2015 IL App (3d) 140042-U

Order filed February 11, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

DENNIS WARD,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit
Plaintiff-Appellant,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-14-0042
	)	Circuit No. 10-L-135
CHRISTINE RICHARDSON, DENNIS B. COY, MARY SMILEY, COUNTY OF KANKAKEE,	)	
	)	
	)	Honorable
	)	Kendall O. Wenzelman,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: We have appellate jurisdiction where certificate of service completed and signed by *pro se* plaintiff, a prison inmate, stated that he mailed notice of appeal within 30 days of trial court's order dismissing his complaint. Plaintiff's complaint, which related to real property in Kankakee County and was purportedly brought pursuant to the Torrens Act, was properly dismissed because the Act was never adopted outside of Cook County.

¶ 2 Plaintiff Dennis Ward, an inmate at Stateville Correctional Center, filed a *pro se* complaint for damages against defendants Christine Richardson, Dennis B. Coy, Mary Smiley, and the County of Kankakee (County), alleging forgery, acknowledgment of fraudulent

conveyance, official misconduct, and negligence. The trial court dismissed plaintiff's complaint. Plaintiff appeals the dismissal of his complaint. The County argues that we lack jurisdiction because plaintiff's notice of appeal was not timely filed. We find that we have jurisdiction over this appeal and affirm.

¶ 3 In 2012, plaintiff, while incarcerated at Stateville Correctional Center, filed a nine-count *pro se* amended complaint for damages against defendants pursuant to the "Torrens Act" for losses he sustained with respect to real property located in Kankakee County. Counts I through III alleged forgery, acknowledgment of fraudulent conveyance and official misconduct against Christine Richardson, an employee of the County. Count IV alleged negligence against Dennis Coy, County Registrar of Deeds. Count V alleged negligence against Mary Smiley, County Chief Deputy of the Recorder of Deeds. Counts VI through IX alleged forgery, acknowledgement of fraudulent conveyance, official misconduct and negligence against the County, as the employer of Richardson, Coy and Smiley. All of defendants' allegedly negligent and wrongful acts were committed on January 6, 2005.

¶ 4 The County filed a motion to dismiss plaintiff's complaint, arguing, in part, that the one-year statute of limitations had expired on plaintiff's claims. Plaintiff filed a response, arguing that the Torrens Act (Act) (765 ILCS 35/0.01 *et seq.* (West 1992)) extended the statute of limitations to 10 years. The County replied that it never adopted the Act.

¶ 5 The court granted the County's motion and dismissed plaintiff's complaint without prejudice, finding the Act inapplicable, but granting plaintiff 60 days to amend his complaint to "bring his cause of action within another appropriate statute of limitations." Plaintiff filed a motion to reconsider, requesting that the court "reconsider its decision and deny defendant's County of Kankakee's motion to dismiss, or issue an order in accordance with Supreme Court

Rule 301 ***, thereby disposing the County of Kankakee from this action, thus giving the appellate court jurisdiction to review this matter."

¶ 6 On November 22, 2013, the trial court entered an order denying plaintiff's motion to reconsider and dismissing plaintiff's complaint with prejudice. Plaintiff filed a notice of appeal. The Circuit Court Clerk of Kankakee County received plaintiff's notice of appeal on January 9, 2014. The envelope containing plaintiff's notice of appeal bears a postmark of January 6, 2014. The "Proof/Certificate of Service" accompanying the notice of appeal, which is signed by plaintiff, states: "This certifies that on December 19, 2013, I have placed the attached *** notice of appeal in the institutional mail at Stateville Correctional Center properly addressed to the Clerk of the Circuit Court at 450 East Court Street, Kankakee County Courthouse, Kankakee, Illinois, for mailing through the United States Postal Service."

¶ 7 I

¶ 8 The County argues that we do not have jurisdiction because plaintiff failed to timely file his notice of appeal.

¶ 9 In determining whether a notice of appeal is timely, we look to Illinois Supreme Court Rule 606(b). Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013). Under Rule 606(b), a defendant must file a notice of appeal "with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from." *Id.*

¶ 10 Pursuant to Supreme Court Rule 373, a notice of appeal will be considered filed on the date it is received by the clerk of the court if it is received before the due date. Ill. S. Ct. R. 373 (eff. Dec. 29, 2009). However, if the notice of appeal is received after the due date, "the time of mailing *** shall be deemed the time of filing." *Id.* According to Rule 373, "[p]roof of mailing *** shall be as provided in Rule 12(b)(3)." *Id.*

¶ 11 The version of Supreme Court Rule 12(b) applicable to this case provides:

"(b) Manner of Proof. Service is proved:

***

(3) in case of service by mail ****, by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the document in the mail ***, stating the time and place of mailing ***, the complete address which appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid[.]" Ill. S. Ct. R. 12(b)(3) (eff. Jan. 4, 2013).

¶ 12 On September 19, 2014, the Supreme Court amended Rule 12(b) to add subsection (4), which now provides:

"(4) in case of service by mail by a *pro se* petitioner from a correctional institution, by affidavit, or by certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)) of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered." Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19. 2014).

As a result of this new provision, *pro se* inmates are no longer required to file an affidavit to establish proof of mailing. See *id*. This amendment evinces the supreme court's desire to lessen the proof of service requirements for incarcerated individuals. See also *People v. Smith*, 8 N.E. 3d 1042 (Ill. 2014) (supreme court order directing appellate court to treat posttrial motion filed by incarcerated defendant as timely filed even though defendant failed to comply with Rule 12(b)(3)'s affidavit requirement).

¶ 13 The supreme court likely added subsection (4) to Rule 12(b) in response to appellate court decisions, finding that it is extremely difficult for incarcerated individuals to comply with the requirements of Rule 12(b)(3) because they have no control over how their mail is handled

once they give it to prison officials. See *People v. Maiden*, 2013 IL App (2d) 120016, ¶ 16; *People v. Hansen*, 2011 IL App (2d) 081226, ¶ 15; *People v. Johnson*, 232 Ill. App. 3d 882, 884 (1992). The Second District in *Hansen* stated:

> "An inmate can mail nothing himself; he is required to place outgoing mail in the hands of the staff at the institution in which he is incarcerated. [Citation.] The staff then forwards the mail to the United States Postal Service. We cannot conclude that our supreme court intended that the Illinois Department of Corrections staff must execute an affidavit pursuant to Rule 12(b)(3) for every legal filing by a *pro se* inmate, nor can we conclude that a defendant must depend on a third party other than the post office to timely deal with the delivery of his mail. We believe that refusing to allow other evidence of mailing is unreasonable when Rule 12(b)(3) makes it virtually impossible for a *pro se* defendant to comply with the rule. We cannot conclude that Rule 12(b)(3) was intended to impose such a harsh outcome upon individuals who have the mail as their only practical means of communicating with the court system." *Hansen*, 2011 IL App (2d) 081226, ¶ 15.

Similarly, the Second District in *Maiden* stated:

> "Defendant did all that he could do, which was to place the mail in the hands of the prison staff, at which point he was dependent on their actions to place it into the United States mail. Defendant could not aver that the prison staff placed proper postage on it after he relinquished it to their control. At best, he could aver only that he timely placed it in the prison mail, which is what he did." *Maiden*, 2013 IL App (2d) 120016, ¶ 16.

¶ 14 In *Johnson*, the Fourth District stated: "When the party required to make the mailing is incarcerated, that individual cannot control the movement of the document after it is placed in the mailing system of the incarcerating institution." *Johnson*, 232 Ill. App. 3d at 884. In that case, the appellate court held that a "Certificate of Service," which was signed by the defendant and stated that he served the "attached documents" on the circuit clerk of Champaign County "by placing the same in the institutional mail at the Menard Correctional Center this 31 [*sic*] day of Dec. 1991, to be processed as per procedure, and delivered to the addressee via United States Mail" was sufficient to establish a filing date of December 31, 1991. *Id*. at 883-84.

¶ 15 Here, the trial court entered its order dismissing plaintiff's complaint with prejudice on November 22, 2013. The clerk of the circuit court did not receive plaintiff's notice of appeal until well after 30 days later. However, plaintiff's "Proof/Certificate of Service" indicated that he placed his notice of appeal "in the institutional mail at Stateville Correctional Center" on December 19, 2013, within 30 days of the court's order.

¶ 16 The County contends that we cannot rely on plaintiff's "Proof/Certificate of Service" because it fails to comply with Rule 12(b)(3) since it (1) is not a notarized affidavit, and (2) does not state "the fact that proper postage or the delivery charge was prepaid." We disagree. As set forth above, the supreme court has decided to relax the proof of service requirements for incarcerated individuals. See Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19. 2014); *Smith*, 8 N.E. 3d 1042 (Ill. 2014). Like the Fourth District in *Johnson*, we find that plaintiff's "Proof/Certificate of Service" was sufficient to establish a timely filing date of December 19, 2013, for plaintiff's notice of appeal. See *Johnson*, 232 Ill. App. 3d at 883-84.

¶ 17 II

¶ 18 Plaintiff argues that the trial court erred in finding that the Act does not apply to his property, which is located in Kankakee County.

¶ 19 The Torrens Act was passed in 1897. *Evans v. Chicago Title & Trust Co.*, 317 Ill. 11, 18 (1925). The purpose of the Act "was to provide a system of registration of land titles by which all instruments affect the title should be filed and registered with one officer, who should be authorized to make a certificate of the title, and show conclusively the state of the title, and the person in whom it was vested, so that by a mere reference to the certificate the title to the land might be ascertained." *Id*. at 19. The Act was created in response to the loss of nearly all land records in the Chicago fire of 1871. McCarthy, M., *The Registered Titles (Torrens) Act*, 31A Ill. Law & Practice, Registration of Land Titles § 4 (2015). Land registration was seen as a good way to clear title for purposes of rebuilding the city. *Id*.

¶ 20 The Act was not made compulsory. See 765 ILCS 35/110 (West 1992). It was left to the action of the voters of each county to decide whether the Act should be effective in their respective county. See *id*. The only county that voted to adopt the Act was Cook County. *Evans*, 317 Ill. at 20; McCormack, J., *Torrens & Recording: Land Title Assurance in the Computer Age*, 18 Wm. Mitchell L. Rev. 61, 73 (1992); Scheid, J., *Buying Blackacre: Form Contracts & Prudent Provisions*, 23 J. Marshall L. Rev. 15, 51 (1989). No other county ever adopted the Act. *Evans*, 317 Ill. at 20; Epperson, K., *Case Note: BAC Home Loans – The Mortgage Follows the Note*, 65 Consumer Fin. L. Q. Rep. 415, n7 (2011). Thus, the Act was never in force in any other county (*Evans*, 317 Ill. at 20), including Kankakee County. The trial court properly dismissed plaintiff's complaint, which was purportedly brought pursuant to the Act.

¶ 21 The judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.