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2017 IL App (3d) 150580-U

Order filed June 30, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

PLACIDO LABOY, JR.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-15-0580
)	Circuit No. 14-MR-3080
)	
LISA MADIGAN,)	The Honorable
)	Cory D. Lund,
Defendant-Appellee.)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Holdridge and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* In a mandamus action, the trial court properly granted defendant's motion for involuntary dismissal of plaintiff's mandamus complaint for failure to state a claim upon which relief could be granted. The appellate court, therefore, affirmed the trial court's judgment.
- ¶ 2 Plaintiff, Placido LaBoy, Jr., an inmate in the Department of Corrections (DOC), filed a petition for writ of mandamus (complaint) in the trial court seeking to compel the Illinois Attorney General, Lisa Madigan, to investigate and prosecute the alleged theft of plaintiff's

personal property.¹ The Attorney General filed a motion to involuntarily dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) for failure to state a claim upon which relief could be granted. After a hearing, the trial court granted the Attorney General's motion to dismiss. LaBoy appeals. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4

LaBoy was an inmate in the DOC at the Stateville Correctional Center. In September 2014, the warden of Stateville and members of Stateville's tactical team confiscated several items of LaBoy's personal property, including magazines, candy, office supplies, a laundry bag, a razor pouch, and a pair of toenail clippers. A week later, Laboy wrote to the Attorney General and requested that she investigate the matter and that she file criminal charges against the DOC staff members who took his property. LaBoy received no response. LaBoy sent a similar letter the following month and again received no response. He also filed a prison grievance regarding the alleged theft.

¶ 5

In December 2014, LaBoy filed a *pro se* complaint for mandamus relief in the trial court against the Attorney General, seeking to compel the Attorney General to investigate the alleged theft and to pursue criminal charges against the DOC staff members involved. In May 2015, the Attorney General filed a section 2-615 motion to dismiss the mandamus complaint, alleging that the complaint failed to state a claim upon which relief could be granted. LaBoy filed a written response and opposed the motion to dismiss.

¹ It would appear that the petition in this case is more properly referred to as a complaint for mandamus relief. See 735 ILCS 5/2-1501 (West 2014) (abolishing writs); 735 ILCS 5/14-102 (West 2014) (referring to the filing of a complaint for mandamus); *Turner-El v. West*, 349 Ill. App. 3d 475, 477 (2004); *People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 181 n.1 (1999).

¶ 6 In July 2015, a hearing was held on the motion to dismiss. LaBoy was present for the hearing in the custody of the DOC and represented himself *pro se*. At the conclusion of the hearing, after listening to the arguments of the parties, the trial court granted the Attorney General's motion and dismissed LaBoy's mandamus complaint with prejudice. LaBoy appealed.

¶ 7 ANALYSIS

¶ 8 On appeal, LaBoy argues that the trial court erred in granting the Attorney General's section 2-615 motion to dismiss LaBoy's complaint for mandamus relief. LaBoy asserts that the motion to dismiss should not have been granted because: (1) LaBoy's complaint was sufficient to state a claim for mandamus relief; and (2) the trial court's consideration of elements (the three case-law elements) that were not in the mandamus statute in evaluating LaBoy's complaint violated the separation of powers clause of the Illinois Constitution (Ill. Const. 1970, art. II, § 1). Based upon the alleged errors, LaBoy asks that we reverse the trial court's dismissal of his mandamus complaint and that we remand this case for a trial. The Attorney General disagrees with LaBoy's assertions and argues that the trial court's ruling was proper and should be affirmed.

¶ 9 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects that are apparent on the face of the complaint. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007). In determining whether a complaint is legally sufficient, a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* "The critical inquiry in deciding upon a section 2-615 motion to dismiss is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group, Inc.*, 186 Ill. 2d 419, 424 (1999). A cause

of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that the plaintiff cannot prove any set of facts that will entitle the plaintiff to relief. *Heastie*, 226 Ill. 2d at 531. In reviewing a trial court's ruling on a section 2-615 motion to dismiss, the appellate court applies a *de novo* standard of review (*Heastie*, 226 Ill. 2d at 530-31), which means the appellate court performs the same analysis that the trial court would perform (*Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43). We may affirm a trial court's grant of a section 2-615 motion to dismiss on any basis supported by the record. *Fidelity National Title Insurance Co. of New York v. Westhaven Properties Partnership*, 386 Ill. App. 3d 201, 220 (2007).

¶ 10

I. Whether LaBoy's Petition Was
Sufficient to State a Claim for Mandamus Relief

¶ 11

In support of his argument on appeal, LaBoy asserts first that the motion to dismiss should not have been granted because his complaint was sufficient to state a claim for mandamus relief where he alleged in the complaint that he was seeking to compel the Attorney General to investigate and prosecute the theft of his personal property—a ministerial act that the Attorney General was required by law to perform but had failed to do. LaBoy contends that the Attorney General was mandatorily required to perform the act in question under both the Illinois Attorney General Act (15 ILCS 205/4 (West 2014) (stating that the duties of the attorney general “shall be,” among other things, to investigate alleged violations of the statutes which the Attorney General has a duty to enforce and to institute and prosecute all actions in favor of the State)) and the crime victims' rights provisions of the Illinois Constitution (Ill. Const. 1970, art. I, § 8.1) and that the trial court erred in reaching a conclusion to the contrary.

¶ 12

The Attorney General disputes LaBoy's claim—that the act in question was a ministerial act—and asserts that Illinois courts have ruled that the investigation and prosecution of an alleged criminal offense is a discretionary act by the Attorney General, despite the use of the

word “shall” in the Attorney General Act (or other applicable statutes). The Attorney General asserts, therefore, that LaBoy’s petition was properly dismissed because LaBoy failed to establish, and could not establish, that he had a clear right to mandamus relief or that the Attorney General had a clear duty to investigate and prosecute the alleged offense.

¶ 13 Mandamus relief is an extraordinary remedy that is used to compel a public officer to perform nondiscretionary (mandatory) official duties. *McFatrige v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain mandamus relief, the plaintiff must establish three elements: (1) that the plaintiff has a clear right to the relief requested; (2) that the public officer has a clear duty to act; and (3) that the public officer has clear authority to comply with an order granting mandamus relief. *Id.* Despite the extraordinary nature of mandamus relief, mandamus proceedings are governed by the same pleading rules that apply to other actions. See *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997). To survive a section 2-615 motion to dismiss, a plaintiff who seeks mandamus relief must allege in the complaint sufficient facts to establish the above three elements. *Id.*

¶ 14 In the present case, LaBoy failed in that burden in two ways. First, LaBoy failed to plead sufficient facts to establish that he was clearly entitled to have the Attorney General investigate and prosecute the alleged theft of his personal property (that he was clearly entitled to the relief requested). See *Noyola*, 179 Ill. 2d at 133. Although LaBoy requested multiple times that the Attorney General investigate the alleged theft and prosecute those involved, it is well established under Illinois law that the Attorney General does not represent private individuals, such as LaBoy. See *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303 (2003); *Cebertowicz v. Madigan*, 2016 IL App (4th) 140917, ¶ 20. Rather, the Attorney General represents the interests of all of the people of the State of Illinois as a whole. *Hadley*, 345 Ill. App. 3d at 303; *Cebertowicz*, 2016 IL App

(4th) 140917, ¶ 20. LaBoy, therefore, did not establish, and could not establish, in his mandamus complaint that he had a right to the relief requested. See *Hadley*, 345 Ill. App. 3d at 303; *Cebertowicz*, 2016 IL App (4th) 140917, ¶ 20.

¶ 15 Second, LaBoy failed to plead sufficient facts to establish that the Attorney General had a clear duty to investigate and prosecute the alleged theft (that the Attorney General had a clear duty to act). See *Noyola*, 179 Ill. 2d at 133. Although LaBoy alleged in his complaint that the Attorney General’s duty to investigate and prosecute criminal offenses, such as the alleged theft in the instant case, was ministerial (nondiscretionary) in nature, the case law on that point is directly contrary to LaBoy’s position. The case law establishes that the Attorney General’s duty to investigate and prosecute criminal offenses is discretionary in nature, regardless of the use of the word “shall” in the Attorney General Act, and that the Attorney General’s duty in that regard cannot be compelled by a complaint for mandamus relief. See *Hadley*, 345 Ill. App. 3d at 301-02; *Cebertowicz*, 2016 IL App (4th) 140917, ¶¶ 17, 21. LaBoy’s mandamus complaint, therefore, did not, and could not, establish that the Attorney General had a clear duty to act to investigate and prosecute LaBoy’s report of the alleged theft of his personal property. See *Noyola*, 179 Ill. 2d at 133.

¶ 16 LaBoy’s citation to the provisions of the Illinois Constitution that pertain to the rights of crime victims does not lead us to reach a different conclusion. Those provisions do not refer in any manner whatsoever to the investigation and initial filing of criminal charges. See Ill. Const. 1970, art I, § 8.1. Thus, we conclude that neither the Illinois Attorney General Act nor the crime victims’ rights provisions of the Illinois Constitution mandatorily require the Attorney General to investigate and prosecute alleged criminal offenses. Rather than being a mandatory obligation, such matters belong to the discretion of the Attorney General to determine which complaints, out

of the volume of complaints that the Attorney General receives each year, should be investigated and/or prosecuted. See *Hadley*, 345 Ill. App. 3d at 302.

¶ 17 II. Whether the Trial Court Violated the Separation of Powers Clause of the Illinois Constitution in Granting the Motion to Dismiss

¶ 18 LaBoy asserts second in support of his argument on appeal that the trial court’s ruling—viewing LaBoy’s mandamus complaint in light of the three elements established under case law for mandamus relief—violated the separation of powers clause of the Illinois Constitution since the mandamus statutes does not contain or refer to those three case-law elements. According to LaBoy, because the three elements are not contained in the mandamus statute enacted by the legislature, the trial court could not require LaBoy to plead material facts that would satisfy the three case-law elements in order to obtain mandamus relief without running afoul of the separation of powers clause.

¶ 19 The Attorney General disagrees with LaBoy and asserts that the separation of powers clause did not prohibit the trial court from assessing LaBoy’s complaint against the Illinois Supreme Court’s well-established case-law elements for mandamus relief. The Attorney General asserts further that while the mandamus statute informs litigants about the procedure for filing and litigating a mandamus action, it does not define the substantive requirements for mandamus relief, which, according to the Attorney General, are the three case-law elements. Thus, the Attorney General contends that the trial court did violate the separation of powers clause or infringe upon the legislature’s ability to make laws by applying to LaBoy’s complaint the pleading standard established under the case law for mandamus actions.

¶ 20 The separation of powers clause of the Illinois Constitution provides that the three branches of government (legislative, executive and judicial) are separate and that one branch shall not exercise powers belonging to another branch. Ill. Const. 1970, art. II, § 1; *Best v.*

Taylor Machine Works, 179 Ill. 2d 367, 410 (1997). The purpose of the separation of powers clause is to ensure that the whole power of two or more branches of government does not reside in the same hands. *Id.* Although there may be some overlap in powers, each branch of government has its own unique sphere of authority that cannot be exercised by another branch. *Id.* at 410-11.

¶ 21 Having reviewed the mandamus statutes in question in the present case, we find that the Attorney General’s position on this matter is correct. See 735 ILCS 5/14-101 to 14-109 (West 2014). The mandamus statutes speak to such things as the titles to be used in a mandamus complaint, the summons procedure, whether the defendant in a mandamus action is required to file an answer or otherwise plead in response to the complaint, the procedure by which the plaintiff may reply to defendant’s answer, whether the prevailing party may recover damages and/or costs, the effect of a successor in office to the defendant, and whether the pleading may be amended if the plaintiff has sought the wrong remedy. See 735 ILCS 5/14-101 to 14-109 (West 2014). The mandamus statutes, however, do not in any way address the substantive requirements for pleading and obtaining mandamus relief. Those requirements, as the Attorney General suggests, are the three elements that have been established through case law and repeatedly applied by the courts. See *McFatridge*, 2013 IL 113676, ¶ 17 (setting forth the three case-law elements as necessary in order to obtain mandamus relief); *Noyola*, 179 Ill. 2d at 133 (setting forth the three case-law elements as a pleading requirement). We, therefore, reject LaBoy’s separation of powers argument on this issue.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 24 Affirmed.