2019 IL App (3d) 180066-U

Order filed August 8, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

CHARLES BOCOCK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-18-0066
	)	Circuit No. 17-MR-1702
	)	
WILL COUNTY STATE'S ATTORNEY,	)	The Honorable
	)	Arkadiusz Z. Smigielski,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a mandamus action, the appellate court found that the trial court properly granted the defendant's motion to dismiss the plaintiff's mandamus complaint because the plaintiff did not, and could not, allege sufficient facts to establish that he was entitled to mandamus relief. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Plaintiff, Charles Bocock, filed a petition for writ of mandamus (complaint) in the trial court seeking to compel defendant, the Will County State's Attorney (State's Attorney), to file

criminal charges against one of the local chiefs of police.[1] The State's Attorney filed a motion to dismiss the complaint, which the trial court granted. Bocock appeals. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 While Bocock was an inmate in the Will County jail, he filed a *pro se* complaint for mandamus relief, seeking to compel the State's Attorney to file criminal charges against the chief of police of Plainfield, Illinois, for allegedly failing to post a notice of rights poster at the police station as required by section 103-7 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-7 (West 2012)) and a certain administrative regulation. Bocock stated in the complaint that he was subjected to a custodial interrogation at the Plainfield police station on June 10, 2013; that he had filed a motion to suppress the statement he had made during that interrogation; and that as part of the motion proceedings, the State's Attorney had either stipulated or offered to stipulate that Plainfield Police Detective Dino Dabezic would testify that a notice of rights poster was not posted at the police station, in violation of Illinois law. Bocock also alleged that at a hearing on the motion to suppress, the State's Attorney argued that suppression was not warranted because the statute already contained a remedy for a violation of section 103-7 in that section 103-8 of the Code (725 ILCS 5/103-8 (West 2012)) provided that any officer who intentionally failed to perform any act required by the statute was guilty of official misconduct.

¶ 5 The State's Attorney filed a combined motion to dismiss the complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619, 2-619.1

[1] It would appear that the petition in this case is more properly referred to as a complaint for mandamus relief. See 735 ILCS 5/2-1501 (West 2016) (abolishing writs); 735 ILCS 5/14-102 (West 2016) (referring to the filing of a complaint for mandamus); *Turner-El v. West*, 349 Ill. App. 3d 475, 477 (2004); *People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 181 n.1 (1999).

(West 2016)). The State's Attorney alleged in the motion that dismissal was warranted because Bocock had failed to plead sufficient facts that would entitle him to mandamus relief and because the decision of whether to file criminal charges was a discretionary decision to be made solely by the State's Attorney. After considering the matter, the trial court granted the State's Attorney's motion to dismiss without specifying in the written order the particular grounds upon which dismissal was granted.[2] Bocock appealed.

¶ 6 ANALYSIS

¶ 7 On appeal, Bocock argues that the trial court erred in granting the State's Attorney's motion to dismiss Bocock's mandamus complaint. Bocock asserts that the motion to dismiss should not have been granted because: (1) his complaint was sufficient to state a claim for mandamus relief; and (2) prosecution of the chief of police, although normally discretionary, was mandatory pursuant to section 103-8 of the Code, which provides that any police officer who intentionally fails to perform any act required of him by this Article "shall" be guilty of official misconduct (see 725 ILCS 5/103-8 (West 2012)). For those reasons, Bocock asks that we reverse the trial court's judgment and that we remand this case to the trial court with directions to enter an order granting Bocock's complaint for mandamus relief. The State's Attorney disagrees with Bocock's assertions and argues that the trial court's ruling was proper and should be affirmed.

¶ 8 Although the trial court in its written order in this case did not state the specific grounds upon which it granted dismissal, we will address only whether dismissal was proper under section 2-615 of the Code of Civil Procedure since it appears from the record that the State's

[2] The record on appeal does not contain a court reporter's transcript, bystander's report, or an agreed statement of facts as to the trial court's ruling on the State's Attorney's motion to dismiss. The only records of the ruling on the motion that has been made part of the record on appeal are the trial court's docket entry and the trial court's written order.

Attorney's motion to dismiss was more in the nature of a section 2-615 motion, rather than a combined motion,[3] and since we may affirm the trial court's ruling on any basis supported by the record (see *Beckman v. Freeman United Coal Mining Co.*, 123 Ill. 2d 281, 286 (1988)). A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects that are apparent on the face of the complaint. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007). In determining whether a complaint is legally sufficient, a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* The crucial inquiry in ruling upon a section 2-615 motion to dismiss is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group, Inc.*, 186 Ill. 2d 419, 424 (1999). A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Heastie*, 226 Ill. 2d at 531. In reviewing a trial court's ruling on a section 2-615 motion to dismiss, the appellate court applies a *de novo* standard of review. *Id.* at 530-31. When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43.

¶ 9 The instant case involves a complaint for mandamus. Mandamus relief is an extraordinary remedy that is used to compel a public officer or body to perform a nondiscretionary (mandatory) official duty. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain mandamus relief, the plaintiff must establish three elements: (1) that the plaintiff

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[3] Even in the section 2-619 portion of the State's Attorney's combined motion to dismiss, the State's Attorney asserted that dismissal was appropriate because the mandamus complaint was "substantially insufficient in law."

has a clear right to the relief requested; (2) that the public officer has a clear duty to act; and (3) that the public officer has clear authority to comply with an order granting mandamus relief. *Id.* As the elements indicate, mandamus may not be used to compel a public officer to perform an act that involves the exercise of the public officer's discretion. See *id.* Despite the extraordinary nature of mandamus relief, mandamus proceedings are governed by the same pleading rules that apply to other actions. See *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997). To survive a section 2-615 motion to dismiss, a plaintiff who seeks mandamus relief must allege in the complaint sufficient facts to establish the above three elements. *Id.*

¶ 10 After reviewing the complaint in the present case, we find that Bocock failed to plead sufficient facts to establish, among other things, that the State's Attorney had a clear duty to prosecute the alleged violation of section 103-7 of the Code. Contrary to Bocock's representations in his mandamus complaint and in his brief on appeal and despite the word "shall" in the statute in question (section 103-8), the case law clearly establishes that the State's Attorney's duty to prosecute a criminal offense is discretionary in nature. See, *e.g.*, *People v. Pankey*, 94 Ill. 2d 12, 16 (1983) (stating that "[t]he decision whether to initiate any criminal prosecution at all as well as to choose which of several charges shall be brought are functions within the exclusive discretion of the State's Attorney"); *People v. Flanagan*, 201 Ill. App. 3d 1071, 1076 (1990) (indicating that "[t]he filing of criminal charges is a discretionary matter resting within the exclusive jurisdiction of the prosecution"). Thus, Bocock's mandamus complaint did not, and could not, establish that the State's Attorney had a clear duty to act to prosecute Bocock's claim of the alleged violation of section 103-7 of the Code. The trial court, therefore, properly granted the State's Attorney's motion to dismiss Bocock's mandamus

complaint pursuant to section 2-615 of the Code of Civil Procedure. See *McFatridge*, 2013 IL 113676, ¶ 17.

¶ 11 CONCLUSION

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 13 Affirmed.