2015 IL App (1st) 150559-U

THIRD DIVISION
December 9, 2015

No. 1-15-0559

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LOUIS ROBERT FASULLO, Plaintiff-Appellant, v. X-SPORT FITNESS and UNKNOWN et al., Defendants-Appellees,	)	Appeal from the Circuit Court of Cook County, Illinois, Municipal Department, First Judicial District. No. 14 CH 16963 The Honorable LeRoy K. Martin, Jr., Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly dismissed the plaintiff's cause of action on the basis that it failed to state any legally cognizable claim. The plaintiff was attempting to collaterally attack and relitigate the same cause of action that had already been dismissed by agreement of the parties in another court of parallel jurisdiction.

¶ 2 This appeal arises from a *pro se* complaint for declaration of rights filed by the plaintiff, Louis Fasullo, seeking a declaration as to orders entered in a separate cause of action (No. 13 CH 27878) brought by the plaintiff against the defendant X-Sport Fitness (hereinafter X-Sport). The

pro se plaintiff appeals from the circuit court's order dismissing his complaint for declaration of rights with prejudice. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The procedural history of this case if fairly complex, and arises from two small claims complaints filed by the *pro se* plaintiff in circuit court beginning in 2012. Specifically, on December 20, 2012, the plaintiff filed his first *pro se* small claims complaint (case No. 12 MI 17402) against X-Sport claiming, among other things, "trespass to chattel" based on an incident that occurred on December 12, 2012, wherein one of X-sport's staff members told the plaintiff that his debit card was denied and then took possession of that debit card and refused to return it to the plaintiff "for a substantial period of time." On March 13, 2013, the plaintiff's cause of action was dismissed due to improper venue. Five days later, on March 18, 2013, the plaintiff filed another small claims complaint against X-Sport (case No. 13 MI 11470) claiming, *inter alia*, "trespass to chattel" based on the same claimed incident which occurred on December 12, 2012. On May 20, 2013, pursuant to a stipulation to dismiss executed by both parties, the plaintiff's complaint seeking damages related to "trespass to chattel" was dismissed with prejudice and without costs to either party.

¶ 5 Nevertheless, a year later, on March 4, 2014, the plaintiff attempted to revive the cause of action by filing several *pro se* pleadings[1] this time in chancery court (under case No. 13 CH 27878), apparently seeking discovery, and ultimately damages, arising from the very same December 12, 2012, incident at X-Sport. On March 28, 2014, X-Sport filed a section 2-619

[1] These pleadings included: (1) a "*Pro Se* Electronic Notice Registration;" (2) two documents titled "Summons for Discovery" (one with a "Request to Produce" attached); (3) a "Motion by [the plaintiff] for Petition for Discovery" (with exhibits) file-stamped February 5, 2014; and (4) Jude Kathleen Kennedy's Order of February 18, 2014 (stating that the plaintiff appeared *pro se* in court and that his verified motion for petition for discovery would be treated as a motion for discovery and ordering that summons for discovery issue against X-sport).

motion to dismiss (735 ILCS 5/2-619 (West 2012)), alleging that the plaintiff's cause of action was barred by the prior judgment, namely the agreed to order entered by the parties dismissing the small claims cause of action with prejudice and without costs to either party. On March 28, 2014, the circuit court granted X-sport's motion to dismiss with prejudice.

¶ 6 On May 28, 2014, the same day that the circuit court dismissed his cause of action with prejudice, the plaintiff nevertheless also sent a "demand letter" to X-sport demanding $5,000 to settle the case.

¶ 7 On June 13, 2014, the plaintiff filed a *pro se* "Motion for Objection," in the same cause of action. He then refiled that same motion on June 23, 204. On July 2, 2014, after hearing oral arguments by the parties, the Honorable Justice Kathleen Kennedy entered an order finding that the plaintiff's cause of action set forth in 13 CH 27878 was dismissed with prejudice based on the court's prior March 28, 2014, order, and that the plaintiff had "no legal basis for his Motion for Objection." The judge further ruled that "the Motion for Objection [was] stricken without leave to reinstate." In addition, the court denied X-Sport's oral motion for sanctions against the plaintiff.

¶ 8 On July 28, 2014, the plaintiff filed a "Motion for Unconstitutionality" in the same case (No. 13 CH 27878), claiming that Justice Kathleen Kennedy's rulings were erroneous. In response, X-Sport filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. 137 (eff. Feb. 1, 1994)).

¶ 9 On October 7, 2014, after hearing oral arguments by the parties, the court denied the plaintiff's motion for unconstitutionality and granted X-Sport's motion for sanctions, ordering the plaintiff to pay sanctions in the amount of $5,000. The plaintiff attempted to appeal the court's October 7, 2014, order to this court, but that appeal was denied on November 25, 2014.

¶ 10 On October 20, 2015, the plaintiff filed the complaint in the instant action (case No. 14 CH 16963), purporting a cause for "Declaration of Rights," but in fact alleging impropriety with respect to the orders entered by Justice Kathleen Kennedy in case No. 13 CH 27878. X-Sport again filed a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)).

¶ 11 On January 28, 2015, after hearing oral arguments by the parties, the court granted X-Sport's motion to dismiss insofar as the plaintiff's complaint requested the court to find that Justice Kathleen Kennedy's ruling was unconstitutional and insofar as the complaint asked for any relief that was duplicative of relief requested before Justice Kennedy or as to which Justice Kennedy had ruled. In addition, on its own motion, the court further dismissed the complaint as to any other relief the plaintiff intended to pray for pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)). The court then granted the plaintiff leave to amend his complaint but only insofar as he sought relief other than that dismissed by the court's order.

¶ 12 On February 17, 2014, the cause appeared for a case management conference and the plaintiff was ordered to tender a copy of his amended complaint by February 23, 2015, both to the court and to X-Sport. On February 20, 2015, the plaintiff filed a notice of filing and a pleading titled "Motion by [the plaintiff] for Amended Complaint." That pleading sought a declaration of rights "on the whole complaint, case number 2013-CH-27878 and what defects does the Complaint have and any consequential relief." The pleading also attached numerous exhibits (primarily pleadings filed in the underlying case).

¶ 13 On February 23, 2015, after reviewing the plaintiff's pleadings and exhibits and after hearing oral argument by the parties, the court denied the plaintiff's motion with prejudice, finding that the plaintiff offered no new facts to allege a cognizable legal cause of action. The court further

found that it lacked jurisdiction to review the court's orders in cause No. 13 CH 27878, and therefore dismissed the cause with prejudice. The plaintiff now appeals from that judgment.

¶ 14 II. ARGUMENT

¶ 15 We begin by noting that the plaintiff has failed to adhere to our supreme court's rules governing appellate review. See Ill. S. Ct. 341 (eff. Feb. 6, 2013). Most notably, the plaintiff has failed to articulate an organized and cohesive legal argument. 341(h)(7) (Ill. S. Ct. 341 (eff. Feb. 6, 2013)). In addition, his brief does not contain an introductory paragraph or a statement of the issues presented for review with the appropriate standard of review, as required by Supreme Court Rule 341(h) (see Ill. S. Ct. 341 (eff. Feb. 6, 2013)).

¶ 16 Admittedly, the plaintiff's *pro se* status does not relieve him of the burden of complying with the format for appeals as mandated by our supreme court rules. See *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001)). It is axiomatic that the appellate court is not required to search the record to determine what legal issues are involved in an appeal. *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001) (citing *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344 (1994)). Rather, a reviewing court is entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with the Supreme Court Rules. *Twardowski*, 321 Ill. App. 3d at 511. As such, a *pro se* plaintiff's noncompliance with these rules subjects his appeal to dismissal (*LaGrange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876 (2000)).

¶ 17 Nevertheless," 'our jurisdiction to entertain the appeal of a *pro se* plaintiff is unaffected by the insufficiency of his brief,' so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party. [Citation.]"

Twardowski, 321 Ill. App. 3d at 511. Since the issues here are straightforward and we have the benefit of a cogent appellee's brief, we choose to entertain the appeal.

¶ 18 Turning to the merits of the plaintiff's claim, we note that our review of the trial court's dismissal of a claim pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)) is *de novo*. See *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352.

¶ 19 The record before us reveals that the plaintiff has essentially attempted to relitigate the same cause of action he initially filed in the small claims court and then agreed to dismiss by way of stipulation on December 20, 2012. The plaintiff first attempted to relitigate the cause of action by filing a complaint with the chancery court. When the chancery court dismissed his complaint on the basis that it was barred by the prior ruling of the small claims court whereby the plaintiff himself had agreed to dismiss the cause of action with prejudice, the plaintiff made a second attempt at relitigation by filing a new complaint in chancery court, this time, for declaratory relief. Despite its title, the plaintiff's complaint for declaratory relief, however, merely sought a review of the orders entered by the chancery court in the underlying action.

¶ 20 The plaintiff's filings, as such, amount to improper forum shopping. See *e.g.*, *Contreras v. Citi Bank*, 198 Ill. App. 3d 1059 (1990); see also *Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶19 ("Decent judicial administration cannot tolerate forum shopping ***"). In that respect, we find the decision in *Contreras v. Citi Bank*, 198 Ill. App. 3d 1059 (1990) instructive. In *Contreras*, the plaintiff filed a declaratory judgment action in the chancery court seeking to have multiple judgments of the municipal court declared void on the basis of improper service of process in the underlying case. *Contreras*, 198 Ill. App. 3d at 1063. The chancery court dismissed the cause of action for declaratory relief explaining that it was not to be "substituted as a court of review" since that was "not its proper role." *Contreras*, 198 Ill. App. 3d at 1063. On

appeal, we affirmed noting that the plaintiffs were "seeking to sidestep the municipal division's decision in regard to the default judgment by going over to the Chancery as an alternate forum." *Contreras*, 198 Ill. App. 3d at 1066. As the court held: "[The] plaintiff's attempt to rely on collateral attack here is merely forum shopping, which is not permitted under the law." *Contreras*, 198 Ill. App. 3d at 1066.

¶ 21 In the present case, just as in *Contreras*, the plaintiff fails to grasp that the right to review the decision of a trial court is held exclusively by the appellate and supreme courts, and that any attempt to relitigate the decisions of another court of parallel jurisdiction at the trial court level will necessarily be barred by the doctrines of collateral estoppel or *res judicata*. See *e.g.*, *Illinois Health Maintenance Organization Guar. Ass'n v. Department of Ins.*, 372 Ill. App. 3d 24, 34 (2007) ("Collateral estoppels is an equitable doctrine that precludes a party from relitigating an issue decided in a prior proceeding"); *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008) ("The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. [Citation.] Res judicata bars not only what was actually decided in the first action but also whatever could have been decided.") (Internal quotation marks omitted.)

¶ 22 Accordingly, since the plaintiff's complaint for declaratory relief here raised no new issues but essentially sought collateral review of the chancery court orders dismissing the plaintiff's complaint, the trial court properly ruled that the plaintiff failed to set forth any legally cognizable action and therefore dismissed the cause of action with prejudice.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 25 Affirmed.