2015 IL App (4th) 140735-U

NO. 4-14-0735

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 19, 2015
Carla Bender
4th District Appellate
Court, IL

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| ANTHONY L. FLETCHER, | ) | Appeal from |
| Plaintiff-Appellant, | ) | Circuit Court of |
| v. | ) | McLean County |
| RICHARD HALL and TAMMY HALL, | ) | No. 08L118 |
| Defendants-Appellees. | ) | |
| | ) | Honorable |
| | ) | Paul G. Lawrence, |
| | ) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, concluding (1) plaintiff's fourth amended complaint failed to comply with Illinois pleading requirements, and (2) the trial court's dismissal with prejudice was appropriate.

¶ 2 In December 2008, plaintiff, Anthony L. Fletcher, an inmate at the Lawrence Correctional Center, filed a *pro se* civil complaint against defendants, Richard Hall and Tammy Hall. Over the course of the next few years, Fletcher refiled and amended his complaint several times. In July 2014, the trial court dismissed Fletcher's fourth amended complaint with prejudice. Fletcher appeals, arguing (1) he properly set forth facts "after the filing of [six] different complaints or amended complaints, over a period of four years," entitling him to recover damages; (2) his *pro se* pleadings should have been held to a less stringent standard than formal pleadings drafted by attorneys; and (3) the trial court impermissibly conducted 11 *ex parte* hearings with the Halls. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2008, Fletcher filed a *pro se* complaint against his landlords, Richard and Tammy Hall, alleging "unlawful entry and illegal search and seizure of property by landlord." With his *pro se* complaint, Fletcher also filed a motion to proceed *in forma pauperis* and a petition for an order of *habeas corpus ad testificandum*. Later that month, the trial court granted Fletcher's motion to proceed *in forma pauperis* but denied his petition for leave to appear.

¶ 5 Fletcher amended his complaint, and in October 2009, the trial court dismissed Fletcher's first amended complaint for want of prosecution. In an order dated September 16, 2010, this court reversed the trial court's decision and reinstated Fletcher's first complaint, finding the court erred when it dismissed his complaint "based solely on his failure to prosecute as a result of his nonappearance." *Fletcher v. Hall*, No. 4-10-0041, slip order at 10 (Sept. 16, 2010) (unpublished order under Supreme Court Rule 23). In September 2012, the Halls filed a motion to dismiss the reinstated complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)). In November 2012, the trial court granted the Halls' motion and dismissed Fletcher's complaint, giving him 30 days to replead.

¶ 6 In December 2012, Fletcher filed his second complaint. The Halls, again, filed a section 2-615 motion, and in March 2013, the trial court granted the motion, giving Fletcher 30 days to replead. In April 2013, Fletcher filed his third complaint, and later that month, his third amended complaint. In June 2013, the Halls filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code. In August 2013, the trial court granted the Halls' motion to dismiss Fletcher's third amended complaint, giving him 30 days to replead.

¶ 7 In August 2013, Fletcher filed his fourth complaint and in October 2013, his fourth amended complaint, entitled "Amended Complaint for Interference with Enjoyment of Premises." Fletcher's fourth amended complaint contained a single count and alleged both "interference with enjoyment of premises" and "wrongful eviction." In the complaint, Fletcher alleges the existence of a written lease commencing "in or about the year 2005." He then claims the lease contained a covenant that he should "peaceably and quietly enjoy and occupy the premises for the agreed term." The complaint also alleges violations of the Forcible Entry and Detainer Act (Forcible Entry Act) (735 ILCS 5/9-101 to 9-121 (West 2012)), along with deprivation of personal, business, and residential property. Fletcher concludes his fourth amended complaint by requesting actual, punitive, consequential, and "humiliation, implied emotional stress, and embarrassment" damages.

¶ 8 In April 2014, the Halls filed a motion to dismiss Fletcher's fourth amended complaint pursuant to sections 2-615 and 2-619 of the Code. Later that month, Fletcher filed a combined motion to take judicial notice and reply to the Halls' motion to dismiss. In June 2014, the Halls filed a response to Fletcher's reply to their motion to dismiss. They contended their motion to dismiss was directed at Fletcher's pleadings and their nonconformity with the Code. Fletcher filed a reply, contending the Halls' reply was ambiguous because it did not identify which complaint they were referencing, as he had previously filed five different pleadings in the form of a complaint or an amended complaint.

¶ 9 In July 2014, the trial court, after reviewing the Halls' motion to dismiss the fourth amended complaint, Fletcher's combined motion to take judicial notice and reply, the Halls' response, and Fletcher's reply, granted the Halls' motion to dismiss with prejudice.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, Fletcher argues the trial court erred in dismissing his complaint because (1) he set forth facts in six different complaints and amended complaints entitling him to recover damages for interference with his enjoyment of the premises and violation of the Forcible Entry Act; (2) his complaint should have been held to a less stringent pleading standard because he was proceeding *pro se*; and (3) the court impermissibly conducted 11 *ex parte* hearings with the Halls. The Halls assert Fletcher's fourth amended complaint was defective and properly dismissed. They specifically claim as follows: (1) Fletcher's fourth amended complaint was legally insufficient pursuant to section 2-615 of the Code; (2) the trial court's dismissal with prejudice was warranted because Fletcher was given numerous opportunities over several years to amend his pleadings; and (3) the trial court did not conduct *ex parte* hearings. We find the Halls' arguments well taken and affirm the trial court's dismissal with prejudice.

¶ 13 A. Fletcher's Fourth Amended Complaint Superseded All Prior Complaints

¶ 14 Fletcher first argues he set forth facts in his six different complaints and amended complaints entitling him to recover damages for interference with his enjoyment of the premises. However, it is well established an amendment, complete in itself, which does not refer to or adopt the prior pleading, supersedes the original pleading. The original pleading, in turn, ceases to be a part of the record, "being in effect abandoned and withdrawn." *Bowman v. County of Lake*, 29 Ill. 2d 268, 272, 193 N.E.2d 833, 835 (1963) (citing *Wright v. Risser*, 290 Ill. App. 576, 581, 8 N.E.2d 966, 968-69 (1937)). Fletcher's fourth amended complaint was complete and did not adopt any prior pleadings, thus his appeal is limited to the allegations contained therein.

¶ 15 B. Pro Se Litigants Are Held to the Same Pleading Standards as Attorneys

¶ 16 We also reject Fletcher's argument he should be held to a less stringent pleading standard as a result of his *pro se* pleading status. Fletcher cites two cases arising out of federal section 1983 proceedings (42 U.S.C. § 1983 (1979)). See *Erickson v. Pardus*, 551 U.S. 89 (2007); *Billman v. Indiana Department of Corrections*, 56 F.3d 785 (7th Cir. 1995). However, Illinois is a fact-pleading jurisdiction, and the Illinois Code—not the Federal Rules of Civil Procedure—apply. See *Teter v. Clemens*, 112 Ill. 2d 252, 256-57, 492 N.E.2d 1340, 1342 (1986). We find Fletcher's reliance on these federal cases inapposite. Under Illinois law, where a party elects to proceed *pro se*, he must comply with the same rules and will be held to the same standards as licensed attorneys. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528, 759 N.E.2d 509, 517 (2001).

¶ 17 C. Fletcher's Complaint Was Properly Dismissed With Prejudice

¶ 18 "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 788 (2009). "Under section 2-615, the critical question is whether the allegations in the complaint, construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Doe-3 v. McLean County Unit District. No. 5 Board of Directors*, 2012 IL 112479, ¶ 16, 973 N.E.2d 880. "In making this determination, all well-pleaded facts must be taken as true." *Id.* However, "[b]ecause Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305, 891 N.E.2d 839, 845 (2008). "Legal conclusions and factual conclusions that are unsupported by allegations of specific facts will be disregarded in ruling on a motion to dismiss." *Cummings v. City of Waterloo*, 289 Ill. App. 3d 474, 479, 683 N.E.2d 1222, 1225 (1997). Moreover, a

properly pleaded cause of action must comply with the pleading requirements set out in section 2-603 of the Code. Section 2-603 states:

> "(a) All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply[;]
>
> (b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation[; and]
>
> (c) Pleadings shall be liberally construed with a view to doing substantial justice between the parties." 735 ILCS 5/2-603 (West 2012).

We review a trial court's dismissal pursuant to section 2-615 *de novo*. *Cummings*, 289 Ill. App. 3d at 479, 683 N.E.2d at 1225.

¶ 19 Upon conducting our *de novo* review, we agree with both the Halls and the trial court that Fletcher's fourth amended complaint is legally insufficient. First, Fletcher's fourth amended complaint asserts multiple causes of action within a single count in violation of section 2-603(b). See 735 ILCS 5/2-603(b) (West 2012) ("Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count[.]"). Fletcher's fourth amended complaint states it is "for interference with enjoyment of premises and wrongful eviction," yet it lumps all factual allegations together under a single heading. He then complains the Halls

violated the Forcible Entry Act when they changed the locks on his doors and alleges multiple forms of damages. The purpose of section 2-603 "is to give notice to the court and to the parties of the claims being presented." *Smith v. Heissinger*, 319 Ill. App. 3d 150, 154, 745 N.E.2d 666, 670 (2001). We find it unclear whether Fletcher seeks recovery for a violation of the Forcible Entry Act, a suit for breach of the covenant of quiet enjoyment, a suit for wrongful eviction, or some other claim for damages. Each of these potential claims is a distinct "cause of action upon which a separate recovery might be had," and dismissal pursuant to section 2-615 of the Code was appropriate. 735 ILCS 5/2-603(b) (West 2012); see also *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19, 919 N.E.2d 383, 387 (2009) ("Failure to comply with section 2-603 may be grounds for dismissal of the complaint.").

¶ 20 Although "[p]leadings shall be liberally construed with a view to doing substantial justice between the parties," liberal construction will not save a complaint containing factual or legal conclusions which are unsupported by specific factual allegations. 735 ILCS 5/2-603(c) (West 2012); *Pooh-Bah Enterprises*, 232 Ill. 2d at 473, 905 N.E.2d at 789. Even if we were to consider Fletcher's claims as separate and distinct, his fourth amended complaint is legally insufficient because it is replete with factual and legal conclusions and fails to plead any facts tending to show the existence of a valid lease agreement—a requirement for both causes of action he asserts were properly pleaded—interference with his enjoyment of the premises, and violation of the Forcible Entry Act.

¶ 21 "In Illinois, four elements are required to create a valid lease: (1) a definite agreement as to the extent and bounds of the property leased; (2) a definite and agreed term; (3) a definite agreement as to the rental; and (4) the time and manner of payment." *Chapman v. Brokaw*, 225 Ill. App. 3d 662, 665, 588 N.E.2d 462, 465 (1992). Fletcher's complaint alleged

only that he had a valid written lease, commencing "in or about the year of 2005," and leased to him "for the term and at the rental specified in the lease."

¶ 22 Although Fletcher did attach an affidavit to his fourth amended complaint stating he was unable to provide a copy of the written lease, nowhere does Fletcher allege the type, duration, or terms of the alleged written lease, nor does he plead any facts tending to show the lease had not been lawfully terminated at the time the Halls changed the locks to the apartment doors. Fletcher tries to combat this point on appeal by contending Richard Hall's sworn federal testimony provides clear evidence of a valid lease agreement. However, nothing relating to any federal testimony was contained in or attached to Fletcher's fourth amended complaint. As stated above, an amendment, complete in itself, supersedes all prior filings. The only testimony referred to in Fletcher's fourth amended complaint was Richard Hall's testimony in a McLean County small-claims case, where Hall stated he was the one who changed the locks to the apartment. We find this factual allegation insufficient to support a finding of a valid lease agreement between the parties.

¶ 23 In addition to finding Fletcher commingled multiple causes of action in a single count, we also find he failed to state a cause of action upon which relief could be granted. Because Fletcher was given multiple chances over a four-year period to amend his complaint, we find no abuse of discretion in the trial court's dismissal of Fletcher's fourth amended complaint with prejudice.

¶ 24 D. The Trial Court Did Not Conduct *Ex Parte* Hearings

¶ 25 Fletcher argues the trial court violated his right to due process when it conducted 11 *ex parte* hearings with the Halls. In support of this contention, Fletcher cites this court's order in *Fletcher*, No. 4-10-0041 (unpublished order under Supreme Court Rule 23), and argues we

held he has a constitutional right to be present throughout the course of a trial of a case to which he is a party. We find Fletcher's reliance on this language from our previous order misplaced.

¶ 26 In December 2008, Fletcher filed a petition for writ of *habeas corpus ad testificandum*, which the trial court denied. However, the court later dismissed Fletcher's complaint for failure to appear. On appeal, we reversed the trial court's judgment, concluding only that it was improper for the court to deny Fletcher's petition for writ to appear and then dismiss his complaint for failing to prosecute. In so holding, we stressed that our decision was not a reversal of the trial judge's order denying Fletcher's petition for a writ of *habeas corpus ad testificandum*, nor did we state an opinion as to the propriety of any future petition Fletcher may file.

¶ 27 Regardless of our prior order, the record fails to show the trial court conducted *any* hearings following the filing of Fletcher's fourth amended complaint, let alone *ex parte* hearings. The docketing statement indicates Fletcher filed his fourth amended complaint in October 2013. The Halls then filed a motion to dismiss, and Fletcher filed a combined motion to take judicial notice and reply to the Halls' motion to dismiss. The Halls filed a response, and Fletcher filed yet another reply. On July 15, 2014, the court made a docket entry, noting its dismissal of Fletcher's complaint with prejudice. The entry stated the ruling was premised solely upon the written motions filed by the parties. Accordingly, we find Fletcher's claim regarding *ex parte* hearings meritless and fully unsupported by the record.

¶ 28 III. EPILOGUE

¶ 29 As a final matter, we note Fletcher has filed numerous meritless appeals with this court over the past decade. See *Fletcher v. Cunningham*, No. 4-05-1039 (Oct. 24, 2006) (appeal dismissed) (failure to comply with Supreme Court Rule 341); *Fletcher v. Foy*, No. 4-06-0869

(Nov. 8, 2006) (appeal dismissed) (failure to file a docketing statement); *Fletcher v. McLean Co. Circuit Court*, No. 4-08-0820 (Feb. 23, 2009) (unpublished order under Supreme Court Rule 23); *Fletcher v. Mathy*, No. 4-09-0795 (July 27, 2010) (unpublished order under Supreme Court Rule 23); *Fletcher v. Mathy*, No. 4-09-0900 (Aug. 3, 2010) (dismissed by unpublished summary order under Supreme Court Rule 23(c)(2)); *Fletcher v. Pontiac Correctional Center*, No. 4-10-0398 (Nov. 18, 2010) (appeal dismissed) (failure to file a docketing statement).

¶ 30 Based on our conclusion today and the above list, it is apparent Fletcher has been engaged in what we have referred to as "litigation for sport." *Williams v. Commissary Department of the Department of Corrections*, 407 Ill. App. 3d 1135, 1137, 948 N.E.2d 1061, 1063 (2011). As part of our judgment, we order Fletcher to show cause within 30 days as to why sanctions should not be entered against him pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) for filing a frivolous appeal in this matter. Until such time as (1) Fletcher responds to this order and (2) this court determines what action to take, we direct the clerk of this court to disregard—and by that we mean to not file—any new pleadings submitted to this court by Fletcher.

¶ 31 IV. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.