2019 IL App (3d) 170532-U

Order filed August 21, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

RAYMOND SERIO,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Putnam County, Illinois.
	)	
v.	)	Appeal No. 3-17-0532
	)	Circuit No. 17-MR-1
PUTNAM COUNTY SHERIFF'S	)	
DEPARTMENT,	)	The Honorable
	)	Thomas A. Keith,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a Freedom of Information Act (FOIA) lawsuit, the appellate court found that summary judgment was properly granted for defendant on plaintiff's FOIA complaint because plaintiff was an inmate in the Department of Corrections and the information that plaintiff requested was exempt from disclosure except to the extent that it was relevant to plaintiff's current or potential case or claim, which plaintiff did not allege in his FOIA requests or in his FOIA complaint and which plaintiff did not establish. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Plaintiff, Raymond Serio, filed a Freedom of Information Act (FOIA or Act) (5 ILCS 140/1 *et seq.* West 2016)) complaint in the trial court seeking to have the trial court declare that

defendant, the Putnam County Sheriff's Department (sheriff), had willfully and intentionally failed to comply with Serio's FOIA requests and to have the trial court order the sheriff to provide Serio with the information that Serio had requested. The sheriff filed a memorandum of law opposing Serio's assertions, and Serio filed a motion for partial summary judgment. After considering the matter, the trial court treated the sheriff's memorandum as a motion for summary judgment, granted summary judgment for the sheriff, and denied Serio's motion for the same relief. Serio appeals. We affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On November 1, 2016, Serio—who was, and still is, an inmate in the Illinois Department of Corrections (DOC)—mailed a FOIA request to the sheriff, asking that the sheriff provide him with specific information regarding individuals that had been booked into custody at the Putnam County jail (county jail or jail) from April 1, 2016, to September 1, 2016. The specific information that Serio requested as to those individuals was the name, age, full address, offense, date of arrest, and photo (if available). Serio stated in his request that he was seeking the information pursuant to section 2.15(a) of the FOIA (5 ILCS 140/2.15(a) (West 2016)) and that none of the information requested was exempt from disclosure under the Act.

¶ 5 On November 9, 2016, the sheriff responded to Serio's FOIA request and provided all of the information requested, except for the home addresses of those individuals that were booked into the jail. The sheriff stated in his response that " '[p]rivate information' as defined in the [FOIA] ha[d] been omitted from the attached document as mandated by the [FOIA]."

¶ 6 On November 26, 2016, Serio mailed another FOIA request to the sheriff seeking the same information that he had sought in the previous request but, this time, for the period of March 1, 2016, to the present date. Serio again stated in his request that he was seeking the

information pursuant to section 2.15(a) of the FOIA and that none of the information was exempt under the Act.

¶ 7 On December 7, 2016, the sheriff responded and provided the information requested but again omitted the home addresses of the individuals booked into the county jail during the relevant time period, stating again that " '[p]rivate information' as defined in the [FOIA] ha[d] been omitted from the attached documents as mandated by the [FOIA]."

¶ 8 In January 2017, Serio filed a *pro se* FOIA complaint in the trial court, seeking a declaration that the sheriff willfully and intentionally failed to comply with Serio's FOIA requests and to have the trial court order the sheriff to produce all of the non-exempt information and to pay civil penalties and Serio's costs of bringing suit. Serio attached to the complaint copies of the two FOIA requests he had sent to the sheriff and the sheriff's responses to those requests.

¶ 9 In April 2017, the sheriff filed an appearance in the trial court on the matter. The following month, in May 2017, the trial court entered an order directing the sheriff to answer or otherwise plead in this case by June 19, 2017. The trial court's order was made in response to two motions that Serio had filed to expedite the case. On June 20, 2017, the sheriff filed a memorandum of law on the issues raised in this case. In the memorandum, the sheriff asserted that the home addresses of the individuals booked into the county jail was private information as defined in the Act, that it was exempt from disclosure under the Act, and that the sheriff was not required to provide Serio with that information.

¶ 10 In July 2017, Serio filed a motion for partial summary judgment on his FOIA complaint. Serio asserted in the motion that under the plain language of the Act, the exemption claimed by the sheriff did not apply and that disclosure was required.

¶ 11 Later that same month, before the Sheriff had filed any type of a response to Serio's motion for partial summary judgment, the trial court issued a written decision, ruling upon the merits of the parties' assertions. In the written decision, the trial court treated the memorandum of law that the sheriff had filed as a motion for summary judgment, ruled in the sheriff's favor on whether the exemption applied to the requested information, granted summary judgment for the sheriff, and denied Serio's motion for the same relief. Serio appealed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Serio argues that the trial court erred in granting summary judgment for the sheriff on Serio's FOIA complaint. Serio asserts that summary judgment should have been granted for Serio, and not for the sheriff, because: (1) the plain language of the Act and the rules of statutory construction, especially those that apply to the interpretation of the Act, showed that the information that Serio had sought to obtain (the home addresses of those individuals who had been booked into the county jail during the relevant time periods) was not exempt from disclosure under the Act; (2) even if the language of the Act was found to be ambiguous as to whether disclosure was required, any ambiguity should have been resolved in favor of disclosure since the provisions of the Act are supposed to be liberally construed so as to achieve the goal of the Act (to provide the public with easy access to government information); and (3) the trial court improperly granted relief for the sheriff—that the sheriff had not requested—when the trial court granted summary judgment for the sheriff, even though the sheriff had not filed a motion for summary judgment. For all of the reasons stated, Serio asks that we reverse the trial court's ruling, that we enter an order granting summary judgment for Serio, and that we remand this case for the trial court to determine whether civil penalties and costs of suit should be assessed against the sheriff.

¶ 14 In response to Serio's argument and assertions, the sheriff argues first that this court lacks appellate jurisdiction to rule upon the merits of this appeal and that the appeal should be dismissed. In support of that argument, the sheriff contends, in agreement with Serio, that the sheriff did not file a motion for summary judgment on Serio's complaint. Thus, the sheriff claims that the only ruling that is before this court is the trial court's denial of Serio's motion for partial summary judgment, a ruling that is not a final and appealable order. Second, and in the alternative, the sheriff argues that if appellate jurisdiction exists in this case, the trial court's ruling granting summary judgment for the sheriff was proper and should be upheld because: (1) the plain language of the Act, considered in light of certain other rules of statutory construction, different from those relied upon by Serio, showed that the information that Serio sought to obtain was exempt from disclosure under the Act and that the sheriff was not required, therefore, to provide Serio with that information; and (2) Serio failed to comply with certain statutory procedural requirements, which were added by the legislature after the trial court's ruling in this case but which apply retroactively to Serio's FOIA complaint and his underlying FOIA requests. For all of the reasons set forth, the sheriff asks that we either dismiss this appeal for lack of appellate jurisdiction or that we affirm the trial court's judgment.

¶ 15 In reply, Serio asserts that appellate jurisdiction exists in this case because the trial court entered a final judgment that ended the trial court proceedings. In making that assertion, Serio contends that the sheriff accepted the "win by error" that the sheriff received in the trial court and is now trying to exploit that "ill gained win" on appeal by claiming that there is no jurisdiction to hear the merits of this case. As for the changes that were made to the FOIA after the trial court ruled on this case, Serio asserts that those changes were substantive in nature and

do not apply retroactively to this case. Serio maintains, therefore, that the trial court should have granted summary judgment in his favor, rather than for the sheriff.

¶ 16 A. Appellate Jurisdiction

¶ 17 Before we address the merits of the arguments, we must first address the sheriff's assertion that there is no appellate jurisdiction in this case. It is well settled that an appellate court has a duty to determine if jurisdiction to hear an appeal exists and to dismiss the appeal if jurisdiction is lacking. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). When we review the record before us in this case, however, we find that appellate jurisdiction exists to rule upon the merits. In the instant case, the trial court treated the sheriff's memorandum as a motion for summary judgment, granted summary judgment for the sheriff, and denied Serio's motion for the same relief. It is clear from the record, therefore, that the trial court entered a final and appealable order and that appellate jurisdiction is not lacking in this case. See *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 358 (1999) (recognizing that although the denial of summary judgment is generally not a final and appealable order, an exception to that rule exists where the parties file opposing motions for summary judgment on the same claim and the trial court grants one motion and denies the other and thereby enters an order that entirely disposes of the litigation). Indeed, it would be unfair in this case to allow the sheriff to receive the benefit of the trial court's ruling—a ruling that the sheriff could have sought to correct by motion in the trial court if the sheriff thought the ruling was procedurally erroneous—but deny on appeal that the ruling in question exists. *City of Chicago v. Higginbottom*, 219 Ill. App. 3d 602, 628 (1991) (stating that a reviewing court "is not simply an umpire and is responsible for the justice of the judgment that it enters").

¶ 18 B. Serio's FOIA Act Claim

¶ 19 Turning to the merits of this appeal, we are mindful of the legal principles that apply to a trial court's grant of summary judgment. The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions on file, and affidavits, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts. *Adams*, 211 Ill. 2d at 43. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Id.* In appeals from summary judgment rulings, the standard of review is *de novo*. *Id.* When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. A trial court=s grant of summary judgment may be affirmed on any basis supported by the record. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004).

¶ 20 We are also mindful of the legal principles that apply to FOIA claims. The overriding purpose of the Illinois FOIA is to open governmental records to the light of public scrutiny. See 5 ILCS 140/1 (West 2016); *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378 (1989). The provisions of the FOIA are to be construed broadly so as to achieve that purpose and the Act's goal of providing a free flow of information between the government and the people. See *Perry v. Department of Financial & Professional Regulation*,

2018 IL 122349, ¶ 34; *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006); *Bowie*, 128 Ill. 2d at 378. Indeed, under the FOIA, public records are presumed to be open to the public for inspection and copying. 5 ILCS 140/1.2 (West 2016); *Bowie*, 128 Ill. 2d at 378. When a public body receives a proper FOIA request, it must comply with that request unless one of the statutory exemptions applies. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407-08 (1997).

¶ 21 The exemptions to the FOIA disclosure requirements are set forth in section 7 of the Act and are to be read narrowly. See 5 ILCS 140/7 (West 2016); *Lieber*, 176 Ill. 2d at 407-08. If a public body denies a request for disclosure based upon one of the section 7 exemptions, it must give written notice of the denial to the requesting party and specify the particular exemption claimed. 5 ILCS 140/9(b) (West 2016); *Lieber*, 176 Ill. 2d at 408. The requesting party may then file a complaint for injunctive and/or declaratory relief in the trial court to challenge the denial of the request for disclosure. 5 ILCS 140/11(a) (West 2016); *Lieber*, 176 Ill. 2d at 408. If a complaint is filed, the public body has the burden in the trial court to prove by clear and convincing evidence that the records in question fall within the exemption claimed. 5 ILCS 140/1.2, 11(f) (West 2016); *Lieber*, 176 Ill. 2d at 408.

¶ 22 In this particular case, the sheriff claimed that the addresses of the individuals who had been booked into the county jail were exempt from disclosure because that information was private information. "Private information" is defined in the Act as follows:

> " ['Private information['] means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email

addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2(c-5) (West 2016).

Section 7(1)(b), which was relied upon by the sheriff in the trial court, provides that private information shall be exempt from disclosure "unless disclosure is required by another provision of this Act, a State or federal law or a court order." 5 ILCS 140/7(1)(b) (West 2016).

¶ 23 Defendant asserts on appeal that section 2.15(a) of the Act is such a provision and that it mandates disclosure of the requested addresses. Section 2.15(a) states:

> "Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody. 5 ILCS 140/2.15(a) (West 2016).

¶ 24 Before we determine whether defendant is correct, however, we must first address a new contention raised by the sheriff on appeal—that the addresses of the individuals booked into the county jail were exempt from disclosure pursuant to section 7(1)(e-10) of the Act, which went

into effect after the trial court's ruling in this case. Section 7(1)(e-10) provides that the following shall be exempt from inspection and copying:

> "Law enforcement records of other persons requested by a person committed to the Department of Corrections, Department of Human Services Division of Mental Health, or a county jail, including, but not limited to, arrest and booking records, mug shots, and crime scene photographs, except as these records may be relevant to the requester's current or potential case or claim." Pub. Act 100-26 § 5 (eff. Aug. 4, 2017) (amending 5 ILCS 140/7).

¶ 25 When we review section 7(1)(e-10), we find that the sheriff is correct and that section 7(1)(e-10) makes the requested information exempt from disclosure in this case, if section 7(1)(e-10) applies retroactively to Serio's FOIA requests and his FOIA complaint. There is no dispute here that Serio was an inmate in the DOC at the time of the FOIA requests, that Serio is still currently an inmate in the DOC, and that Serio was seeking law enforcement records of other persons. It also undisputed that Serio did not state in his FOIA requests that the information that he sought to have disclosed was relevant to his current or potential case or claim as required by section 7(1)(e-10). See *id.* Nor did Serio attempt to explain any possible connection to the information he requested and his current or potential case or claim. See *id.* Thus, if section 7(1)(e-10) applies in this case, the contested portions of Serio's FOIA requests were appropriately rejected by the sheriff.

¶ 26 To answer that question, we must determine whether section 7(1)(e-10) applies retroactively, since section 7(1)(e-10) was not made effective until after the trial court had ruled in this case. In deciding whether a statute (or changes made to a statute) will be applied retroactively, a court will first look to see whether the legislature has expressly stated the

temporal reach of the statute. *Perry*, 2018 IL 122349, ¶ 40. If the legislature has done so, the temporal reach specified by the legislature must be given effect unless to do so would be constitutionally prohibited. *Id.* However, if the temporal reach of the statute has not been specified by the legislature, then section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2016)) controls and procedural changes to a statute will be applied retroactively, but substantive changes will be applied prospectively only. *Id.* ¶¶ 41, 43.

¶ 27 In the present case, the legislature did not expressly state in adding subsection 7(1)(e-10) to the statute whether the change was to apply retroactively or prospectively. Section 4 of the Statute on Statutes, therefore, controls as to whether the statutory amendment will be applied retroactively. See *id.* In our opinion, and contrary to Serio's assertion, the change that was made to the statute through the addition of subsection 7(1)(e-10) was procedural in nature since the statutory amendment did not change the rights available to a requester under the Act and only changed the procedure and pleading requirements that had to be followed for a DOC requestor to obtain arrest records pertaining to another individual. See *id.* ¶¶ 69-71 (discussing the differences between procedural and substantive changes to a statute). Because the statutory change was procedural in nature, it applies retroactively to Serio's FOIA requests in the present case. See *id.* ¶¶ 41, 43, 69-71. As noted above, Serio did not allege in his requests or his complaint that the information requested was relevant to his current or potential case or claim and gave no explanation of how the information was related. Serio's requests for the addresses, therefore, were properly denied by the sheriff. In addition, because there is no factual dispute that Serio did not set forth that information in his requests to the sheriff or in his FOIA complaint, the trial court properly granted summary judgment for the sheriff. We, therefore,

affirm the trial court's grant of summary judgment, albeit for a different reason than what the trial court had decided. See *Home Insurance Co.*, 213 Ill. 2d at 315.

¶ 28 Having found that summary judgment was properly granted for the sheriff on Serio's FOIA complaint based upon Serio's failure and inability to prove that he complied with section 7(1)(e-10) of the Act, we need not determine whether Serio would have been entitled to disclosure of the arrestees' addresses under section 2.15(a) of the Act if Serio had complied with section 7(1)(e-10). We do not reach that determination because Serio did not comply with the procedural requirements of the Act to trigger the disclosure requirement.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Putnam County.

¶ 31 Affirmed.