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2019 IL App (3d) 180178-U

Order filed April 1, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

ERIC LITWIN,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	La Salle County, Illinois,
)	
v.)	Appeal No. 3-18-0178
)	Circuit No. 17-L-32
COUNTY OF LA SALLE; VILLAGE OF)	
UTICA and VILLAGE OF NORTH UTICA,)	Honorable
)	Eugene P. Daugherty,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court improperly dismissed plaintiff's complaint with prejudice pursuant to section 2-619.1 as untimely and for failure to state a claim upon which relief can be granted without providing plaintiff an opportunity to file an amended complaint.

¶ 2 Following the reversal of a criminal conviction, Eric Litwin (plaintiff) filed a *pro se* complaint against several public entities pertaining to his arrest and subsequent prosecution. The trial court dismissed plaintiff's original complaint with prejudice as untimely filed, *inter alia*. Plaintiff appeals.

¶ 3

I. BACKGROUND

¶ 4

After a trial, plaintiff was found guilty of unlawful cannabis trafficking and was sentenced to 12 years of imprisonment. On September 17, 2015, this court reversed plaintiff's conviction in *People v. Litwin*, 2015 IL App (3d) 140429. On January 20, 2016, the Supreme Court denied the State's petition for leave to appeal. Plaintiff's criminal case returned to the trial court where the State dismissed the criminal charges on March 8, 2016.

¶ 5

On February 24, 2017, plaintiff filed a lawsuit against multiple defendants, namely, La Salle County, the Village of Utica, and the Village of North Utica. Count I of plaintiff's complaint was directed against La Salle County and alleged that as a result of conduct by law enforcement from La Salle County, plaintiff was unjustly incarcerated for 20 months. The facts set forth in the complaint alleged members of the Utica police department stopped plaintiff's vehicle for alleged traffic violations and then detained plaintiff in violation of his constitutional rights. Further, plaintiff alleged that during the prosecution that followed, officer Jerry Nanouski testified inconsistently and defamed plaintiff. In addition, plaintiff alleged officer Nanouski, the La Salle County State's Attorney's Office, and the Utica police department maliciously edited the video of the traffic stop, *inter alia*. Plaintiff's complaint requested a damages award in excess of \$50,000 to compensate him for his legal costs, loss of employment, and for the medical conditions plaintiff suffered due to the incident. Count II of plaintiff's complaint set forth the same allegations against the Village of Utica while count III of plaintiff's complaint set forth the same allegations against the Village of North Utica.

¶ 6

La Salle County filed a combined motion to dismiss count I of plaintiff's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure 735 ILCS 725 ILCS 5/2-615 (West 2016); 735 ILCS 5/2-619 (West 2016). Regarding section 2-615 grounds for

dismissal, La Salle County argued count I of plaintiff's complaint was deficient for failing to state a cognizable cause of action or theory of recovery. Specifically, La Salle County asserted count I failed to state a cause of action because it was unclear what causes of action plaintiff was alleging, and it was unclear how La Salle County was guilty of any wrongdoing, *inter alia*.

¶ 7 Regarding section 2-619 grounds for dismissal, La Salle County argued the lawsuit was barred by an affirmative matter based on the applicable one-year statute of limitations set forth in the Local Governmental and Governmental Employees Tort Immunity Act (the Act) (745 ILCS 10/1 *et seq.* (West 2016)). Specifically, La Salle County argued the statute of limitations began running on the date plaintiff's cause of action accrued, either September 17, 2015, when this court reversed the trial court's ruling in *People v. Litwin*, 2015 IL App (3d) 140429, or January 20, 2016, when our Supreme Court denied the State's petition for leave to appeal. La Salle County argued plaintiff's complaint, filed on February 24, 2017, was untimely based on either time period.

¶ 8 The Village of Utica and the Village of North Utica (collectively, the Villages)¹ filed a motion to dismiss counts II and III of plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure. 735 ILCS 5/2-619.1 (West 2016). The Village's arguments with regard to sections 2-615 and 2-619 mirror the grounds for dismissal in La Salle County's motion to dismiss.

¶ 9 On January 2, 2018, plaintiff filed a response to the motions to dismiss. Plaintiff argued his complaint was legally sufficient and included sufficient factual allegations to support a cause of action for malicious prosecution, warrantless stop, and search and seizure. Citing 735 ILCS 5/13-202 (West 2016), plaintiff claimed a two-year statute of limitations applied to this action.

¹The Village of Utica and the Village of North Utica appear to have had the same legal representation both in the trial court and on appeal, and have consolidated all of their filings. Thus, the parties appear to treat both Villages as a single party for purposes of this litigation.

According to plaintiff, the two-year statute of limitations did not lapse until March 8, 2018, two years from the date the trial court dismissed defendant's criminal charge.

¶ 10 On January 5, 2018, the court conducted a hearing on the Village's motion to dismiss. Following argument, the trial court found plaintiff's action accrued on January 20, 2016, the date the Supreme Court denied the prosecution's leave to appeal in *People v. Litwin*, 2015 IL App (3d) 140429 and was therefore untimely based on the one-year statute of limitations set forth in the Act. Additionally, the trial court commented that "the pleadings that [plaintiff] filed against [the Villages] don't specify the causes of action that you are seeking this Court's remedy and relief for." The trial court dismissed plaintiff's complaint with prejudice.²

¶ 11 On February 5, 2018, plaintiff filed a motion to reconsider the trial court's January 5, 2018, ruling. On February 28, 2018, the trial court denied plaintiff's motion to reconsider the trial court's January 5, 2018, ruling. On the same date, the trial court granted La Salle County's motion to dismiss on section 2-619 grounds. The court found plaintiff's complaint, filed February 24, 2017, was untimely based on the applicable one-year statute of limitations because plaintiff's cause of action either accrued on September 17, 2015, or January 20, 2016. Plaintiff appeals.

¶ 12

II. ANALYSIS

¶ 13 On appeal, plaintiff argues the trial court improperly dismissed his complaint as untimely because plaintiff's complaint was filed outside of the one-year statute of limitations outlined in the Act. Plaintiff's argues the proverbial "clock" began to tick on March 8, 2016, the date the State dismissed the criminal case against defendant in the trial court, thus rendering plaintiff's

²On February 5, 2018, plaintiff filed an amended complaint which contained none of the prior allegations and alleged spoliation of evidence and *negligent* infliction of emotional distress. This amended complaint stated no facts. Plaintiff did not obtain leave from the trial court to file this amended complaint, and the amended complaint does not appear to have been addressed by either plaintiff or the trial court.

complaint, filed February 24, 2017, timely. La Salle County and the Villages conversely argue the statute of limitations should be measured from September 17, 2015, the date the court reversed plaintiff's conviction in *People v. Litwin*, 2015 IL App (3d) 140429, or January 20, 2016, the date the Supreme Court denied the State's petition for leave to appeal.³ Alternatively, La Salle County and the Villages argue plaintiff's complaint failed to state a cognizable cause of action.

¶ 14 Motions pursuant to section 2-619.1 allow litigants to combine sections 2-615 and 2-619 motions to dismiss. *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 10. "When the legal sufficiency of a complaint is challenged by a section 2-615 motion to dismiss, all well-pleaded facts in the complaint are taken as true and a reviewing court must determine whether the allegations of the complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Id.* Plaintiffs are not required to set forth evidence in their complaint, however, plaintiffs must allege facts, not simply conclusions, sufficient to render their claims legally cognizable. *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 14. A motion to dismiss for failure to state a cause of action is properly granted where no set of facts would entitle the plaintiff to recovery. *Id.* On the other hand, section 2-619 enumerates bases for an involuntary dismissal which appear outside the four corners of the complaint, including dismissal for failing to commence an action within the time limited by law. 735 ILCS 5/2-619(a)(5) (West 2016).

¶ 15 We review the trial court's dismissal of a complaint pursuant to section 2-619.1 *de novo*. *Morris v. Harvey Cycle and Camper, Inc.*, 392 Ill. App. 3d 399, 402 (2009). However, a court's

³Because the motions to dismiss filed by La Salle County and the Villages are substantially the same and because the trial court did not differentiate in its reasoning with respect to dismissal of the various defendants, La Salle County's brief adopts the entirety of the argument set forth in the Village's brief.

decision to dismiss a complaint “with prejudice” is reviewed for an abuse of discretion. *Lake Point Tower Condominium Ass’n v. Waller*, 2017 IL App (1st) 162072, ¶ 21.

¶ 16 We conclude the involuntary dismissal of plaintiff’s complaint with prejudice pursuant to section 2-619.1 was erroneous and must be reversed. Our decision follows the holding in *Ferguson v. City of Chicago*, 213 Ill. 2d 94 (2004). Similar to the case at hand, our Supreme Court in *Ferguson* was tasked with determining when an arrestee’s civil action against the City of Chicago (the City) accrued in the face of the one-year statute of limitation set forth by the Act. See *id.* In *Ferguson*, on August 25, 2000, the court granted the State’s request to have the charges brought against the defendant “stricken with leave to reinstate.” *Id.* at 97. The defendant’s attorney immediately filed a speedy trial demand that required a trial on or before February 1, 2001. *Id.* at 98. The State did not reinstate the charges against the defendant in that case. *Id.*

¶ 17 On January 29, 2002, the defendant initiated a civil lawsuit against the City for malicious prosecution. *Id.* The City argued the defendant’s complaint was time-barred pursuant to the Act. The City argued the defendant’s cause of action accrued on August 25, 2000, “when the circuit court entered its order striking the criminal charges with leave to reinstate.” *Id.* at 99-100.

¶ 18 The trial court in that case agreed with the City and dismissed the defendant’s complaint pursuant to section 2-619(a)(5). 735 ILCS 5/2-619(a)(5) (West 2000). *Id.* at 96. Our Supreme Court held that the order “striking the criminal charges against [the defendant] with leave to reinstate did not result in a termination, favorable or otherwise, of the criminal case against him.” *Id.* at 100-01. Because the criminal charges “remained pending,” the *Ferguson* court held the defendant’s malicious prosecution claim did not accrue until February 1, 2001, the date the speedy trial period ended. *Id.* at 102.

¶ 19 For purposes of this appeal we assume plaintiff’s inartfully drafted *pro se* complaint attempts to state a claim for malicious prosecution. Based on this assumption, according to the holding in *Ferguson*, the proverbial “clock” began to tick on March 8, 2016, the date the State dismissed the criminal case against plaintiff in the trial court, rather than September 17, 2015, the date we issued our decision in *People v. Litwin*, 2015 IL App (3d) 140429, or January 20, 2016, the date the Supreme Court denied the State’s petition for leave to appeal. It matters not whether the Supreme Court’s denial of the State’s petition for appeal “effectively” ended the criminal case against plaintiff. The charges against plaintiff remained “active” and/or “pending” until March 8, 2016, thereby rendering plaintiff’s complaint, filed February 24, 2017, timely. Therefore, the trial court’s decision dismissing the complaint with prejudice based on section 2-619 considerations is reversed.

¶ 20 In this case, we have set aside the trial court’s involuntary dismissal of plaintiff’s complaint pursuant to section 2-619. Next, we consider whether dismissal of the complaint with prejudice was warranted on section 2-615 grounds. Here, we agree with the trial court that plaintiff’s complaint is insufficient and does not contain sufficient legal or factual allegations to support a viable cause of action against each defendant. However, we reiterate that a complaint should only be dismissed with prejudice for failure to state a cause of action where no set of facts would entitle the plaintiff to recovery. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 488 (1994). This rule applies even where plaintiff has not requested leave to amend. *Id.*⁴

¶ 21 We believe that with proper legal and factual allegations, plaintiff’s complaint for malicious prosecution, *inter alia*, could be cured and plaintiff is entitled to at least one

⁴Moreover, on February 5, 2018, one month after the trial court’s January 5, 2018, dismissal of the counts against the Villages, and several weeks before the trial court’s February 28, 2018, dismissal of the count against La Salle County, plaintiff filed an “amended complaint at law,” which the trial court has not addressed.

