

Illinois Official Reports

Appellate Court

In re Estate of Yanni, 2015 IL App (2d) 150108

Appellate Court Caption	<i>In re</i> ESTATE OF PATRICIA YANNI, a Disabled Person (Diana Law, Kane County Public Guardian, Petitioner-Appellee, v. Richard Yanni, Respondent-Appellant).
District & No.	Second District Docket No. 2-15-0108
Filed	November 4, 2015
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 13-P-158; the Hon. Joseph M. Grady, Judge, presiding.
Judgment	Vacated in part and reversed in part; cause remanded.
Counsel on Appeal	Phyllis J. Perko, of Law Offices of Harlovic & Perko, of West Dundee, for appellant. Patrick M. Kinnally, of Kinnally, Flaherty, Krentz & Loran, P.C., of Aurora, for appellee.
Panel	JUSTICE McLAREN delivered the judgment of the court, with opinion. Justices Jorgensen and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Respondent, Richard Yanni, appeals from the trial court’s order imposing a constructive trust on property owned by Richard and awarding punitive damages and attorney fees against him. We determine that the trial court erred in denying Richard’s motion to dismiss. Thus, we vacate the trial court’s judgment in favor of petitioner, Diana Law, the Kane County public guardian, reverse the trial court’s denial of Richard’s motion to dismiss, and remand the cause.

¶ 2 I. BACKGROUND

¶ 3 In March 2013, pursuant to a petition for an emergency temporary guardianship brought by her daughter, Kristin Davison, Patricia Yanni was adjudicated a disabled person. In the petition, Davison alleged that Patricia was unable to handle personal and financial affairs due to dementia and physical maladies. Davison also alleged that Richard, who is Patricia’s son, lived in Patricia’s home and “was found to be neglecting his mother.” Patricia had been removed from her home and placed in a skilled nursing facility. Kristin sought to have the public guardian appointed as guardian of Patricia’s estate and to have herself appointed as guardian of Patricia’s person. The trial court granted the petition, appointing Kristin as temporary guardian of the person with leave to place Patricia in an appropriate facility, and appointing Diana Law, the Kane County public guardian, as temporary guardian of the estate. The court also appointed Len Seraphin as Patricia’s guardian *ad litem* (GAL).

¶ 4 Seraphin filed a report in April 2013. Seraphin met with Patricia and found her “generally *** oriented as to time and space” such that he was able to “carry on a prolonged and substantial conversation” with her. Patricia was not objecting to the appointment of a guardian, so long as Kristin was appointed. Patricia also told him that Richard “had deeded her residence to himself without her approval, and she is very upset with that matter.” Because Patricia “has limited means and may well need all of her available assets to provide for her care and support,” Seraphin recommended that Kristin be appointed guardian of both Patricia’s person and her estate and that the estate guardian pursue any and all claims against Richard in connection with any alleged financial abuse.

¶ 5 The trial court appointed Law as plenary guardian of the estate and later granted her leave to subpoena and depose Richard. In her September 9, 2013, subpoena for deposition and records directed to Richard, Law specifically requested “[a]ny and all documents regarding the property located at 6N915 Ridgeline Road, St. Charles, Illinois, including, but not limited to: deeds, mortgages, notes, closing statements and powers of attorney.” Law also issued subpoenas to several banking institutions.

¶ 6 On October 18, 2013, pursuant to section 16-1 of the Probate Act of 1975 (Act) (755 ILCS 5/16-1 (West 2012)), Law filed a petition for a citation order against Richard and Fidelity National Title. The petition stated that Desiree Wilson of Fidelity notarized three documents: two quitclaim deeds and a mortgage. Law requested the production of “all documents and identification used at the closing, which took place on July 19, 2012, and August 1, 2012.” The court issued the citation in November. Law subsequently subpoenaed

Fidelity, seeking the production of all documents regarding Patricia, Richard, and Richard's wife, Joy Yanni; Law also subpoenaed Wilson for additional information.

¶ 7 On January 28, 2014, Law petitioned the trial court to convene a hearing under section 16-1 of the Act. Law alleged that Patricia had purchased the home at 6N915 Ridge Line Road in St. Charles, contributing "no less than \$150,000 to the purchase price." However, "[t]hrough a series of transfers, Richard Yanni now owns the improved real estate with his wife but his mother, Patricia, is listed as an obligor on the mortgage." Further, Patricia had never received the \$150,000 that she had invested. Law sought a hearing for the court to take testimony regarding Patricia's interest in the property and, ultimately, to impose a constructive trust on the property for Patricia's benefit.

¶ 8 Law subsequently filed a two-count amended petition to recover estate assets. Law alleged that Patricia bought the Ridge Line Road property for \$540,000 in November 2004. Title was conveyed solely to Patricia. Further, Patricia borrowed \$486,000 to buy the property; no one other than Patricia was identified in the debt instruments concerning that loan. Richard had lived in the home since 2004.

¶ 9 About a year after the purchase, Patricia refinanced the property with Richard and conveyed the property to herself and Richard as joint tenants with rights of survivorship. Over the years, there were multiple refinancings and other transactions concerning the property. In February 2008, Patricia executed a specific durable power of attorney appointing Richard as her agent and attorney-in-fact with respect to refinancing and paying off existing liens on the property. This power of attorney was eventually revoked in September 2010. In the meantime, Richard married Joy in June 2010.

¶ 10 Another refinance occurred on July 19, 2012, when Patricia and Richard conveyed title to themselves and Joy as joint tenants with rights of survivorship and Patricia, Richard, and Joy took out a \$274,000 mortgage. Less than two weeks later, according to a quitclaim deed dated August 1, Patricia relinquished her interest in the property, as Patricia, Richard, and Joy purportedly quitclaimed and conveyed their interests to Richard and Joy.

¶ 11 According to Law, Patricia never consented to conveying her interest to Richard and Joy on August 1, 2012. Either Richard forged Patricia's signature on the quitclaim deed or he exerted undue influence over her and coerced her into signing the deed. Patricia had contributed no less than \$150,000 toward the property and had received no consideration from Richard or Joy for purportedly relinquishing her interest in the property. Further, Patricia remained a mortgagor pursuant to the July 2012 mortgage.

¶ 12 Count I alleged conversion. According to Law, Patricia was a rightful owner of a percentage of the property and was entitled to immediate possession of that interest, which Richard and Joy now possessed. The removal of Patricia from the title to the property "was an illegal conversion of funds." Law sought a hearing, the imposition of a constructive trust to the extent of Patricia's interest in the property, and court costs. Count II sought punitive damages.

¶ 13 Richard filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), arguing that an action for conversion applied only to the unlawful exercise of ownership or control over the personal property of another and that it was not an appropriate method to gain an interest in real estate; as this cause involved real estate, the amended petition failed to state a valid cause of action. The trial court denied the motion, and Richard filed an answer and affirmative defenses. His

answer included admissions that Patricia contributed \$150,000 to the property and that she remained a mortgagor on the property.

¶ 14 Following a two-day trial, the court issued a written decision on October 30, 2014. The court noted that the August 1 conveyance was not accompanied by a refinancing, “as had been the history of Patricia and Richard Yanni’s updates and changes in their interests in the Ridge Line property.” After conceding that it “is not in the business of handwriting analysis,” the court also opined that “the signatures purporting to be of Patricia M. Yanni on the Specific Durable Power of Attorney of February 20, 2008, and on the Quitclaim Deed dated August 1, 2012, appear to be different handwritings.” Further, Wilson, the notary who notarized the signatures on the August quitclaim deed, testified that she notarized those signatures on July 24, 2012, and no other evidence indicated that Wilson notarized the deed on August 1.

¶ 15 The court noted that Richard lived with Patricia in the Ridge Line home and that Patricia “came to depend on him and his advice and assistance more and more in her affairs.” Just “as parents have an obligation or duty to care for their children or at least not cause harm to them, so do children have an obligation or duty to care for their parents or at least not cause harm to them.” Whether or not Richard’s duty to Patricia was an actual fiduciary duty, the court found that Richard “exerted undue influence on her as she became increasingly dependent upon him as she aged and he continued to reside with her.”

¶ 16 Thus, the court found that Richard and Joy owed Patricia or her estate at least \$150,000, “the sum that the evidence reflects was paid down by Patricia” for the purchase of the property. The court placed a constructive trust on the property for Patricia’s benefit “to the extent of her interest in the property, which this Court finds to be at least \$150,000.” The court acknowledged that the interest could be higher based on the disposition of funds from the various refinancings and Richard’s contributions to household expenses.

¶ 17 The court assessed court costs and attorney fees against Richard. Because of Richard’s “wrongful conduct” in obtaining the property “and to deter similar future conduct,” the court also imposed punitive damages against him “in a sum equal to the appraised value of the property *** less the \$150,000 (or greater) interest of Patricia” plus the fees and costs imposed. The court dismissed Richard’s motion for reconsideration, and this appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Richard first contends that the trial court erred in denying his motion to dismiss the amended petition. Richard’s motion to dismiss was brought pursuant to section 2-615 of the Code; such a motion “challenges the legal sufficiency of a complaint based on defects apparent on its face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In reviewing the sufficiency of a complaint pursuant to a section 2-615 motion to dismiss, we accept as true all well-pleaded facts and all inferences that can be drawn from those facts, and we construe the allegations in the light most favorable to the nonmovant. *Id.* A court should not dismiss a cause of action under this section unless it is clearly apparent that no set of facts can be proved that would entitle a plaintiff to recovery. *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 886 (2009). We review *de novo* a trial court’s order granting or denying a section 2-615 motion to dismiss. *Id.*

¶ 20 In general, if a defendant files an answer after the trial court denies his motion to dismiss, the defendant forfeits any defect in the plaintiff’s complaint. See *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 60 (1994). Further, under the doctrine of aider by verdict, a verdict against a defendant cures not only formal and purely technical defects in the complaint, but also any defects in failing to allege or alleging imperfectly any substantial facts essential to the cause of action. *Id.* at 60-61. However, an important exception to these rules provides that a defendant may raise at any time a claim that the complaint fails to state a cause of action. *Id.* at 61. Such an attack may be made at any time and by any means where it appears that, as a matter of law, the complaint wholly and absolutely fails to state a cause of action that the law will recognize. *Lambert v. City of Lake Forest*, 186 Ill. App. 3d 937, 940 (1989). The exception does not apply where a complaint states a recognized cause of action but contains an incomplete or otherwise insufficient statement of the cause of action. *Adcock*, 164 Ill. 2d at 61-62. “A complaint that fails to state a cause of action cannot support a judgment.” *Lambert*, 186 Ill. App. 3d at 940. Here, as we explain below, there is no recognized cause of action in Illinois for conversion of real property; thus Richard has not forfeited his argument that Law failed to state a cause of action for conversion.

¶ 21 “Conversion is the unauthorized deprivation of property from the person entitled to its possession.” *Sandy Creek Condominium Ass’n v. Stolt & Egner, Inc.*, 267 Ill. App. 3d 291, 294 (1994). Its essence is “the wrongful deprivation of one who has a *right to the immediate possession* of the object unlawfully held.” (Emphasis in original.) *Naiditch v. Shaf Home Builders, Inc.*, 160 Ill. App. 3d 245, 269 (1987). A cause of action for conversion requires: (1) the unauthorized and wrongful assumption of control, dominion, or ownership by the defendant over the personal property of another; (2) the plaintiff’s right in the property; (3) the plaintiff’s absolute and unconditional right to immediate possession of the property; and (4) a demand for possession of the property. *Id.*

¶ 22 Generally, under Illinois law, an action for conversion lies only for personal property—not real property. See *In re Thebus*, 108 Ill. 2d 255, 260 (1985); *Sandy Creek Condominium Ass’n*, 267 Ill. App. 3d at 294. Interestingly, the trial court did not address this issue in its written judgment. Indeed, the court never mentioned the word “conversion” in its judgment.

¶ 23 Here on appeal, Law does not address this either. Instead, she argues that she did not seek to recover the title to the property; rather, she sought to recover Patricia’s “interest in the money she paid (\$150,000) for the real estate she acquired.” Indeed, Law alleged in count I of the amended petition that “[t]he removal of Patricia on [*sic*] the title to the Property by Richard to himself and Joy was an illegal conversion of funds.”

¶ 24 We disagree with Law’s analysis. In her amended petition, Law alleged that Patricia was “the rightful owner of a certain percentage of the Property” and that she was “entitled to immediate possession of her respective interest in the Property,” which was “now in the hands of Richard and Joy.” However, Law’s position then morphed into an allegation that the removal of Patricia was “an illegal conversion of funds” even though there were no “funds” specifically identified and no allegation of any funds being generated by the transactions at issue.

¶ 25 The transfer of Patricia’s interest in the property generated no cash. Although Patricia alleged, and Richard admitted, that Patricia had contributed \$150,000 toward the property, that sum was not realized by any party and could not become the “corpus of the conversion,”

as Law argues. Law's reliance on *In re Estate of Lashmett*, 369 Ill. App. 3d 1013 (2007), in support of her argument is misplaced. First, we note that *Lashmett* did not involve real property; it involved a daughter's use of her mother's tractor to obtain a \$55,000 trade-in credit on the purchase of a new tractor. *Id.* at 1016. The mother and daughter had been involved in such transactions in the past, with the daughter paying back an agreed-upon amount to the mother. However, in this instance, the daughter failed to pay any money back to the mother, who died shortly after the daughter traded in the tractor. The trial court found that the daughter converted the tractor and it granted a citation to recover assets. *Id.* at 1016, 1020. An issue on appeal was whether the \$55,000 was a debt owed to the estate (which would not be recoverable in a citation proceeding). *Id.* at 1018-20. In its analysis of that issue, the appellate court noted that, "[i]f, by her sole action, [the daughter] converted the tractor into cash," her obligation to repay the estate would not have been characterized as a debt. (Emphasis added.) *Id.* at 1020.

¶ 26 This analysis gives no support to Law's contention here that Richard converted funds instead of a right in real estate. Unlike the daughter in *Lashmett*, Richard was not alleged to have taken something from his mother and received financial value for it. Nothing here was converted into cash or a cash equivalent. No funds were involved. The only thing that changed was Patricia's interest in real property, an interest that was not converted into funds. An action for conversion does not lie for real property. Therefore, the trial court erred in denying Richard's motion to dismiss the conversion claim.

¶ 27 Richard also contends that the trial court's judgment based on undue influence is not supported by the pleadings or the proofs. In its judgment, the trial court concluded that "the evidence is that [Richard] exerted undue influence on [Patricia] as she became increasingly dependent upon him as she aged and he continued to reside with her." Law argues that Richard never raised in the trial court the sufficiency of the pleadings regarding undue influence and has thus forfeited that issue on appeal.

¶ 28 "Parties may plead as many causes of action *** as they may have, and each shall be separately designated and numbered." 735 ILCS 5/2-613(a) (West 2012). Simply put, separate theories of relief must be pled in separate counts; neither the court nor the parties "should be placed in the position of trying to decipher a count to determine if there is more than one theory of relief in the count and, if so, how many." *Brandon v. Bonell*, 368 Ill. App. 3d 492, 519 (2006) (McLaren, J., specially concurring). A citation petition seeking the recovery of property must make out cognizable legal claims against the respondent, just like any other complaint. *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 250 (2006).

¶ 29 Here, Law made the baldest conclusory allegation that "in the alternative, Richard exerted undue influence over Patricia and coerced her into signing the August 1, 2012 Quit Claim Deed." This one sentence, contained in the introduction of the amended petition, was insufficient to allege a claim of undue influence. Richard was not required to raise the sufficiency of such a claim in a motion to dismiss, because this allegation did not rise to the level of a properly raised legal claim in a separate count. As this was not a properly raised legal claim, it further goes without saying that the trial court could not enter a judgment based on it.

¶ 30 The only substantive count seeking recovery against Richard was count I, which alleged conversion. We have concluded that this count failed to state a cause of action and that the trial court erred in denying Richard's motion to dismiss. The trial on Law's citation should

never have occurred. Therefore, we vacate the trial court's judgment in favor of Law, we reverse the trial court's judgment denying Richard's motion to dismiss, and we remand the cause for the dismissal of Law's amended petition and for further proceedings that would ordinarily follow had the citation been dismissed.¹

¶ 31

III. CONCLUSION

¶ 32

The judgment of the circuit court of Kane County in favor of Law is vacated; the denial of Richard's motion to dismiss is reversed; and the cause is remanded.

¶ 33

Vacated in part and reversed in part; cause remanded.

¹“Whether to grant a plaintiff leave to amend a complaint is a decision that is left to the sound discretion of the circuit court, and under normal circumstances leave to amend should be liberally granted.” *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 13. Courts consider numerous factors in determining whether to grant leave to amend, including whether: (1) the proposed amendment cures a defect in the pleadings; (2) the other party is prejudiced or surprised by the proposed amendment; (3) the proposed amendment is timely; and (4) there were previous opportunities to amend. *Id.*