

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 MCHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.)

9 No. 17 LA 377

10 THE LAW OFFICES OF THOMAS)

11 J. POPOVICH, P.C., and)

12 HANS MAST,)

13 Defendants.)

14 ELECTRONICALLY RECORDED Report of
15 Proceedings had in the above-entitled cause before
16 The Honorable Thomas A. Meyer, Judge of the Circuit
17 Court of McHenry County, Illinois, on the 12th day of
18 September, 2018, in the McHenry County Government
19 Center, Woodstock, Illinois.

20 APPEARANCES:

21 CLAUSEN MILLER, PC, by:

22 MR. GEORGE K. FLYNN,

23 on behalf of the Defendants.
24

1 THE COURT: Counsel, which one you on?

2 MR. FLYNN: Dulberg.

3 THE COURT: Is opposing counsel here?

4 MR. FLYNN: She's not. I received an email. She
5 said she was going to be late. She's in Waukegan.

6 THE COURT: I'm sorry, how late?

7 MR. FLYNN: I'm not sure how late, Judge. She said
8 she's in Waukegan. Mr. Gooch was apparently ill today,
9 so she's going to be covering today's hearing.

10 THE COURT: And she's in Waukegan now?

11 MR. FLYNN: She's in Waukegan. Originally thought
12 she might be able to be here by 10:30, but she said the
13 judge stepped up 15 minutes late on her other matter,
14 so --

15 THE COURT: I mean, that's about an hour drive.

16 MR. FLYNN: The email I received was -- I was in the
17 car as well, so 10 or 15 minutes ago.

18 THE COURT: Okay. See if you can email her and find
19 out if we can get an ETA.

20 MR. FLYNN: Okay.

21 THE COURT: And we'll work from there.

22 MR. FLYNN: Okay. Thanks, Judge.

23 THE COURT: Thank you.

24

1 (Whereupon, the above-entitled cause
2 was passed and subsequently recalled.)

3 THE COURT: Okay. Counsel, if you can approach. So
4 Dulberg versus Mast.

5 MR. FLYNN: Good morning, Your Honor. George Flynn
6 on behalf of the defendants. I did -- I received
7 communication from counsel. She was walking to her car
8 at the Waukegan courthouse at 11 -- I'm sorry, at 10:10,
9 and she indicated that her GPS estimated she would
10 arrive here at one hour and six minutes.

11 THE COURT: 11:30-ish. Fair?

12 MR. FLYNN: Fair.

13 THE COURT: All right. Well, rather than delay
14 this, I'm going to rule from the bench based upon my
15 review of the amended complaint and consideration of the
16 briefs in support of and opposition to.

17 I'm going to strike the complaint. The basis
18 of my decision is I think the complaint states a cause
19 of action, but there are so many things in there that
20 are unsupported by factual allegations that I think it
21 best just to deal with them now rather than at a later
22 date. I reviewed -- and I'm looking for the specific
23 allegations of negligence within the amended complaint.
24 I felt that in paragraph 31, subparagraph (a) included

1 enough of a fact that I -- I'm going to tell you the
2 ones I think can stand. Then I'm going to strike the
3 rest of them and try to explain it. I think paragraph
4 (a) gave me enough of a fact that I would allow it to
5 stand. I felt that (b) was a conclusion; (c) was
6 redundant of (a); (d) I was going to allow to stand, it
7 alleges something; (e) I was going to allow to stand;
8 (f) is a conclusion, it's not a fact -- Where are we?
9 -- (g) I'm just going to strike, it's a conclusion;
10 (h), it's a conclusion, strike it; (i) it's a
11 conclusion, strike it; (j) I'm going to allow to stand;
12 (k) I'm -- I'm going to strike. It says there were
13 necessary facts, but doesn't tell me what those
14 necessary facts were. I think an allegation of coercion
15 can stand, but I'm not quite sure what it is we're
16 alleging.

17 MR. FLYNN: So just to clarify, Judge, you're ruling
18 that there can be an allegation of coercion, but it's
19 not supported by facts here --

20 THE COURT: Yeah.

21 MR. GLYNN: -- under the 615 standard?

22 THE COURT: Yeah.

23 MR. GLYNN: Okay.

24 THE COURT: (1) there might be some facts in there,

1 but I'm not sure what they are, so I'm going to strike
2 it. I mean, there might be a factual basis to support
3 what they're getting at, but I don't know what it is. I
4 don't think it's supported, so I think it's a
5 conclusion. I'll strike -- (m) is a conclusion, I'll
6 strike it; (n) is I think duplicative of (a) and (c);
7 and (o) is just a conclusion.

8 I will allow them to replead because I think
9 the ones I've -- and I hate to make you the note-taker,
10 but it saves you a return trip, and I was going to ask
11 questions, but these -- this is what I felt about the
12 allegations in the complaint. I think there is -- this
13 -- for going -- as far as going forward is concerned, if
14 there were more paragraphs that weren't conclusions, I
15 might have allowed the complaint to stand and just
16 strike -- strike them on their face rather than go
17 through the trouble of re-pleading. Unfortunately, most
18 of the paragraphs were conclusions that I felt had to be
19 stricken, and I'm dealing with that now. As a result,
20 I'm striking the complaint.

21 Plaintiff gets to re-plead and the -- and if
22 they just -- and if they limit it to the ones I've
23 allowed to stand that I've advised you about that I
24 think are adequate, then I'm going to -- I would deny

1 future 615 based on the same concepts.

2 Does that make sense?

3 MR. FLYNN: I -- without having gone through each of
4 the subparagraphs, yes, I understand the Court's ruling.
5 I think that the general theme of our motion was that
6 the plaintiff hasn't set forth what a breach of any duty
7 would have been as far as the McGuires and what legal
8 standard they would have been held to and how they
9 breached that.

10 THE COURT: I think --

11 MR. GLYNN: Just because they're a land owners and
12 an accident happened on their property doesn't mean
13 they're liable on this.

14 THE COURT: And I -- actually, I take that back. I
15 agree, but I think that there was enough implicit in the
16 allegations that I still felt that there was going to be
17 an adequate cause of action, and to clarify what I said
18 earlier, I would agree that they've got to explain that
19 better, but it's -- I probably -- since I'm striking the
20 complaint, I'm going to direct them to do that. I felt
21 that I could read enough in here to understand what they
22 were getting at, that I wouldn't have struck the
23 complaint solely on that basis.

24 Does that answer your question?

1 MR. FLYNN: I think so.

2 THE COURT: Okay. There's a lot to unpack here, but
3 I think that there are enough allegations and enough of
4 an understanding of where they're going that I think
5 they're going to be able to state a cause of action, at
6 least insofar as 2-615 is concerned.

7 We'll see what they say in their new complaint.
8 Do you want to give them 28 days --

9 MR. FLYNN: Sure.

10 THE COURT: -- to file?

11 What would you like to do? Twenty-eight after
12 or --

13 MR. GLYNN: Yes.

14 THE COURT: Okay. So let's put the case out
15 60 days. That will each give you plenty of time, and
16 that will take us to November 13th. That is a Tuesday.
17 Does that day work for you?

18 MR. FLYNN: Yes.

19 THE COURT: Okay. And for purposes of the record,
20 we were advised that -- about 10:15 that plaintiff's
21 counsel was about an hour drive away having been
22 detained in Waukegan. As a result, I just decided to --
23 rather than continuing the hearing and going through the
24 process I just did, I would provide my ruling and save

1 everybody some effort.

2 Questions?

3 MR. FLYNN: 9:00 o'clock status on November 13th?

4 THE COURT: Yes.

5 Mr. Dulberg, any questions? I don't really
6 want you to get substantively involved because you're
7 represented, but do you want any clarification of
8 anything I just said?

9 MR. DULBERG: Clarification, no. But I will say
10 that I don't think that we should have to try the case
11 in the pleading.

12 THE COURT: And you don't have to. And that's not
13 what I've said. That's not what he said. But there are
14 certain allegations that I didn't feel were adequate and
15 that's the basis of my dismissal.

16 MR. DULBERG: (Inaudible).

17 THE COURT: I don't want you to argue too much
18 because, again, you've got an attorney and I don't want
19 to involve you. I just -- Do you have any questions?

20 MR. DULBERG: No.

21 THE COURT: Okay. All right. Counsel, if you could
22 draft the order.

23 MR. FLYNN: I will, Judge, based on my -- the
24 note-taking that I did, and can I reference the

1 transcript. This is recorded, I believe, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- correct?

4 THE COURT: Yeah, that's fine.

5 MR. FLYNN: Okay.

6 THE COURT: Yeah, I think they're going to need the
7 transcript probably to get through all that.

8 MR. FLYNN: Fair enough.

9 THE COURT: Okay? Thank you.

10 MR. FLYNN: Thank you, Judge.

11 (Which was and is all of the evidence
12 offered at the hearing of said cause
13 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 I, Stacey A. Collins, an Official Court
5 Reporter for the Circuit Court of McHenry County,
6 State of Illinois, do hereby certify that I reported in
7 shorthand the proceedings had in the above entitled
8 cause and that the foregoing is a true and correct
9 transcript of all the proceedings heard.

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14 Stacey A. Collins, CSR
15 Official Court Reporter
16 License No. 084-002377
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