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2012 IL App (3d) 110403-U

Order filed March 16, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

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| KERWIN DOSS, |) Appeal from the Circuit Court |
| |) of the 12 th Judicial Circuit, |
| Plaintiff-Appellant, |) Will County, Illinois, |
| |) |
| v. |) Appeal No. 3-11-0403 |
| |) Circuit No. 09-L-370 |
| |) |
| DEPUTY DANIEL LOPEZ, et al., |) Honorable |
| |) Michael J. Powers, |
| Defendants-Appellees. |) Judge, Presiding. |

JUSTICE McDade delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* This court does not have jurisdiction over this appeal because the trial court did not enter a final order in the case that could properly serve as the basis for an appeal.

¶ 2 Kerwin Doss, the plaintiff, filed a civil complaint against Will County Deputies Daniel Lopez and Raymond Hoch, the defendants. The trial court dismissed the cause for want of prosecution. The plaintiff filed a motion to reconsider and a motion to vacate the dismissal. The plaintiff also filed a second complaint against the defendants under the case number assigned to

the original complaint. The defendants filed a motion requesting that the trial court assign a new number to the second case, and the trial court granted this motion. The plaintiff appeals, contending that: (1) the trial court violated his constitutional rights when it dismissed his original complaint for want of prosecution; (2) the trial court abused its discretion when it did not issue rulings on, among other things, his motion to reconsider and motion to vacate dismissal; and (3) this court has jurisdiction over the matter because the trial court's order that gave his second complaint a new case number was an order that "finalize[d]" the original case. We conclude that we do not have jurisdiction over the matter, and we dismiss the instant appeal.

¶ 3

FACTS

¶ 4 On May 1, 2009, counsel for the plaintiff filed a personal injury complaint against the defendants, alleging a violation of section 1983 of the federal Civil Rights Act (42 U.S.C. §1983 (2006)). The Will County trial court assigned this case as No. 09-L-370.

¶ 5 After the filing of the plaintiff's complaint, his retained counsel filed a motion to withdraw. The plaintiff filed a response requesting that the trial court deny counsel's motion or appoint substitute counsel to represent him. On February 17, 2010, the court granted plaintiff's counsel's motion to withdraw. The court sent the plaintiff notification of this decision, and also informed the plaintiff that he must file a notice of supplemental appearance within 21 days.

¶ 6 On March 10 and 11, 2010, the plaintiff filed two nearly identical "motion[s] for supplementary appearance and appointment of counsel," requesting the appointment of counsel and otherwise entering his *pro se* appearance on his own behalf. The plaintiff also filed an application to sue or defend as a poor person. The record does not indicate that the plaintiff filed a notice or a certificate of service with his motions.

¶ 7 The trial court conducted a hearing on March 22, 2010, and dismissed the plaintiff's cause of action for want of prosecution. The docket sheet indicates that "[p]laintiff fail[ed] to appear and no appearance [was] filed. On court's own motion, cause is dismissed for want of prosecution." The court ordered the clerk to transmit a copy of this determination to the plaintiff, and the record indicates that the clerk did so.

¶ 8 On April 21, 2010, the *pro se* plaintiff filed a motion to reconsider the trial court's dismissal of his complaint, and he later filed a motion to vacate the dismissal of his complaint. Then, on November 1, 2010, the plaintiff filed a second complaint against the defendants. This complaint was essentially identical to the original complaint. On that date, the plaintiff also filed a motion to sue or defend as a poor person and a motion for appointment of counsel. The plaintiff filed his second complaint and accompanying motions under the original case No. 09-L-370. The plaintiff also filed a notice of filing and an affidavit of service with this complaint. The defendants filed a motion requesting that the trial court direct the clerk to assign a "2010 court number to the plaintiff's complaint," noting that the court had dismissed the original complaint for want of prosecution. The court granted this motion on May 9, 2011, and ultimately assigned the second case No. 11-L-347. The docket sheet in the common law record indicates that case No. 11-L-347 is proceeding through the Will County trial court.

¶ 9 The plaintiff appealed.

¶ 10 ANALYSIS

¶ 11 Taking the issues raised by the plaintiff in reverse order, we first consider whether we have proper jurisdiction over the instant appeal. The plaintiff contends that we do because the trial court's order assigning a new number to his second complaint "finalize[d]" the original case.

¶ 12 Pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), “every final judgment of a circuit court in a civil case is appealable as of right.” However, a dismissal for want of prosecution is not a final and appealable order under Supreme Court Rule 301, as the plaintiff has an absolute right to refile the lawsuit against the same parties and to reallege the same cause of action. *Flores v. Dugan*, 91 Ill. 2d 108 (1982). Furthermore, an order that denies a posttrial motion is not a final judgment; rather, it is an order denying relief that confirms the preceding final judgment. *Gibson v. Belvidere National Bank and Trust Co.*, 326 Ill. App. 3d 45 (2001). Additionally, “a matter is moot when the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief.” *Johnson v. Edgar*, 176 Ill. 2d 499, 511 (1997).

¶ 13 We conclude that we do not have jurisdiction over the instant appeal. Specifically, the record indicates that on March 22, 2011, the trial court dismissed the plaintiff’s original complaint in case No. 09-L-370 for want of prosecution. As shown above, this dismissal is not a final judgment. Because only an appeal from a final judgment confers jurisdiction on an appellate court, we do not have jurisdiction over the instant appeal from the non-final judgment.

¶ 14 We further note as a practical matter that the plaintiff refiled this same case against the defendants, and the record indicates that this second case is proceeding through the Will County circuit court. Consequently, even if this court had proper jurisdiction over the instant appeal, any issues raised by the filing of a motion to reconsider or a motion to vacate the dismissal of the original complaint would be moot because the plaintiff’s own second case reinstates his claims and thus provides the only relief this court could grant. Also, even if the trial court had ruled on these motions to reconsider to vacate and denied them, this court would still lack jurisdiction

over the instant appeal because the denial of a posttrial motion is not itself a final order, rather, it only confirms the prior final judgment. No final judgment was entered in the trial court, therefore, there is no order from which a proper appeal may be taken and which could support an exercise of jurisdiction by this court.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the instant appeal is dismissed.

¶ 17 Appeal dismissed.