

NOTICE

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FILED

April 19, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160380-U
NO. 4-16-0380

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

WALTER J. BRZOWSKI,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
PRISONER REVIEW BOARD and THOMAS)	No. 15MR89
SPILLER,)	
Defendants-Appellees.)	Honorable
)	Chris Perrin,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in dismissing, under section 2-619(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(3) (West 2014)), plaintiff’s petition for *habeas corpus* relief after concluding a separate action was pending between the same parties for the same cause.
- ¶ 2 In February 2015, plaintiff, Walter J. Brzowski, filed a petition for *habeas corpus* relief. Plaintiff was returned to prison after the Prisoner Review Board (Board) found he violated the terms of his mandatory supervised release (MSR) when a weapon was found in his place of residence. After the weapon was found, the State charged plaintiff with a violation of his parole and unlawful use of a weapon. Plaintiff was acquitted of the criminal charges. Because of this acquittal, plaintiff contends he should be released from prison on the parole violation.
- ¶ 3 Defendants moved to dismiss plaintiff’s petition under section 2-619(a)(3) of the

Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619(a)(3) (West 2014)). Defendants argued the *habeas corpus* petition presented the same cause between the same parties as the pending legal action plaintiff filed in January 5, 2015: Sangamon County circuit court case No. 15-MR-6.

¶ 4 In April 2016, the trial court agreed with defendants and dismissed the *habeas corpus* petition. Plaintiff appeals *pro se*, arguing the dismissal is improper as he is asserting different legal issues and arguments not presented in case No. 15-MR-6. We affirm.

¶ 5 I. BACKGROUND

¶ 6 Beginning in April 2007 and continuing over a number of years, the Will County circuit court entered multiple orders of protection mandating plaintiff avoid contact with his ex-wife and two minor sons. *People v. Brzowski*, 2015 IL App (3d) 120376, ¶¶ 3-5, 32 N.E.3d 1152. In September 2010, the State charged plaintiff with two felony counts of violating the applicable protective order. *Id.* ¶ 6. In December 2010, the State charged plaintiff with two additional felony counts of unlawful violation of an order of protection. *Id.* ¶ 7. Separate trials were held on the September 2010 and December 2010 charges. *Id.* ¶ 8. Plaintiff was convicted on all charges. *Id.* ¶¶ 14, 20.

¶ 7 In May 2012, plaintiff was sentenced on the September 2010 charges to concurrent one-year prison terms and four-year MSR terms. One month later, the court sentenced defendant on the December 2010 charges to a three-year prison term and a four-year MSR term, to be served concurrently. In September 2013, plaintiff was released from prison to serve his MSR term at his mother's house in Chicago, Illinois.

¶ 8 In October 2013, during a home visit by agents of the Illinois Department of

Corrections, a .22-caliber rifle was found in a bag in a bedroom. The agents called the Chicago police department, who arrested plaintiff for violating conditions of his MSR.

¶ 9 In April 2014, after a hearing on the alleged MSR violations, the Board revoked plaintiff's release on MSR. The Board based its decision on a number of findings, including the fact plaintiff had been "placed on GPS and failed to comply with approved movement," and he unlawfully possessed a weapon. Plaintiff challenged the Board's findings by filing grievances.

¶ 10 In February 2015, plaintiff filed a "Petition for Habeas Corpus Release" against defendants. Plaintiff asserted he was "serving four year[s'] MSR parole time in custody" after the commission " 'Unlawful Use of a Weapon,' Cook County case #13 CR-2121301." Plaintiff asserted, in October 2014, he was acquitted of the unlawful-use-of-a-weapon charge. Plaintiff argued he was being unlawfully held because the acquittal of the weapon offense—the offense that triggered the alleged parole violation—meant he "should be restored of [his] parole." Plaintiff further argued the parole agents acted beyond their authority and violated his right to due process.

¶ 11 In May 2015, defendants moved to dismiss plaintiff's petition. Defendants argued plaintiff's petition should be dismissed under section 2-619(a)(3) of the Procedure Code (735 ILCS 5/2-619(a)(3) (West 2014)), as another action was pending between the same parties for the same cause. Defendants pointed to the "mandamus petition" plaintiff filed in the Sangamon County circuit court (*Brzowski v. Prisoner Review Board, et al.*, No. 15-MR-6 (filed Jan. 5, 2015)). According to defendants, plaintiff's mandamus petition was filed against the Board and contained substantially similar allegations.

¶ 12 In the time between the filing of the *habeas corpus* petition and the hearing on the

State’s motion to dismiss, a number of proceedings and filings occurred. Notably, the Third District Appellate Court reversed plaintiff’s convictions on the September 2010 and December 2010 charges (*People v. Brzowski*, 2015 IL App (3d) 120376, ¶ 57, 32 N.E.3d 1152). Plaintiff later entered a negotiated plea deal, pleading guilty to one of the September 2010 charges. He was resentenced to a three-year prison term, followed by a four-year MSR term.

¶ 13 In April 2016, the trial court entered a docket order granting defendants’ motion to dismiss. The court, citing case No. 15-MR-6, reasoned another action was pending between the same parties involving the same occurrence.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Section 2-619(a)(3) was enacted for the purpose of avoiding duplicative litigation. See *Estate of Hoch v. Hoch*, 382 Ill. App. 3d 866, 869, 892 N.E.2d 30, 33 (2008). The section authorizes the dismissal of an action on the ground “another action [is] pending between the same parties for the same cause.” 735 ILCS 5/2-619(a)(3) (West 2014). The “same parties” requirement of section 2-619(a)(3) is met even when litigants differ in number or name, so long as the interests of the litigants are sufficiently similar. *Hoch*, 382 Ill. App. 3d at 869, 892 N.E.2d at 34. The “same cause” requirement is satisfied so long as the relief requested is based on substantially the same facts. *Id.* The decision whether to grant a dismissal under section 2-619(a)(3) lies within the trial court’s discretion. See *id.* at 869, 892 N.E.2d at 33. We will not overturn a section 2-619(a)(3) dismissal absent an abuse of discretion. *Id.* at 869, 892 N.e.2d at 33-34.

¶ 17 Plaintiff contends the trial court erroneously dismissed his *habeas* petition as, in

this petition, “he was bringing forth under ‘similar’ non-raised legal issues that were not argued within either the Will County [case] or the developed *mandamus* Sangamon County civil case.” Plaintiff contends the trial court’s dismissal will leave the arguments raised in his *habeas* petition unresolved, leaving him “in constitutional peril.” Plaintiff further cites “numerous unconstitutional injustices” occurring since his September 2010 imprisonment.

¶ 18 Plaintiff’s argument is unconvincing. The question of whether cases are the same cause does not turn on the legal theories or issues presented but on whether the two cases “arise out of the same transaction or occurrence.” *Jackson v. Callan Publishing, Inc.*, 356 Ill. App. 3d 326, 337, 826 N.E.2d 413, 425 (2005) (“[T]he crucial inquiry is whether both arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof, or relief sought materially differs between the two actions.”). Here, the record supports the trial court’s conclusion case No. 15-MR-6 and plaintiff’s *habeas corpus* case arise from the same occurrence. Both cases arise from the following facts plaintiff asserts in both petitions: (1) plaintiff was imprisoned due to a violation of his MSR terms, the possession of a weapon; (2) he was found not guilty of the criminal charge, unlawful use of a weapon, which was based on the same facts that led to the revocation of his parole and his imprisonment; and (3) parole agents overstepped their authority in conducting a compliance check on his parole site on October 1, 2013. While some variances in facts exist, the facts key to both claims plaintiff should no longer be imprisoned are substantially the same.

¶ 19 The trial court did not abuse its discretion in dismissing plaintiff’s petition.

¶ 20 III. CONCLUSION

¶ 21 We affirm the trial court’s judgment.

¶ 22

Affirmed.