SECOND DIVISION
August 15, 2017

No. 1-16-2226

BRUCE M. ABRAHAMSON, Plaintiff-Appellant, v. GREENBERG TRAURIG, LLP, GREENBERG TRAURIG OF ILLINOIS, INC., THOMAS DUTTON, BROWN UDELL POMERANTZ & DELRAHIM, LTD., JEFFREY R. BECK, DAVID A. EPSTEIN, GLENN L. UDELL, and DANIEL L. BRAUN, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 15 L 12548 The Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's legal malpractice complaint was properly dismissed as time-barred.

¶ 2 Bruce Abrahamson has been pursuing a medical license in Illinois for over 30 years. In the present litigation, he seeks to hold Thomas Dutton and Dutton's law firm, Greenberg Traurig, LLP, liable for attorney malpractice. Plaintiff claims that in 2007, Dutton failed to preserve and pursue a compensatory damages claim against the State of Illinois in connection with plaintiff's state court challenge to the Illinois Department for Professional and Financial Regulation's denial of his second application for a medical license. Plaintiff also seeks to hold Jeffrey R. Beck, David A. Epstein, Glenn L. Udell, and Daniel L. Braun, and their law firm, Brown, Udell,

Pomerantz & Delrahim, Ltd., liable for failing to advise plaintiff of Dutton's malpractice. The circuit court dismissed plaintiff's complaint for professional malpractice against the defendants, and plaintiff appeals. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The following history is pertinent to an understanding of the issues in this appeal, and is taken from plaintiff's amended complaint, the circuit court's written orders, the prior orders and opinions of the state and federal courts that have addressed issues related to the history of this case, as well as the statements of facts as set forth in the defendants' briefs to assist in the understanding of our disposition of this appeal.

¶ 5 In 1986, plaintiff, after completing medical school in Mexico and allegedly fulfilling all of the other requirements for licensure, submitted an application to the Illinois Department for Professional and Financial Regulation for a medical license. The Department questioned some of plaintiff's responses on his application and after a hearing, the Department found that plaintiff (1) created a false transcript, (2) offered "inconceivable" testimony as to his dual enrollment at two medical schools, (3) made numerous misstatements of material fact in his application, (4) demonstrated a lack of moral character in failing to be forthright and truthful when supplying information in support of his application, and (5) displayed a lack of ethical judgment in the fraudulent production of an academic credential. The Department denied plaintiff's application for a medical license.

¶ 6 On administrative review, the circuit court reversed the Department's decision, and the appellate court affirmed. Our supreme court, however, reinstated the Department's decision, finding that (1) good moral character is a requirement for licensure, (2) plaintiff was not denied procedural due process, (3) the Department's finding that plaintiff made misrepresentations of

material fact was not against the manifest weight of the evidence, and (4) the denial of a medical license was not too severe of a sanction under the circumstances. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 89-100 (1992).

¶ 7 In 1998, plaintiff reapplied for a medical license, which the Department denied in July 2001 after determining that plaintiff's medical knowledge was not current. Plaintiff sought administrative review in the circuit court (the 2001 action). In 2002, the matter was remanded to the Department, resulting in a Department order outlining what plaintiff would need to do in order to show that he possessed the present capacity to practice medicine. Plaintiff again sought administrative review in the circuit court from the Department's order, contending that he was not provided an opportunity to participate in formulating the Department's order. In the circuit court, an agreed order was entered in April 2003 in which the Department agreed to have the case remanded for a hearing. Plaintiff and the Department appear to have disagreed, however, over matters such as timing and the applicable rules for how the hearing would be conducted. In March 2005, the circuit court entered an order requiring that a hearing take place before the hearing board. The hearing took place in June 2005, at which plaintiff was represented by Dutton. On August 9, 2006, after the hearing and two motions for rehearing, the Department adopted the recommendation that plaintiff's application be denied based on the findings that he failed to show that he was professionally capable of practicing medicine with reasonable skill, judgment, and safety.

¶ 8 On September 13, 2006, plaintiff, represented by Dutton, filed a motion for leave to file a second amended complaint for administrative review in the circuit court (the 2006 action). The second amended complaint asserted in part that the Department's refusal to grant plaintiff a restricted or probationary license and the Department's "continuous and repeated delay in ruling

on [plaintiff's] application, his requests for hearings, and his motions for rehearing, from 1998 through 2006," violated plaintiff's "right to due process and equal application of the law under the Illinois and United States Constitutions."

¶ 9 On March 16, 2007, the circuit court allowed plaintiff to file a "Memorandum of Clarification and Reservation." In the memorandum, plaintiff asserted that he raised his constitutional arguments:

> "not for the purpose of submitting his Constitutional claims for decision by this Court, but instead, [plaintiff] has exposed his federal claims here so that this Court may construe the Illinois Medical Practice Act and the attendant Regulations 'in light of' [his] Constitutional Claims [*sic*]. It is [plaintiff's] intent–and he hereby explicitly reserves his right–to submit his Constitutional claims to the federal district court in the event that this Court were to rule against him on the questions of State law that are currently before it."

¶ 10 On June 26, 2007, the circuit court affirmed the Department's final administrative decision to deny plaintiff a medical license. Plaintiff, represented by Dutton, appealed that decision, and we affirmed, finding that the Department did not abuse its discretion in refusing plaintiff a license until he could demonstrate his capacity to practice medicine. *Abrahamson v. Illinois Department of Financial & Professional Regulation*, 1-07-2045 (2008) (unpublished order under Supreme Court Rule 23), *pet. leave to appeal denied*, 231 Ill. 2d 657 (2009). Dutton represented and also drafted plaintiff's petition for leave to appeal to our supreme court.

¶ 11 In March 2011, plaintiff filed a *pro se* complaint in federal court against the Department and multiple other defendants under section 1983 (42 U.S.C. § 1983 (2010)) alleging due process violations, failure to intervene "to prevent the violation of Plaintiff's constitutional rights," and conspiracy to deprive him of his constitutional rights. He additionally asserted state law claims

for malicious prosecution, intentional infliction of emotional distress, civil conspiracy, *respondeat superior*, and indemnification. Plaintiff requested that the federal district court (1) reverse or vacate the Department's final order in the 2006 action denying him a license, (2) order the Department to expunge an "Adverse Action Report" that had been submitted to a national registry, and (3) order the defendants to pay $500,000,000 in compensatory damages for "loss of income, loss of enjoyment of life, emotional harm, pain and suffering, punitive damages against each *** Defendant, as allowable under the law, because these Defendants acted in a malicious, willful and/or wanton manner toward Plaintiff." He also requested attorney fees and costs.

¶ 12 The Department and the other defendants moved to dismiss plaintiff's federal complaint. Plaintiff then retained defendants Beck, Udell, Espstein, and Braun and their law firm Brown, Udell, Pomerantz & Delrahim, Ltd. to represent him in the federal lawsuit. The district court dismissed plaintiff's section 1983 claims for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine, since his claims sought review of state court decisions, and the district court declined to exercise supplemental jurisdiction over plaintiff's remaining state law claims. *Abrahamson v. Illinois Department of Financial & Professional Regulation*, No. 11 C 2038, 2012 WL 2814376 (July 10, 2012).

¶ 13 Plaintiff filed a *pro se* appeal. On December 12, 2014, the Court of Appeals for the Seventh Circuit, in an unpublished order, affirmed the district court's judgment dismissing plaintiff's federal claims for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine. The Court of Appeals found that plaintiff failed to allege a due process claim that was unconnected to his demand that he be issued a medical license, and that to the extent that plaintiff sought damages, the relief he sought was unavailable because "it would directly upset

the state-court judgment confirming the Department's decision to deny him a license unless he passes the current board and completes an additional residency." *Abrahamson v. Illinois Department of Financial and & Professional Regulation*, 594 Fed. App'x 307, 310 (7th Cir. 2014).

¶ 14 On December 11, 2015, plaintiff filed a *pro se* complaint against defendants in the circuit court for legal malpractice. After retaining counsel, plaintiff filed a two-count amended complaint on February 29, 2016. In count I, he alleged that Dutton and Greenberg Traurig should have sought compensatory damages from the State in the 2006 action, and that they committed malpractice by "attempting to preserve [plaintiff's] claims for licensure and compensation in the [the 2006 action] as the 'Rooker Feldman [sic] Doctrine' acted as a bar to the same in the Federal Court Action that was doomed to failure from the beginning." Plaintiff further alleged that Dutton and Greenberg Traurig informed him at the end of the 2006 action that they could not represent him against the State, and "[o]n or about March, 24, 2011," Dutton and Greenberg Traurig provided him with advice by phone as to the contents of his federal complaint and "repeatedly assured [plaintiff] through May, [*sic*] 2011, that he would be able to bring and prosecute his still un-adjudicated claims for compensatory damages" against the State in federal court.

¶ 15 In count II of the amended complaint, plaintiff asserted a malpractice claim against Beck, Udell, Epstein, and Braun and the Brown Udell firm for failing to advise plaintiff that the statutes of limitation and repose were running on any legal malpractice claims plaintiff might have had against Dutton and Greenberg Traurig, resulting in him being denied any compensation for damages from the denial of his medical license.

¶ 16 Dutton and Greenburg Traurig filed a motion to dismiss count I of plaintiff's amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). Defendants asserted that count I should be dismissed pursuant to section 2-615 of the Code since plaintiff failed to allege sufficient facts to support proximate cause or damages because he failed to allege that he would have won a claim for compensatory damages against the State but for the alleged malpractice. Dutton and Greenburg Traurig also moved to dismiss count I pursuant to section 2-619(a)(5) of the Code, asserting that plaintiff failed to bring his claim within six years of the alleged malpractice, and therefore his claim was barred by the statute of repose set forth in section 13-214.3(c) of the Code (735 ILCS 5/13-214.3(c) (West 2014)).

¶ 17 Beck, Udell, Epstein, and Braun and the Brown Udell firm moved to dismiss count II of plaintiff's amended complaint pursuant to section 2-619(a)(4) of the Code (735 ILCS 5/2-619(a)(4) (West 2014)), asserting that plaintiff's claim was barred by collateral estoppel. Defendants argued that plaintiff could not prevail on his malpractice claim because, in order to succeed, he would need to prove that he would have won a claim for damages but for defendants' alleged malpractice, which in turn would require a showing that he was qualified for a medical license. Defendants argued that in the second administrative review action, plaintiff fully litigated that issue to a final judgment on the merits, which he lost, and he was therefore precluded from relitigating that issue in the malpractice action.

¶ 18 On July 14, 2016, the circuit court entered two written orders. In the first written order, the circuit court granted Dutton and Greenberg Traurig's motion to dismiss count I for failing to state a claim and as barred by the statute of repose. In the second written order, the circuit court granted Beck, Udell, Epstein, and Braun and the Brown Udell firm's motion to dismiss count II

on the basis of collateral estoppel. Each order contained a finding that it was a final and appealable order. Plaintiff filed a timely *pro se* notice of appeal.

¶ 19 ANALYSIS

¶ 20 Plaintiff's appellant's brief runs afoul of Supreme Court Rule 341(h)(6) by failing to set forth the "facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). His brief also fails to properly identify the issues raised on appeal because he asserts that each of his claims should not have been "summarily terminated," and then provides lengthy explanations in support of his assertions, in violation of Supreme Court Rule 341(h)(3). Ill. S. Ct. R. 341(h)(3) (eff. Jan. 1, 2016) (stating that the appellant's brief shall contain "A statement of the issue or issues presented for review, without detail or citation of authorities."). Finally, the argument section of plaintiff's brief contains virtually no citations to the record on appeal, violating Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016).

¶ 21 It is well-settled that plaintiff's *pro se* status does not relieve him of the obligation to comply with Rule 341. See *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12 (parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys); *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys."). Compliance with these procedural rules is mandatory and this court may, in its discretion, strike a brief and dismiss an appeal for failure to comply with Rule 341. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12; *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). Here, we decline to strike plaintiff's brief, since all of the defendants

have addressed his arguments on the merits, and we are able to discern the nature of his appellate arguments.

¶ 22 We find, however, that plaintiff has not raised any coherent argument with respect to the dismissal of count II of his amended complaint. Although he cites authority regarding the doctrine of *res judicata* and the circumstances under which its application may be relaxed, those principles are not applicable here, since the circuit court dismissed count II on the basis of collateral estoppel. Plaintiff has failed to advance any argument regarding collateral estoppel that might warrant reversal of the circuit court's judgment dismissing count II. This results in forfeiture. Ill. S. Ct. R. 341(h)(7) ("Points not argued are waived[.]"). As a court of review, we are entitled to have the issues on appeal clearly presented. *Holmstrum v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. It is not our duty to scour the record in an effort to develop an argument for a party. *Travaglini v. Ingalls Health System,* 396 Ill. App. 3d 387, 405 (2009). Plaintiff has not provided us with any basis from which we might reverse the circuit court's judgment on count II. We therefore affirm the circuit court's judgment dismissing count II of plaintiff's amended complaint.

¶ 23 Plaintiff argues that (1) the trial court erred in dismissing count I of his amended complaint as barred by the statute of repose because the doctrine of equitable estoppel precludes Dutton and Greenberg Traurig from relying on the statute of limitations, or that defendants' fraudulent concealment tolls the limitations period, and (2) he alleged sufficient facts to establish

the elements of duty, breach, proximate cause, and damages, and therefore stated a claim for attorney malpractice in count I of his amended complaint.

¶ 24 We review a circuit court's ruling on a motion to dismiss brought pursuant to either section 2-615 or section 2-619 of the Code *de novo*. *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). A motion to dismiss under section 2-615 attacks only the legal sufficiency of a complaint and does not raise affirmative factual defenses, but alleges only defects appearing on the face of the complaint. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). In comparison, a section 2-619 motion to dismiss allows for an involuntary dismissal of a claim based on certain defects or defenses. Section 2-619 provides that an action may be dismissed, on the motion of the defendant, if "the action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2012). "It is proper for a court[,] when ruling on a motion to dismiss under either section 2-615 or section 2-619[,] to accept all well-pleaded facts in the complaint as true and to draw all reasonable inferences from those facts in favor of the nonmoving party." *Edelman*, 338 Ill. App. 3d at 164 (citing *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 162 (1998)). We may affirm the circuit court's ruling on a motion to dismiss on any basis appearing in the record. *Perry v. Estate of Carpenter*, 396 Ill. App. 3d 77, 84 (2009).

¶ 25 We first address plaintiff's argument that the doctrine of equitable estoppel precludes Dutton and Greenberg Traurig from relying on the statute of limitations, or that Dutton and Greenberg Traurig's fraudulent concealment tolls the limitations period. Plaintiff argues that Dutton and Greenberg Traurig advised him during the 2006 action that the "Memorandum of Clarification and Reservation" would preserve his due process claims against the State and was necessary to preserve his ability to seek compensatory damages. He claims that he "could not

reasonably know" that the memorandum was insufficient to do this. He further argues that he was informed by Dutton and Greenberg Traurig that he needed to exhaust all of his state court appeals before pursuing his federal claims, although plaintiff fails to cite to the record to support this assertion, and we note that he did not include this allegation in his amended complaint. He contends that he was "clueless" as to Dutton and Greenberg Traurig's malpractice until February 26, 2013, when the federal district court dismissed his federal complaint. Plaintiff makes no argument on appeal that his claim against Dutton and Greenberg Traurig was made within either the two-year statute of limitations set forth in section 13-214.3(b) (735 ILCS 5/13-214.3(b) (West 2014)), or the six-year statute of repose set forth in section 13-214.3(c) (West 2014)), but focuses solely on the issue of whether the applicable limitations periods were tolled. Plaintiff also makes no effort to identify when his claims against Dutton and Greenberg Traurig accrued or when the statutes of limitation and repose began running on his claims. We need not resolve these issues, however, because the only acts of malpractice alleged in count I are that Dutton failed to pursue and properly preserve a compensatory damages claim against the State, and those alleged failures, which are the relevant acts for the purpose of section 13-214.3(c) of the Code (735 ILCS 5/13-214.3(c) (West 2014)), indisputably took place in 2007.

¶ 26 Section 13-215 of the Code tolls a cause of action and allows a plaintiff to bring a claim within five years of discovering a cause of action where "a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto[.]" 735 ILCS 5/13-215 (West 2014). "The concealment contemplated in section 13-215 must consist of affirmative acts or representations which are calculated to lull or induce a claimant into delaying filing of his claim, or to prevent a claimant from discovering his claim." *Smith v. Cook County Hospital*, 164 Ill. App. 3d 857, 862 (1987). "Mere silence on the part of the defendant and failure

by the claimant to learn of the cause of action are not enough." *Id.* "A plaintiff must plead and prove that the defendant made misrepresentations or performed acts which were known to be false, with the intent to deceive the plaintiff, and upon which the plaintiff detrimentally relied." *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 18 (2007). Tolling will not apply where "the claimant discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period." *Smith*, 164 Ill. App. 3d at 862.

¶ 27 Similarly, equitable estoppel is defined as "the effect of a person's conduct whereby the person is barred from asserting rights that might otherwise have existed against the other party who, in good faith, relied upon such conduct and has been thereby led to change his or her position for the worse." *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313 (2001). A plaintiff invoking the doctrine of equitable estoppel must demonstrate that: (1) the defendant misrepresented or concealed material facts, (2) the defendant knew at the time he or she made the representations that they were untrue, (3) the plaintiff claiming estoppel did not know that the representations were untrue when they were made and when the plaintiff decided to act, or not, upon the representations, (4) the defendant intended or reasonably expected that the plaintiff would determine whether to act, or not, based upon the representations, (5) the plaintiff reasonably relied upon the representations in good faith to his or her detriment, and (6) the plaintiff would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 82-83 (2006). The plaintiff must be able to demonstrate that he reasonably relied on defendant's conduct or representations in forbearing suit, but need not show that the defendant intentionally misled the plaintiff. *Id.* at 83.

¶ 28 Here, plaintiff's amended complaint alleged that "[o]n or about March, 24, 2011," Dutton and Greenberg Traurig provided plaintiff with advice by phone as to the contents of his federal complaint and "repeatedly assured [plaintiff] through May, 2011 [*sic*], that he would be able to bring and prosecute his still un-adjudicated claims for compensatory damages" against the State in federal court. But, as the circuit court correctly found, by the time plaintiff initiated this action on December 11, 2015, any malpractice claim he might have had against Dutton or Greenberg Traurig was time-barred.

¶ 29 Assuming, *arguendo*, that prior to March 2011, plaintiff could not have reasonably discovered any claim he might have had against Dutton or Greenberg Traurig for failing to properly preserve a damages claim in 2007 (since by 2011, the statute of limitations would have run on his malpractice claim unless plaintiff could successfully invoke the discovery rule in his favor), he would need to successfully invoke either equitable estoppel or fraudulent concealment to save his claims from the statute of repose. To invoke either doctrine, plaintiff would need to demonstrate both that Dutton and Greenberg Traurig misrepresented a material fact plaintiff could pursue a compensatory damages claim against the State, and that Dutton and Greenberg Traurig knew that the representation was false. Here, even if plaintiff alleged sufficient facts to show that in March 2011, Dutton and Greenberg Traurig misrepresented that plaintiff could pursue a damages claim against the State, plaintiff failed to allege any facts that Dutton and Greenberg Traurig made those representations with any knowledge that the representations were false. See *Orlak*, 228 Ill. 2d at 18. This omission is fatal to plaintiff's attempt to estop Dutton and Greenberg Traurig from asserting a statute of repose defense, and to plaintiff's attempt to use the fraudulent concealment statute to toll the statute of repose. Simply put, plaintiff cannot show that Dutton and Greenberg Traurig took any affirmative act to conceal the facts of their own alleged

malpractice or to mislead plaintiff as to their alleged malpractice. Therefore, plaintiff cannot escape the operation of the six-year statute of repose in section 13-214.3(c) of the Code, which expired sometime in 2013. Plaintiff did not initiate this malpractice action until December 2015, well outside the outer limit for asserting a malpractice claim premised on the conduct alleged in his amended complaint.

¶ 30 Even assuming, *arguendo*, that the only negligent act complained of in count I was that Dutton and Greenberg Traurig negligently advised plaintiff that he could pursue a damages claim against the State in March 2011, plaintiff's claim would still be barred by the two-year statute of limitations, which would have expired in March 2013. Plaintiff contends that he was "clueless" as to Dutton and Greenberg Traurig's malpractice until February 26, 2013, when the federal district court dismissed his federal complaint. But even if the discovery rule applied and we found that plaintiff could not reasonably have discovered his claims against Dutton and Greenberg Traurig until February 26, 2013, plaintiff did not file his initial complaint alleging malpractice until December 2015, almost ten months after the statute of limitations had expired. Again, the only way plaintiff could avoid the statute of limitations would be to show that equitable estoppel or fraudulent concealment applied. But as we explained, plaintiff's complaint contains no allegations that Dutton and Greenberg Traurig ever knowingly misrepresented any fact regarding whether plaintiff could bring a damages claim against the State that caused plaintiff to delay filing a malpractice claim. Plaintiff has failed to establish that any form of tolling applies to his malpractice claims against Dutton and Greenberg Traurig.

¶ 31 The circuit court properly dismissed plaintiff's complaint as time-barred pursuant to section 2-619(a)(5) of the Code.

¶ 32 While we need not consider whether count I adequately stated a claim for legal malpractice, we note that in order for plaintiff to potentially prevail on a malpractice claim against Dutton and Greenberg Traurig, he would need to prove his case-within-a-case: that "but for" Dutton and Greenberg Traurig's negligence, he would have prevailed on his claim for compensatory damages against the State. See *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 12. But plaintiff's compensatory damages claim would fail because he would also need to prove that the State wrongfully withheld a medical license. Plaintiff fully litigated that issue before the Department in the 2006 action, the circuit court on administrative review, and on appeal, both before this court and our supreme court. Simply put, plaintiff cannot show that he was entitled to a medical license and that the Department wrongfully denied him one.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 35 Affirmed.