2011 IL App (2d) 090973-U
No. 2-09-0973
Order filed October 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-3046
PAUL OLSSON,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Bowman and Birkett concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in concluding that defendant's purported search for an attorney was obstructionist and dilatory, such that he forfeited his right to counsel of his choice; therefore, trial court did not lose jurisdiction over case and subsequent orders finding defendant unfit to stand trial were not void.

¶ 1 Defendant, Paul Olsson, appeals an order finding him unfit to stand trial. He contends that the trial court denied him his right to counsel and thus lost jurisdiction to enter the order. We affirm.

¶ 2 On August 15, 2005, defendant was charged by complaint with four counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1 (a)(i) (West 2004)) and eight counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2004)). On September 7, 2005,

Brian Telander entered his appearance as defendant's attorney. On October 12, 2005, defendant was indicted on two counts each of predatory criminal sexual assault of a child and aggravated criminal sexual abuse (case No. 05-CF-3046); two counts of aggravated criminal sexual abuse (case No. 05-CF-3628); two counts of aggravated criminal sexual abuse (case No. 05-CF-3629); and two counts of aggravated criminal sexual abuse (case No. 05-CF-3630). The cases were consolidated. Defendant pleaded not guilty to all the charges. On June 29, 2006, the trial court, Judge Fred Foreman presiding, found him fit to stand trial.

¶ 3 At a hearing on October 4, 2006, Assistant State's Attorney Veronica O'Malley said that the circuit court clerk had tendered her three affidavits that defendant and his parents had prepared. She had asked the clerk to seal them, as she thought it "inappropriate" to file them. Telander confirmed that he had received copies of the affidavits. He was "kind of stunned" because he had not been told in advance that the affidavits would be filed. He had since learned that defendant's father, David Olsson, had filed them. Judge Foreman asked whether the affidavits had been removed from the case file; O'Malley said that they were "right here" in an envelope and gave them to Telander.

¶ 4 On January 8, 2007,Telander moved to withdraw as defendant's attorney. At a hearing, he explained that defendant had discharged him. Judge Foreman asked defendant whether he had obtained counsel; defendant said that he had not but would look for a new lawyer. That day, the court granted Telander's motion and set January 29, 2007, for "status of attorney."

¶ 5 On January 24, 2007, defendant filed a *pro se* "Notice of Reservation" (Notice). The Notice stated as follows. On January 9, 2007, defendant received from the circuit court clerk a certified copy of the entire file in his case. Missing were the three affidavits, which had been filed on September 26, 2006. At the October 4, 2006, hearing, O'Malley admitted that she had obtained the affidavits from the clerk. O'Malley violated several state statutes by removing the affidavits. Later,

defendant discharged Telander. O'Malley and Telander had perpetrated a fraud on the court and had denied defendant his sixth amendment right to counsel. Therefore, under *Johnson v. Zerbst*, 304 U.S. 458 (1938), the court had lost jurisdiction of his case. The Notice attached copies of the three affidavits. All were file-stamped September 26, 2006, and related to events that occurred on August 14, 2005, when defendant was taken to the police station for questioning.

¶ 6 On January 29, 2007, defendant appeared in court and told Judge Foreman that he had interviewed two attorneys, both of whom had refused to take his case, and that he had appointments with other attorneys. Judge Foreman told defendant to return in two weeks with an attorney, or he would appoint counsel or inquire whether defendant wanted to proceed *pro se*.

¶ 7 On February 6, 2007, defendant filed a *pro se* "Bill Quia Timet,"[1] stating that he feared that Judge Foreman was trying to rush the case to judgment without giving him time to hire an attorney. He also expressed concern that Judge Foreman had allowed O'Malley and Telander to remove the affidavits from the case file and would continue to "countenance unlawful activity in the Court."

¶ 8 On February 8, 2007, defendant told Judge Foreman that he had interviewed three more attorneys, all of whom had refused to take his case. Judge Foreman gave defendant two more weeks to find an attorney, and he admonished defendant that, if he did not have an attorney by February 22, 2007, he would consider whether to appoint counsel or to require defendant to proceed *pro se*. On February 20, 2007, defendant filed another bill *quia timet*, again expressing his fear that the

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[1]"*Quia timet*" is "[a] legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." Black's Law Dictionary 1281 (8th ed. 2004); see also, *e.g.*, *Cherokee Nation v. State of Georgia*, 30 U.S. 1, 78 (1831); *Borey v. National Union Fire Insurance Co.*, 934 F.2d 30, 32 (2d Cir. 1991).

judge was trying to force an attorney on him in violation of his right to counsel of his choice. On February 22, 2007, the case was reassigned to Judge Victoria Rossetti. At a hearing that day, defendant told Judge Rossetti that he still had not found an attorney who would take his case. The judge told defendant, "Next Thursday [March 1, 2007], you will come in with an attorney." Later that day, at a hearing before Judge Foreman, defendant said that he was still seeking an attorney. Judge Foreman told defendant that he would construe the bill *quia timet* as a motion for a substitution of judge and that he would assign the motion to Judge Rossetti.

¶ 9 On February 28, 2007, defendant filed another bill *quia timet*, alleging that the trial court had violated his right to counsel and thus had lost jurisdiction of his case. Defendant contended that Judge Rossetti, like Judge Foreman, had improperly condoned O'Malley's and Telander's removal of the affidavits from the case file. He added that, since January 9, 2007, he had asked approximately 20 lawyers to take his case, but all had refused.

¶ 10 On March 1, 2007, defendant told Judge Rossetti that he had not retained an attorney and could not say when he would be able to do so. Judge Rossetti denied the bill *quia timet*, which she construed as a motion for a substitution of judge. Later that day, before Judge Foreman, defendant stated that, in the past four days, he had interviewed three attorneys but all of them had declined to take his case. Judge Foreman told defendant that he had one more week to hire a private attorney. The court set March 8, 2007, for "status of attorney."

¶ 11 On March 7, 2007, defendant filed a fourth bill *quia timet*, alleging misconduct by Judges Foreman and Rossetti and asserting that O'Malley was trying to pressure them into denying him his right to counsel of his choice. On March 8, 2007, the trial court struck the hearing on "status of attorney." At a hearing, Judge Foreman stated that he would construe the latest bill *quia timet* as a motion to reconsider Judge Rossetti's ruling of March 1, 2007. On March 12, 2007, defendant

filed a fifth bill *quia timet*, alleging that he was the victim of a conspiracy to deny him his right to counsel.

¶ 12 On March 13, 2007, defendant told Judge Rossetti that he still did not have an attorney. The judge appointed Keith Grant, an assistant public defender, to represent defendant. Defendant objected to the appointment. Judge Rossetti discharged the public defender. That day, defendant appeared before Judge Foreman and named several more attorneys who had refused to take his case. The court set May 14, 2007, for defendant's jury trial.

¶ 13 On March 29, 2007, defendant filed his sixth bill *quia timet*, reiterating his conspiracy allegations. On March 30, 2007, defendant told Judge Foreman that, since his last court appearance, he had spoken to five attorneys, all of whom had refused to take his case. He was waiting to hear back from "approximately five to seven attorneys." He had received the names from the Cook County Bar Association. He had not consulted the Lake County Bar Association. He explained, "I don't trust them because they are before you a lot." Judge Foreman asked defendant whether he wanted a different judge; defendant responded, "I am afraid to answer that without advice of counsel, Your Honor." Judge Foreman asked defendant whether he wanted the public defender; defendant responded that he was still waiting to hear back from several private attorneys.

¶ 14 Judge Foreman, noting how long defendant had gone without securing an attorney, told him that, if necessary, Scott Spitalli could be appointed as conflict counsel. He told defendant, "I am going to set the matter for trial. Tell me what you want." Defendant responded, "Your Honor, again I am unsure of how to answer and I can't proceed without advice of counsel." After several similarly fruitless interchanges, defendant said that he would be willing to talk to Spitalli, whom the court then appointed. Judge Foreman warned defendant that he would not allow him to use his right

to counsel as a pretext to delay or hinder the proceedings. He added that, if defendant hired an attorney, the attorney should come to court with him on April 5, 2007.

¶ 15 On April 5, 2007, at a hearing, Spitalli told Judge Foreman that defendant did not want court-appointed counsel and wished to hire his own attorney. Spitalli was allowed to withdraw. Defendant said that three more attorneys had declined to represent him and that he was waiting to hear from several others. Later that day, the parties discussed the three affidavits that defendant claimed had been removed from the case file. Judge Foreman showed defendant the file, and defendant admitted that the affidavits were in the file. Judge Foreman found that defendant was "being intentionally dilatory in trying to continue the case." He stated that May 21, 2007, had been set for trial. The judge also stated that defendant was fit to stand trial.

¶ 16 On May 7, 2007, at a hearing, defendant said that he was still trying to hire an attorney. He explained that the reason for attorneys' reluctance to take his case was "their absolute duty to perform their Himel [*sic*] obligation, which once they find out of [*sic*] attorney misconduct they immediately become disinterested." Judge Foreman asked whether defendant was saying that the attorneys would not follow his request to file complaints against Telander. Defendant responded, "I am not making any request. I am just making known to them of [*sic*] their absolute duty as stated by the Supreme Court." The judge told defendant, "[T]hat is not really relevant at this point in the proceeding." He reiterated that defendant was "intentionally trying to frustrate the administration of justice in this case." However, the case would "move ahead." That day, the court appointed John Murphy as standby counsel for defendant, and it scheduled a status hearing for May 14, 2007.

¶ 17 On May 11, 2007, defendant filed another bill *quia timet*, alleging that Judge Foreman and O'Malley were trying to draw Murphy into a conspiracy to deny defendant his rights. On May 14, 2007, Murphy informed the court that defendant did not want his assistance. Defendant said that

he had spoken to "at least 40" attorneys, but none would take his case. Judge Foreman asked whether that was because defendant had insisted that they file charges against Telander and others. Defendant responded, "I make it known to them that there are Himmel obligations that show the apparent and admitted acts on [*sic*] public government actors on the record," *i.e.*, the removal from the record of the three affidavits. He explained that, once he showed an attorney his "latest pleadings," the attorney lost interest. The judge reiterated that the trial would take place the next week.

¶ 18 On May 17, 2007, defendant filed another bill *quia timet*. He now suggested that the court reporter may have falsified transcripts to make it appear that he had waived his right to counsel. At a hearing on May 18, 2007, defendant explained that he had talked to three more attorneys and was waiting to hear from four more. The judge stated that, over defendant's objection, he was discharging Murphy and appointing Grant to represent defendant. Grant moved to discharge the public defender, on the ground that defendant was not indigent. The judge denied Grant's motion.

¶ 19 At a hearing on May 30, 2007, Grant told the court that defendant had refused to communicate with him or the public defender's office. On June 13, 2007, Judge Foreman declined to discharge the public defender. On July 11, 2007, at a hearing, Judge Foreman again declined to discharge the public defender. On the State's motion, the cause was continued to October 1, 2007.

¶ 20 On September 26, 2007, defendant, through the public defender, moved for a fitness examination and a fitness hearing. The next day, the trial court appointed Dr. Karen Chantry to examine defendant and report to the court. On October 12, 2007, the court found that defendant was not fit to stand trial, and it remanded him to the custody of the Department of Human Services (DHS). Defendant did not appeal this order. On January 22, 2008, the court ordered Dr. Chantry to prepare an evaluation. On February 25, 2008, the State moved for a fitness hearing, alleging that

Dr. Chantry had evaluated defendant on January 30, 2008, and found him unfit to stand trial. On February 28, 2008, defendant filed another bill *quia timet*, claiming that, because he had been denied counsel of his choice, the court lacked jurisdiction of his case.

¶ 21 The trial court eventually held a jury trial on defendant's fitness. On March 14, 2008, the jury found that defendant was unfit to stand trial. On March 18, 2008, the trial court entered a judgment on the verdict and remanded defendant to the custody of DHS. Defendant appealed. On July 23, 2008, after a hearing, the trial court again found defendant unfit to stand trial. Defendant appealed. We consolidated the appeals. On appeal, defendant argued that (1) the October 12, 2007, order finding him unfit was erroneous; and (2) the March 18, 2008, order was void because a jury trial was not allowed in a fitness hearing. We held that we lacked jurisdiction over the first issue, because defendant had never appealed from the October 12, 2007, order and was not contending that it was void. We held that the second issue raised only harmless error, as the decision to hold a jury trial did not prejudice defendant—who, indeed, had requested a jury trial. *People v. Olsson*, Nos. 2-08-0301 & 2-08-0802 cons. (2009) (unpublished order under Supreme Court Rule 23).

¶ 22 Meanwhile, on October 7, 2008, DHS filed a progress report stating that, in the opinion of the examining psychiatrist, defendant had been restored to fitness. On October 22, 2008, defendant, by the public defender, moved for a discharge hearing (see 725 ILCS 5/104-23(a) (West 2008)), as more than a year had passed since the original finding that he was unfit to stand trial. Defendant, through the public defender, also moved to "bar consideration" of the DHS report, for the same reason. On October 29, 2008, defendant filed another bill *quia timet*, contending that the trial court had forced him to accept the public defender, even though it lacked the authority to order the public defender to represent someone who was not indigent.

¶ 23 On November 10, 2008, the trial court, Judge Christopher R. Stride presiding, held a hearing. Judge Stride stated that there could be no discharge hearing until a fitness hearing had decided whether defendant had been restored to fitness within a year from the original finding of unfitness. Thus, the trial court denied both of the public defender's motions. On November 13, 2008, defendant filed another bill *quia timet*, alleging that Judge Stride was biased against him. On November 14, 2008, the public defender petitioned to withdraw, asserting that defendant had refused to cooperate with his appointed counsel. On December 2, 2008, the trial court denied the petition. On December 19, 2008, the court declined to reconsider its denial of defendant's motion for a discharge hearing, and it ordered Dr. Chantry to reevaluate defendant and update her findings.

¶ 24 On June 23, 2009, a fitness evaluation was filed. On July 22, 2009, the trial court held a fitness hearing. On August 14, 2009, the trial court found that defendant was unfit and thus that he had not been restored to fitness within a year after the original finding of unfitness. On August 20, 2009, the court ordered Dr. Chantry to reevaluate defendant to determine whether special provisions or assistance would render him fit (see 725 ILCS 5/104-22 (West 2008)).

¶ 25 On September 11, 2009, defendant filed a *pro se* notice of appeal from the August 14, 2009, order finding him unfit to stand trial. The notice of appeal listed only case No. 05-CF-3046.

¶ 26 On appeal, defendant contends that the trial court's order of May 18, 2007, forced counsel upon him, in violation of the sixth amendment. He asserts that, under *Johnson v. Zerbst*, 304 U.S. 458 (1938), the denial of counsel divested the court of jurisdiction over his case. Thus, he concludes, the order finding him unfit to stand trial in case No. 05-CF-3046 is void. The State responds that (1) the trial court did not deny defendant his right to counsel; and (2) even if it did, the court retained jurisdiction. Because we agree with the State's first argument, we affirm the

judgment without considering whether a sixth amendment violation would have been a jurisdictional bar to further proceedings.

¶ 27 The sixth amendment right to counsel includes the right to counsel of one's choosing. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006); *People v. Tucker*, 382 Ill. App. 3d 916, 919 (2008). Nonetheless, the right is not absolute. A defendant who abuses the sixth amendment in an attempt to delay trial and thwart the effective administration of justice may forfeit his right to counsel of his choice. *Tucker*, 382 Ill. App. 3d at 920; *People v. Bingham*, 364 Ill. App. 3d 642, 645 (2006). The trial court has the discretion to decide whether, under the particular facts of the case, the defendant's right to choose his own counsel unduly interferes with the orderly process of judicial administration. *Tucker*, 382 Ill. App. 3d at 920.

¶ 28 Here, we conclude that the trial court acted well within its discretion on May 18, 2007, when it appointed counsel for defendant.[2] By that time, more than four months had elapsed since defendant had discharged Telander. Defendant had spoken to more than 40 attorneys, but none of them had been willing to take his case. The trial court had repeatedly granted defendant continuances so that he could hire private counsel. The court had previously appointed Grant, Spitalli, and Murphy to represent defendant, but he had refused to cooperate with them. Yet defendant repeatedly stated that he did not want to proceed *pro se*.

¶ 29 Essentially, defendant presented the trial court with three alternatives: (1) grant him continuances indefinitely so that he could eventually find an attorney who would take his

[2]We note that defendant is *not* now arguing that the court lacked the authority to appoint the public defender for him. Therefore, we do not consider that issue. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (points not raised on appeal are forfeited).

case—which he had not been able to do after interviewing the equivalent of a medium-sized urban law firm; (2) require defendant to proceed *pro se* even though he had repeatedly insisted that he wanted a lawyer; and (3) find that defendant's actions were obstructionist and dilatory—at least in effect—and conclude that he had forfeited his right to counsel of his own choice. We cannot say that the trial court abused its discretion in choosing the third alternative.

¶ 30 Judge Foreman noted on April 5, 2007, that defendant had been "intentionally dilatory in trying to continue the case." This observation was sound. We add that defendant's failure to find an attorney appears to have resulted from his own unreasonable behavior. Not only is it hard to imagine any other reason for defendant's singular lack of success in hiring counsel, but the record suggests strongly that he sabotaged his own (purported) quest for representation of his choice. Judge Foreman concluded that defendant had alienated prospective attorneys by insisting that they pursue a chimerical action of some sort against Telander (and perhaps O'Malley) for removing the three affidavits from the case file, even though (1) on April 5, 2007, defendant conceded that the affidavits were back in the case file; (2) on that date, defendant conceded that he had not objected when Telander sought to withdraw the affidavits; and (3) the affidavits were filed without Telander's knowledge while he was representing defendant. Defendant did little to dispel the judge's suspicions; he admitted that attorneys turned down his case because he (a lay person) had informed them of "their absolute duty as stated by the Supreme Court." Also, he admitted that, each time that he showed an attorney his "latest pleadings," the attorney immediately lost interest in his case.

¶ 31 We cannot fault the trial court for refusing to allow defendant yet more time to pursue a course that was almost guaranteed to frustrate his (purported) objective of hiring the attorney of his choice. Not only would tolerating such conduct make a mockery of the sixth amendment, it would risk delaying the proceedings indefinitely, to the detriment of the State's and the public's legitimate

interest in the timely resolution of a felony criminal case. The trial court did not err in concluding that defendant had forfeited his right to counsel of his choice, given his conduct and its deleterious effects on the administration of justice.

¶ 32 Consequently, the trial court did not lose jurisdiction on May 18, 2007, and the subsequent orders, including the August 14, 2009, order finding defendant unfit to stand trial, were not void.

¶ 33 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 34 Affirmed.