2016 IL App (4th) 150233-U

NO. 4-15-0233

FILED
January 21, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BRIAN DUGAN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
ILLINOIS DEPARTMENT OF CORRECTIONS,	)	No. 13MR858
Defendant-Appellee.	)	
	)	Honorable
	)	Chris Perrin,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the circuit court did not err in granting defendant's motion for summary judgment and denying plaintiff's motions to strike and for sanctions.

¶ 2 In August 2013, plaintiff, Brian Dugan, filed a *pro se* complaint against defendant, the Illinois Department of Corrections (Department), as well as S.A. Godinez and Lisa Weitekamp, seeking relief following prison officials' refusal to provide a document to plaintiff under the Freedom of Information Act (FOIA or Act) (5 ILCS 140/1 to 11.5 (West 2012)). In December 2014, the Department filed a motion for summary judgment. In February 2015, the circuit court granted the Department's motion. In March 2015, the court denied plaintiff's postjudgment motions.

¶ 3 On appeal, plaintiff argues the circuit court erred in granting the Department's motion for summary judgment and denying his motions. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2012, plaintiff, an inmate housed at Pontiac Correctional Center, sought Department documents, including a blank mental-health-treatment-plan form, under the Act. In May 2012, Weitekamp, the Department's FOIA officer, responded, in part, as follows:

> "Your request is denied pursuant to Section 7(1)(e) of the Freedom of Information Act, which provides 'Records that relate to or affect the security of correctional institutions and detention facilities.' This is the form utilized by [the Department] to ensure inmates receive appropriate mental health treatment. Blank copies of this document could be forged or altered in such a manner that would allow inmates into assignments which threaten security. This form relates directly to security."

Thereafter, plaintiff requested review of the denial from the Illinois Attorney General's Public Access Counselor. Plaintiff contended the form does not relate to prison security and argued the Department's denial was "specious."

¶ 6 In June 2012, Dushyanth Reddivari, an assistant Attorney General in the Public Access Bureau, indicated further inquiry as to plaintiff's request was warranted. Reddivari requested the Department provide "un-redacted copies" of the form and "a detailed factual basis for the asserted exemptions." Weitekamp responded, stating the Department "believes that allowing blank copies of this document to be released could lead to potential alterations and security breaches." Weitekamp enclosed a copy of the form and stated it was only for "your review and not to be released to any other party."

¶ 7 In June 2013, Reddivari issued a non-binding decision, stating, in part, as follows:

> "[The Department's] hypothetical and generalized scenarios regarding possible circumstances in which the form *could* be altered or result in a breach of security do not satisfy the clear and convincing evidence standard required under section 1.2 of FOIA. In particular, it is unclear how a form forged by an inmate could be placed in an inmate's secure medical file. Therefore, we conclude that [the Department] has not met its burden of demonstrating that the form is exempt from disclosure under section 7(1)(e)." (Emphasis in original.)

¶ 8 In August 2013, plaintiff filed a *pro se* complaint in the circuit court, naming the Department, Director Godinez, and Weitekamp. Plaintiff sought a declaratory judgment, injunctive relief to require the Department to disclose the form, as well as fees, costs, and a $2,500 to $5,000 penalty against the Department for failure to disclose the form.

¶ 9 In December 2013, Godinez and Weitekamp filed a motion to dismiss, arguing the Department Director and the FOIA officer were not proper parties to a suit filed pursuant to the Act. In May 2014, plaintiff filed a motion for *in camera* inspection of the form. In August 2014, the circuit court granted the motion to dismiss, finding Godinez and Weitekamp were not proper parties. The court also took the motion for *in camera* inspection under advisement.

¶ 10 The parties engaged in discovery in the form of interrogatories. In October 2014, plaintiff filed a motion to compel the Department to answer his interrogatories and release the form. In November 2014, the Department responded by stating it had appropriately answered the interrogatories. The Department also stated it would not disclose the form because its release posed security risks.

¶ 11 In December 2014, the Department filed a motion for summary judgment pursuant to section 2-1005(b) of the Code of Civil Procedure (735 ILCS 5/2-1005(b) (West 2012)). The Department argued it was exempt from disclosing the form under section 7(1)(e) of the Act (5 ILCS 140/7(1)(e) (West 2012)), which exempts disclosure of documents that relate to or affect security in correctional institutions.

¶ 12 In support of the motion, the Department attached the responses to plaintiff's interrogatories. Therein, the Department stated the completed forms are maintained in the inmate's medical file, and blank forms are stored electronically on a server for prison employees.

¶ 13 The Department also included the affidavit of Pontiac Correctional Center Major Patrick Hobart. He stated the form was developed to assist Department staff "with the observation, diagnosis, and treatment of mental illnesses amongst inmates." According to Hobart, the top section of the form includes an inmate's biographical data, while the rest contains information about an inmate's mental illnesses and treatment goals. Hobart stated the form allows Department staff "to make informed decisions about the placement of inmates." Further, providing blank copies of the form to inmates creates a safety and security risk because inmates could attempt to "manipulate the system by mastering an interview regarding the form" or "attempt to replicate the form and fill in false information in order to manipulate the prison system." Hobart also stated the information in the form could negatively impact the inmate and cause a security concern.

¶ 14 In January 2015, plaintiff filed a motion to strike Hobart's affidavit, arguing the responses were vague, conclusory, and self-serving. Plaintiff also filed a motion in opposition to the Department's request for summary judgment. Plaintiff contended the Department waived the FOIA exemption because it disclosed the form during the discovery process.

¶ 15 In February 2015, the circuit court granted the Department's motion for summary judgment, finding the form was exempt from disclosure under section 7(1)(e) of the Act (5 ILCS 140/7(1)(e) (West 2012)). The court also denied plaintiff's motion to strike Hobart's affidavit.

¶ 16 Plaintiff filed two postjudgment motions, asking the circuit court to reverse its summary-judgment ruling, impose sanctions against the Department for its motion and "frivolous" filings, and strike Hobart's affidavit. In March 2015, the court denied the motions. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Summary Judgment

¶ 19 Plaintiff argues the circuit court erred in granting the Department's motion for summary judgment. We disagree.

¶ 20 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). "Summary judgment is a drastic remedy and should be allowed only when the right of the moving party is clear and free from doubt." *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291, 730 N.E.2d 1119, 1127 (2000). On appeal from a circuit court's decision to grant a motion for summary judgment, our review is *de novo*. *Bowles v. Owens-Illinois, Inc.*, 2013 IL App (4th) 121072, ¶ 19, 996 N.E.2d 1267.

¶ 21 Section 1 of the Act states it is "the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees."

5 ILCS 140/1 (West 2012). Our supreme court has stated "[t]he purpose of the FOIA is to open governmental records to the light of public scrutiny." *Bowie v. Evanston Community Consolidated School Dist. No. 65*, 128 Ill. 2d 373, 378, 538 N.E.2d 557, 559 (1989). Thus, under FOIA, a presumption exists that public records be " 'open and accessible.' [Citation.]" *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415-16, 844 N.E.2d 1, 15 (2006).

¶ 22 "[W]hen a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the Act applies." *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463, 791 N.E.2d 522, 527 (2003); see also *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407, 680 N.E.2d 374, 377 (1997) (stating the exceptions to disclosure are to be read narrowly). "If the public body seeks to invoke one of the exemptions in section 7 as grounds for refusing disclosure, it is required to give written notice specifying the particular exemption claimed to authorize the denial." *Lieber*, 176 Ill. 2d at 408, 680 N.E.2d at 377 (citing 5 ILCS 140/9(b) (West 1994)). Pursuant to section 1.2 of the Act, a "public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2012); see also 5 ILCS 140/11(f) (West 2012). "Satisfying this burden requires the public body to provide a detailed explanation for asserting the exemptions in order for those reasons to be tested in an adversarial proceeding." *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶ 22, 994 N.E.2d 705.

¶ 23 In the case *sub judice*, the Department contended the form requested by plaintiff was exempt from disclosure under section 7(1)(e) of the Act (5 ILCS 140/7(1)(e) (West 2012)),

which deals with "[r]ecords that relate to or affect the security of correctional institutions and detention facilities." The Department included Hobart's affidavit, which stated his duties include supervising and directing a security force at Pontiac Correctional Center, conducting security investigations, and reviewing segregation placement of inmates. He stated he was familiar with the form and stated it is used to assist prison staff in the observation, diagnosis, and treatment of mental illnesses in the inmates. He stated the top part of the form contains biographical information and then addresses a particular inmate's mental illness, personality disorder, or cognitive deficit and any accompanying treatment goals.

¶ 24 Hobart stated the form allows prison staff to make informed decisions about the placement of inmates. Further, he stated providing blank copies of the form to inmates "creates a safety and security concern," as inmates "in an attempt to avoid or engage in assignments or medical treatment can manipulate the system by mastering an interview regarding the form" or could "attempt to replicate the form and fill in false information in order to manipulate the prison system."

¶ 25 We find the Department presented clear and convincing evidence that the form is subject to exemption under the Act. Hobart's affidavit indicated the form is directly related to prison security and housing placement. Moreover, he stated disclosure of the form would create a security risk for the prison because inmates could master the mental-health interview to manipulate the system in an attempt to avoid or engage in assignments or medical treatment.

¶ 26 Plaintiff argues the circuit court should have conducted an *in camera* review of the form to determine if the form was exempt from disclosure. Pursuant to section 11(f) of the Act, the court "shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision

of this Act." 5 ILCS 140/11(f) (West 2012). Our supreme court has stated the "court need not conduct an *in camera* review where the public body meets its burden of showing that the statutory exemption applies by means of affidavits. [Citations.] However, affidavits will not suffice if the public body's claims are conclusory, merely recite statutory standards, or are too vague or sweeping." *Illinois Education Ass'n*, 204 Ill. 2d at 469, 791 N.E.2d at 530.

¶ 27 Here, the Department gave a legitimate reason for not disclosing the form—disclosure of the form would compromise prison security. Hobart's affidavit was not conclusory, self-serving, or vague, as he discussed the portions of the form and highlighted the security concerns. *Cf. Illinois Education Ass'n*, 204 Ill. 2d at 470, 791 N.E.2d at 531 (stating "the public body may not simply treat the words 'attorney-client privilege' or 'legal advice' as some talisman, the mere utterance of which magically casts a spell of secrecy over the documents at issue"). As the motion specifically discussed the form by providing Hobart's supporting affidavit discussing the form's contents, the court need not have conducted an *in camera* inspection prior to granting summary judgment. See *Illinois Education Ass'n*, 204 Ill. 2d at 470-71, 791 N.E.2d at 531 (stating summary judgment may be granted "without *in camera* review if the affidavits show with reasonable specificity why the documents fall within the claimed exemption and are sufficient to allow adversarial testing").

¶ 28 Even assuming the exemption found in section 7(1)(e) of the Act applies, plaintiff argues the Department waived the exemption by "repeatedly disclosing the form during the discovery process." However, the Department did not voluntarily disclose the unredacted form to the Public Access Counselor but was required to do so under section 9.5(c) of the Act. 5 ILCS 140/9.5(c) (West 2012) (requiring that "[w]ithin 7 days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with

the Public Access Counselor"). Moreover, the Department specifically informed the Public Access Counselor that the form was only for "your review, and not be released to any other party." Thus, the Department's disclosure did not remove the form's privileged status.

¶ 29 B. Plaintiff's Motions

¶ 30 Plaintiff argues the circuit court erred in denying his motions to strike Hobart's affidavit and impose sanctions. We disagree.

¶ 31 First, plaintiff argues Hobart's affidavit should have been stricken because it violated Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) by containing vague, self-serving, and conclusory statements. However, Hobart swore in his affidavit that he had personal knowledge of the facts therein and would be competent to testify. Further, he swore about the contents and uses of the form and the Department's concerns regarding security. Nothing in the affidavit shows Hobart's statements were conclusory or vague.

¶ 32 Second, plaintiff argues the circuit court erred in failing to find the Department's motion for summary judgment to be frivolous and to impose sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Sanctions may be granted when a pleading is not well grounded in fact or intended to harass the opposing party, cause unnecessary delay, or needlessly increase the cost of litigation. *People v. Stefanski*, 377 Ill. App. 3d 548, 551, 879 N.E.2d 1019, 1022 (2007). Here, however, the Department made a good-faith argument the form was exempt under section 7(1)(e) of the Act, made an appropriate motion for summary judgment, and supported that motion with Hobart's affidavit and interrogatory responses. Nothing indicates sanctions were warranted in this case, and the court did not abuse its discretion in denying plaintiff's motion.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the circuit court's judgment.

¶ 35 Affirmed.