2019 IL App (4th) 180775-U

NO. 4-18-0775

FILED
June 10, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOHN LUGO,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Woodford County
AVENA L. STURM,	)	No. 18CH48
Defendant-Appellee.	)	
	)	Honorable
	)	Michael L. Stroh,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed and remanded, finding the circuit court erred in granting defendant's motion to dismiss.

¶ 2 In September 2018, plaintiff, John Lugo, filed a *pro se* complaint to quiet title and for other relief against defendant, Avena L. Sturm, in conjunction with a boundary dispute between their adjoining properties. Sturm filed a motion to dismiss, which the circuit court granted.

¶ 3 On appeal, Lugo argues the circuit court erred in granting Sturm's motion to dismiss his complaint. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 In September 2018, Lugo filed a *pro se* complaint to quiet title and for other relief. He alleged he is the owner of real estate at 218 East Walnut Street in Washburn and Sturm owns the adjoining property at 214 East Walnut Street. The complaint alleged Sturm

claimed to own 0.3 feet beyond her boundary line. Lugo sought to quiet title to the disputed portion, which amounts to 45 square feet of land. Lugo claimed Sturm was interfering with his use of the disputed portion of property and erected a fence that caused damage to mature trees on his land. Lugo also claimed he had no adequate remedy at law because (1) it would be impossible for him to determine the precise amount of damage he would suffer if Sturm's conduct was not restrained and (2) he would be deprived of the use of his property, which cannot be compensated in damages. Lugo asked the circuit court to determine the correct location of the boundary line, quiet his title, and order injunctive relief.

¶ 6 In October 2018, Sturm filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2016)), arguing the circuit court had no subject matter jurisdiction because Lugo improperly brought an action in equity when an adequate remedy at law existed. Sturm cited *Livingston County Building & Loan Ass'n v. Keach*, 219 Ill. 9, 76 N.E. 72 (1905), and stated the Illinois Supreme Court had held that where the true boundaries of two properties are in dispute, no action can lie in equity since there is an adequate remedy at law.

¶ 7 In his response, Lugo stated Sturm informed him in May 2018 of her desire to erect a fence on the boundary line that separated their properties. Prior to the construction of the fence, Lugo had a survey conducted to document the boundary line. In August 2018, Sturm erected the fence, and Lugo had a second survey conducted. The second survey revealed Sturm had constructed the fence on Lugo's property along a line that was 0.3 feet east of the boundary line. Lugo asked Sturm to remove the fence, but she declined. Citing *Cragg v. Levinson*, 238 Ill. 69, 87 N.E. 121 (1908), Lugo argued the circuit court should exercise jurisdiction in this case to prevent a multiplicity of suits.

¶ 8 In November 2018, the circuit court held a hearing on the motion to dismiss. A bystander's report of the proceedings has been included in the record. Sturm's attorney stated there was no dispute over the property line between the respective properties and, as such, a court of equity was not the proper court to hear the case. Lugo stated he had been engaged in a 15-year-long dispute with Sturm about the property line. Lugo claimed Sturm signed an affidavit agreeing the true boundary line was noted in the first survey and Sturm had not disputed the altered boundary line created by her fence, which constituted an admission of an ongoing trespass. The bystander's report indicated the circuit court reviewed the parties' case law, found Lugo had not yet established his right at law, and granted Sturm's motion to dismiss. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Lugo argues the circuit court erred in granting Sturm's motion to dismiss based on the belief that his right had not been established at law. We agree.

¶ 11 "A section 2-619 motion to dismiss admits the legal sufficiency of the plaintiff's claim, but asserts affirmative matter that defeats the claim." *Hubble v. Bi-State Development Agency*, 238 Ill. 2d 262, 267, 938 N.E.2d 483, 488 (2010). Here, Sturm asserted Lugo's complaint should be dismissed under section 2-619(a)(1) of the Procedure Code, which provides for the dismissal of a claim where "the court does not have jurisdiction of the subject matter of the action ***." 735 ILCS 5/2-619(a)(1) (West 2016). The dismissal of a complaint based on the lack of subject matter jurisdiction is reviewed *de novo*. *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583.

¶ 12 "With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by

our state constitution." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). That has been the case in Illinois since a 1964 constitutional amendment significantly altered the basis of circuit court jurisdiction by "granting circuit courts 'original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.' " *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 30, 32 N.E.3d 553 (quoting Ill. Const. 1870, art. VI (amended 1964), § 9). The current Illinois Constitution, which was adopted in 1970, retained the aforementioned amendment and provides as follows: " 'Circuit Courts shall have original jurisdiction of all justiciable matters' " and that " 'Circuit Courts shall have such power to review administrative action as provided by law.' " *LVNV Funding*, 2015 IL 116129, ¶ 30 (quoting Ill. Const. 1970, art. VI, § 9). Thus, "[u]nder the 1970 Illinois Constitution, the distinction between courts of law and equity has been abolished, so that our court system is now a unified one with original jurisdiction of justiciable matters." *In re Marriage of Isaacs*, 260 Ill. App. 3d 423, 427, 632 N.E.2d 228, 232 (1994). The abolishment is reflected in Illinois Supreme Court Rule 132 (eff. Jan. 4, 2013), which requires civil complaints to contain in the caption a designation, such as " 'at law' " or " 'in chancery,' " but expressly provides "[m]isdesignation shall not affect the jurisdiction of the court."

¶ 13 "Our current constitution does not define the term 'justiciable matters,' nor did our former constitution, in which this term first appeared." *Belleville Toyota*, 199 Ill. 2d at 335, 770 N.E.2d at 184. Our supreme court has found "a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335, 770 N.E.2d at 184.

¶ 14 In the case *sub judice*, Lugo filed his *pro se* complaint in equity to quiet title to the disputed portion of land. Sturm filed a motion to dismiss under section 2-619(a)(1) of the Procedure Code (735 ILCS 5/2-619(a)(1) (West 2016)), arguing the circuit court had no subject matter jurisdiction because Lugo improperly brought an action in equity when an adequate remedy at law existed. However, under our modern court system, an adequate remedy is a limitation on equitable relief, not jurisdiction. See *Sjogren v. Maybrooks, Inc.*, 214 Ill. App. 3d 888, 892, 573 N.E.2d 1367, 1368 (1991); see also *In re Estate of Zoglauer*, 229 Ill. App. 3d 394, 398, 593 N.E.2d 93, 96 (1992) (stating "[t]he allocation of judicial responsibility to various divisions of the circuit court does not reflect any constitutional barriers to jurisdiction, but rather only administrative convenience"); *Meyer v. Murray*, 70 Ill. App. 3d 106, 115, 387 N.E.2d 878, 885 (1979) (noting the law and chancery divisions of the circuit court are "for administrative purposes only and no longer constitute jurisdictional barriers"). The court had subject matter jurisdiction over this controversy and thus erred in granting Sturm's motion to dismiss under section 2-619(a)(1). Accordingly, we reverse the court's judgment and remand the case for further action consistent with this order.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we reverse the circuit court's judgment and remand with directions.

¶ 17 Reversed and remanded.