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2017 IL App (3d) 170274-U

Order filed November 15, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

CHARLES W. POLLOCK, JR.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellant,)	Knox County, Illinois,
)	
v.)	Appeal No. 3-17-0274
)	Circuit No. 17-SC-18
THE KNOX COUNTY SHERIFF,)	
GALESBURG, ILLINOIS, and)	
DETECTIVE CARL KRAEMER,)	Honorable
)	Scott Shiplett,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Plaintiff forfeited any argument that the trial court erred by dismissing his complaint with prejudice based on the doctrine of collateral estoppel. Even if plaintiff did not forfeit this issue, the trial court properly concluded that the doctrine of collateral estoppel barred plaintiff's claim.
- ¶ 2 Plaintiff, Charles W. Pollock Jr., filed a complaint of negligence and gross negligence alleging that Carl Kraemer, a detective for the Knox County Sheriff's department, "deliberately misrepresented and omitted facts that vitiate" two search warrants Kraemer obtained and

executed. The complaint also alleged Kraemer improperly photographed vehicles during the search. The trial court granted the motion to dismiss of defendants, the Knox County Sheriff's Department and Kraemer. We affirm.

¶ 3

FACTS

¶ 4

Defendants moved to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). Defendants asserted plaintiff's claim was barred by the doctrine of collateral estoppel because plaintiff previously contested the validity of the search warrants in federal court during plaintiff's criminal prosecution. Therefore, defendants argued plaintiff's complaint should be dismissed because the propriety of the search warrant was already litigated. Alternatively, defendants argued plaintiff's complaint should be dismissed because it was barred by the statute of limitations.

¶ 5

Attached to defendants' motion to dismiss is the docket sheet from plaintiff's criminal prosecution in federal court. The docket sheet shows plaintiff filed motions to suppress the search warrants obtained by Kraemer—including the photographs plaintiff took issue with in his civil complaint. The docket sheet shows plaintiff's motions to suppress were denied and the search warrants were found valid. The cause proceeded to trial and plaintiff was found guilty of three felony offenses. Plaintiff appealed the judgment, and his convictions and sentences were affirmed. See *United States v. Pollock*, 757 F.3d 582 (2014).

¶ 6

Plaintiff filed a response to defendants' motion to dismiss his complaint, and the trial court held a hearing. After the hearing, the trial court found plaintiff's claim was barred by the doctrine of collateral estoppel and the statute of limitations and dismissed the complaint with prejudice.

¶ 7

ANALYSIS

¶ 8

On appeal, plaintiff argues the trial court erred by dismissing his complaint. Although the trial court relied on two grounds when dismissing plaintiff's complaint (statute of limitations and collateral estoppel), plaintiff only challenges the finding that the statute of limitations bars his claim. Significantly, plaintiff's brief on appeal fails to address the trial court's determination that his complaint is also barred by the doctrine of collateral estoppel. When a party on appeal fails to explain why the trial court erred by dismissing a claim, the party forfeits the argument concerning the propriety of the claim's dismissal. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017); see also *Del Real v. Northeast Illinois Regional Commuter R.R. Corp.*, 404 Ill. App. 3d 65, 71, 74 (2010). Consequently, plaintiff has forfeited any argument on the issue of collateral estoppel. On plaintiff's forfeiture alone, we affirm the trial court's dismissal of plaintiff's complaint.

¶ 9

However, even if we were to excuse plaintiff's forfeiture, we would find the trial court correctly found plaintiff's complaint was barred by the doctrine of collateral estoppel. The doctrine of collateral estoppel "bars relitigation of an issue already decided in the same case." *People v. Tenner*, 206 Ill. 2d 381, 395 (2002). Collateral estoppel applies where: "(1) the issue decided in the prior proceeding must be identical to the one in the current suit; (2) the prior adjudication must have been a final judgment on the merits; and (3) the party against whom the estoppel is asserted must have been a party to, or must be in privity with a party to, the prior adjudication." *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 77. The parties seeking to invoke the doctrine—in this case, defendants—have the burden of meeting the three requirements. *People v. Jones*, 207 Ill. 2d 122, 139 (2003). Defendants have satisfied all three requirements of collateral estoppel.

¶ 10 As to the first requirement (identical issues), the legal and factual determinations made in the criminal proceedings are identical to those presented in the current negligence suit. In the criminal proceedings, the trial court considered the validity of the search warrants obtained and executed by Kraemer. In upholding the search warrants, the trial court considered—and rejected—plaintiff’s claim that Kraemer made misrepresentations and omissions of fact when obtaining the search warrants. In addition, the trial court rejected plaintiff’s argument that Kraemer wrongfully photographed vehicles while executing the search warrant.

¶ 11 Likewise, plaintiff’s present complaint for negligence is based on the allegation that Kraemer obtained the search warrants by misrepresentation and omission of facts. Plaintiff also alleged Kraemer wrongfully photographed the vehicles while executing the search warrant. While plaintiff claims his civil action involves additional evidence he failed to present in the criminal proceedings, the factual and legal question of whether Kraemer obtained the search warrants by misrepresentation and omission of facts were decided in the criminal proceedings. Plaintiff’s present civil action is merely an attempt to relitigate the validity of the search warrants, which was already fully litigated in the prior criminal proceedings.

¶ 12 We also conclude the second and third requirements of collateral estoppel are satisfied. As to the second requirement (a finality of judgment in the prior proceedings), the trial court in the criminal proceedings denied plaintiff’s motions to suppress, the cause went to trial and plaintiff was convicted. His convictions and sentences were upheld on appeal. Therefore, there is a final judgment in the prior criminal proceedings. The third requirement (privity) is satisfied because plaintiff was the party prosecuted in the criminal proceedings.

¶ 13

CONCLUSION

¶ 14

Plaintiff has forfeited any argument that the trial court erred by dismissing his complaint on the grounds of collateral estoppel. Even if we were to excuse plaintiff's forfeiture, defendants have satisfied all three collateral estoppel requirements. We offer no opinion on the alternative dismissal ground—statute of limitations. See *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (noting a court of review can affirm the circuit court's judgment on any basis contained in the record). The judgment of the trial court of Knox County is affirmed.

¶ 15

Affirmed.