

2017 IL App (2d) 140988-U
No. 2-14-0988
Order filed February 6, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 04-CF-1701
)	
RUDELL L. FERGUSON,)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed defendant's section 2-1401 petition (essentially granting the State summary judgment), as the petition was filed beyond the limitations period and defendant's mere showing of a mental illness was insufficient to raise an issue of material fact as to a legal disability that would toll that time.

¶ 2 Defendant, Rudell L. Ferguson, appeals the trial court's order dismissing his petition for relief from judgment, filed under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), on the basis that it was untimely. Defendant contends that he presented a

issue of material fact requiring an evidentiary hearing as to whether he was legally disabled so as to toll the period for filing. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On September 21, 2007, defendant entered a fully negotiated guilty plea to aggravated battery of a child (720 ILCS 5/12-4.3 (West 2006)), in exchange for a 22-year prison sentence. He did not file a motion to withdraw his plea. On September 30, 2011, he filed a *pro se* petition for relief from judgment under section 2-1401, alleging ineffective assistance of counsel and requesting a reduction of his sentence. Defendant also alleged that he filed no direct appeal due to his depression and symptoms from medication that he was prescribed for his “diagnosis.” Defendant attached an affidavit that did not address his mental state or reasons why he waited until 2011 to file his petition. The trial court dismissed the petition *sua sponte* on the merits, and we vacated because the dismissal was premature. *People v. Ferguson*, 2013 IL App (2d) 111287-U.

¶ 5 On remand, the State moved to dismiss the petition on the basis that it was untimely. Defendant was initially represented by a public defender. He later obtained private counsel who moved to amend the petition. At the hearing on the motions, the court denied counsel’s motion, stating that it would proceed on the *pro se* petition. Counsel did not ask for an evidentiary hearing and proceeded to argue that there were mental health records to show that defendant suffered from a mental disability that tolled the time for him to file his petition. The court dismissed the petition, finding that it did not raise an adequate issue of legal duress or disability to excuse the untimely filing.

¶ 6 Defendant filed a motion to reconsider, followed by an amended motion in which he asked for an evidentiary hearing and attached various documents concerning his mental health

following his guilty plea. A document dated September 27, 2007, stated that defendant was diagnosed with paranoid schizophrenia and was prescribed four drugs. Medical records from that time also listed psychosis as a diagnosis. A document dated November 15, 2007, showed that defendant reported that he attempted suicide in 2004 and that he heard voices telling him to do stupid things. He reported that he felt like no one could touch him and that people were out to get him. There were notes indicating signs of depression and mania and that his affect was “blunted.” However, defendant’s flow of thoughts was listed as “coherent.” A note was made that defendant “tended to endorse all symptoms as ‘all the time’ ” and that he might be “over endorsing symptoms.”

¶ 7 A treatment note dated January 3, 2008, stated that defendant still heard voices on and off but did not want to continue medication, because his grandmother told him that it made him look like a zombie. He reported two incidents where he was on the verge of calling a crisis team but talking to the officers in charge helped him. The note stated that he was alert and cooperative with normal speech. No formal thought disorder was noted, he had no delusional ideations, and he was not actively hallucinating. However, he thought that people were out to get him, and his concentration, judgment, and insight were poor.

¶ 8 A treatment note dated June 20, 2009, stated that defendant still heard voices all the time but he did not feel compelled to act on what they said. He was listed as alert and cooperative with normal speech and no delusional ideas. His concentration, judgment, and insight were poor. He did not allow an increase in his medication, due to sedation. A similar note was made on September 12, 2009, but did not make any findings about poor concentration, judgment, or insight. Defendant was refusing a medication because it made him feel like zombie.

¶ 9 An October 12, 2009, treatment note stated that defendant was alert, cooperative, and speaking coherently and logically. He reported auditory hallucinations but there was no evidence of active hallucinations. He complained about his medications and was adamant that he would not take them. The evaluator questioned how defendant qualified for schizophrenia, finding that there might be an unspecified psychosis but that it did not have a functional impact. On December 5, 2009, the evaluator noted that defendant was not taking medication and that he was very functional despite complaining that he heard voices all the time. His medications were changed to an as-needed basis.

¶ 10 On September 3, 2014, a hearing was held. Defendant's counsel argued that the trial court erred when it granted the State's motion to dismiss, because there was an issue of material fact as to whether defendant was legally disabled after his plea so as to toll the time allowed to file his petition. The court noted that the petition and affidavit made no claim of legal disability. The court further found that the medical records did not sufficiently raise an issue of material fact concerning legal disability. The court denied the motion to reconsider, and defendant appeals.

¶ 11

II. ANALYSIS

¶ 12 Defendant argues that the trial court erred in failing to grant an evidentiary hearing on the issue of whether he was legally disabled so as to toll the filing time for his section 2-1401 petition. Applying summary-judgment principles, he contends that the documents attached to his amended motion for reconsideration present an issue of material fact about whether he was legally disabled such that the trial court erred in summarily dismissing his petition. He does not make any arguments about the merits of the petition.

¶ 13 Section 2-1401 provides a comprehensive procedure that allows for the vacatur of a final judgment older than 30 days. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). The statute requires that a petition be supported by affidavit or other appropriate showing as to matters not of record. *Id.* Generally, a section 2-1401 petition must be filed no later than two years after the entry of the judgment, excluding time during which the person seeking relief is under legal disability or duress. *Id.* Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a meritorious claim or defense in the original action and of diligence in pursuing both the original action and the section 2-1401 petition. *Id.* at 7-8.

¶ 14 When the trial court either dismisses a section 2-1401 petition or grants or denies relief based on the pleadings alone, we review the matter *de novo*. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 947 (2009) (citing *Vincent*, 226 Ill. 2d at 16). When the parties' filings are functionally equivalent to cross-motions for summary judgment, summary-judgment principles apply. *Id.* at 948. We also review grants of summary judgment *de novo*. *Id.*

¶ 15 Here, defendant likens the matter to a grant of summary judgment. "Summary judgment is appropriate only when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* "In reviewing a grant of summary judgment, we must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the nonmoving party." *Id.* "The sole function of the trial court in acting upon a motion for summary judgment is to determine whether a question of material fact exists, not to resolve the issue." *Id.* "In deciding a motion for summary judgment, the court may draw inferences from undisputed facts to determine whether a genuine issue of material fact exists." *Id.* "However, where reasonable persons could draw divergent inferences

from undisputed facts, the issue should be decided by a trier of fact and the motion for summary judgment should be denied; the trial court does not have any discretion in deciding the matter on summary judgment.” *Id.*

¶ 16 It is noteworthy that defendant did not present the documents that he argues create an issue of material fact until his amended motion to reconsider, even though his counsel referenced them at the hearing on the State’s motion to dismiss. Defendant does not argue that his petition and affidavit alone create an issue of fact as to whether he was legally disabled.

¶ 17 “The purpose of a motion to reconsider is to bring to the trial court’s attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.” *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). “Accordingly, a trial court is well within its discretion to deny such a motion and ignore its contents when it contains material that was available prior to the hearing at issue but never presented.” *Id.* at 493.

¶ 18 Here, the trial court noted the failings of the section 2-1401 petition and supporting affidavit but it also accepted the new documents and considered them when making its ruling. Further, the State has not argued that the trial court should not have considered them. In any event, the trial court was correct both in determining that the petition and affidavit were insufficient to present an issue of material fact concerning legal disability and in determining that the new documents also did not create an issue of material fact on the matter.

¶ 19 “A person suffers from a ‘legal disability’ when he or she is ‘entirely without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his [or her] estate or financial affairs.’ ” *In re Doe*, 301 Ill. App. 3d 123, 126-27 (1998) (quoting *Estate of Riha v. Christ Hospital*, 187 Ill. App. 3d 752, 756 (1989)). “In a

case where a legal disability is alleged, the record must contain sufficient allegations of fact from which one could conclude that the person seeking to be found legally disabled was incompetent or suffered from serious mental disorder which made that person entirely without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his estate or financial affairs.” *Id.* at 127 (citing *Sille v. McCann Construction Specialities Co.*, 265 Ill. App. 3d 1051, 1054-55 (1994)). Being diagnosed with a “disability” does not grant a person automatic status as being legally disabled. “[M]any impairments both physical and mental may be termed disabilities, but all are not legal disabilities.” *Id.*

¶ 20 For example, in *Doe*, the plaintiff in a personal injury action filed a late complaint alleging that he suffered from “‘post-traumatic stress disorder, autism, attention-deficit hyperactivity disorder, auditory perception disability, social imperceptions and social-emotional developmental delay with concurrent deficits and impairments in adaptive behavior relative to his age’ ” and that he required the appointment of a guardian for life decisions and financial matters. *Id.* at 125-26. Included was an affidavit from a physician averring that the plaintiff was mentally and physically incapable of making completely voluntary and informed decisions about his personal care and support and was unable to attend to his personal matters without assistance. *Id.* at 126. Noting that, during the limitations period, the plaintiff had attended college, sought counseling, and consulted with a physician because he had a fear of AIDS, the trial court found that the affidavit did not raise a question of fact as to whether the plaintiff was legally disabled. *Id.* The First District affirmed, noting that the affidavit merely stated a conclusion with no supporting factual basis. The court further noted that, although a condition such as autism is considered a developmental disability, it is not granted automatic status as a legal disability. *Id.* at 127.

¶ 21 Here, as illustrated by *Doe*, defendant's mental illness diagnosis is insufficient by itself to create an issue of fact as to legal disability. Nor are the treatment notes from his physicians sufficient to show that he was arguably without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his estate or financial affairs. While early treatment notes showed that defendant suffered from mental health problems, his thoughts were listed as coherent. Nothing in the record beyond the mere existence of a mental illness suggests that defendant did not have the capacity to make or communicate decisions about himself. To the contrary, as early as January 2008, defendant was listed as alert and cooperative with no formal thought disorder. He also began at that time to take an active role in requesting that he not take his medications, showing an ability to communicate decisions about himself. Nothing in the treatment notes addresses the specific definition of a legal disability, and defendant himself did not address that in his own affidavit.

¶ 22 Defendant relies on *Mills*, in which we found that there was an issue of material fact as to whether the plaintiff exercised due diligence in filing a section 2-1401 petition when he suffered from mental illnesses but had the ability to care for a sick relative. But in *Mills*, the plaintiff filed his petition within the two-year limitations period. Thus, the case did not involve the definition of a legal disability. As a result, we specifically found that the plaintiff was not required to establish that his mental illness rose to the level of a legal disability so as to toll the limitations period. Instead, the plaintiff was merely required to establish the reasonableness of his actions within that period. *Mills*, 393 Ill. App. 3d at 950. Accordingly, *Mills* is not applicable. Here, the principles from *Doe* apply, and defendant has not presented enough evidence to raise an issue of material fact as to whether he was legally disabled so as to toll the limitations period.

¶ 23

III. CONCLUSION

The trial court properly dismissed the petition. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 24 Affirmed.