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2017 IL App (3d) 160747-U

Order filed June 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

BENNIE K. ELLISON,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellant,)	Knox County, Illinois.
)	
v.)	
)	
S. A. ANITA ALVAREZ, Acting S.A. KIM)	Appeal No. 3-16-0747
FOX, ASAESS POJE, JOYCE,)	Circuit No. 16-MR-97
POPIELEWSKI, COTTER, VOOTA,)	
BENDER, HALL, LANNEAR, ASDOSS,)	
PELLETIER, GOLDBERG, ORENSTEIN,)	
and KAZMIERSKI, JOYCE,)	
)	Honorable Paul L. Mangieri,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by dismissing plaintiff's complaint for *mandamus* for failure to state a cause of action.

¶ 2 In September 2016, plaintiff, Bennie K. Ellison, filed a *pro se mandamus* complaint against defendants, State's Attorney Anita Alvarez (former Cook County State's Attorney), acting State's Attorney Kim Foxx (current Cook County State's Attorney), Asaess Poje, Joyce,

Popielewski, Cotter, Voota, Bender, Hall, Lannear, Asdoss, Pelletier, Goldberg, Orenstein, and Kazmierski, Joyce. The trial court *sua sponte* dismissed his *mandamus* complaint for failure to state a cause of action. He appealed. We affirm.

¶ 3

FACTS

¶ 4

Ellison is an inmate incarcerated by the Illinois Department of Corrections (DOC) at Hill Correctional Center. In September 2016, he filed a *pro se mandamus* complaint that included a “demand [for] jury trial,” a “civil tort suit” and a “civil legal serv[ice] provider.” He sought an order from the trial court commanding defendants “to vacate fraudulent judgments [and] orders.” In particular, he asserted, in part, that defendants:

“refused ministerial duties pursuant to [the Illinois Constitution] in which the State officers knowingly facili[t]ated treason against administration rules, procedures, local rules, supreme c[ou]rt rules, fraud scheme, false imprisoning by inaccurate information, concealment of public records, wrongful convictions of actual innocence [and] refused to correct prior actions to vacate fraudulent judgments [and] orders, whereas Cook County court lacked jurisdiction.”

In addition, he sought \$15,000,000 in “compensation damages” and \$8,000,000 in “punitive damages,” to be paid in monthly installments of \$1,000,000. He also requested that \$15,000 be wire transferred to his DOC trust fund account.

¶ 5

In October 2016, the Knox County circuit court *sua sponte* dismissed plaintiff’s complaint, finding that it failed to state a cause of action. Specifically, the court noted plaintiff’s complaint:

“though primarily couched as a petition for mandamus, is in actuality a conglomerate of asserted causes of action citing primarily the mandamus statute, 735 ILCS 5/14-101, with a request for relief from judgment pursuant to 735 ILCS 5/2-1401, including a demand for jury trial, with a claim of ‘civil tort suit’, a request for ‘civil legal service provider’, and a prayer for relief which seeks [money damages].”

¶ 6 In November 2016, Ellison filed a “motion for *sua sponte* rehearing pursuant to S[upreme] C[ourt] Rule 367 w/ vacate 10-18-16 erroneous judgment & order,” which the trial court denied.

¶ 7 This appeal followed.

¶ 8 ANALYSIS

¶ 9 The issue on appeal is whether the trial court erred when it dismissed Ellison’s *mandamus* complaint for failing to state a cause of action.

¶ 10 “*Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion.” *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001). In a complaint for *mandamus*, the plaintiff must set forth every material fact needed to demonstrate (1) a clear, affirmative right to relief, (2) a clear duty of the official to act, and (3) clear authority in the official to comply with the writ. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555 (2002). We review *de novo* the trial court’s *sua sponte* dismissal of a complaint for *mandamus*. *Dupree v. Patchett*, 361 Ill. App. 3d 789, 789 (2005).

¶ 11 Initially, we note that Ellison’s brief on appeal, like his complaint for *mandamus*, is difficult to follow as it is encumbered by a plethora of different causes of action, including allegations which were not included in his *mandamus* complaint. For example, under a section in his brief titled “Argument & Demand Jury Trial,” he asserts he “has suffered irreparable injuries blurred [and] loss of vision, punched by inmates, dislocated right shoulder by excessive force and 21 aggravated assaulting incidents w[ith] denied medical treatment for fractured right hand, thumb [and] wrist incident *** orchestrated and facilitated by [defendants].” This contention, like many others in his brief, was not included in his complaint for *mandamus* and is not properly before this court.

¶ 12 Relevant to this appeal, Ellison essentially argues that his *mandamus* complaint was sufficient to state a cause of action where he asserted that defendants “refused to perform [their] public and ministerial duties” by failing to vacate his convictions in Cook County case Nos. 09-CR-6863, 09-CR-6542, and 10-CR-5208, when the Cook County circuit court allegedly lacked jurisdiction to prosecute him for those offenses. We disagree.

¶ 13 Based on our review of Ellison’s complaint for *mandamus*, we find that he failed to allege sufficient facts to support his *mandamus* action. In particular, we note that nowhere in his complaint does he demonstrate that Cook County lacked jurisdiction to convict him of the offenses charged in the aforementioned cases. Further, none of his other claims—if they can be characterized as such—state a viable cause of action. Instead, Ellison’s complaint is speckled with conclusory statements that fail to demonstrate a clear, affirmative right to relief. Accordingly, the trial court did not err in dismissing Ellison’s *mandamus* complaint for failure to state a cause of action.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Knox County.

¶ 16 Affirmed.