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2014 IL App (3d) 120727-U

Order filed May 27, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

|                                         |   |                               |
|-----------------------------------------|---|-------------------------------|
| RALPH DIXON,                            | ) | Appeal from the Circuit Court |
|                                         | ) | of the 12th Judicial Circuit, |
| Plaintiff-Appellant,                    | ) | Will County, Illinois,        |
|                                         | ) |                               |
| v.                                      | ) | Appeal No. 3-12-0727          |
|                                         | ) | Circuit No. 10-L-1034         |
|                                         | ) |                               |
| PAMELA J. McGUIRE, Clerk of the Circuit | ) | Honorable                     |
| Court, and KERRY J. BRYSON, assistant   | ) | Marzell L. Richardson, Jr.,   |
| appellate defender,                     | ) | Judge, Presiding.             |
|                                         | ) |                               |
| Defendants-Appellees.                   | ) |                               |

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 Held: The trial court properly dismissed Plaintiff's constitutional due process and other claims against the clerk of the circuit court and the appellate defender who represented Plaintiff on direct appeal of his criminal conviction for failure to state a claim.
- ¶ 2 Plaintiff, Ralph Dixon, sued defendants Pamela McGuire, the Clerk of the Circuit Court of Will County, and Kerry Bryson, the appellate defender who represented Dixon during the direct appeal of his criminal conviction, seeking damages and injunctive relief. Dixon's

complaint alleges, among other things, that McGuire violated Dixon's due process rights under the Illinois Constitution and various civil and criminal statutes when she removed, falsified, and/or failed to include certain documents in the common law record she transmitted to our appellate court in Dixon's criminal case. Dixon also alleges that Bryson "conspired and condoned" McGuire's actions and attempted to fraudulently conceal documents from Dixon. The trial court dismissed Dixon's complaint with prejudice because it found that it "fail[ed] to state a valid claim upon which relief may be granted against either of the defendants." The trial court also dismissed the complaint on the grounds of *res judicata* and public official immunity. This appeal followed.

¶ 3

### FACTS

¶ 4 Dixon was convicted of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2), (d)(1) (West 2010)) and aggravated sexual abuse (720 ILCS 5/12-16(d), (g) (West 2010)). Our appellate court affirmed his convictions on direct appeal. *People v. Dixon*, No. 3-08-0174 (Ill. App. Ct. Jan. 4, 2011) (*Dixon I*). Dixon filed a *pro se* postconviction petition which alleged, *inter alia*, that: (1) McGuire had omitted certain documents from the record on appeal; and (2) Bryson was complicit in McGuire's alleged omissions. The circuit court of Will County dismissed Dixon's petition as "frivolous and patently without merit," and our appellate court affirmed. *People v. Dixon*, 2013 Ill. App. (3d) 110313-U (*Dixon II*). Dixon also filed a complaint in the United States District Court for the Northern District of Illinois alleging that McGuire and Bryson violated his federal constitutional rights by denying him due process and interfering with his access to the courts. *Dixon v. McGuire*, 2011 WL 2518958, \*3 (N.D. Ill. June 22, 2011) (*Dixon III*). Specifically, Dixon alleged that: (1) McGuire deliberately falsified the state court's docket in the criminal proceeding and destroyed or withheld important evidence

in Dixon's criminal case; and (2) Bryson conspired with McGuire and condoned her actions. *Id.* The federal district court granted the defendants' motions to dismiss the complaint for failure to state a claim. *Id.*

¶ 5 Dixon also filed a civil action against both defendants in the circuit court of Will County, which is the subject of this appeal. In this case, Dixon alleged that McGuire violated Dixon's due process rights under the Illinois Constitution and various civil and criminal statutes when she: (1) "altered the court docket" in Dixon's criminal case "to reflect false information"; (2) "presented false information to the reviewing court"; (3) "wilfully refused to comply with the written orders of both the circuit court and appellate court"; (4) "denied [Dixon] his right to due process as related to [his] direct appeal"; (5) "denied [Dixon] his right to present issues in post-conviction based on the certified record"; and (6) "altered the certified common law record by removing documents." Dixon also alleged that Bryson "has conspired and condoned these actions and attempted to fraudulently conceal documents from [Dixon] and the courts and as such is accountable for the conduct of Defendant McGuire under 720 ILCS 5/5-1 and 720 ILCS 5/5-2 (c), Illinois Rules of Professional Conduct, Fraudulent Concealment – 735 ILCS 5/13-215 and Official Misconduct – 720 ILCS 5/33-3 (a), (b) and (c)." Dixon sought "injunctive relief" by asking the court to enter judgment in his favor in the criminal case. He also sought compensatory and punitive damages totaling \$20 million plus "interest and cost." *[sic]*. The trial court dismissed the complaint with prejudice on the grounds of *res judicata* (due to *Dixon III*), public official immunity, and failure to state a claim against either defendant. This appeal followed.

## ¶ 6 ANALYSIS

¶ 7 The trial court correctly dismissed Dixon's complaint for failure to state a claim. As

noted, Dixon alleges that the defendants violated several civil and criminal statutes and "Illinois Rules of Professional Conduct." However, none of the statutes or rules Dixon cites creates a private right of action. The Criminal Code creates no civil cause of action for a violation of its provisions. See 720 ILCS 5/1-4 (2010). Similarly, the Illinois Rules of Professional Conduct explicitly state that they "are not designed to be a basis for civil liability" and that "[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer." Ill. R. Prof'l Conduct of 2010, Preamble ¶ 20. Moreover, the fraudulent concealment provision in the Code of Civil procedure cited by Dixon merely extends the limitations period for bringing a civil action under certain circumstances; it "is not a cause of action in and of itself." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 110 (internal quotation marks omitted). Thus, neither the Criminal Code, nor the Rules of Professional Conduct, nor the Code of Civil Procedure provides Dixon with a civil cause of action against the defendants.

¶ 8 Dixon's due process claim under the Illinois Constitution also fails as a matter of law. As our appellate court noted in *Dixon II* and the federal district court noted in *Dixon III*, some of the documents that Dixon claims were improperly deleted from the record were included in the record, and other such documents were never tendered to the trial court as exhibits to pleadings and therefore were never made part of the record or relied upon by the trial court. In any event, Dixon's complaint merely alleges in conclusory fashion that the omission of these documents from the record adversely impacted his direct appeal and his postconviction petition; his complaint contains no factual allegations supporting these legal conclusions. Dixon does not explain how any of these documents were material to his claims on appeal or postconviction. Moreover, Dixon's suggestion that he was somehow prejudiced by docket entries that falsely indicated that he was convicted and sentenced for aggravated criminal sexual assault and that the

trial court had imposed a \$25,000 fine is likewise wholly conclusory.<sup>1</sup> In short, Dixon's complaint contains no factual allegations suggesting that he was "deprived of life, liberty, or property without due process of law." Ill. Const. art. I, § 2. Illinois is a fact-pleading jurisdiction. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 26. While this does not require a plaintiff to set forth evidence in the complaint, "it does demand that the plaintiff allege facts sufficient to bring a claim within a legally recognized cause of action." *Id.* "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." *Id.* The conclusory allegations in Dixon's complaint fail to state a due process claim against either defendant under the Illinois Constitution.

¶ 9 Dixon's claims against Bryson fail for additional reasons. In his brief on appeal, Dixon primarily contests dismissal of his claims against McGuire. As to the trial court's dismissal of his claims against Bryson for failure to state a claim, Dixon merely repeats his conclusory conspiracy claim, and he does so only once. Accordingly, Dixon has forfeited any argument against dismissal of his claims against Bryson for failure to state a claim. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Sexton v. City of Chicago*, 2012 Ill App (1st) 100010, ¶ 79 (noting that "[a] reviewing court is entitled to have the issues \*\*\* supported by pertinent authority and cohesive arguments" and that "failure to develop an argument results in waiver," and holding that plaintiff waived an issue on appeal by "failing to develop her argument properly").

¶ 10 Even if we were to review the issue, however, we would affirm the trial court's dismissal

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<sup>1</sup> It is not clear how Dixon could assert a violation of due process based upon these allegations even in principle. Dixon was, in fact, convicted of aggravated criminal sexual assault.

Moreover, as was noted in *Dixon III*, any concerns about McGuire's docketing the \$25,000 fine were rendered moot when our appellate court vacated that fine in Dixon's direct appeal.

of Dixon's constitutional claim against Bryson for failure to state a claim. The Illinois Constitution's guarantee of due process protects citizens only from deprivations committed by the government, not by other private citizens. *Chicago Commons Ass'n v. Hancock*, 346 Ill. App. 3d 326, 331 (2004). A public defender who serves as legal counsel to defendant in a criminal proceeding is not deemed a government actor for the purpose of a constitutional claim, even when he is employed by the government. *Vermont v. Brillon*, 556 U.S. 81, 91 (2009); *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Although a government-appointed lawyer may be deemed a government actor when he conspires with state officials to deprive the plaintiff of constitution rights (*Tower v. Glover*, 467 U.S. 914, 920 (1984)), Dixon's bald assertion that Bryson conspired with McGuire is unsupported by any factual allegations. Dixon does not allege that there was an agreement between the defendants. Nor does he allege any facts from which it might be inferred that Bryson and McGuire shared an intent to deprive Dixon of his constitutional rights. Instead, Dixon merely asserts that Bryson "has conspired and condoned [McGuire's] actions." Such conclusory allegations are insufficient to state a claim for conspiracy under Illinois law. *Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 22 ("conclusory allegations that the defendants agreed to achieve some illicit purpose are insufficient to sustain [a] claim" for civil conspiracy); *Holzrichter*, 2013 IL App (1st) 110287, ¶ 128 (holding that plaintiff failed to state a claim for conspiracy under the Antitrust Act where the complaint did "not articulate[] specific acts, statements or directives of the [defendants] that would support the contention that those defendants perpetrated or joined in such a conspiracy").

¶ 11 One final point should be mentioned. In his brief on appeal, Dixon asserts that he raised additional claims against the Defendants for "fraud," "theft by deception," "theft by threat," and "detinue" in his "amended complaint." For example, Dixon claims he alleged that: (1) he was

"released from custody of [the] Will County Sheriff on a real estate bond issued by [the] Will County Circuit Court"; (2) Defendant McGuire maintained the court records to show a lien existing on Dixon's property in the amount of the real estate bond which resulted in the "canceling a private sale of the real estate" and a subsequent foreclosure sale by the Will County Sheriff"; and (3) "Bryson conspired with McGuire in the theft of [Dixon's] real estate and equity bond." These claims were included in a proposed amended complaint that Dixon submitted to the trial court. However, the trial court never granted Dixon leave to file that proposed amended complaint. The trial court's dismissal order was based on the allegations contained in Dixon's *original* complaint, which are the only allegations at issue in this appeal. Dixon does not argue that the trial court abused its discretion in refusing to allow him to file his proposed amended complaint. Accordingly, Dixon has forfeited any such argument on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Armagan v. Pesh*, 2014 IL App (1st) 121840, \*43.

¶ 12

### **CONCLUSION**

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court of Will County dismissing Dixon's complaint for failing to state a claim.

¶ 14 Affirmed.