2025 IL App (1st) 231337-U

FIFTH DIVISION
March 21, 2025

Nos. 1-23-1337 & 1-24-0107 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STACEY F. JAMES, Plaintiff-Appellant, v. VILLAGE OF CALUMET PARK, VILLAGE BUILDING COMMISSIONER MARTIN CORONA, and VILLAGE DEPUTY CLERK TERI RANEY, Defendants-Appellees.	)	Appeal from the Circuit Court Of Cook County. No. 22 M6 003092 Honorable Carrie Hamilton, Judge Presiding.

STACEY F. JAMES, Plaintiff-Appellant, v. VILLAGE OF CALUMET PARK, MAYOR RONALD DENSON, VILLAGE BUILDING COMMISSIONER MARTIN CORONA, ADMINISTRATIVE HEARING OFFICER INDIA WINBUSH, VILLAGE TRUSTEE NORMAN EDWARDS, VILLAGE TRUSTEE RONALD BROWN, VILLAGE DEPUTY CLERK TERI RANEY, and SYNTHIA HARRIS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 23 L 066014 Honorable Michael Barrett, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justice Mitchell concurred in the judgment.
Justice Oden Johnson dissented.

O R D E R

¶ 1 *Held*: (1) Although the circuit court said in its order that it was dismissing some of the claims in a small claims suit "without prejudice," the substance of the dismissal order made clear that it was a final order of dismissal; (2) we affirm the dismissal of the small claims suit as time-barred and on the basis of other affirmative bars to the claims; (3) we find that, because the small claims judgment was final, the trial court in the subsequent law division case correctly dismissed the action before it on the basis of *res judicata*.

¶ 2 These two lawsuits both grow out of a dispute that plaintiff Stacey James had with her neighbor about their property line. Ms. James sued a number of public officials in Calumet Park who she felt failed to properly respond to her complaints. Ms. James first filed a small claims case but then, after that case was dismissed, she filed a similar case in the law division. That case was also dismissed. For the reasons that follow, we find the circuit court properly dismissed both of these cases.

¶ 3 I. BACKGROUND

¶ 4 A. Small Claims Action

¶ 5 1. The Allegations

¶ 6 Ms. James initiated the small claims action (No. 22 M6 003092) on April 21, 2022, against defendants the Village of Calumet Park (the Village), village building commissioner Martin Corona, and village deputy clerk Teri Raney. Ms. James filed the operative second-amended small claims complaint on September 13, 2022, and attached numerous documents relative to her allegations, which are as follows.

¶ 7 On or about April 20, 2020, Ms. James spoke to Mr. Corona regarding a neighbor's recent construction of a fence that Ms. James believed was on her own property and butted against her own existing chain link fence. On May 1, 2020, Ms. James filed a written complaint about the fence with the building department.

¶ 8 On May 4, 2020, Mr. Corona measured the property in the front yard and informed Ms. James that the fence was not on her property. Ms. James responded that the problem was in the backyard, but Mr. Corona refused to measure the backyard area.

¶ 9 On May 6, 2020, Ms. James filed a complaint with the Village regarding Mr. Corona. On May 11, 2020, Ms. James filed a complaint with the building department alleging that the adjacent neighbors were harassing her. Receiving no response, Ms. James emailed the village trustees and the mayor on May 12, 2020.

¶ 10 Although the trustees never responded to Ms. James, on May 12, 2020, the same day she sent the email, the mayor sent a police officer to summon Ms. James to a meeting at his office where she told the mayor she believed that Mr. Corona was "refusing to remedy her complaint in an attempt to retaliate against and harass her because he was pursuing a vendetta against her for rejecting his many advances to date her." Ms. Raney was present at that meeting. At the meeting, the mayor "dismissed [Ms. James]'s allegations, upheld [Mr.] Corona's wrongful actions, did nothing to remedy [Ms. James]'s complaint regarding the encroachment, and cursed [Ms. James] for filing a complaint on [Mr.] Corona and standing up for her rights."

¶ 11 On October 28, 2020, Ms. James filed a complaint with the Village against the building department for refusing "to appropriately handle the events that have given rise to this complaint," and then received a violation citation for "Nuisance 'rocks under fence/lot line dispute' " with a hearing date of November 18, 2020.

¶ 12 At the administrative hearing, the neighbor—Synathia Harris—gave false testimony. Two survey plats were introduced—one paid for by the Village, and the other by Ms. James. The hearing officer—Administrative Law Judge India Winbush—accepted the Village's survey and ordered Ms. James to remove the stones she had placed between the two fences. The hearing officer

also directed Ms. James and her neighbor to "forward correspondence to [Mr.] Corona regarding a resolution to abate the weeds growing between the fences." The matter was continued.

¶ 13 On March 11, 2021, the mayor informed Ms. Raney that she was not to respond to any more of Ms. James's inquiries and that Ms. James could only speak to him.

¶ 14 Ms. James alleged that the administrative proceedings were resolved in her favor, "indicative of innocence." The hearing officer ultimately issued a decision on April 21, 2021. In that decision, the hearing officer found that the code had been violated and that the findings were in favor of the municipality. The hearing officer additionally noted that Ms. James "removed stones and came into compliance." The case was closed due to "compliance."

¶ 15 2. The Procedural History

¶ 16 Ms. James alleged seven counts in her small claims complaint, including counts solely against Mr. Corona for malicious prosecution (count I), abuse of process (count II), and harassment (count V); counts against the Village for *respondeat superior* (count VI) and indemnification (count VII); and counts against all three defendants for "deliberate indifference" (count III) and negligent infliction of emotional distress (count IV).

¶ 17 Defendants moved to dismiss Ms. James's initial complaint on July 1, 2022. She was given leave to file an amended complaint in response, and defendants moved to dismiss that complaint on August 2, 2022. Ms. James was then given leave to file the second amended complaint that is at issue here.

¶ 18 On September 22, 2022, defendants moved to dismiss the second amended small claims complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2022)), on the basis that it was barred by the resolution of the administrative proceedings in favor of the Village, that defendants were immune from liability pursuant to the Local

Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2022)), and that it was barred by the Tort Immunity Act's statute of limitations.

¶ 19 On November 17, 2022, the circuit court entered a detailed written order dismissing counts I through V of the small claims complaint. With respect to count I, the court found that the claim for malicious prosecution failed based on the administrative hearing officer's decision, which made clear that the proceedings were not terminated in Ms. James's favor. As to count II, the court concluded that Ms. James's allegations did not support the claim of abuse of process. The court also dismissed count III with respect to Mr. Corona because the allegations did not support a claim of deliberate indifference. The court dismissed count III with respect to Ms. Raney and the Village, count IV, and count V based on the statute of limitations. In its order, the court said that the motion to dismiss was granted "without prejudice." The court also stated that because the claims against the individual defendants had been dismissed, the two remaining counts against the Village were also dismissed and that "the matter [wa]s off call."

¶ 20 On December 15, 2022, Ms. James moved to reconsider the circuit court's November 17, 2022, dismissal order. After hearing argument, on March 15, 2023, the circuit court denied the motion to reconsider "for the reasons stated on the record," and indicated that a "written opinion w[ould] be emailed to the parties." Then, in a written order entered on April 13, 2023, the court denied the motion to reconsider in part but granted it with respect to count II and count III as to Mr. Corona. The judge explained that she had dismissed these counts based on the sufficiency of the factual allegations, but on reconsideration felt that she had not given Ms. James the full benefit of Illinois Supreme Court Rule 282 (eff. Jan. 1, 2018). That rule provides that a plaintiff may file a small claims action without necessarily including all essential elements of the purported claims.

Ill. S. Ct. R. 282(a) (eff. Jan. 1, 2018).

¶ 21 Defendants renewed their motion to dismiss count II and count III as to Mr. Corona, arguing that the circuit court had not considered its arguments that these counts were barred under the immunity provisions of the Tort Immunity Act or its statute of limitations.

¶ 22 The circuit court granted that renewed motion to dismiss on April 27, 2023, agreeing with defendants that she had not considered all the legal bars to these portions of the complaint. The court found count II was barred because the hearing officer's ruling foreclosed this claim and also by the one-year statute of limitations in the Tort Immunity Act. The circuit court dismissed count III against Mr. Corona based on several provisions of the Tort Immunity Act that barred liability of public officials for any of the conduct alleged in the complaint as demonstrating "deliberate indifference." The court granted the renewed motion to dismiss count II and count III against Mr. Corona, this time noting that the dismissal was "with prejudice."

¶ 23 On June 15, 2023, the court denied Ms. James's motion to reconsider its April 27, 2023, order.

¶ 24 On July 13, 2023, Ms. James filed a notice of appeal, listing the April 27, 2023, and June 15, 2023, orders (appeal No. 1-23-1337).

¶ 25 On September 6, 2023, the trial court entered a bystander's report, accepting much of Ms. James's proposed description of what had occurred. The court summarized the arguments of both sides and its own rulings. The bystander's report does not state whether the court's various dismissal orders were with or without prejudice.

¶ 26 B. Law Division Action

¶ 27 On March 15, 2023, Ms. James filed a new complaint in the law division (No. 23 L 066014). The case was originally assigned to the same judge that had presided over the small

claims complaint. However, Ms. James filed a petition for substitution of judge as of right, which was granted, and the case was assigned to a new judge.

¶ 28 Ms. James amended her law division complaint on September 27, 2023, and it is the amended complaint that is at issue in this appeal. Ms. James named the same defendants as in her small claims complaint, but added two village trustees—Norman Edwards and Ronald Brown, and the hearing officer India Winbush (collectively, the Village defendants)—and one of her neighbors from the fence dispute—Synathia Harris. Ms. James brought a total of 11 counts, all based on allegations that concerned the fence dispute and the administrative proceedings that grew out of it, tracking but expanding on the allegations made in her small claims complaint.

¶ 29 On October 11, 2023, the Village defendants moved to dismiss Ms. James's amended law division complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)) based on *res judicata*, the failure to state a claim, and the same legal arguments they had made in the small claims action.

¶ 30 On December 7, 2023, the trial court entered a written order stating that the parties had appeared and that the court had reviewed their "briefings" and "hear[d] their arguments." The court made two findings, which are, in full:

> "1. Defendants § 2-619 motion to dismiss based upon res judicata is granted.
>
> 2. This matter is dismissed with prejudice and the proceedings are terminated."

¶ 31 On January 2, 2024, Ms. James filed a notice of appeal from the circuit court's dismissal (appeal No. 1-24-0107).

¶ 32 On February 29, 2024, the circuit court issued a bystander's report which reiterated that the dismissal was based solely on *res judicata* and was with prejudice.

¶ 33 E. Consolidation

¶ 34 On August 19, 2024, Ms. James moved this court to consolidate her small claims and law division appeals on the ground that the small claims case "led to these appeals." We granted her motion on April 29, 2024.

¶ 35 II. JURISDICTION

¶ 36 An appellate court has an independent duty to consider its own jurisdiction, regardless of whether the issue was raised by any of the parties. *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 15. Because the dissent in this case disputes our jurisdiction over the small claims appeal, we will discuss that issue in some detail.

¶ 37 For her appellate briefs in both cases, Ms. James used the form brief provided by the Illinois Supreme Court's website (see https://www.illinoiscourts.gov/documents-and-forms/approved-forms/appellate-forms/appellants-brief/ (last visited March 7, 2025)), which includes blank spaces to fill in as well as checkboxes. In the jurisdiction section of her small claims appellate brief, Ms. James checked the box that provides "[t]his court has jurisdiction under Rule 301 because the trial court's judgment ended a civil (non-criminal) case." Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) provides that "[e]very final judgment of a circuit court in a civil case is appealable as of right." However, the dissent concludes that the small claims judgment was *not* final because the circuit court said in its order that several of Ms. James's claims were dismissed "without prejudice." We disagree.

¶ 38 It is true that, for purposes of appeal, an order dismissing a complaint without prejudice is not considered final. *Village of Orion v. Hardi***,** 2022 IL App (4th) 220186, ¶ 19. But as several well-reasoned decisions of this court have recognized, the circuit court's labeling of a dismissal as "without prejudice" is not determinative. In *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill.

App. 3d 562, 568 (1999), we explained:

> "Because the effect of a dismissal order is determined by its substance, and not by the incantation of any particular magic words, a trial court's description of a final judgment as being 'without prejudice' is of no greater logical effect than a trial court's statement that a non-final dismissal judgment is 'with prejudice.' In each instance, whether the trial court's dismissal order is final (and thereby appealable under Rule 304(a)) or is not final (and, therefore, not appealable) is a function *not of its words, but of its effect*. Thus, if the dismissal is because of a deficiency which could be cured by simple technical amendment, the order is not the subject of appeal. On the other hand, if the dismissal is because, as here, of a perceived substantive legal deficiency (e.g. that the plaintiffs have not sustained damages as a matter of law and, therefore, lack standing to sue), the dismissal order is final." (Emphasis added.)

¶ 39 We followed *Schal Bovis* recently, noting that "if the dismissal is because of a perceived substantive legal deficiency—for example, the plaintiffs have not sustained damages as a matter of law and, therefore, lack standing to sue—the dismissal order is final." *Erickson v. Knox County Wind Farm LLC*, 2024 IL App (4th) 230726, ¶ 65; but see *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 24 (where a circuit court order clearly indicates that a dismissal was "without prejudice," there is no final order)

¶ 40 We believe the procedural history of this case explains why the court labeled the November 17, 2022, dismissal order as "without prejudice." In that order, the court dismissed count II and count III against Mr. Corona based on pleading defects that could potentially be cured, so dismissal without prejudice was appropriate to allow Ms. James the chance to cure those defects. On April 27, 2023, however, the circuit court dismissed those counts based on legal deficiencies, and

expressly stated that the dismissal was "with prejudice." Although, for the sake of clarity, it would have been helpful if the circuit court amended its November 17, 2022, order to clarify that the dismissal of counts I, IV, V, VI, VII, and count III as to the Village and Ms. Raney was also with prejudice, the circuit court's failure to do so is not determinative here. The circuit court's "without prejudice" label on its November 17, 2022, order is not binding on this court in assessing our own jurisdiction.

¶ 41 Looking at the bases for the dismissals of counts I, IV, V, VI, VII, and count III as to the Village and Ms. Raney, in the November 17, 2022, order, it is clear that those dismissals were with prejudice. The circuit court was explicit in its November 17, 2022, order that the dismissal of those counts all rested on legal defenses—that the administrative proceeding was not resolved in Ms. James's favor or the statute of limitations—that could not be cured by amendment. A dismissal based on what the circuit court viewed as a legal deficiency is, by definition, a dismissal with prejudice. *Schal Bovis*, 314 Ill. App. 3d at 568 (1999). Accordingly, the circuit court's November 17, 2022, order was final as to counts I, IV, V, VI, VII, and count III as to the Village and Ms. Raney.

¶ 42 The circuit court dismissed Ms. James's remaining claims on April 27, 2023, and denied Ms. James's motion to reconsider that dismissal on June 15, 2023. Ms. James timely filed her notice of appeal on July 13, 2023, within 30 days of the circuit order's denial of her motion to reconsider. We therefore have jurisdiction over the small claims appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 43 As to the law division appeal, the circuit court dismissed that case with prejudice on December 7, 2023, and Ms. James timely filed her notice of appeal from that order on January 2,

2024. Accordingly, we also have jurisdiction over the law division appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 44 III. ANALYSIS

¶ 45 A. The Small Claims Complaint

¶ 46 The circuit court dismissed the entirety of the small claims complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2020)). Section 2-619 permits involuntary dismissal based upon certain defects or defenses. A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the claim. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). A grant or denial of a motion to dismiss is a question of law that we review *de novo*." *Simmons v. Homatas,* 236 Ill. 2d 459, 477 (2010).

¶ 47 The claims in Ms. James's small claims complaint are legally deficient, some on multiple bases. First, most of her claims are legally barred because they fall outside the statute of limitations. 735 ILCS 5/2-619(a)(5) (West 2022). Ms. James filed her small claims complaint against a local public entity and public officials. The Tort Immunity Act provides that "[n]o civil action *** may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-l0l(a) (West 2022). This limitations period applies to any action, whether based upon the common law, statute, or the Illinois Constitution. *Id.* § 8-l0l(c).

¶ 48 Ms. James filed her complaint on April 21, 2022. At that point, only her claim for malicious prosecution was not time-barred. Other than the final decision of the hearing officer, which was issued on April 21, 2021, every allegation of Ms. James's complaint concerned conduct that occurred outside the one-year statutory period. As the circuit court recognized, this included the

claim for abuse of process, since it was the instigation of the administrative complaint in October 2020 that gave rise to that claim. Aside from the April 21, 2021, administrative decision, the latest act Ms. James alleged was a directive given on March 11, 2021, by Mayor Denson—who is not a defendant in the small claims complaint—to Ms. Raney. This action, as well as the rest of the alleged actions of defendants, is outside the one-year statute of limitations. Thus, for this reason alone, most of the small claims complaint was properly dismissed.

¶ 49 Ms. James's claim for malicious prosecution is legally deficient on a different basis. A claim is legally deficient if it is barred by affirmative matter that avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619 (a)(9) (West 2020)). "[A]ffirmative matter in a section 2–619(a)(9) motion, is something in the nature of a defense which negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." (Internal quotation marks omitted.) *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486 (1994).

¶ 50 A claim for malicious prosecution requires proof that the administrative proceeding concluded in the plaintiff's favor. *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 26. Ms. James alleged in her complaint that the administrative proceeding terminated in her favor. However, the hearing officer's decision makes clear that she found the code had been violated and found in favor of the municipality. No fine was issued because Ms. James had come into compliance, and the proceeding was closed because of that compliance, but that is not a finding in Ms. James's favor. Because the administrative proceedings were resolved against Ms. James, her claim for malicious prosecution is legally barred.

¶ 51 As the circuit court recognized, the fact that the administrative proceeding was not resolved in Ms. James's favor is also a basis for dismissing her abuse of process claim. A claim for abuse

of process requires proof that legal process was used improperly. *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 183 (2003). The conclusion of the proceeding in favor of the Village negates such a finding.

¶ 52 Much of Ms. James's small claims complaint was also barred by specific provisions of the Tort Immunity Act, under which public entities and employees are not liable for any injury caused by issuing or failing to revoke permits, failing to enforce any law, including the building code, or for inadequate inspections. 745 ILCS 10/2-103, 2-104, 2-105, 2-205, 2-206, and 2-207 (West 2022). Ms. James's remaining claims were based on allegations that the public officials did not revoke her neighbor's fence permits and failed to enforce her property rights, properly respond to her complaints, or properly inspect her property. The Tort Immunity Act shields them from liability for this conduct.

¶ 53 In short, Ms. James's small claims complaint was properly dismissed on multiple bases: most of the allegations were outside of the statute of limitations, the administrative proceeding did not terminate in her favor, and many of her allegations were against public officials for conduct for which they were immune under the Tort Immunity Act.

¶ 54 Ms. James also argues that the circuit court erred in refusing to reconsider its November 17, 2022, dismissal order on the basis of the audio recordings of the administrative proceeding that she had attached as newly discovered evidence. In response, defendants argue that Ms. James had access to those recordings before she filed her second amended complaint and, thus, they were not newly discovered. We need not consider this problem because the audio recordings could have no bearing on the legal bars to Ms. James's small claims complaint as outlined above. They are simply irrelevant to whether that complaint was properly dismissed.

¶ 55 B. The Law Division Complaint

¶ 56 As noted above, the circuit court dismissed Ms. James's law division claims solely on grounds of *res judicata*. Whether an action is barred by *res judicata* is a question of law that this court reviews *de novo*. *Ward v. Decatur Memorial Hospital*, 2019 IL 123937, ¶ 44.

¶ 57 The doctrine of *res judicata* "extends not only to every matter that was actually determined in the prior suit, but to every other matter that might have been raised and determined in it." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 339. Three requirements must be met for the doctrine to apply: (1) a final judgment on the merits; (2) an identity of cause of action; and (3) the parties or their privies must be the same in both actions. *Id.* at 335.

¶ 58 The only element that Ms. James asserts is not present here is a final judgment. She contends that the law division case was not a new case but a refiling of her original small claims case. Her argument is as follows: "[The law division complaint] is not a new lawsuit, it is a refiling of Plaintiff's original small claims, only refiled in a higher court in order to truly redress the wrongs committed against her by the Defendants under Color of Law." Of course, this argument acknowledges that the law division complaint is simply a refiling of Ms. James's complaint and therefore all the elements of *res judicata* are present.

¶ 59 The dissent also takes the position that there was no final judgment in the small claims case because of the circuit court's use of the words "without prejudice," in its November 17, 2022, order. However, for the reasons set out in our discussion of jurisdiction, we find those words are not determinative. Rather, the small claims complaint was dismissed in a final order on the merits and Ms. James was barred from relitigating those claims or any claims that she could have brought as part of that same action in a second lawsuit.

¶ 60 IV. CONCLUSION

¶ 61 For the foregoing reasons, we find that both lawsuits were properly dismissed by the circuit court.

¶ 62 No. 1-23-1337: Affirmed.

¶ 63 No. 1-24-0107: Affirmed.

¶ 64 JUSTICE ODEN JOHNSON, dissenting:

¶ 65 For the reasons explained below, I find: (1) that we have no jurisdiction over the small claims appeal because the judgment appealed from was not a final order; and (2) that, since the small claims judgment was not a final order, the trial court erred in finding that the small claims dismissal was res judicata of the law action. Thus, I would dismiss the small claims appeal for lack of jurisdiction, and I would reverse the dismissal in the law action and remand for further proceedings.

¶ 66 A. The Small Claims Appeal

¶ 67 1. Seeming Split

¶ 68 As the majority acknowledges, an appellate court has an independent duty to consider its own jurisdiction whether or not the issue was raised by any of the parties. *Supra* ¶ 36, citing *Salvatore*, 2019 IL App (2d) 180425, ¶ 15 ("Before addressing the merits of this appeal, we have an independent duty to examine our appellate jurisdiction."). See also *Morgan v. Richardson*, 343 Ill. App. 3d 733, 738 (2003) ("Even when a party does not challenge this court's jurisdiction, this court has an independent duty to consider its jurisdiction before considering the merits of the

appeal.").[1]

¶ 69 Also, as the majority acknowledges, "[i]t is true that, for purposes of appeal, an order dismissing a complaint without prejudice is not considered final." *Supra* ¶ 38, citing *Village of Orion*, 2022 IL App (4th) 220186, ¶ 19.

¶ 70 The majority seems to indicate a split in appellate-court authority as to whether the appellate court should be in the business of making presumptions to determine whether they were *really with or* without prejudice. *Supra* ¶ 39. The majority cites cases which appear to suggest that appellate courts should be second-guessing the trial court. *Supra* ¶ 39 (discussing *e.g. Erickson*, 2024 IL App (4th) 230726, ¶ 65 (citing *Schal Bovis*, 314 Ill. App. 3d at 568)). The majority also forthrightly acknowledges appellate-court statements that support a different outcome, such as in *Village of Orion*, 2022 IL App (4th) 220186, ¶ 19 (limiting *Schad* to permitting an appellate court to look to the substance of what was decided, when the trial court's written order fails "to specify whether the dismissal was with or without prejudice"), and *D'Attomo*, 2015 IL App (2d) 140865, ¶ 24 (same). See also *Moore v. Ferris*, 2016 IL App (2d) 150190-U, ¶ 12 (same).

¶ 71 2. Supreme Court

¶ 72 Regardless of what other appellate courts may have held, only the supreme court is binding on us; and this is an issue on which our supreme court has spoken—as other appellate courts before us have already explained. *D'Attomo*, 2015 IL App (2d) 140865, ¶ 24 (discussing *Pfaff v. Chrysler Crop*, 155 Ill. 2d 35, 63 (1992), *overruled on other grounds by ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010)); *Moore*, 2016 IL App (2d) 150190-U, ¶ 12 ("our supreme court has instructed that this sort of form-over-substance analysis applies to a general order of

[1] In support, the majority notes that the *pro se* plaintiff checked a box on the *pro se* form for an appellate brief indicating that judgment was final. *Supra* ¶ 37, Obviously, the box checked by a *pro se* litigant does not provide us with jurisdiction that we do not otherwise have.

dismissal; a reviewing court should not engage in an interpretation of a trial court's order which affirmatively indicates on its face that it is not a final order," citing *Pfaaff*, 155 Ill. 2d at 62- 63 and *D'Attomo*, 2015 IL App (2d) 140865, ¶ 24).

¶ 73 "Unless specifically, authorized by supreme court rules, the appellate court has no jurisdiction to review judgments, order or decrees that are not final." *Hawes v. Luhr Bros., Inc.*, 212 Ill. 2d 93, 106 (2004). When faced with a nonfinal order that is not subject to specific authorization, an appellate court must dismiss the appeal. *Hawes*, 212 Ill. 2d at 106. An order that dismisses an action or motion without prejudice is nonfinal. *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982) (an order that dismisses an action "without prejudice" is not final and not appealable); *DeLuna v. St. Elizabeth's Hospital*, 147 Ill. 2d 57, 76 (1992) ("An order dismissing an action without prejudice is not final.").

¶ 74 "[S]ubstance rather than form may determine whether a general order of dismissal represents a final adjudication." *Pfaaff*, 155 Ill. 2d at 62-63. "However, we decline to engage in *any* interpretation of an order which so affirmatively indicates on its face that a final adjudication was not made." (Emphasis added.) *Pfaaff*, 155 Ill. 2d at 63. In the case at bar, we are spared the task of having to interpret a general order, where the trial court specified which counts were dismissed without prejudice and which were dismissed with prejudice.

¶ 75 Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016)) provides, in relevant part, that, "if multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." (Emphasis added.) Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016). In the case at bar, no such finding was made.

¶ 76 "In the absence of such a finding, any judgment that adjudicates fewer than all the claims *** is not enforceable or appealable." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Thus, per supreme court precedent and rules, we do not have jurisdiction to hear the small claims appeal and must dismiss the appeal on this ground.

¶ 77 3. Appellate Courts

¶ 78 As for *Schal Bovis*, 314 Ill. App. 3d and *Erickson*, 2024 IL App (4th) 230726— cited in support by the majority (*supra* ¶¶ 38-39)—the words of these cases apply to a completely different situation and simply do not apply to the facts of our case. In *Schal Bovis*, the trial court had stated *both* that the dismissal was " 'final and appealable' " *and* that it was entered " 'without prejudice.' " *Schal Bovis*, 314 Ill. App. 3d at 567. The trial court made these contradictory statements regarding the *same exact* counts of the complaint. *Schal Bovis*, 314 Ill. App. 3d at 566-67. As a result, the appellate court had no choice but to figure out what the trial court meant. After the statement quoted by the majority (s*upra* ¶ 38), the *Schal Bovis* court went on to say that the "inclusion of the words 'without prejudice' in the trial court's orders [did] not deprive us of jurisdiction under Supreme Court Rule 304(a)," which permits jurisdiction when a trial court has made an express written finding, as the trial court had done in *Schal Bovis*. *Schal Bovis*, 314 Ill. App. 3d at 568; Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

¶ 79 Like *Schal Bovis*, *Erickson* also concerns Rule 304(a) and contradictory statements by a trial court that impacted the finality statement specifically required for Rule 304(a) jurisdiction. As we noted above, Rule 304(a) permits an appeal from a final judgment as to one or more but fewer than all of the parties or claims, but "only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). In *Erickson*, the trial court dismissed a count without prejudice, but

then stated that a subsequent order was final and appealable. *Erickson*, 2024 IL App (4th) 230726, ¶ 66. The appellate court found that it was not deprived of Rule 304(a) jurisdiction by the earlier "without prejudice" statement. *Erickson*, 2024 IL App (4th) 230726, ¶ 66.

¶ 80 Both these cases concerned statements by trial judges that their orders were final and appealable. We have no such statement here. Thus, the aforementioned cases are readily distinguishable.

¶ 81 In our case, an experienced trial judge made a careful distinction between the claims she was dismissing with prejudice and the claims she was dismissing without prejudice. However, the majority makes certain presumptions, as to why the judge may have dismissed without prejudice as opposed to with prejudice, and bases our jurisdiction on those presumptions. This flies in the face of supreme court precedent and supreme court rules to the contrary. Therefore, I must respectfully dissent.

¶ 82 B. The Law Division Appeal

¶ 83 With respect to the law case, plaintiff alleges that we have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 301, and she is correct. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) ("[e]very final judgment of a circuit court in a civil case is appealable as of right"). On December 7, 2021, the trial court dismissed that case with prejudice, making that judgment final.

¶ 84 The trial court dismissed the law action pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020)). Section 2-619 permits involuntary dismissal based upon certain defects or defenses. 735 ILCS 5/2-619 (West 2020); *Richter v. Prairie-Farms Dairy, Inc.*, 2016 IL 119518, ¶ 18. Our supreme court has found that dismissal due to res judicata is permitted under section 2-619(a)(4), which permits dismissal when an action " 'is barred by a prior judgment ' " *Richter*, 2016 IL 119518, ¶ 20 (quoting 735 ILCS 5/2-619 (West 2012)). In

ruling on a section 2-619 motion, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party which, in the case at bar, is plaintiff. *Richter*, 2016 IL 119518, ¶ 18. A section 2-619 motion to dismiss presents a question of law, which we review *de novo*. *Richter*, 2016 IL 119518, ¶ 18.

¶ 85 As the majority acknowledges, the trial court dismissed plaintiff's claims in the law case solely on the grounds of res judicata. *Supra* ¶ 56. On appeal, plaintiff argues that the key element in res judicata is missing, namely, a final judgment. This issue also demands a *de novo* standard of review. *Schmidt v. Gaynor*, 2019 IL App (2d) 180426, ¶ 17 ("a dismissal under res judicata is reviewed under the *de novo* standard"); *Buchanan v. Legan*, 2017 IL App (3d) 170037, ¶ 22.

¶ 86 Under the doctrine of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent action between the same parties, or those that they are in privity with, for the same cause of action. *Gaynor*, 2019 IL App (2d) 180426, ¶ 17. The elements of the doctrine are: (1) a final judgment; (2) identity of the cause of action; and (3) identity of parties or their privies in both actions. *Buchanan*, 2017 IL App (3d) 170037, ¶ 22. Res judicata prevents the relitigating of issues that were actually decided, as well as issues that could have been decided, in the first case. *Buchanan*, 2017 IL App (3d) 170037, ¶ 22.

¶ 87 As this court has previously noted, the issue of whether a trial court's dismissal was with or without prejudice can be easily avoided by simply adding the appropriate words. *Buchanan*, 2017 IL App (3d) 170037, ¶ 22 ("[s]such confusion can be easily avoided" by adding the appropriate words"). The simple addition of two words then saves other trial courts and the appellate court from the task of trying to "glean[]" from a silent record what was intended. *Buchanan*, 2017 IL App (3d) 170037, ¶ 22.

¶ 88 Our supreme court has found that the requirement of a final order is the key or critical

element in res judicata. *Richter*, 2016 IL 119518, ¶ 22. The party invoking res judicata has the burden of establishing this element, as well as the other elements of the doctrine. *Richter*, ¶ 22. Since defendants bear the burden of proof and persuasion on this issue, we turn to their arguments.

¶ 89 On appeal, defendants cite first, in support, Illinois Supreme Court Rule 273. Rule 273 provides that, "unless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal *** operates as an adjudication upon the merits." However, in the small claims case, the order did otherwise specify, so this rule does not aid defendants.

¶ 90 Next, defendants argue that a dismissal is final unless a plaintiff procures leave of court to refile. In support, defendants cite *Richter*, 2016 IL 119518, ¶ 25, and *Ward v. Decatur Memorial Hospital*, 2019 IL 12937, ¶ 50.

¶ 91 First, defendants quote *Richter* out of context. The supreme court in *Richter* explicitly stated: "a dismissal 'without prejudice' signals that there was no final decision on the merits and that the plaintiff is not barred from refiling the action." *Richter*, 2016 IL 119518, ¶ 24. That is exactly what happened in our case. Based on that quote alone, we could find for plaintiff and that she was not barred from refiling her action. *Richter* also stated, as defendant quotes, that if a trial court "involuntarily dismisses" an action and if the plaintiff "does not procure leave of court to refile," then the dismissal is "deem[ed" on the merits. *Richter*, 2016 IL 119518, ¶ 24. However, the court here appears to be speaking of a dismissal that did not specify whether it was with or without prejudice, because the court goes on to conclude: "where a dismissal order does not specify that it is 'without prejudice,' or that plaintiff was granted leave to file an amended complaint, the dismissal order is a final adjudication on the merits." *Richter*, 2016 IL 119518, ¶ 25.

¶ 92 As for *Ward*, the supreme court noted that, in the case before it, the trial court had both (1)

stated that the dismissals were without prejudice and (2) granted permission to refile; and, thus, the dismissals were not final. *Ward*, 2019 IL 12937, ¶ 49. The court did not state that both were required but, rather, it stated what had occurred in the case before it. The court went on in the next paragraph to indicate that a trial court's statement of with, or without, prejudice was dispositive. *Ward*, 2019 IL 12937, ¶ 50. The court stated that a dismissal order was final (1) if the order "specified" it was with prejudice "or" (2) if it denied leave to refile. *Ward*, 2019 IL 12937, ¶ 50. In the case at bar, the specifics are in the orders. Rather than supporting defendants' position, both cases support finding that the small claims disposition was not final.

¶ 93 Third, defendants argue that, "despite" the trial court's explicit use of the terms 'with prejudice' for certain counts and 'without prejudice' for others, the trial court really meant 'with prejudice' for all. The time for defendants to have sought clarification about what the trial court meant was when they were in front of the trial court.

¶ 94 Lastly, defendants argue that plaintiff conceded that the small claims judgment was final by filing an appeal from it. Defendants cite no legal support for this novel proposition, nor can we find any. "A reviewing court is entitled to have issues clearly defined with relevant authority cited." In re *Marriage of Bates*, 212 Ill.2d 489, 517 (2004), *Lozman v. Putnam*, 379 Ill. App. 3d 807, 824 (2008). This would be a novel bit of bootstrapping. Defendants are trying to use a prior case, that is not res judicata, to block res judicata. Further, in her notice of appeal in the small claims appeal, plaintiff listed only the June 15, 2023, and April 27, 2023, orders, which were the two orders concerning the dismissal with prejudice of counts II and III. I mention what plaintiff listed in this context because defendants are arguing about an alleged concession by her.

¶ 95 Having examined each of defendants' arguments in turn, I do not find them persuasive on the issue of res judicata.

¶ 96 Conclusion

¶ 97 For the foregoing reasons, I find: (1) that we lack jurisdiction over the small claims appeal because the judgment appealed from was not a final order; (2) that, since the small claims judgment was not a final order, the trial court erred in finding that the small claims dismissal was res judicata of the law action. Thus, I would dismiss the small claims appeal for lack of jurisdiction, and I would reverse the dismissal in the law action and remand for further proceedings. As a result, I must respectfully dissent.