2015 IL App (1st) 133929-U

SIXTH DIVISION
September 18, 2015

No. 1-13-3929

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRANKLIN H. WARREN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 M1 17308
	)	
CITY OF CHICAGO,	)	Honorable
	)	Anthony L. Burrell,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

O R D E R

¶ 1 ***Held*:** We affirmed the dismissal of plaintiff's amended complaint, with prejudice, and the denial of his motions to vacate and for reconsideration of that order, where he forfeited, on appeal, any challenges to the grounds asserted for the dismissal of his amended complaint, with prejudice; and his arguments raised on appeal were meritless.

¶ 2 Plaintiff-appellant, Franklin H. Warren, *pro se* appeals from the circuit court's order which denied his motion for reconsideration and rehearing of his claims and denying his motion to vacate the circuit court's order which dismissed, with prejudice, his amended complaint against defendant, the City of Chicago (City). On appeal, plaintiff contends the circuit court

failed to give effect to the intent of the rules governing small claims which, he argues, require more relaxed procedures, and that his amended complaint sufficiently set forth various causes of action. For the reasons that follow, we affirm.

¶ 3 On December 14, 2012, plaintiff *pro se* filed in the circuit court a small-claims complaint against the Chicago police department. In his complaint, plaintiff alleged that on December 14, 2010, he told a Chicago police officer that a tow truck "was in the process of stealing" his vehicle, but the officer did not "effectuate a meaningful pursuit." The complaint further alleged that the officer "breached its duty to protect plaintiff's property." Plaintiff sought damages of $2,500, the "reimbursement of a reasonable cost for his property," and the costs for bringing the lawsuit.

¶ 4 The City filed an appearance as the proper defendant. The City also filed a motion to dismiss the complaint pursuant to sections 2-619(a)(5), (9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5), (9) (West 2012)), arguing that plaintiff's claims were time-barred because he filed the complaint after the applicable statutory time limit (745 ILCS 10/8-101(a) (West 2012)), and that defendant had immunity from suits based on allegations of a "failure to prevent or solve a crime." See 745 ILCS 10/4-102 (West 2012). On February 5, 2013, the circuit court granted the City's motion to dismiss, without prejudice.

¶ 5 Plaintiff then filed a motion to reconsider the circuit court's order dismissing his complaint. Although he acknowledged his complaint alleging a state law claim was time-barred, he sought leave to amend his complaint to add constitutional and section 1983 (42 U.S.C. § 1983) claims. The City responded to this motion by filing a motion to dismiss the complaint, with prejudice, pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619 (West 2012)).

The City argued that a federal claim was not available to plaintiff under the alleged facts because "federal constitutional rights protect citizens from government intrusion but do not guarantee protective services." In his response to the City's motion, plaintiff explained that if his motion to reconsider were granted, he would "amend his complaint with the factual allegations sufficient to proceed" under 42 U.S.C. § 1983. On July 15, 2013, the circuit court allowed plaintiff 21 days to file an amended complaint and continued the City's motion to dismiss, with prejudice. On August 15, 2013, the circuit court allowed plaintiff time to file the amended complaint beyond the 21 days and gave the City time to file a reply in support of its motion to dismiss, with prejudice, after the filing of the amended complaint.

¶ 6 Accordingly, on August 15, 2013, plaintiff filed a three-count amended complaint. The caption of the amended complaint named the City and the Chicago police department as defendants. In the body of the pleading, however, plaintiff identified the following additional defendants: "an unknown male white CPD Officer, of the City of Chicago;" "an unknown white female CPD Officer, of the City of Chicago;" "the Office of Professional Standards[1] [of the Chicago police department];" and "an unknown officer and/or unknown persons or members of the [Office of Professional Standards of the Chicago police department]."

¶ 7 Plaintiff alleged, in his amended complaint, that on December 14, 2010, while looking out of the window of his condominium he observed a tow truck remove his "legally parked vehicle and illegally [removed]" the vehicle from the condominium building's rear parking lot. Plaintiff ran downstairs to the parking lot, but could not stop the tow truck. He then flagged

[1] We will use the term "Office of Professional Standards" because plaintiff refers to it as such, although the office had been replaced in 2007 by the Independent Police Review Authority. See *Service Employees International Union, Local 73 v. Illinois Labor Relations Board*, 2013 IL App (1st) 120279, ¶¶ 1, 6.

down a police officer and told the officer what had just happened. Shortly thereafter, another officer arrived at the scene.

¶ 8 Additionally, the amended complaint alleged that the police searched plaintiff without his consent and asked him whether or not he was behind on his car payments, and whether the condominium association could have towed his vehicle. One of the officers called the towing company whose sign was displayed in the condominium parking lot and asked if plaintiff's vehicle had been towed. Eventually, one of the officers drove around the neighborhood for a few minutes and searched for plaintiff's vehicle without success. Plaintiff alleged that "while all [of this] was ongoing *** Plaintiff's vehicle was being actually stolen while both *** officers were simply just wasting time awaiting an answer from [the towing company]." Plaintiff maintained that the officers were indifferent to his situation, and they treated him unfairly based on his race. Plaintiff reported the officer's actions to the Office of Professional Standards which, plaintiff believed, had concluded that the officers acted appropriately.

¶ 9 In count 1, plaintiff alleged race-based discrimination in violations of 42 U.S.C. § 1983, the Illinois constitution, and Illinois law because the officers "breach[ed] the immunity extended under the Illinois Government Tort Immunity Act." In count 2, plaintiff alleged that he was subjected to an illegal search in violation of both the Illinois and federal constitutions. In count 3, plaintiff alleged fraudulent misrepresentation because one of the officers "misrepresented that he reasonably believed by circling a three or four block radius after delay of no less than 25 to 30 [minutes] that he expected to solve [plaintiff's] emergency." Plaintiff sought both compensatory and punitive damages. The amended complaint did not include a specific amount as to the claimed damages and was not labeled as a small-claim suit.

¶ 10 On August 20, 2013, the City filed a reply in support of its motion to dismiss, with prejudice. The City argued that: (1) all of plaintiff's state law and constitutional claims were untimely; (2) the City was the only proper defendant to the suit; (3) plaintiff did not make the necessary factual allegations to support his claim under 42 U.S.C. § 1983; (4) the City's failure to provide protective services was not actionable under federal law; and (5) punitive damages were not permitted against the City.

¶ 11 On September 19, 2013, the court granted the City's motion to dismiss, with prejudice.

¶ 12 Plaintiff then filed a series of motions, including: a motion for "reconsideration and combined motion for leave to file a [second] amended complaint;" a motion "for clarification whether [his] amended complaint states a cause of action;" a motion "to further understand the court['s] line of reasoning for [his] motion of reconsideration and combined motion for leave to file a [second] amended complaint;" and a motion "in opposition to defendant[']s misapplication of case law in support of this instant cause and other reconsideration(s)." The motions were set for presentment on November 14, 2013.

¶ 13 On November 14, 2013, the circuit court entered an order denying plaintiff's motions for rehearing and reconsideration, and to vacate the dismissal order, with prejudice. In its order, the circuit court specifically found that plaintiff's amended complaint failed to state a viable cause of action. This appeal followed.

¶ 14 Plaintiff's arguments on appeal can generally be summarized as follows: that the circuit court erred in dismissing his amended complaint where it failed to give effect to the intent of the rules governing small claims which provide for more relaxed procedures and, under those rules, his amended complaint sufficiently set forth various causes of action. In response, the City

argues that all of plaintiff's state causes of action were properly dismissed as the State's claims were time barred, or subject to immunity protections, and he failed to sufficiently assert federal claims.

¶ 15 The City moved to dismiss the amended complaint pursuant to section 2-619(a)(9) of the Code. In a motion to dismiss, under section 2-619, a defendant admits that the plaintiff's claim is legally sufficient, but asserts certain defenses which defeat the claim. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). Specifically, "section 2-619(a)(9) permits dismissal where a plaintiff's claims are 'barred by other *affirmative matter* avoiding the legal effect of or defeating the claim.'" (Emphasis in original.) *Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 19 (quoting 735 ILCS 5/2-619(a)(9) (West 2006)).

¶ 16 The court must view the complaint in the light most favorable to the plaintiff. *Czarobski*, 227 Ill. 2d at 369. On appeal, the proper inquiry for the reviewing court is " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). We review *de novo* the circuit court's ruling on a section 2-619 motion to dismiss. *Id*.

¶ 17 We note that the City, in its motion to dismiss and reply in support of the motion to dismiss included arguments relating to the insufficiency of plaintiff's claims which were more appropriately brought pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2012). Further, the circuit court, in response to the plaintiff's motion to clarify, made a finding that plaintiff had failed "to state a viable cause of action." A section 2-615 motion to dismiss

"challenges a complaint's legal sufficiency based on defects apparent on the face of the complaint." *Callaghan*, 2015 IL App (1st) 142152, ¶ 18. We will treat the City's motion to dismiss as, actually, a hybrid motion, asserting grounds for dismissal which were proper under section 2-619 and other grounds which were proper under section 2-615. *Goldberg v. Rush University Medical Center*, 371 Ill. App. 3d 597, 605 fn. 1 (2007). Because "courts allow some overlap between motions filed under section 2-615 and section 2-619" (*Callaghan*, 2015 IL App (1st) 142152, ¶ 19), and our review under both sections is *de novo*, we find that plaintiff was not prejudiced by the mislabeling.

¶ 18 Plaintiff's sole arguments on appeal are based on his contention that the circuit court acted in contravention of Supreme Court Rule 282 which sets forth the pleading standard for complaints in small-claims court. Ill. S. Ct. R. 282 (eff. July 1, 1997). Under Rule 282, the plaintiff need only file "a short and simple complaint setting forth (1) plaintiff's name, residence address, and telephone number, (2) defendant's name and place of residence, or place of business or regular employment, and (3) the nature and amount of the plaintiff's claim, giving dates and other relevant information." Ill. S. Ct. R. 282(a) (eff. July 1, 1997). Rule 282 does not require a plaintiff to plead all the essential elements to state a cause of action but, rather, only requires the plaintiff to "clearly [notify] the defendant of the nature of the plaintiff's claims." *Toth v. England*, 348 Ill. App. 3d 378, 385 (2004); see also *Porter v. Urbana-Champaign Sanitary District*, 237 Ill. App. 3d 296, 300 (1992) (stating that a small-claims "complaint is to be liberally construed").

¶ 19 A small claim is defined as "a civil action based on either tort or contract for money not in excess of $10,000, exclusive of interest and costs, or for the collection of taxes not in excess

of that amount." Ill. S. Ct. R. 282 (eff. Jan. 1, 2006). Plaintiff's amended complaint, which sought unspecified compensatory and punitive damages and alleged constitutional violations and a section 1983 claim, does not fall within this definition, and Rule 282 is inapplicable.

¶ 20 In the present case, even if we were to conclude plaintiff's amended complaint was subject to and met the requirements of Rule 282, our inquiry would not end there. A plaintiff bringing a small-claims suit must still assert a cause of action upon which relief may be granted. Moreover, Rule 282 does not preclude the raising of the defenses asserted by the City in its motion to dismiss.

¶ 21 Plaintiff, in his brief, fails to address the grounds for dismissal which were presented in the City's motion to dismiss. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Del Real v. Northeast Illinois Regional Commuter R.R. Corp.*, 404 Ill. App. 3d 65, 73-74 (2010) (stating that when party on appeal fails to explain why the circuit court erred in dismissing a claim, the party has forfeited the argument concerning the propriety of the claim's dismissal). Thus, plaintiff has forfeited all challenges to the circuit court's dismissal of his amended complaint on those grounds.

¶ 22 Forfeiture aside, we find the circuit court's dismissal of plaintiff's amended complaint was proper.

¶ 23 First, the City sought dismissal of plaintiff's state causes of action under sections 8-101 745 ILCS 10/8-101(a) (West 2010), and 4-102 (745 ILCS 10/4-102 (West 2010)), of the Local Governmental and Governmental Employees Tort Immunity Act (Act). Section 8-101 bars any "civil action," unless it was commenced within one year from the date when the cause of action accrued. Civil actions include claims "based upon the common law or statutes or Constitution

of" Illinois. 745 ILCS 10/8-101(c) (West 2012). Plaintiff's complaint alleged the conduct of the police officers giving rise to this suit occurred on December 14, 2010. However, plaintiff filed his initial complaint on December 14, 2012—exactly two years after the cause of action accrued. Further, the City is protected from liability for the failure to provide police protection or services; prevent and solve crimes; or identify and apprehend criminals under section 4-102 of the Act (745 ILCS 10/4-102 (West 2010)). Thus, plaintiff's state causes of action were barred by sections 8-101 and 4-102 and were properly dismissed.

¶ 24 Second, in regard to plaintiff's federal law causes of action for a violation of 42 U.S.C. § 1983, the City argued these claims were precluded by the United State Supreme Court's holding in *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). In *Monell*, the Court held that "a local government may not be sued under section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under [section] 1983." *Monell*, 436 U.S. at 694; see also *Doe v. Calumet City*, 161 Ill. 2d 374, 401-02 (1994) (discussing *Monell* and stating "municipal liability under section 1983 requires that the municipality be at fault by having some municipal policy, custom or usage that is the 'moving force' behind the deprivation of a Federal right") *overruled on other grounds by DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497 (2006). Here, plaintiff's amended complaint alleged only the misconduct of individual police officers and did not assert facts related to a policy of the City, thus, the section 1983 claims were properly dismissed.

¶ 25 Finally, the City argued that plaintiff's remaining federal claims, concerning violations of the federal constitution, were barred by *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989). The Court in *DeShaney* set limits on when the government is required to protect individuals from harm imposed by private actors holding that the government has a duty to protect an individual only when the government has taken an "affirmative act of restraining the individual's freedom to act on his own behalf;" such as, "through incarceration, institutionalization, or other similar restraint of personal liberty." *DeShaney*, 489 U.S. at 200. Here, plaintiff has alleged no facts which demonstrate that his freedom was restrained by the City, in any way, to require it to afford him affirmative protective services. Accordingly, plaintiff's federal constitutional claims against the City were properly dismissed.

¶ 26 For the foregoing reasons, the orders of the circuit court of Cook County dismissing plaintiff's amended complaint and denying his motions for reconsideration of the dismissal, rehearing of his claims, and to vacate the dismissal, are affirmed.

¶ 27 Affirmed.