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2016 IL App (3d) 150801-U

Order filed December 6, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

CHARLES BOCOCK,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-15-0801
)	Circuit No. 15-CH-1397
KEVIN MEYERS,)	
)	Honorable
Defendant-Appellee.)	Cory D. Lund,
)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Order granting motion to dismiss for failure to state a claim under FOIA was affirmed because, although the *pro se* complaint arguably stated a claim against the assistant state's attorney in his official capacity, the request did not reasonably identify the public records being sought.
- ¶ 2 The plaintiff, Charles Bocock, appeals the dismissal of his complaint against the defendant, Kevin Meyers, an assistant state's attorney in Will County, for the denial of a public

record request under the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.* (West 2012).

¶ 3

FACTS

¶ 4

While a pretrial detainee at the Will County Adult Detention Facility, Bocock requested copies of certain Illinois Pattern jury instructions from the Will County State's Attorney's Office pursuant to FOIA. Meyers, a registered FOIA officer, denied the request on three grounds: (1) the Illinois Pattern Jury Instructions are copyrighted, and thus exempt under 5 ILCS 140/7(1)(a) (West 2012); (2) responding to the request would require giving legal advice, which the office was not obligated to do under FOIA; and (3) Bocock was an inmate who had access to the library, and access to the materials, making them exempt under 5 ILCS 140/7(1)(e-5) (West 2012). Bocock filed a petition against Meyers seeking injunctive relief. Bocock alleged that Meyers willfully and intentionally failed to comply with FOIA. The complaint was brought against Kevin Meyers as the sole defendant. The body of the complaint alleged that Meyers was an employee of the Will County State's Attorney's Office and that the state's attorney's office was a public body as defined in FOIA.

¶ 5

Meyers filed a motion to dismiss pursuant to 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), arguing that he did not meet the definition of "public body" under section 2(a) of FOIA (5 ILCS 140/2(a) (West 2012)), so no relief could be afforded under section 11 of FOIA (5 ILCS 140/11 (West 2012)). The trial court granted the motion to dismiss, and Bocock appealed.

¶ 6

ANALYSIS

¶ 7

Bocock argues that the trial court erred in granting the motion to dismiss because his claim was against Meyers in his official capacity, which is a claim against the Will County

State's Attorney's Office. Meyers argues that Bocoock filed suit against him in his individual capacity, and he is not a public body, so the dismissal of Bocoock's complaint was proper.

¶ 8 The parties agree that FOIA governs only public bodies. See 5 ILCS 140/1 (West 2012); *Illinois Educational Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003) ("[W]hen a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the Act applies."). The Illinois Supreme Court has determined that the office of the state's attorney falls within the FOIA's definition of a "public body." *Nelson v. Kendall County*, 2014 IL 116303, ¶ 27. However, Bocoock did not file his petition against the Will County State's Attorney's Office, but rather against Kevin Meyers. Bocoock argues that, although not specifically stated, his complaint was actually against Meyers in his official capacity, which was a claim against the Will County State's Attorney's Office. Meyers points out that the caption on the petition, the notice of appeal, and the appellate briefs do not indicate that Meyers was sued in his official capacity.

¶ 9 Both parties cite to *Kentucky v. Graham*, 473 U.S. 159 (1985), in support of their argument. That case involved a commissioner who was sued in both his individual and official capacities for civil rights violations. *Id.* In that case, the Supreme Court analyzed personal-capacity and official-capacity suits in the context of section 1983 actions, but there was no dispute in that case that the commissioner was sued in both capacities. *Id.* at 169. The Supreme Court concluded that the case was necessarily litigated as a personal-capacity action because the Eleventh Amendment precluded a damages action against the state, the effective result of an official-capacity action. *Id.*

¶ 10 This case must necessarily be litigated as an official-capacity action because, as the parties agree, FOIA is not applicable to individuals. Although Bocoock's complaint does not

specify in the heading in which capacity he is suing Meyers, his complaint alleges that Meyers is an employee of the Will County State's Attorney's Office and that the Office is a public body as defined by FOIA. The summons was addressed to "Kevin Meyers, WCSCO," addressed to the office of the Will County State's Attorney. Since *pro se* briefs are to be liberally construed, *People v. Duke*, 305 Ill. App. 3d 169, 172 (1999), we find that Bocock sufficiently alleged a claim against Meyers in his official capacity.

¶ 11 However, when reviewing a section 2-619 dismissal, we apply a *de novo* standard of review and may affirm on any basis appearing in the record, whether or not the trial court relied on that basis. *Krause v. USA DocuFinish*, 2015 IL App (3d) 130585, ¶ 22. Under FOIA, a request to inspect or copy must reasonably identify a public record and not general data, information, or statistics. *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, 2014 IL App (4th) 130427, ¶ 33. Without addressing the applicability of copyright law or the availability of the jury instructions through an administrative request in the jail law library, we affirm the dismissal of Bocock's complaint on the basis that his request did not reasonably identify the public records that he was seeking. He requested jury instructions applicable to seven different criminal statutes, with no reference to the specific pattern jury instructions as published by the Illinois Courts.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Will County is affirmed.

¶ 14 Affirmed.