2019 IL App (3d) 170618-U

Order filed May 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

CALVIN L. MERRITTE,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	La Salle County, Illinois
	)	
v.	)	
	)	Appeal No. 3-17-0618
LA SALLE COUNTY STATE'S	)	Circuit No. 17-MR-170
ATTORNEY'S OFFICE, BRIAN J. TOWNE	)	
and TODD MARTIN,	)	Honorable
	)	Eugene P. Daugherity
Defendants-Appellees.	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err when it dismissed plaintiff's complaint for failure to state a claim where issues were *res judicata*, failed to grant plaintiff's motion for default judgment and rejected plaintiff's equitable estoppel assertions.

¶ 2 Plaintiff Calvin Merritte filed a petition for *mandamus* in the Will County trial court, asking the court to order defendants La Salle County State's Attorney's Office, former State's Attorney Brian Towne and former Assistant State's Attorney Todd Martin, to disclose various evidence and refrain from continuing to oppose Merritte's efforts to overturn his conviction. The

State filed a motion to dismiss, which the trial court heard and granted. Merritte appealed. We affirm.

¶ 3 FACTS

¶ 4 In February 2016, plaintiff Calvin Merritte filed a petition for *mandamus* seeking the court order defendants La Salle County State's Attorney's Office, former State's Attorney Brian Towne and former Assistant State's Attorney Todd Martin to perform certain ministerial duties. Towne and Martin are no longer employed in the La Salle County State's Attorney's Office and the current state's attorney, Karen Donnelly, replaced them as defendants. In his petition, Merritte argued that the State's Attorney's Office failed to perform specific duties required of it and violated his rights to access to the courts, to discovery in his criminal case, and to all exculpatory evidence material to his innocence in his criminal drug conspiracy case and concerning an incident in the La Salle County jail where Merritte was involved in a physical altercation with a jailor, John Knepper. Merritte argues in his *mandamus* petition that he has a right to the evidence, the State has a nondiscretionary duty to disclose it and he will suffer irreparable damages if his *mandamus* request is not granted.

¶ 5 The trial court continued the case in March 2016 for proof of service. Summons were issued in April 2016 and returned unserved in June 2016. A certified mailing card apparently addressed to the State's Attorney's Office was also returned "signed for by Ashley Foreman." In August 2016, Merritte filed a motion for summonses to issue. In September 2016, a status hearing was held regarding service and the cause was again continued for status on service. On September 28, 2016, Merritte filed motions for default and *forum non conveniens*. On October 26, 2016, summonses were issued and they were served on Towne, Martin and the State's Attorney's Office on November 10, 2016. Affidavits of service were filed on November 22,

2016. A hearing took place on December 22, 2016, for a status on service, which indicated the summonses were returned served. The trial court continued the cause for the State to file its answer.

¶ 6 On January 13, 2017, Merritte moved for a default judgment. On February 23, 2017, a status hearing took place on the State's answer on Merritte's motion for default. The motion for default was taken under advisement and the cause continued. On March 9, 2017, Donnelly filed her appearance for the State and moved to dismiss the petition and to transfer venue to La Salle County. The trial court granted the motion to transfer in May. The La Salle County trial court heard the State's motion to dismiss and granted it, finding that the issues Merritte raised in his petition had already been raised were *res judicata* as they were decided in prior proceedings. Merritte filed a motion to reconsider, which the court heard and denied. Merritt appealed.

¶ 7 ANALYSIS

¶ 8 Merritte raises three issues on appeal: whether the trial court erred when it granted the State's motion to dismiss his *mandamus* petition and when it denied his motion for a default judgment; and whether the State should be equitably estopped from arguing that his claims were barred. He argues dismissal was not warranted where his claims were not fully litigated in any other proceedings; the court relied on additional facts not previously before the court; and the circumstances require that waiver should be relaxed.

¶ 9 A section 2-615 motion to dismiss asserts that the complaint fails to state a cause of action on which relief may be granted. 735 ILCS 5/2-615 (West 2016). A section 2-615 motion challenges the sufficiency of a complaint. *Jones v. Brown-Marino*, 2017 IL App (1st) 152852, ¶ 19. All well-pleaded facts in the petition must be taken as true and any inferences should be in favor of the nonmovant. *Id.* A plaintiff is not required to prove his case at this stage in the

proceedings; he must only allege facts sufficient to sustain all the elements necessary for his cause of action. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007) (citing *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 123 (1986)). Dismissal should be granted only where it is apparent no facts exist that would entitle the plaintiff to relief. *BMO Harris Bank, N.A. v. Porter*, 2018 IL App (1st) 171308, ¶ 45. We review the trial court's grant of a section 2-615 motion to dismiss *de novo*. *Id.* ¶ 47.

¶ 10 *Res judicata* is a doctrine providing that "a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). Issues barred under *res judicata* include those that were actually decided in the prior action and also issues that could have been determined. *Id.* at 334-35. There are three requirements for *res judicata* to apply: (1) a final judgment on the merits entered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) identical parties or privies. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). We review *de novo* whether *res judicata* bars a claim. *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 22.

¶ 11 *Mandamus* is an extraordinary remedy used to direct a public official or public body to perform a ministerial task not involving judgment or discretion. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301 (2003). A plaintiff seeking *mandamus* must establish a clear right to the requested relief, a clear duty of the public official to act and a clear authority in the official to comply with the requested relief. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555 (2002).

¶ 12 Merritte's *mandamus* petition requests the State turn over discovery from his drug conspiracy trial; evidence concerning witness inducements; statements of witnesses claiming ownership of the drugs; information regarding a suggestive identification of a co-conspirator;

other witness statements, reports, documents and evidence; information concerning a witness's Bureau County arrest; a video of the witness having sexual intercourse with another conspirator; the medical and disciplinary records of Knepper, the La Salle County corrections officer with whom Merritte had a physical alteration; a video of the altercation; and information regarding misconduct of other officers involved in the drug conspiracy investigation. He sought the court to order the disclosure of the requested information and to order the State's Attorney's Office to refrain from opposing or challenging his claims regarding the jail incident.

¶ 13 The trial court dismissed Merritte's *mandamus* petition on the basis of *res judicata*, finding the issues raised in the petition had been fully litigated in prior proceedings. We agree. Merritte sought information regarding the incident at the jail with Knepper in his previous Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2016)) requests, including a specific request for the videotape. See *Merritte v. Templeton*, 2015 IL App (3d) 140014-U; *Merritte v. Templeton*, 2017 IL App (3d) 160073-U. The jail incident and trial issues were also raised in *People v. Merritte*, 2016 IL App (3d) 150677-U. In other pleadings, complaints and appeals filed by Merritte, he challenged aspects of his trial for drug conspiracy and the State's handling of evidence he characterizes as discoverable. The proceedings against Merritte resulted in final judgments against him. The cases had the same cause of action as Merritte raises in this appeal and were directed against the same defendants, that is, the La Salle County State's Attorney's Office and its employees. See *People v. Merritte*, 2013 IL App (3d) 110640-U; *People v. Merritte*, 2016 IL App (3d) 140314-U.

¶ 14 Merritte asserts that he has demonstrated a clear right to relief. He relies on Illinois Supreme Court Rules 412 (eff. March 1, 2001) and 415 (eff. Oct. 1, 1971) to support his claim that he is entitled to the information he seeks to obtain through *mandamus*. Neither discovery

rule applies here. Both rules concern discovery and provide that the duties required under the discovery rules continue throughout and until the end of the trial. See Ill. S. Ct. R. 412(a) (eff. March 1, 2001); R. 415(b) (eff. Oct. 1, 1971); *People v. Hendricks*, 325 Ill. App. 3d 1097, 1103 (2001) (discussing continuing duty to supplement discovery during trial). The disclosure obligations cease when the trial ends. Merritte was found guilty in a bench trial in 2008 and the State's duty to provide continuing discovery ceased at that time. Merritte has litigated or had the opportunity to litigate the same claims against the same defendant as he raises here and his claims are barred by *res judicata*. Because he cannot establish that he has a clear right to the requested relief, we find he cannot sustain his petition for *mandamus*.

¶ 15 The next issue we address is whether the trial court erred when it failed to grant Merritte a default judgment. He argues that the State's Attorney's Office failed to appear or file a pleading in response to his *mandamus* petition.

¶ 16 In a *mandamus* action, the defendant must answer or otherwise plead on or before the return date on the summons. 735 ILCS 5/14-103 (West 2016). The decision whether to grant a default judgment is discretionary with the trial court. *Id*. The trial court may enter a default judgment for want of an appearance or a failure to plead. 735 ILCS 5/2-1301(d) (West 2016). In deciding whether to grant or deny a default judgment, the overriding consideration is "whether substantial justice is being done" between the parties and whether it is reasonable under the facts to compel the parties to trial. *Walker v. Monreal*, 2017 IL App (3d) 150055, ¶ 28. We review a trial court's decision on whether to deny a motion for default for an abuse of discretion. *Id*.

¶ 17 The summonses here were 30-day summonses and were served on November 10, 2016. Accordingly, the State's Attorney's Office was required to answer or otherwise plead by December 10, 2016. Donnelly did not enter her appearance and motions to dismiss and transfer

venue until March 9, 2017. Thus, the State's Attorney's Office defaulted by failing to timely appear or answer. Nevertheless, the default does not automatically entitle Merritte to judgment in his favor. The overriding consideration is whether a default judgment would do substantial justice between the parties. As discussed above, Merritte's complaint failed to state a cause of action on which relief could be granted. Accordingly, issuing a default judgment against the State would serve to deny substantial justice to it, which would be faced with a default judgment against it for a complaint that failed to present a cause of action. See *Walker*, 2017 IL App (3d) 150055, ¶ 29 (default for defendant appropriate where petition for *mandamus* failed to state a cause of action).

¶ 18 The trial court took Merritte's motion for default under advisement, which indicates it considered Merritte's arguments even if the court did not rule on the motion. The trial court's grant of the State's motion to dismiss negated the court's need to determine whether a default judgment was appropriate. We find the trial court did not err when it failed to grant Merritte a default judgment for the State's failure to timely appear in response to his petition for *mandamus*.

¶ 19 The last issue for our consideration is whether the State should be equitably estopped from arguing that Merritte's claims are barred. Merritte asserts that the State mispresented or concealed facts, knowing the misrepresentations were not true, and that he relied on the misrepresentations or concealed facts to his detriment.

¶ 20 " 'Equitable estoppel is typically invoked "where a person by his or her statements and conduct leads a party to do something that the party would not have done but for such statements and conduct." ' " *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 949 (2010) (quoting *Trossman v. Philipsborn*, 373 Ill. App. 3d 1020, 1040 (2007)). To establish equitable estoppel, a party must

demonstrate (1) the other person misrepresented or concealed material facts; (2) knowing that when the misrepresentations were made they were untrue, (3) the party claiming estoppel did not know the misrepresentations were untrue when they were made and when the party acted on them; (4) the party making the misrepresentation intended or reasonably expected the other party would act on the misrepresentations; (5) the other party reasonably relied on the misrepresentations in good faith and to his detriment; and (6) that party would be prejudiced by his or her reliance on the misrepresentations. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001). The party claiming estoppel bears the burden of proving it by "clear and unequivocal evidence." *Id*. at 314. We review a trial court's determination regarding equitable estoppel for an abuse of discretion. *Cosgrove Distributors, Inc. v. Haff*, 343 Ill. App. 3d 426, 430 (2003).

¶ 21 Merritte has not demonstrated by clear and convincing evidence that the State should be barred from maintaining that his claims are *res judicata*. He does not provide any facts that were misrepresented or that the State failed to disclose. He speculates that the State had certain evidence that it improperly withheld from him and he relied on the lack of disclosure to his detriment, which resulted in an unfair trial. Merritte maintains that his well-plead allegations must be accepted as true at the pleading stage. See *Krozel v. Court of Claims*, 2017 IL App (1st) 162068, ¶ 13. Illinois is a fact-pleading jurisdiction, which required Merritte to allege facts and not mere conclusions to establish a claim. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). We find Merritte failed to plead facts sufficient to establish equitable estoppel.

¶ 22 We find the trial court did not err in granting the State's motion to dismiss. Merritte's claims were barred by *res judicata*. The trial court did not err in failing to grant Merritte's

motion for default. Merritte cannot sustain an equitable estoppel claim to prevent the State from asserting his claims were barred.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 25 Affirmed.