2014 IL App (1st) 141707

FIRST DIVISION
AUGUST 31, 2015

No. 1-14-1707

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TODD WILLIAMS, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF REHABILITATION SERVICES and DAVID HANSON, in his Official Capacity as Acting Director of the Illinois Department of Rehabilitation Services, Defendants-Appellees,	)	Appeal from the Circuit Court of Cook County. No. 13 L 66078 Honorable Camille E. Willis, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's dismissal of plaintiff-appellant's complaint seeking review of defendant agency's decision was presumptively correct, in light of appellant's failure to include transcript or record of proceedings from the hearing on the agency's motion to dismiss. Moreover, the available record on appeal indicated that dismissal was proper because the appellant's failure to file his complaint within 35 days of the challenged agency decision deprived the circuit court of jurisdiction pursuant to section 3-103 of the Administrative Review Law. 735 ILCS 5/3-103 (West 2012). Furthermore, a prior federal court decision dismissing appellant's challenge to the same agency decision also appeared to bar the appellant's action under the doctrine of *res judicata.*

¶ 2 Plaintiff-appellant Todd Williams appeals from the May 29, 2014 order of the circuit court of Cook County dismissing his complaint against the defendants-appellees Illinois Department of Human Services, Division of Rehabilitation Services (the agency)[1] and David Hanson (in his capacity as the agency's acting director), which challenged the administrative decision denying Williams' request for the agency to fund his proposed business.

¶ 3 BACKGROUND

¶ 4 Williams claims that he has certain learning disabilities that affect his ability to read and write. Williams is thus eligible for services from the agency, whose function, under Illinois' Disabled Persons Rehabilitation Act, is to "co-operate with the federal government in the administration of the federal Rehabilitation Act of 1973"[2] and "[t]o prescribe and supervise such courses of vocational training and provide such other services as may be necessary for the habilitation and rehabilitation of persons with one or more disabilities." 20 ILCS 2405/3 (West 2014).

¶ 5 As set forth in its regulations, the agency provides vocational rehabilitation services to individuals with disabilities, including assistance to individuals seeking self-employment, provided that they meet certain eligibility criteria and submit required documentation. See 89 Ill. Adm. Code 590.315-320 (2014). The regulations specify that the agency's funding of an individual's self-employment plan is limited, such that the agency "shall pay up to 50% of the eligible costs of the customer's Program for Self-Employment not to exceed the $10,000

[1] Williams' complaint incorrectly sues the agency under the name "Illinois Department of Rehabilitation Services."

[2] Pursuant to the Federal Rehabilitation Act of 1973, the federal government authorizes grants to assist states in operating programs designed to provide vocational rehabilitation services for individuals with disabilities. 29 U.S.C. § 720(a) (2014).

maximum limit," unless an exception is granted by the "appropriate Bureau Chief." 89 Ill. Adm. Code 590.320(c) (2015).

¶ 6 The agency's regulations require that an individual seeking assistance for a self-employment plan must complete a "Preliminary Program for Self-Employment Questionnaire" to demonstrate, among other things, that "[s]elf-employment is a viable employment option" for the individual, that the individual "has available cash or credit resources to cover 50% of all eligible costs" of the program for self-employment, and that the individual "has available resources to cover all eligible expenses over the $10,000 limit that [the agency] will contribute towards eligible costs." 89 Ill. Adm. Code 590.315(b) (2015). The individual seeking self-employment funding must also submit a "business plan for development of the business" including a "full description of the proposed business or service operation," a financial estimate for the first year of operations, and "evidence that the proposed business has a reasonable chance of success." 89 Ill. Adm. Code 590.320(a) (2015).

¶ 7 For several years, Williams has attempted to obtain self-employment funding from the agency for his proposed business plan, which involves marketing digital video discs (DVDs) containing general legal advice.[3] In 2009, Williams submitted a self-employment plan to the agency's Waukegan office in which he stated that he planned to produce and sell "videos in DVD format designed to help and assist individuals in exercising their legal and or constitutional rights," including the topics of divorce and bankruptcy. At that time, Williams requested that the agency grant him $10,000 to fund a national television marketing campaign. The agency denied the funding request in September 2009. Williams sought a hearing to review the agency

[3] The record reflects that Williams has an undergraduate degree and a graduate degree in business administration but that he does not have any legal education.

decision, which was conducted by an impartial hearing officer in May 2010. On September 17, 2010, the impartial hearing officer issued a decision affirming the denial of Williams' request, finding that his self-employment plan did not present a "realistic employment goal" for Williams, as there was "no showing that the Plan will make a consistent profit necessary for achieving an employment outcome."

¶ 8 Williams subsequently filed a complaint in the circuit court of Lake County seeking review of the September 2010 agency decision. On May 4, 2011, the Lake County circuit court affirmed the agency's denial of his funding request, finding that "the final administrative decision was not against the manifest weight of the evidence." Williams did not appeal from that circuit court decision.

¶ 9 However, Williams subsequently filed four separate federal complaints between 2011 and 2013 based on the same denial of his funding request. Each of those complaints was dismissed. In the first of those federal cases, the federal district court granted a motion to dismiss on the basis that Williams' claims were barred under the *Rooker-Feldman* doctrine, under which federal district courts may not review a state court judgment, because Williams' complaint sought the same relief that he had been denied by the Lake County circuit court. In each of the three following federal cases, the federal district court (a different judge in each case) dismissed Williams' complaint for failure to state a plausible claim for relief.

¶ 10 In the meantime, in January 2012, Williams submitted a separate application for funding assistance at the agency's Chicago Heights office. At that time, Williams was asked to complete a questionnaire entitled "initial Proposal for Self-Employment Enterprise." Williams' response to two of the questions led to the agency's decision not to proceed on his application. First, question no. 2 asked Williams to "[g]ive reasons for wanting to establish your own enterprise[]

where there is a high risk of failure, rather than to take job training and find[] employment for a wa[ge] or salary." In response, Williams cited federal regulations and stated that "[t]here is no evidence that there is a high risk of failure" and "[t]hus, I do not have to explain it." Separately, question no. 19 asked: "Where will you obtain funds required beyond [the agency's] investment (i.e. loans, etc.)?" Williams responded that: "According to past federal court cases and federal regulations, [the agency's] contribution amount is 100%."

¶ 11 On April 13, 2012, the agency denied his application, deeming his answers incomplete. Williams sought an administrative hearing, which was conducted by an impartial hearing officer in April 2013. According to the subsequent decision of the hearing officer, Williams testified at the April 2013 hearing that he believed "that based on federal regulations, [the agency] is supposed to give him 100% of the funds for his business" and thus maintained that "it is not necessary for him to answer Question 19." Williams also testified that he needed "about $58,000 for his business" and argued that limiting the amount of assistance to $10,000 was improper because the agency "cannot discriminate between clients when it comes to how much money they provide."

¶ 12 On May 15, 2013, the impartial hearing officer issued his findings and decision. The decision found that Williams' answer to question no. 2 was responsive, but that his answer to question no. 19, regarding funding beyond the agency's contribution limit, was not responsive. The decision examined the federal regulations cited by Williams and found that they did not support his contention that the agency was required to fund 100% of his business plan. The decision thus affirmed the agency's determination not to grant Williams funding based on his submitted answers, although the decision was "remanded to allow [Williams] the opportunity to respond to Question 19." There is no indication that Williams ever sought to revise his answer.

¶ 13 Also on May 15, 2013, the agency mailed correspondence to Williams attaching the decision and stating: "This decision is the final administrative decision. This decision is reviewable only through the Circuit Courts of the State of Illinois. The time the Circuit Court will allow for filing for such review may be as short as 35 days from the date of this letter."

¶ 14 Williams did not sue in the circuit court within 35 days, but instead sued in federal court. On June 12, 2013, he filed a 30-page *pro se* complaint in the United States District Court for the Northern District of Illinois which was premised, in part, on the May 2013 decision of the impartial hearing officer. The complaint argued that the underlying April 2013 administrative hearing "was not impartial" because, *inter alia*, the impartial hearing officer "always assume[s] that the Illinois administrative codes do not violate federal regulation or federal law. This means that the impartial hearing always starts in favor of [the agency] and [Williams] believes that this means that the hearing is not impartial." The prayer for relief requested that the agency approve his business plan, that the agency "fund the services he needs to achieve his employment outcome and for rehabilitation technology," provide "reimbursement for vocational and other training services," and provide other payments and services.

¶ 15 Williams moved to proceed in *forma pauperis* without paying the federal court's filing fee. On November 26, 2013, the federal district court issued a memorandum opinion and order which noted that, in determining such a motion, the district court did not merely consider whether the movant was indigent, but also screened the complaint for failure to state a claim for relief. The federal court proceeded to conclude that although Williams was indigent, his complaint failed to state a claim for relief and should be dismissed.

¶ 16 The federal court briefly reviewed the four earlier federal cases filed by Williams, noting that each of them concerned the denial of his initial 2009 request for the agency to fund his

business plan. The federal court noted that in each of the prior four cases, the district court had either concluded that the complaint was barred under the *Rooker-Feldman* doctrine, or otherwise failed to state a plausible claim for relief.

¶ 17 The federal court observed that the subject of the most recent federal complaint "continues to be the same proposed business plan and [Williams'] assertion that the Illinois agency has improperly refused to provide all the money he is requesting for his business." The federal court found that the complaint "suffers from the same problems already identified in the [previous] four cases." Referring to the 2011 Lake County circuit court decision, the federal court explained that Williams "has already challenged the [agency's] decision in state court," and thus "[a]ny ruling we would make would call this ruling into question and amount to a *de facto* appeal, which would violate the *Rooker-Feldman* doctrine."

¶ 18 In addition, the federal court noted that Williams "believes that this case raises a new issue not covered by the earlier cases," that is, "the most recent agency decision – the May 15, 2013 finding by the administrative hearing officer." The federal court acknowledged that the May 2013 agency decision had not been addressed in the four previous federal complaints. Nevertheless, the federal court found: "We fail to see how this new wrinkle alters the basic *Rooker-Feldman* analysis."

¶ 19 The federal court further explained that it found no error in the May 2013 agency decision denying Williams' request based on his response to question no. 19: "[W]e can find no legal ground for why the [agency] would not have the right to ask about contingency plans and alternative financing when the State *** is being asked to provide $68,000 for a new business venture." After noting Williams' description of his business plan was "to get information about divorce and bankruptcy law from federal websites and then put this information on a DVD and

sell it to people," the court noted: "This description on its face certainly suggests that this venture would carry significant risks *** and it is therefore hard to see how the [agency's] request for more explanation could be viewed as unreasonable." Concluding that his "claims could not survive a motion to dismiss," the federal court dismissed Williams' complaint *sua sponte*.

¶ 20 Approximately two weeks later, on December 9, 2013, Williams commenced the instant action by filing a *pro se* complaint in the circuit court of Cook County which was over 200 pages long and stated 19 "claims" or "issues." That complaint, like the recently dismissed federal complaint, also sought to overturn the agency's May 2013 decision and contained a nearly identical prayer for relief, including the request for the agency to "fund the services [Williams] needs to achieve his employment outcome and for rehabilitation technology."

¶ 21 On January 21, 2014, the agency moved to dismiss Williams' complaint pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 (West 2012). The agency's supporting memorandum of law specified two independent grounds for dismissal. First, the agency argued that Williams' complaint was time-barred pursuant to the Administrative Review Law, which provides that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days" after service of the administrative decision. 735 ILCS 5/3-103 (West 2012). The agency argued that Williams' time to file a complaint seeking review of the May 15, 2013 decision expired on June 19, 2013, 35 days after the decision was served. Thus, the agency argued that the circuit court lacked jurisdiction because Williams did not file his complaint until December 2013.

¶ 22 As a second ground for dismissal, the agency urged that the action was barred by the doctrine of *res judicata*, because the federal district court, in its November 2013 dismissal order, had already found that Williams' challenge to the agency's May 2013 decision lacked merit. The

agency noted that the federal court's November 2013 dismissal order concluded that the court could "find no legal ground for why the [agency] would not have the right to ask about contingency plans and alternative financing." The agency argued that *res judicata* applied because both the recently dismissed federal suit and the circuit court complaint "share[d] the same operative facts ***, *i.e.*, the 2013 [agency] denial of the funding request and the impartial hearing officer's administrative decision confirming it." The agency thus argued that "claim preclusion *** prohibits [Williams] from re-litigating the claims that were or could have been raised in his previous federal lawsuit."

¶ 23 On February 3, 2014, Williams submitted a response to the agency's motion to dismiss. With respect to the agency's argument that his complaint was untimely, Williams did not dispute that he filed his circuit court complaint more than 35 days after the May 2013 agency decision. Instead, he argued that federal regulations, rather than the Administrative Review Law, governed his action, and thus the 35 day limit did not apply. Specifically, relying on section 361.57(i) of title 34 of the Code of Federal Regulations, (34 C.F.R. 361.57(i) (2014))[4], Williams argued that "courts cannot conduct an administrative review for cases involving [the agency], and that these kinds of cases must be heard as a civil action." Williams argued that under this provision of the Code of Federal Regulations, "there is no 35 day time limit, and there is nothing in" the federal

[4] Section 361.57(i) provides that "any party who disagrees with the findings and decision of an impartial hearing officer *** in a State that has not established administrative review procedures *** and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section [which permits states to provide for further administrative review of a hearing officer's decision] "ha[s]a right to bring a civil action with respect to the matter in dispute" in "any State court of competent jurisdiction or in a district court of the United States." 34 C.F.R. § 361.57(i) (2014).

regulations "that give[s] [the agency] or the State of Illinois the discretion to enact a 35 day time limit."

¶ 24 In response to the State's *res judicata* argument, Williams argued that the federal court's November 2013 decision dismissing his complaint was based on the *Rooker-Feldman* doctrine and the federal court's lack of subject matter jurisdiction. Thus, Williams argued that the federal court's dismissal was not "a dismissal on the merits" that could support application of *res judicata* to preclude his circuit court lawsuit.

¶ 25 The trial court set a hearing on the motion to dismiss to occur on May 29, 2014. On that date, the trial court dismissed Williams' complaint in an order stating: "The Court being fully advised of the premises and, for the reasons set forth on the record, Defendants' motion to dismiss is granted and Plaintiff's complaint is dismissed with prejudice." Notably, however, the record on appeal does not contain any transcript, record of proceedings, or bystander's report from that date reflecting the parties' arguments to the court or any other statements by the court regarding its basis for dismissal.

¶ 26 Williams filed a notice of appeal from the dismissal order on June 4, 2014.

¶ 27 ANALYSIS

¶ 28 We note that we have jurisdiction as Williams filed a timely notice of appeal within 30 days from the May 29, 2014 dismissal order. See Ill. S. Ct. R. 303(a) (eff. May 30, 2008).

¶ 29 The applicable standard of review upon a trial court's order granting a section 2-619 motion to dismiss is *de novo. Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). "A section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Id.* "When ruling on a section 2-619 motion to

dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Id.*

¶ 30 In this case, our ability to review the trial court's dismissal of Williams' complaint is hindered by Williams' failure to include any transcript or record of proceedings from the May 29, 2014 hearing that resulted in the dismissal that is the subject of his appeal. Thus, although the trial court's written dismissal order states that it granted dismissal "for the reasons set forth on the record," the record on appeal does not indicate the trial court's reasoning.

¶ 31 Our supreme court has made clear that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (finding that, without a transcript of the hearing on a motion to vacate, there was "no basis for holding that the trial court abused discretion in denying the motion."); see also *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 24 ("Although the record contains the written memorandum issued by the circuit court disposing of the section 2-101 petition, without the transcript or a bystander's report of the April 15, 2014 hearing in this matter, we are unable to review the question of whether the circuit court ruled on the defendant's petition in contravention of [supreme court precedent].").

¶ 32 Although "the absence of a transcript does not preclude appellate review because Supreme Court Rule 323 provides the appellant with a means to reconstruct an absent record," *id.* ¶ 23 (citing Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), in this case Williams "failed to reconstruct the record with either a bystander's report or an agreed statement of facts filed by the parties" as

permitted by that rule. *Id.* Since the burden was on Williams, as appellant, to present a complete record on appeal, we must presume that the trial court's May 29, 2014 dismissal, which the court stated was "for the reasons set forth on the record," was in conformity with the law. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005) ("Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law.").

¶ 33 Even if the lack of a record of the May 29, 2014 proceedings did not compel us to presume that the trial court's dismissal order was proper, we note that the parties' briefs on the agency's motion to dismiss make clear that, in any event, dismissal was warranted. First, it is apparent that Williams did not file his circuit court complaint challenging the agency's May 2013 decision within 35 days, which deprived the circuit court of jurisdiction pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)).

¶ 34 "In Illinois, review of an administrative decision may only be obtained by a statutory provision, whereas review of circuit court decision is guaranteed by the state's constitution." *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 407 (2009). Section 3-103 of the Administrative Review Law provides that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103 (West 2012).

¶ 35 It is apparent that the May 2013 decision by the agency in this case is an "administrative decision" subject to the Administrative Review Law. Section 3-101 of the Administrative Review Law broadly defines "administrative decision" to mean "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal

rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." *Id.* The Department of Human Services "is an administrative agency, and, therefore, judicial review of its decisions is governed by the Administrative Review Law." *Arellano v. Department of Human Services*, 402 Ill. App. 3d 665, 669 (2010) (citing 735 ILCS 5/3-101 *et seq.* (West 2008)); see also 735 ILCS 5/3-101 (West 2012) (defining "administrative agency" to mean "a person, body of persons, group, officer, board, bureau, commission or department *** having power under law to make administrative decisions.").

¶ 36 Our supreme court has made clear that "the filing of a complaint within the 35-day time limit" set forth in section 3-103 of the Administrative Review Law "is required to confer subject matter jurisdiction upon the circuit court." *Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409, 423 (2003); see also *Carroll*, 389 Ill. App. 3d at 408 ("The 35-day time limit *** is an essential element of one's statutory right to seek judicial review and therefore is a jurisdiction requirement that cannot be waived."). "The 35-day period begins to run upon the date that the decision was mailed." *Id.*

¶ 37 In this case, the record reflects (and Williams does not dispute) that the agency's May 15, 2013 decision was mailed to him on that date. Williams did not file his circuit court complaint seeking review of that decision until December 2013. As Williams indisputably failed to file his circuit court complaint challenging the decision within 35 days as required under the Administrative Review Law, the circuit court lacked jurisdiction, requiring dismissal.

¶ 38 Moreover, although we need not decide the issue to affirm the trial court, the agency's alternative argument for dismissal on the basis of *res judicata* also appears to be meritorious, in light of the federal court's November 2013 decision dismissing Williams' prior challenge to the agency's May 2013 decision. "Under the doctrine of *res judicata*, a final judgment on the merits

rendered by a court of competent jurisdiction bars any subsequent cause of action between the parties or their privies on the same cause of action." *Cooney v. Rossiter*, 2012 IL 11322 ¶ 18. Three requirements must be met for the doctrine to apply: "(1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies." (Internal quotation marks omitted). *Id.*

¶ 39 Williams has argued that the first requirement is not satisfied, because the November 2013 federal court decision relied, in part, on the jurisdictional *Rooker-Feldman* doctrine. It is true that the federal court stated that it "fail[ed] to see" how Williams' challenge to the May 2013 agency decision "alters the basic *Rooker-Feldman* analysis" that contributed to the dismissal of his first federal action. Nevertheless, the federal court proceeded to conclude that Williams' challenge to the agency's May 2013 denial independently lacked merit, stating that it "can find no legal ground for why the [agency] would not have the right to ask about contingency plans and alternative financing" and that it was "hard to see how the [agency's] request for more explanation could be viewed as unreasonable." This language indicates that the federal court made a determination on the merits that Williams had no viable challenge to the May 2013 agency decision. Furthermore, as Williams' circuit court complaint raised the same challenges to the May 2013 agency decision and named the same defendants as those named in the dismissed federal lawsuit, it is clear that there was "an identity of cause of action" and "an identity of parties," fulfilling the remaining requirements for application of *res judicata. Id.* ¶ 18.

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.