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2013 IL App (3d) 110404-U

Order filed April 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

ZLATKO NIKSICH, individually and as)	Appeal from the Circuit Court
beneficiary of Cole Taylor Bank, successor)	of the 12th Judicial Circuit,
trustee to Manufacturers Bank f/k/a Steel)	Will County, Illinois,
City National Bank, as trustee under trust)	
agreement dated March 12, 1987, known as)	
trust number 2985,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 3-11-0404
)	Circuit No. 09-L-62
)	
DEUTSCHE BANK NATIONAL TRUST)	
COMPANY, as trustee of Ameriquest)	
Mortgage Securities, Inc. asset backed pass-)	
through certificates series 2005-R10 under)	
Pooling and Servicing Agreement dated)	
November 1, 2005, AMERIQUEST)	
MORTGAGE COMPANY, <i>et al.</i> ,)	Honorable
)	Michael J. Powers,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly granted the defendants' motion for involuntary dismissal of plaintiff's second amended complaint where the complaint was barred by principles of *res judicata*. Appellee did not establish that appeal was frivolous and without merit sufficient to warrant the imposition of sanctions.

¶ 2 The plaintiff, Zlato Niksich (Niksich), appeals from a judgment of the circuit court of Will County dismissing, with prejudice, his second amended complaint seeking to quiet title to property located at 24207 South Walden Lane in Crete, Illinois (the property). In his complaint, Niksich alleged that the defendants, Deutsche Bank National Trust Company and Ameriquet Mortgage Company, committed fraud and slander of title. The defendant filed a motion pursuant to section 2-619(4) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(4) (West 2004)) seeking dismissal of Niksich's complaint based upon principles of *res judicata*. The defendants maintained that Niksich's claims were previously litigated and decided against him in the foreclosure action previously instituted against the property, as well as Niksich's prior attempt to vacate the judgment of foreclosure under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2004). The court granted the defendants' motion and dismissed Niksich's second amended complaint with prejudice. Niksich filed a motion to vacate to judgment, which was denied. Niksich then filed this timely appeal. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The following facts are taken from the record. On April 11, 2006, the defendants filed a complaint to foreclose a mortgage on the property which secured a loan given to Bozica Niksich, one of Zlatko Niksich's three daughters. A judgment of foreclosure and sale was entered on

October 16, 2006. At the sheriff's sale, Deutsche Bank purchased the property for \$442,068.75. The court entered an order approving the sale of the property and allowing the bank to take possession on or about April 4, 2007. On April 30, 2007, Niksich filed a *pro se* petition to intervene and vacate the judgment of foreclosure and sale. Niksich's petition, filed pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2004)), alleged that he was an owner of the property and that Bozica, acting alone and without his knowledge, had mortgaged the property to Deutsche Bank. Niksich further alleged that the defendant, Ameriquet, had acted fraudulently in causing documents to be drafted and filed which concealed his ownership in the property. After a hearing on Niksich's motion to vacate the foreclosure judgment, the trial court denied the motion, finding that Niksich had failed to establish a meritorious defense to the foreclosure.

¶ 5 On January 23, 2009, Niksich filed an amended motion to vacate the foreclosure and sale judgment. The amended motion to vacate the judgment was also denied. The court found that Niksich had failed to properly plead the elements of fraud and failed to plead that the perpetrators of the alleged fraud were acting as agents of Ameriquet. Niksich appealed to this court. On September 29, 2010, this court affirmed the judgment of the circuit court. *Deutsche Bank National Trust Co., as Trustee of Ameriquet Mortgage Securities, Inc. v. Bozica Niksich*, No. 3-09-0259 (2010) (unpublished order under Supreme Court Rule 23).

¶ 6 Niksich brought the instant action as a quiet title action alleging, *inter alia*, fraud and slander of title counts against Deutsche Bank and Ameriquet. The circuit court granted the motion to dismiss filed by these two defendants, finding that Niksich's claims against both defendants were barred by the doctrine of *res judicata*. Niksich appeals that decision.

¶ 8 A case is properly dismissed pursuant to section 2-619(4) of the Code of Civil Procedure if the cause of action is barred by a prior judgment under the doctrine of *res judicata*. 735 ILCS 5/2-619(4) (West 2008). Whether a claim is barred by *res judicata* is a question of law which is reviewed *de novo*. *Curtis v. Lofy*, 394 Ill. App. 3d 170, 177 (2009). Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between those same parties involving the same cause of action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). The doctrine applies not only to what was decided in the first action but also to those matters that could have been decided in the preceding action. *Id.* The doctrine of *res judicata* promotes judicial economy by requiring the parties to litigate in one case all claims arising out of the same set of operative facts. *Mann v. Rowland*, 342 Ill. App. 3d 827, 834 (2003). In order for *res judicata* to apply: (1) a court of competent jurisdiction must have rendered a final judgment on the merits; (2) there must be identity of the cause action; and (3) the parties in the subsequent action must be the same as in the prior action. *River Park*, 184 Ill. 2d at 302. In the instant matter, all three criteria have been met.

¶ 9 The decision of the circuit court in the original foreclosure action was a final judgment on the merits by a court of competent jurisdiction. Niksich presented his claims of fraud and slander of title against Deutsche Bank and Ameriquist in the original foreclosure action by way of his motion to vacate the foreclosure judgment under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2010). His claims were held by the trial court to be insufficient to meet the meritorious defense requirement necessary for a party to successfully vacate a prior judgment. This court

upheld the judgment of the circuit court. Niksich now maintains that a ruling on a motion to vacate a judgment does not satisfy the requirements for *res judicata* necessary to bar his claim in the instant matter. We find otherwise.

¶ 10 It is well settled that a ruling on a petition to vacate a judgment can satisfy the requirements of the doctrine of *res judicata*. *Eighteen Investments, Inc. v. Nationscredit Financial Services Corp.*, 376 Ill. App. 3d 527 (2007). In *Eighteen Investments*, the court held that the doctrine of *res judicata* barred a suit by an entity that previously filed a petition to vacate a judgment confirming a judicial sale in a foreclosure action where the circuit court had denied the entities' petition to vacate the confirming judgment. Where an entity seeks to vacate a foreclosure judgment by way of a postjudgment motion, there can be no dispute that the denial of the motion to vacate was rendered by a court of competent jurisdiction and constituted a final judgment on the merits. *Id.* at 531. Moreover, identity of parties and claims is established since the basis of all the claims in the original action to vacate the foreclosure and the subsequent quiet title action necessarily arose from the same set of operative facts. *Id.* Additionally, it is well settled that the denial of a motion to vacate a judgment is a final order, on the merits, that ends the entire action as it relates to the party moving to have the prior judgment vacated. *Washington Mutual Bank, F.A. v. Archer Bank*, 385 Ill. App. 3d 427, 431 (2008); *In re Estate of Barth*, 339 Ill. App. 3d 651, 668 (2003) (denial of a section 2-1401 motion to vacate a judgment is a final order for purposes of the doctrine of *res judicata*).

¶ 11 Niksich argues that *res judicata* cannot apply where his claim was adjudicated without a full evidentiary hearing. However, a full evidentiary hearing is not necessary for an order of the

court to be a "final adjudication" on the merits. *River Park*, 184 Ill. 2d at 302; *Eighteen Investments, Inc.* 376 Ill. App. 3d at 532.

¶ 12 Niksich also maintains that there is no identity in the cause of action in his instant complaint for quiet title and his previous motion to vacate the foreclosure judgment. We disagree. He maintains that his theory of recovery in the quiet title action is different from his theory of recovery in his motion to vacate the foreclosure. We note, however, that the bar under the doctrine of *res judicata* extends to all theories or causes of action that could have been raised and decided in the first suit. *River Park*, 184 Ill. 2d at 302. In *River Park*, our supreme court adopted the "transactional" test for determining whether causes of action are the same for purposes of *res judicata*. Under this approach, the assertion of different kinds or theories of relief constitute a single cause of action if a single group of operative facts give rise to the different claims for relief. *River Park, Id.* at 307.

¶ 13 Here, Niksich's petition to vacate the mortgage foreclosure judgment and the quiet title complaint at issue in the instant appeal arise out of the same set of operative facts. In both actions, Niksich alleged that he was fraudulently deprived of title to his property through a forged quitclaim deed that was procured by his daughter, Bozica, without his knowledge and with the assistance of an agent of Ameriquest. In both actions, he claimed that, by virtue of the actions of Deutsche Bank, Ameriquest, and its agents, the mortgage lien that was the subject of the prior foreclosure action was fraudulent. In both actions, he claims that he is the rightful title holder. Reviewing the record, we find that the same set of operative facts are at issue and, thus, under the transactional test articulated in *River Park*, we find that the circuit court properly dismissed Niksich's quiet title action as barred by the doctrine of *res judicata*.

¶ 14 Niksich next maintains that the circuit court's dismissal of his quiet title action violated his right to due process. We disagree. It is well settled that requirements of due process are met where a litigant is provided actual or constructive notice of a claim against his property or interest and has an opportunity to be heard and to protect his rights. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244 (2004). Moreover, our supreme court has held that an involuntary dismissal of a claim does not violate a litigant's right to due process. *Calabrese v. Hatlen Heights Sewer & Water Co.*, 34 Ill. 2d 483, 486 (1966).

¶ 15 Next, we consider Deutsche Bank's motion for sanctions pursuant to Supreme Court Rule 375 (eff. Feb. 1, 1994), which permits this court to impose appropriate sanctions upon a party if it is determined that the appeal is frivolous or that an appeal was not taken in good faith or was taken for an improper purpose such as delay. *Singer v. Brookman*, 217 Ill. App. 3d 870, 880 (1991). Deutsche Bank maintains that Niksich's *pro se* appeal was frivolous in that he raised issues on appeal that were contrary to established precedent (*Polsky v. BDO Seidman*, 293 Ill. App. 3d 414, 427 (1997)), and which no reasonably prudent attorney would raise (*Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1039 (2008)).

¶ 16 We find that Deutsche Bank has not established that sanctions are warranted in the instant case. A sanction for filing an appeal that may be considered frivolous should be imposed only in the most egregious of circumstances. *In re Marriage of Beeler*, 353 Ill. App. 3d 1101 (2004). Moreover, it is generally not appropriate to impose sanctions where an appeal involves matters subject to *de novo* review. *RBS Citizens National Ass'n v. RTG-Oak Lawn, LLC.*, 407 Ill. App. 3d 183, 188 (2011). Here, given that Niksich sought *de novo* review of the trial court's finding

that the doctrine of *res judicata* barred his quiet title action, we find that his appeal is not of such egregious circumstances as to warrant sanctions by this court.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Will County dismissing the plaintiff's quiet title complaint against appellants based upon the doctrine of *res judicata*. Motion for sanctions under Supreme Court Rule 375 filed by Deutsche Bank is denied.

¶ 19 Judgment affirmed; motion for sanctions denied.