of three of the four counts with prejudice. We also affirm the dismissal of the remaining count, but modify the dismissal to reflect that it is without prejudice to amend.

¶ 4 The 63-page amended complaint[1] contains 11 counts and names 17 individuals and entities as defendants. Because the issues presented in this appeal are rather limited, we set forth

[1] The record contains four versions of the complaint: (1) an original complaint filed *pro se* on September 9, 2013; (2) an amended complaint filed *pro se* on November 26, 2013 without leave of court; (3) a different amended complaint filed *pro se* on December 19, 2013, again without leave of court; and (4) an amended complaint filed by Ladien's attorney on February 3,

herein only those specific facts and portions of the procedural history necessary to establish context for our disposition.

¶ 5 The amended complaint alleges that Ladien is a medical doctor and was a staff psychiatrist at St. Joseph. Both he and his late wife believed that all possible measures should be taken to prolong an individual's life, to the extent that medical care should never be withdrawn. Further, they believed that, upon the death of one spouse, the other would cryogenically preserve the other, "as hope of a future cure for any terminal condition." Doucette-Ladien underwent an extensive course of treatment spanning several years. During this time, Ladien frequently objected to various aspects of his wife's medical care. The relationship between Ladien and St. Joseph was marked by considerable acrimony.

¶ 6 According to Ladien, hospital officials took retaliatory action against him in a wilful and wanton manner to undermine his ability to guide Doucette-Ladien's care. First, the hospital summarily suspended Ladien from his staff privileges and barred him from the hospital premises, even to visit his wife. After Ladien told his wife's treating physician that if she died "and she is not full code, in addition to this being gross malpractice, this will be manslaughter," the hospital imposed a second summary suspension on Ladien.

¶ 7 After Doucette-Ladien died, the hospital convened a peer review hearing to permanently revoke Ladien's privileges. Section 5.4 of the hospital's by-laws provides that at such a hearing, a physician may: "a. call, examine and cross-examine witnesses; b. introduce exhibits; c. present evidence, determined appropriate by the hearing committee chairman or hearing officer, regardless of admissibility in a court of law;" and "d. challenge the credibility or competency of any witness." The amended complaint specifically alleges that, among other things, the hospital

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2015, with leave of court. No version of the complaint is styled "first," "second," or otherwise to differentiate it from any other version. The version at issue in this appeal is the fourth, filed February 3, 2015. For simplicity, we refer to it as the "amended complaint."

denied Ladien rights granted under the by-laws because, at the hearing, he was: "a. repeatedly cut off from questioning or statements to the panel; b. barred from calling [hospital] employees as witnesses; c. denied the right to present exhibits, including but not limited to exhibits appropriate for the hearing; d. limited or simply cut off [from] cross-examination of [hospital] witnesses; and, e. barred from challenging the credibility of the [hospital's] witnesses."

¶ 8 The amended complaint further alleges that the hospital's revocation of Ladien's privileges was not only the result of a flawed hearing process, but that it was unreasonable, without any valid basis, and done out of revenge and "with specific intent to harm the economic and professional interests" of Ladien and to "prevent exposure and review of the actual facts in the treatment of Sylvia."

¶ 9 Following the hearing panel's revocation of his privileges, Ladien pursued an appeal to the hospital's "Appellate Review Body." Under section 5.7-8 of the by-laws, the Appellate Review Body does not retry the matter, but merely ensures that the underlying hearing was "fair," in substantial compliance with the by-laws, and "supported by evidence in the record." Accordingly, the Appellate Review Body considers only the hearing record and written statements presented by the parties. Section 5.7-2 of the by-laws specify that when a physician has requested appellate review, failure "to thereafter appear or proceed" under the by-laws "shall constitute voluntary acceptance of the recommendation and decision of the hearing board." Section 5.7-5 of the by-laws further provides that the Appellate Review Body "in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements in favor of their positions." The Appellate Review Body upheld the hearing panel's decision to revoke Ladien's privileges.

¶ 10 Ladien claims that because hospital officials barred him from the premises after they revoked his privileges, he was unable to attend the meeting of the Appellate Review Body. His absence, he claims, resulted in a "finding of his voluntary acceptance by failure to attend as provided by Section 5.7-2." Following the completion of the termination proceedings, the hospital filed a notification of Ladien's termination with the National Practitioner Data Bank (established by 45 C.F.R. § 60.1 *et seq*. (2013) pursuant to authority granted by the Health Care Quality Improvement Act of 1986 (HCQIA), as amended, title IV of Public Law 99-660 (42 U.S.C. §§11101 *et seq*.) (2012)).

¶ 11 The counts of the amended complaint at issue in this appeal are counts I, II, III and IX. Count I, labeled "Injunctive Relief," recites that because of the hospital's violation of its own by-laws during the process leading up to Ladien's termination, the court should "nullify[ ]" Ladien's termination and rescind the notification it sent to the National Practitioner Data Bank. The specific by-law violations alleged in Count I relate to Ladien's inability to present witnesses and exhibits as provided in the hospital by-laws. Count I seeks no monetary damages whatsoever.

¶ 12 Count II of the amended complaint, labeled "Whistleblower Retaliation," is a claim under the Illinois Whistleblower Act (740 ILCS 174/1 *et seq*. (West 2012)). In this count, Ladien alleges that he was an employee of the hospital and that the actions of various defendants "constituted retaliation against [him] for his efforts to disclose potentially fatal wrongdoing in patient care ***." Ladien does not allege in this count, nor in any of the 173 prefatory paragraphs incorporated therein, that St. Joseph is "funded in whole or in part, by the State". Licensed physicians practicing at hospitals which are so funded may bring claims under the Whistleblower Act (740 ILCS 174 (West 2012)) even though they are not hospital employees. Count II seeks monetary damages and reinstatement of Ladien's privileges.

¶ 13 Count III of the amended complaint is a common law tort claim for defamation. This count is based on hospital employees' submission of Ladien's termination into the National Practitioner Data Bank. The submission characterized Ladien's termination as having resulted from " 'disruptive behavior' and other professional misconduct." Ladien claims this characterization was false and that the employees published it "with malice, hatred and ill will." Count III seeks only monetary damages.

¶ 14 Count IX is a claim for interference with prospective economic advantage. Ladien alleges that he had an active and lucrative medical practice before the hospital terminated him. He lost income because of the termination, and he claims the hospital unjustifiably terminated him "with the intent of impairing or terminating Plaintiff's license to practice medicine, Plaintiff's prospective economic relationships with hospitals, nursing homes, and patients." Count IX seeks only monetary damages.

¶ 15 St. Joseph filed a motion to dismiss Counts I, II, III, and IX pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012) (Code)). In the section 2-619 portion of the motion, the hospital argued that: (1) all four counts should be dismissed because the federal HCQIA and section 10.2 of the Illinois Hospital Licensing Act (210 ILCS 85/10.2 (West 2012)), each grant immunity to the hospital for damages arising from termination of staff physicians; and (2) Count III should be dismissed for the additional reason that the HCQIA specifically, and separately, provides that the hospital is not liable for damages for reporting a terminated physician to the National Practitioner Data Bank.

¶ 16 As relevant here, the section 2-615 portion of the motion argued that: (1) because all four counts relied on the hospital's by-laws, they should be dismissed pursuant to section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)) because Ladien failed to attach a copy of the by-laws as

an exhibit to the amended complaint; (2) Count I did not state a valid cause of action because a "request for an injunction is not a separate cause of action"; and (3) Count II did not state a valid cause of action because it did not plead facts showing that the hospital fell within the definition of "employer" in section 5 of the Whistleblower Act, that is, that it was a public or governmental institution. The motion also sought dismissal of other counts on various grounds.

¶ 17 After briefing, the circuit court dismissed Counts I, II, III, and IX with prejudice. The written order neither sets forth the court's reasoning nor explains which counts were dismissed for which reason, and the record on appeal contains no transcript of the court's ruling. The court determined there was no reason to delay enforcement or appeal of its order pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). This appeal followed.

¶ 18 ANALYSIS

¶ 19 We first address St. Joseph's request to strike portions of Ladien's brief. The *pro se* brief contains three sections. The first section is drafted in the usual manner and is unobjectionable as to form. The second section, which runs from pages 30 to 39, is headed "Pro Se STATEMENT OF RELEVANT FACTS – CRITICAL ERRORS OF JUDGMENT." This section includes a disjointed series of summaries of newsworthy events, complaints about how Ladien was treated, requests for the case to be mediated, demands to disqualify attorneys for various defendants, and attacks on various public and ecclesiastical officials who have no apparent relationship to Ladien's dispute. The third section, which is included after the index to the record on appeal, consists of excerpts from what appears to be a self-published book by Ladien entitled *Obama and the MURDER of Don Young*, and a compact disc purporting to contain the full text of the book. And although St. Joseph does not raise the issue itself, we note that Ladien's reply brief is similar in content to the second and third sections of his opening brief. A full printed copy of

Ladien's book is clipped to the reply brief. We find that the second and third portions of the opening brief, and the reply brief as a whole, do not comport with Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016), which requires the argument section of a brief to "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." The material contained in these filings overwhelmingly relates to persons and historical incidents having no relation to the legal issues presented to this court. We therefore strike the second and third portions of Ladien's opening brief and his reply brief in full, acknowledging that small isolated portions of the reply brief contain some material responsive to the hospital's brief. The deficiencies in these briefs complicate, but do not completely frustrate, our review, so we will consider the merits of the appeal.

¶ 20 Our analysis on the merits begins with some familiar principles. Section 2–619.1 of the Code permits a party to combine a section 2–615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2–619 motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2–619.1 (West 2012). When ruling on a motion to dismiss under either section 2–615 or section 2–619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a motion to dismiss pursuant to either section should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (section 2–615); *Snyder v. Heidelberger,* 2011 IL 111052, ¶ 8 (section 2–619). We review *de novo* the circuit court's decision on motions to dismiss brought under both sections 2–615 and 2–619. *Coghlan*, 2013 IL App (1st) 120891, ¶ 24. Finally, we review the judgment, not the reasoning, of the circuit court, and we may affirm on any ground in the record,

regardless of whether the court relied on those grounds or whether the court's reasoning was correct. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995).

¶ 21 In the court below, St. Joseph sought to dismiss count I pursuant to section 2-615 of the Code on the basis that there is no "injunction" cause of action under Illinois law. While it is true that an injunction is a remedy rather than a stand-alone cause of action, we look to the character, rather than the title, of a pleading. *In re Haley D.*, 2011 IL 110886, ¶ 67. Count I alleges that the hospital violated its by-laws in various ways, ultimately resulting in the termination of Ladien. He claims that he had a right under the by-laws to have his hearing conducted in a particular manner, and the hospital did not do so. Hospital by-laws constitute a type of contract between physicians and hospitals. *Lo v. Provena Covenant Medical Center*, 356 Ill. App. 3d 538, 542 (2005). The usual remedy for a breach of contract is monetary damages. *Id*. at 544 (citing E. Farnsworth, Farnsworth on Contracts § 12.2, at 156 (3d ed. 2004)). As explained above, though, the Hospital Licensing Act precludes a physician terminated in violation of a hospital's by-laws from recovering damages. 210 ILCS 85/10.2 (West 2012). Nonetheless, the physician may still have a viable remedy for breach of contract which is not precluded by the Hospital Licensing Act—specific performance. "A court has discretion to order the specific performance of a contract if 'perfect justice cannot be done at law.' " *Lo*, 356 Ill. App. 3d at 545 (quoting *Dixon v. City of Monticello*, 223 Ill. App. 3d 549, 561 (1991)). Therefore, count I is essentially a claim for breach of contract, but with its remedy limited to specific performance.

¶ 22 "To state a cause of action for specific performance, the plaintiff must allege and prove the following elements: (1) the existence of a valid, binding, and enforceable contract; (2) compliance by the plaintiff with the terms of the contract, or proof that the plaintiff is ready, willing, and able to perform the contract; and (3) the failure or refusal of the defendant to

perform his part of the contract." *Hoxha v. LaSalle National Bank*, 365 Ill. App. 3d 80, 85 (2006). In its brief in this court, the hospital relies solely on provisions contained in the Hospital Licensing Act and federal law granting immunity from damages, and presents no argument specifically directed to the portion of count I which seeks reinstatement. As noted above, hospital by-laws are normally considered to be a contract between a hospital and its staff physicians. The allegations of count I, viewed in the light most favorable to Ladien, sufficiently allege that the hospital breached its by-laws by failing to allow Ladien to call witnesses, admit exhibits, and otherwise exercise various rights at his termination hearing. We therefore find that count I states a valid cause of action for breach of contract, limited to the remedy of specific performance.

¶ 23 In so doing, we acknowledge that whether to grant the remedy of specific performance rests within the sound discretion of the circuit court, based on all the facts and circumstances in evidence. *Id*. at 84. The record on appeal contains no transcripts of any of the suspension or termination hearings, and our review is based solely on the bare allegations of count I which we must take as true. We caution that nothing in our holding should be construed to suggest that the by-laws allow an unlimited right to call every conceivable witness or to present limitless exhibits regardless of their relevance. In fact, section 5.4-5 of the by-laws themselves provide that "[a]ny *relevant* matter upon which reasonable persons customarily rely in the conduct of serious affairs may be considered" at a termination hearing. (Emphasis added.) Similarly, section 5.4-2 allows the presiding officer to "maintain decorum," provide a "reasonable opportunity to present relevant oral and documentary evidence," and to rule "on the admissibility of evidence."

¶ 24 Having determined that count I states a valid cause of action, we will consider the alternative basis the hospital asserted for dismissal of count I. Section 2-606 of the Code

requires that a complaint based on a contract or written instrument, a copy of that document must be attached to the complaint. 735 ILCS 5/2-606 (West 2012). Since no copy of the hospital by-laws was attached to the amended complaint, the claim was properly dismissed for violation of section 2-606. *Sherman v. Ryan*, 392 Ill. App. 3d 712, 733 (2009). However, failure to attach the by-laws can be easily rectified without prejudice to the hospital. We therefore modify the dismissal of count I to be without prejudice. We remand for the purpose of amending count I. The amendment shall solely be limited to the attachment of a copy of the hospital by-laws.

¶ 25 We next consider Count II, Ladien's claim under the Whistleblower Act. Count II sought both monetary damages and reinstatement of Ladien's staff privileges. While the hospital is generally immune from claims for monetary damages from claims relating to termination of staff privileges following a peer review process, this immunity does not extend to claims filed under the Whistleblower Act. *Larsen v. Provena Hospitals*, 2015 IL App (4th) 140255, ¶ 50.

¶ 26 Section 30 of the Whistleblower Act provides that an "employee" "may bring a civil action against the employer for all relief necessary to make the employee whole." 740 ILCS 174/30 (West 2012). That definition of "relief" plainly encompasses both of Ladien's claims for reinstatement and damages.

¶ 27 The Whistleblower Act's definition of "employee" contains two clauses. The first clause broadly encompasses "any individual who is employed on a full-time, part-time, or contractual basis by an employer." 740 ILCS 174/5 (West 2012). The second clause provides that the definition of "employee" "also includes, but is not limited to, a licensed physician who practices his or her profession, in whole or in part, at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State." *Id.*

¶ 28 Based on the second clause pertaining to hospitals and health care facilities, St. Joseph broadly argues that "So long as the hospital is a private facility, it is not subject to claims brought under the Whistleblower Act." This interpretation, however, ignores the opening clause of the section, which essentially states that an employee in *any* standard employer-employee relationship may bring a claim under the Whistleblower Act. In fact, private employers are frequently sued under the Whistleblower Act. See, *e.g.*, *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56 (2011) (employer was a private bank).

¶ 29 St. Joseph cites *Larsen* in support of this assertion. In *Larsen*, the court considered a certified question—whether payment to a hospital under assignment from Medicaid is " 'funding' by the State" so that a licensed physician who "*practice*[s] *his or her profession* * * * *at*" the hospital was a Whistleblower Act-covered "employee" under the second clause of section 5 merely because the hospital received Medicaid funding. *Larsen*, 2015 IL App (4th) 140255, ¶¶ 54-55. The legislative history of Public Act 96-1253, which added the second clause relating to state-funded hospitals, is helpful to understand why this distinction is important. The House sponsor of the bill explained that the purpose of the bill was to extend the protections of the Whistleblower Act beyond "those who report misdeeds only if they're an employee" to "those that might also serve on a medical staff *even though there isn't an employer-employee relationship*." (Emphasis added.) 96th Ill. Gen. Assem., House Proceedings, Mar. 17, 2010, at 98 (statement of Representative Nekritz). Rep. Nekritz further offered the example of a case "where a doctor did report and did suffer some retribution as a result." *Id.*

¶ 30 Therefore, contrary to St. Joseph's assertions, *Larsen* does not completely resolve the question before us. We must also consider the first clause of the definition in section 5, which requires a determination of whether count II alleges a standard employer-employee relationship

between Ladien and the hospital. Essential to an employer-employee relationship is an express or implied contract. *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487 (1997). Whether an employer-employee relationship exists also involves an examination of such factors as "the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and who provides tools, materials, or equipment." *Wenholdt v. Industrial Comm'n*, 95 Ill. 2d 76, 80 (1983). Count II contains a bare conclusory allegation that Ladien was an " 'employee' of [St. Joseph] as defined in the Illinois Whistleblower Act." Neither count II, nor the prefatory allegations common to all counts, explain Ladien's employment relationship to the hospital in any way, other than that he had privileges to see patients there.

¶ 31 In sum, count II fails to allege sufficient facts to demonstrate that Ladien was not merely an independent contractor or a physician with privileges to see patients at the hospital, but was a hospital "employee" under a standard employer-employee relationship so as to fall within the first clause in section 5 of the Whistleblower Act. Count II also fails because while the second clause of section 5 clearly encompasses a physician who has practice privileges at a hospital but is not an employee of the hospital, it does not allege that St. Joseph is "funded, in whole or in part, by the State." See *Larsen*, 2015 IL App (4th) 140255, ¶ 62. Accordingly, the circuit court correctly dismissed count II pursuant to section 2-615 of the Code.

¶ 32 Finally, we address counts III and IX. Both are tort claims. Count III seeks damages for defamation; count IX for interference with prospective economic advantage. Section 10.2 of the Hospital Licensing Act grants hospital immunity from certain damage claims. It provides:

> "Because the candid and conscientious evaluation of clinical practices is essential to the provision of adequate hospital care, it is the policy of this State to

> encourage peer review by health care providers. Therefore, no hospital * * * shall be liable for civil damages as a result of the acts, omissions, decisions, or any other conduct, except those involving wilful or wanton misconduct, of a * * * credential committee, peer review committee, or any other committee or individual whose purpose, directly or indirectly, is * * * for the purpose of professional discipline including institution of a summary suspension in accordance with Section 10.4 of this Act and the medical staff bylaws." 210 ILCS 85/10.2 (West 2012).

¶ 33 Section 10.2 further defines "wilful or wanton" as "a course of action that shows actual or deliberate intention *to harm* or that, if not intentional, shows an utter indifference to or conscious disregard for a person's *own safety* and the safety of others." (Emphases added.) *Id*. Ladien acknowledges the immunity provision of the Hospital Licensing Act, but he claims that the allegations in counts III and IX sufficiently allege wilful and wanton conduct by St. Joseph to fall within the exception in section 10.2 governing such conduct.

¶ 34 The definitive authority on the scope of the wilful and wanton conduct exception in section 10.2 of the Hospital Licensing Act is *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 25, an opinion which our supreme court issued before the briefing in this case began, but which neither party has cited in its briefs in this court. The *Valfer* court first examined, with approval, prior appellate court decisions which had determined that "the legislative aim of the [Hospital Licensing Act] is to foster self-policing by the medical profession in matters unique to that profession and to thereby promote the legitimate State interest in improving the quality of health care." *Id*. ¶ 24. The court then construed the Hospital Licensing Act's wilful and wanton exception based on: (1) the statute's expressed purposes; (2) its text; (3)

the canon of legislative interpretation holding that a court must construe statutes to avoid absurd results, and (4) prior appellate court opinions interpreting it. The court determined that to invoke the wilful and wanton exception, a physician must allege *physical* harm. *Id*. ¶ 25. The court explained:

> "Reading section 10.2 as a whole, we find that the appellate court was correct in determining that the 'wilful and wanton' exception is limited to physical harm. We agree that the only reasonable way to interpret the last sentence of the above-quoted section defining wilful and wanton misconduct is by finding that the phrase 'utter indifference to or conscious disregard for a person's own safety and the safety of others' clarifies the kind of intentional 'harm' the legislature had in mind. The last phrase of the exception's reference to safety clearly shows an intent that the harm contemplated is physical." *Id*.

¶ 35 We therefore must consider whether counts III and IX allege that St. Joseph acted in a way to inflict physical harm on Ladien. The counts contain repetitious allegations to the effect that the hospital took certain specified actions with "a willful and wanton intent specifically to harm Plaintiff and others," but these allegations are conclusions rather than substantive facts. As such, they are insufficient to establish that the wilful and wanton exception applies. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 520 (1989). The specific allegations of fact in the amended complaint reveal that Ladien, the hospital, and others were engaged in hostile quarrels over Doucette-Ladien's care, and that those disputes were continuous, rancorous, and

prolonged. However, no allegation of the amended complaint states that anyone from the hospital physically harmed Ladien, such as by assaulting his person.

¶ 36 That leads us to the remaining clause in section 10.2, which defines "wilful and wanton" as including "utter indifference to or conscious disregard for * * * the safety *of others*." (Emphasis added.) Counts III and IX contain allegations that one of St. Joseph's motivations for terminating Ladien's privileges was a desire to "prevent exposure and review of the actual facts" regarding Doucette-Ladien's treatment. Conclusions aside, these allegations merely show there was a contentious dispute between Ladien and the hospital regarding Doucette-Ladien's treatment, not that any hospital official intended to physically harm her.

¶ 37 Viewing the allegations of these counts in full context, we find they fail to allege physical harm as required by *Valfer*. Since these counts sought only monetary damages, and the Hospital Licensing Act immunizes hospitals from damages for peer review-related claims, the circuit court correctly dismissed counts III and IX pursuant to section 2-619(a)(9) of the Code. 735 ILCS 5/2-619(a)(9) (West 2012). This disposition makes it unnecessary for us to address the alternative grounds St. Joseph asserts for dismissal of these counts.

¶ 38 CONCLUSION

¶ 39 We affirm the judgment of the circuit court which dismissed counts II, III, and IX with prejudice. We also affirm the dismissal of count I, but modify it to reflect that the dismissal is without prejudice as outlined above. We remand for further proceedings consistent with this order.

¶ 40 Affirmed as modified; cause remanded.