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2017 IL App (3d) 160144-U

Order filed March 30, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

ROSCOE CHAMBERS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellant,)	Whiteside County, Illinois,
)	
v.)	Appeal No. 3-16-0144
)	Circuit No. 15-L-11
TERRY COSTELLO, KRISTOPHER)	
SCHMIDT, STATE OF ILLINOIS,)	
and JOHN L. HAUPTMAN,)	Honorable
)	Gregory G. Chickris,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court lacks jurisdiction because plaintiff's notice of appeal preceded the final order of the trial court.

¶ 2 The *pro se* plaintiff, Roscoe Chambers, filed a complaint against Whiteside County Assistant State's Attorney Terry Costello, Whiteside County Sheriff's Deputy Kristopher Schmidt, and Whiteside County Circuit Court Judge John L. Hauptman alleging claims for false arrest, false imprisonment, malicious prosecution, and a deprivation of his due process rights. On

March 3, 2016, the trial court granted defendants' motions to dismiss all counts of the complaint with prejudice, with the exception of Chambers' malicious prosecution claim against the arresting officer, which was dismissed without prejudice. On March 16, 2016, Chambers appealed from the March 3, 2016, dismissal order. Since the filing of Chambers' notice of appeal, the trial court dismissed the sole remaining claim for malicious prosecution with prejudice in an order dated November 14, 2016.

¶ 3

FACTS

¶ 4

Whiteside County Sheriff's Deputy Schmidt (Schmidt) arrested Roscoe Chambers for various offenses in May 2009. Following this arrest, the State charged Chambers with one count of aggravated driving while under the influence (count I) (625 ILCS 5/11-501(d)(1)(G) (West 2008)), two counts of driving while his license was revoked (counts II and III) (625 ILCS 5/6-303(a) (West 2008)), and one count of obstructing justice (count IV) (720 ILCS 5/31-4(a) (West 2008)). Chambers requested a trial by jury. The jury returned a guilty verdict against Chambers for aggravated driving while under the influence, driving while his license was revoked, and obstructing justice.

¶ 5

On direct appeal, this court reversed all three convictions and remanded the case for a new trial. See *People v. Chambers*, 2011 IL App (3d) 100035-U. Following this court's ruling, for reasons unrelated to probable cause, the Whiteside County State's Attorney dismissed all criminal charges on May 22, 2014.

¶ 6

In 2015, Chambers initiated this lawsuit alleging false arrest, false imprisonment, malicious prosecution, and deprivation of due process. Chambers sought damages for the time he spent in prison, the loss of his vehicle, and other alleged losses.

¶ 7 On December 15, 2015, the Illinois Attorney General filed a motion to dismiss Chambers’ complaint against the trial judge, Judge Hauptman, pursuant to section 2-619.1 of the Code of Civil Procedure (Code) based on judicial immunity. 735 ILCS 5/2-619.1 (West 2014). Shortly thereafter, the other defendants, Schmidt and Costello, filed a joint motion to dismiss the complaint pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2016). Schmidt and Costello asserted the factual allegations of the complaint were insufficient to state a cause of action as a matter of law. 735 ILCS 5/2-615 (West 2016). In addition, both argued Chambers’ claims for false arrest and imprisonment were untimely and barred by the applicable one-year statute of limitations period set forth in section 10/8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (“Illinois Tort Immunity Act”). 745 ILCS 10/8-101(a) (West 2016) and sought dismissal with prejudice under section 2-619(a)(5) of the Code. 735 ILCS 5/2-619(a)(5) (West 2016). Finally, Costello requested a dismissal with prejudice based on absolute prosecutorial immunity under section 2-619(a)(9). 735 ILCS 5/2-619(a)(9) (West 2016).

¶ 8 On March 3, 2016, the trial court issued an order on defendants’ motions to dismiss. The trial court found absolute judicial immunity barred Chambers’ claims against Hauptman, and dismissed those claims with prejudice under section 2-619(a)(9). 735 ILCS 5/2-619(a)(9) (West 2016). Similarly, the trial court found that Costello had absolute prosecutorial immunity and the court found this claim was subject to dismissal with prejudice under section 2-619(a)(9). 735 ILCS 5/2-619(a)(9) (West 2016). The trial court also found that under section 2-615, Chambers failed to plead a claim against Hauptman because the allegations in his complaint were too conclusory. 735 ILCS 5/2-615 (West 2016).

¶ 9 The trial court also found the false arrest and imprisonment claims against Schmidt and Costello were time-barred under the applicable one-year statute of limitations (745 ILCS 10/8-101(a) (West 2016)). The trial court dismissed those claims with prejudice pursuant to section 2-619(a)(5) on March 4, 2016. 735 ILCS 5/2-619(a)(5) (West 2016).

¶ 10 In addition, the court found that Schmidt had probable cause to believe Chambers committed a crime. The court noted that the existence of probable cause is an absolute bar to claims for false arrest, false imprisonment, and malicious prosecution. The court also agreed Chambers failed to plead sufficient facts to demonstrate Schmidt had any malice toward Chambers, and the court dismissed Chambers' malicious prosecution claim against Schmidt *without* prejudice under section 2-615. 735 ILCS 5/2-615 (West 2016).

¶ 11 The court allowed Chambers 30 days to file an amended complaint to replead the malicious prosecution claim against Schmidt. The court ordered that Chambers file an amended complaint by April 1, 2016. Chambers did not file an amended complaint by April 1, 2016. Instead, on March 16, 2016, Chambers filed a notice of appeal with this court.

¶ 12 While the appeal was pending, the trial court granted Schmidt's motion to reconsider the prior dismissal of the malicious prosecution claim against Schmidt without prejudice. Thereafter, the trial court dismissed the malicious prosecution claim against the arresting officer with prejudice in an order dated November 14, 2016. This order indicated the order entered on that date was final and terminated the original lawsuit.

¶ 13 ANALYSIS

¶ 14 On March 4, 2016, the trial court entered an order dismissing all counts of Chambers' complaint with prejudice, with the exception of one count Chambers filed against the arresting officer for malicious prosecution. The trial court also dismissed the malicious prosecution claim

against the arresting officer without prejudice and granted Chambers leave to refile an amended pleading by April 1, 2016. Significantly, the March 4, 2016, order did not contain Rule 304(a) language as required to give rise to this court's jurisdiction. Ill. Sup. Ct. R. 304(a) (eff. Mar. 8, 2016).

¶ 15 Defendants argue the March 16, 2016, notice of appeal was premature because the March 4, 2016, order did not resolve all the issues in this case. On this basis, defendants assert this court lacks jurisdiction to hear Chambers' appeal because the March 16, 2016, notice of appeal was premature. We agree.

¶ 16 A reviewing court must ascertain its jurisdiction before proceeding in a cause of action. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). Generally, appeals can only be taken from final orders disposing of all claims against all parties. *Pekin Insurance Co. v. Phelan*, 343 Ill. App. 3d 1216, 1219 (2003). The trial court's March 4, 2016, order allowed defendant leave to file an amended complaint concerning the malicious prosecution claim against Schmidt and did not provide a final resolution of the last claim against Schmidt.

¶ 17 Unless the trial court's order includes an express finding that there is no just reason to delay the appeal, an order disposing of fewer than all of the claims is not an appealable order. *Id.*; Ill. Sup. Ct. R. 304(a) (eff. Mar. 8, 2016). The March 4, 2016, order did not contain Rule 304(a) language. Even though the trial court eventually dismissed all claims against the various defendants with prejudice by written order on November 14, 2016, Chambers' March 16, 2016, notice of appeal was premature and did not confer jurisdiction on this court.

¶ 18 For sake of completeness, we also address whether the “savings” provision found in Illinois Supreme Court Rule 303(a)(2) resurrects Chambers’ premature notice of appeal in this case. Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015). Rule 303(a)(2) provides, in relevant part:

“When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered. A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a notice of appeal, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, ***”

Id.

¶ 19 In the instant case, there are two reasons why the notice of appeal remains ineffective. First, the postjudgment motion which resulted in the final order was not timely filed and cannot serve a tolling function. Second, Chambers is actually challenging the trial court’s ruling on the postjudgment motion to reconsider and he has not filed the requisite amended notice of appeal following the trial court’s final and appealable decision entered on November 14, 2016. In sum, the requirements of Rule 303(a)(2) have not been met.

¶ 20 For these reasons, we hold that Chambers’ original notice of appeal was premature and Chambers has not filed a timely amended notice of appeal that could confer jurisdiction on this court. Therefore, this appeal must be dismissed.

¶ 21 **CONCLUSION**

¶ 22 We conclude our jurisdiction has not properly attached and the appeal is dismissed.

Appeal dismissed.