2015 IL App (3d) 140974-U

Order filed October 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

LEON ROBINSON-BEY,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-14-0974
v.	)	Circuit No. 13-MR-1666
	)	
MICHAEL LEMKE,	)	Honorable
	)	Roger Rickmon,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: *Res judicata* bars the issue raised in plaintiff's second *habeas corpus* complaint because the circuit court previously adjudicated the same issue on the merits in plaintiff's first *habeas corpus* complaint. The arguments not contained in plaintiff's second *habeas corpus* complaint are forfeited.

¶ 2 In 1992, a jury convicted plaintiff, Leon Robinson-Bey, of first degree murder (Ill. Rev. Stat. 1991, ch. 38, ¶ 9-1(a)(2)). The circuit court sentenced plaintiff to 80 years' imprisonment. Plaintiff's conviction and sentence were affirmed on direct appeal. *People v. Robinson*, No. 3-92-0463 (1993) (unpublished order under Supreme Court Rule 23). Plaintiff is currently an

inmate at Stateville Correctional Center. This appeal involves two separate *habeas corpus* complaints filed by plaintiff against the warden of Stateville Correctional Center. Plaintiff appeals from the dismissal of his second *habeas corpus* complaint. We affirm.

¶ 3 FACTS

¶ 4 In January 2011, plaintiff filed his first *habeas corpus* complaint naming Marcus Hardy, the warden of Stateville Correctional Center, as defendant. In the complaint, plaintiff argued the circuit court did not have jurisdiction over his criminal proceedings due to misrepresentations made by the State in the charging process. According to plaintiff, the State acted improperly by initially charging him by complaint, then later charging him by indictment for first degree murder. The circuit court granted defendant's motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)).[1] Plaintiff did not appeal.

¶ 5 In July 2013, plaintiff filed a second *habeas corpus* complaint, the subject of the present appeal, naming Michael Lemke, the warden of Stateville Correctional center, as defendant. In the complaint, plaintiff again argued that the circuit court improperly acquired jurisdiction over his criminal case due to misrepresentations made by the State in the charging process. Defendant moved to dismiss the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) arguing *res judicata* barred plaintiff's claim.

¶ 6 In response, plaintiff filed an objection to defendant's motion to dismiss. Rather than defending the arguments raised in his second *habeas* complaint, plaintiff's objection raised new allegations that the "extended term sentence in plaintiff's case violates separation of powers and *ex post facto* principles because it punishes plaintiff for conduct that was not an element of the

[1]Defendant's motion to dismiss is not included in the record on appeal. However, the order granting the motion is included in the record on appeal.

crime" Plaintiff reasserted this argument in a subsequent" motion for status hearing" where he contended the "State unlawfully altered the indictment to include accountability and brutal and heinous behavior and asked the judge to sentence the defendant to an 80 year extended term sentence." Plaintiff did not request leave to amend his second *habeas* complaint in his objection or motion for status hearing.

¶ 7 After a hearing on the merits, the circuit court entered an order granting defendant's motion to dismiss.[2] The corresponding docket entry indicates the circuit court dismissed defendant's second *habeas* complaint with prejudice.

¶ 8 ANALYSIS

¶ 9 On appeal, plaintiff argues the circuit court erred when it dismissed his second *habeas* complaint. Upon review we find the claims contained within the second *habeas* complaint are barred by the doctrine of *res judicata*. Therefore, the circuit court properly dismissed the complaint.

¶ 10 Plaintiff also claims reversal is justified in light of the novel claims contained within his objection to defendant's motion to dismiss and reply brief. As these arguments are not contained in plaintiff's second *habeas* complaint, they are not properly before this court.

¶ 11 "*Res judicata* precludes subsequent litigation between parties on the same claim after a court of competent jurisdiction renders final judgment on a matter." *Altair Corp. v. Grand Premier Trust and Investment Inc.*, 318 Ill. App. 3d 57, 61 (2000). "[T]hree requirements must

[2]The record on appeal does not contain a report of the proceedings. However, the common law record includes a docket entry indicating the circuit court held a hearing on defendant's motion to dismiss. At the hearing, plaintiff appeared *pro se* and an assistant Attorney General appeared on behalf of defendant.

be met for application of the doctrine of *res judicata*: '(1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies. ' " *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18 (quoting *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998)). We review a section 2-619 dismissal *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). We find all three requirements are met and *res judicata* bars plaintiff's second *habeas* complaint.

¶ 12 Here, both *habeas* complaints allege that the circuit court lacked jurisdiction over plaintiff's criminal proceedings due to misrepresentations made by the State in the charging process. In his second *habeas* complaint, plaintiff alleged "the State committed fraud upon the court by initiating prosecution for a felony by complaint in order to acquire jurisdiction." Plaintiff made the identical argument, cited the same authority, and also named the warden of Stateville Correctional Center as defendant in his first *habeas* complaint, where he argued "the State [had] intentionally failed to follow all of the four mandatory requirements for acquiring subject-matter jurisdiction." Because the circuit court dismissed plaintiff's first *habeas* complaint on the merits (Ill. S. Ct. R. 273 ("an involuntary dismissal of an action *** operates as an adjudication upon the merits")), *res judicata* bars relitigation of the same claim alleged in plaintiff's second *habeas* complaint. *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001) (A final judgment bars "successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit."). Consequently, we find the circuit court properly dismissed plaintiff's second *habeas* complaint.

¶ 13 In reaching our conclusion, we note that an involuntary dismissal does not operate as an adjudication upon the merits where the complaint is dismissed for lack of jurisdiction, improper venue, or failure to join an indispensible party. See Ill. S. Ct. R. 273. Consequently, an order

entered pursuant to those three exceptions would not satisfy the *res judicata* requirement of a final adjudication on the merits. *Rossiter*, 2012 IL 113227, ¶ 18. The order dismissing plaintiff's first *habeas* complaint only indicates that the circuit court granted defendant's section 2-615 motion to dismiss. It is unclear what basis supported defendant's section 2-615 motion because plaintiff failed to include the motion in the record on appeal. Plaintiff also failed to include the report of the proceedings from the hearings on defendant's motion to dismiss in either of plaintiff's *habeas* complaints. The appellant has a duty on appeal to present a complete record of the proceedings below and, where the record is incomplete, we resolve any doubts against appellant and presume that the order entered by the trial court conformed to both the law and the facts of the case. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 31. Further, plaintiff fails to argue on appeal that any of the three exceptions apply. Accordingly, we presume the circuit court dismissed defendant's first *habeas* complaint on the merits because it later found *res judicata* barred plaintiff's second *habeas* complaint.

¶ 14 In addition, we decline to consider the new argument raised by plaintiff in his objection to defendant's motion to dismiss and in his appellate brief. As discussed above, plaintiff argues that the jury instruction regarding a theory of accountability renders his conviction and sentence void because the State did not include an accountability allegation in the indictment. In civil proceedings, such as the instant case, a party may not succeed on a theory that is not contained in the party's complaint. *Schultz v. Schultz*, 297 Ill. App. 3d 102, 106 (1998). "Thus, a party can only win the case according to the case the party has presented in the pleadings." *In re J.B.*, 312 Ill. App. 3d 1140, 1143 (1999). Plaintiff did not assert this claim in his second *habeas*

complaint. Rather, plaintiff raised this argument in his objection to defendant's motion to dismiss without requesting leave to amend the second *habeas* complaint.[3]

¶ 15 Finally, we do not consider the new argument plaintiff set forth in his reply brief that the circuit court lacked jurisdiction over his person and that "Leon Robinson-Bey, is a legal fiction[.]" Plaintiff forfeited the issue when he failed to raise it in the circuit court or in his appellate brief. See *People v. Polk*, 2014 IL App (1st) 122017, ¶ 49 (finding plaintiff forfeited issue because it was raised for the first time in his reply brief).

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.

[3]Even if we were to consider plaintiff's claim that the accountability instruction, without an accountability allegation in the indictment, renders his conviction and sentence void, we find plaintiff's allegation wholly without merit. It is not error to tender an accountability instruction despite charging defendant as a principle, because accountability is not a separate offense but merely an alternative manner of proving a defendant guilty of the substantive offense. See *People v. Ceja*, 204 Ill. 2d 332, 359-66 (2003) (noting that it was permissible to charge defendant as principal then later convict defendant as an accomplice).