2017 IL App (3d) 150332-U

Order filed March 30, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

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| DENNIS LEE BAILEY, | ) | Appeal from the Circuit Court |
| | ) | of the 12th Judicial Circuit, |
| Plaintiff-Appellant, | ) | Will County, Illinois. |
| | ) | |
| v. | ) | |
| | ) | |
| | ) | |
| JUDGE ROBERT P. LIVAS, | ) | |
| | ) | Appeal No. 3-15-0332 |
| Defendant, | ) | Circuit No. 13-MR-2258 |
| | ) | |
| and | ) | |
| | ) | |
| JASON R. STRZELECKI and TIMOTHY J. MCGRATH, | ) | |
| | ) | The Honorable |
| | ) | Roger Rickmon, |
| Defendants-Appellees. | ) | Judge, presiding. |

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JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held*: In a declaratory judgment action, the trial court properly granted the defendants' motion for involuntary dismissal of plaintiff's complaint because the action was barred by a prior judgment. The appellate court, therefore, affirmed the trial court's ruling.

¶ 2 Plaintiff, Dennis Lee Bailey, filed a complaint for declaratory judgment in the trial court against defendants, Robert P. Livas, Jason R. Strzelecki, and Timothy J. McGrath. Strzelecki and McGrath filed a motion to dismiss Bailey's complaint pursuant to section 2-619(a)(4) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(4) (West 2014)).[1] After a hearing, the trial court granted the motion to dismiss. Bailey appeals. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 In September 2013, Bailey filed the instant complaint for declaratory judgment. Through the declaratory judgment action, Bailey sought to obtain an order from the trial court requiring that medical records and certain other discovery materials (collectively referred to as the discovery materials or the documents) from some of his prior criminal cases be turned over to him by his prior public defenders so that he could use the documents to support a postconviction petition. In the complaint, Bailey alleged that: (1) he had been convicted of certain criminal offenses in Will County that were charged in a 2004 criminal case and a 2005 criminal case; (2) as a result of those convictions, he had been sentenced to a lengthy prison term (24 years in one of the cases and 234 years in the other); (3) Judge Robert Livas presided over both criminal cases; (4) Bailey was represented in one or both of the criminal cases by public defenders Jason Strzelecki and Timothy McGrath; (5) during the two criminal cases, Bailey made numerous motions requesting that his public defenders be required to release the discovery materials to him, but Judge Livas denied those motions; (6) Bailey had exercised due diligence in trying to obtain the discovery materials and had made requests under the Freedom of Information Act (5 ILCS 140/1 *et seq*. (West 2012)) to various agencies but was unable to obtain complete unredacted copies of the materials and was told in some cases that the materials no longer

[1] The record before us is unclear as to the status of the instant declaratory judgment action as to Judge Livas, and he is not involved in this appeal.

existed; (7) Bailey filed postconviction petitions in both criminal cases, but his petitions were dismissed in 2009 by Judge Livas as being without merit; (8) in 2011 and 2012, Bailey filed petitions for mandamus in the trial court and again requested that the discovery materials be turned over to him, but the petitions were dismissed by the trial court for failure to state a claim;[2] and (9) Bailey was entitled to declaratory judgment by a preponderance of the evidence because he possessed a clearly ascertainable right which needed protection, because he would suffer irreparable injury to his reputation, along with disgrace and humiliation, and because he had suffered great physical and mental anguish and a deprivation of liberty under the constitution. Attached to the complaint were various supporting exhibits. Included in those exhibits was a copy of a trial court order entered in June 2008 denying Bailey's request for some of the discovery materials (referenced in the order as medical records) in the 2004 criminal case.

¶ 5 In March 2014, Strzelecki and McGrath filed a section 2-619(a)(4) motion to dismiss Bailey's complaint for declaratory judgment. The motion, which was later re-filed, alleged that: (1) the instant declaratory judgment action was a collateral attack on the trial court's ruling in June 2008 in which the trial court denied Bailey's request for the same discovery materials in both the 2004 and 2005 criminal cases; (2) the declaratory judgment action was also a collateral attack on the trial court's ruling in June 2013 dismissing Bailey's two petitions for mandamus in which Bailey had again requested that the same discovery materials be turned over to him; (3) Bailey had chosen not to perfect his appeal of the trial court's ruling on the petitions for mandamus but instead had filed the instant declaratory judgment action and had requested the same relief; and (4) the instant declaratory judgment action should be dismissed pursuant to section 2-619(a)(4) of the Code because it was barred by prior judgments.

[2] As will be set forth later in this order, the petitions for mandamus were actually dismissed on the basis of *res judicata*.

¶ 6 Attached to the motion to dismiss were various supporting documents. Two of those supporting documents were copies of the two prior mandamus petitions that Bailey had filed. The mandamus petitions were filed against the same three defendants as in the instant case. A third supporting document was a copy of the trial court's order dismissing the mandamus petitions on the basis of *res judicata*. The order stated that all three of the listed defendants were being dismissed from the two mandamus cases with prejudice. In addition to those documents, attached to the re-filed motion to dismiss was a copy of this court's mandate dismissing Bailey's appeal in the two mandamus cases. The appellate court mandate noted that the appeal was being dismissed on Bailey's own motion.

¶ 7 In December 2014, the trial court held a hearing on Strzelecki and McGrath's motion to dismiss. After reviewing the motion, Bailey's response, and the various supporting documents, the trial court granted the motion and dismissed Bailey's complaint for declaratory judgment. Bailey filed a motion to reconsider, which the trial court subsequently denied. Bailey appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, Bailey argues that the trial court erred in granting Strzelecki and McGrath's motion to dismiss Bailey's complaint for declaratory judgment. Bailey asserts first that the motion should not have been granted because he satisfied all of the statutory requirements for a declaratory judgment to be entered in his favor. Second, and in the alternative, Bailey asserts that any potential preclusive effect from the prior judgments should not be applied in this case because it would be unfair and unjust to do so since Bailey has been diligent in his attempts to obtain copies of the discovery materials in question, there are no other means available for Bailey to obtain the requested documents, and his right to obtain relief is clear and undisputable. Bailey asks, therefore, that we reverse the trial court's ruling, that we remand this case, and that

we order that the requested discovery materials be turned over to him. Strzelecki and McGrath disagree with Bailey's assertions and argue that the trial court's ruling was proper and should be upheld.

¶ 10 Section 2-619 of the Code allows a litigant to obtain an involuntary dismissal of an action or claim based upon certain defects or defenses. See 735 ILCS 5/2-619 (West 2014). The statute's purpose is to provide litigants with a method for disposing of issues of law and easily proven issues of fact early in a case, often before discovery has been conducted. See *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003); *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). In a section 2-619 proceeding, the moving party admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter to defeat the nonmoving party's claim. *Van Meter*, 207 Ill. 2d at 367. In ruling upon a section 2-619 motion to dismiss, the court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* at 367-68. On appeal, a dismissal pursuant to section 2-619 is reviewed *de novo. Id.* at 368; *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 18.

¶ 11 Section 2-619 lists several different grounds upon which an involuntary dismissal may be granted. See 735 ILCS 5/2-619(a)(1) to (a)(9) (West 2014). Under subsection (a)(4) of the statute, the subsection that applies in this case, a litigant may obtain an involuntary dismissal of a cause of action or a claim asserted against him if the action or claim is barred by a prior judgment. 735 ILCS 5/2-619(a)(4) (West 2014). Subsection (a)(4) allows a litigant to raise the affirmative defenses of *res judicata* and collateral estoppel as a basis for granting an involuntary dismissal. See *Richter*, 2016 IL 119518, ¶ 20; *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 558 (2005).

¶ 12 Pursuant to the doctrines of *res judicata* and collateral estoppel, a judgment in a prior case may, under certain circumstances, have a preclusive effect on or in a later case. See *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction in a prior case is conclusive as to the rights of the parties and their privies and bars a subsequent case between the same parties or their privies on the same claim, demand, or cause of action. See *id.* More simply stated, *res judicata* bars a second case when the second case is nothing more than a do-over of the first case. *Deutsche Bank National Trust Co. v. Bodzianowski*, 2016 IL App (3d) 150632, ¶¶ 17, 22. When *res judicata* is established as a bar to a subsequent case, it applies not only to matters that were actually litigated and decided in the first case, but also to any matter that could have been raised in the first case to defeat or sustain the claim or demand. See *Nowak*, 197 Ill. 2d at 389. For *res judicata* to apply, the following three requirements must be satisfied: (1) there must be a final judgment on the merits rendered by a court of competent jurisdiction in the prior case; (2) there must be an identity of cause of action between the prior case and the current case; and (3) there must be an identity of parties or their privies in both cases. *Id.* at 390. The party seeking to assert *res judicata* has the burden of establishing that the doctrine applies. *Richter*, 2016 IL 119518, ¶ 22.

¶ 13 The doctrine of collateral estoppel, on the other hand, applies when a party, or someone in privity with that party, participates in two separate and consecutive cases arising upon different causes of action and some controlling fact or question material to the determination of both cases has been adjudicated against that party in the former case by a court of competent jurisdiction. *Nowak*, 197 Ill. 2d at 390. The adjudication of the fact or question in the first case, if properly presented, is conclusive of the same question in a second case and bars the re-

litigation of that question in the second case. See *id.* In other words, collateral estoppel prevents a party from re-litigating an issue that was fairly and completely resolved in a prior case. *LaSalle Bank National Ass'n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635 (2005). Collateral estoppel differs from *res judicata* in that under collateral estoppel, the judgment in the first case only bars relitigation of the point or question that was actually litigated and determined in that case; collateral estoppel does not bar relitigation in the second case of matters that could have been litigated in the first case but were not. See *Nowak*, 197 Ill. 2d at 390. For collateral estoppel to apply, the following three requirement must be satisfied: (1) the issue decided in the prior case must be identical to the one presented in the current case; (2) there must have been a final judgment on the merits in the prior case rendered by a court of competent jurisdiction; and (3) the party against whom estoppel is asserted must have been a party or in privity with a party in the prior case. *Id.* As with *res judicata*, the party seeking to assert collateral estoppel bears the burden of showing that the doctrine applies. *Smith v. Chemical Personnel Search, Inc.*, 215 Ill. App. 3d 1078, 1082 (1991).

¶ 14 After having reviewed the record in the present case, we find that the trial court properly determined that Bailey's declaratory judgment action was barred by the preclusive effect of the judgments in the prior actions and properly granted Strzelecki and McGrath's 2-619(a)(4) motion to dismiss the complaint on that basis. See 735 ILCS 5/2-619(a)(4) (West 2014); Ill. S. Ct. R. 273; *Nowak*, 197 Ill. 2d at 389-90; *Bodzianowski*, 2016 IL App (3d) 150632, ¶¶ 17, 22; *Bull Valley*, 355 Ill. App. 3d at 635. The record before us shows that Bailey made the same request for the same discovery materials in the prior mandamus proceedings. Those proceedings involved the same parties as in the current case and final judgments on the merits were entered—as the mandamus proceedings were dismissed on the basis of *res judicata*. See Ill. S. Ct. R. 273

(unless the order of dismissal or a state statute provides otherwise, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits); *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 335-36 (1996). The record also shows that Bailey had previously requested the same discovery materials in the 2004 and 2005 criminal cases and that his request was denied. Thus, in both prior sets of proceedings—the criminal proceedings and the mandamus proceedings—Bailey made the same request for the same materials and that request was directly or implicitly denied. Pursuant to the doctrines of *res judicata* and collateral estoppel, therefore, Bailey cannot now seek to relitigate that same claim or issue. See 735 ILCS 5/2-619(a)(4) (West 2014); Ill. S. Ct. R. 273; *Nowak*, 197 Ill. 2d at 389-90; *Bodzianowski*, 2016 IL App (3d) 150632, ¶¶ 17, 22; *Bull Valley*, 355 Ill. App. 3d at 635.

¶ 15 Bailey's only argument to the contrary is that it would be fundamentally unfair for the court to apply *res judicata* (or collateral estoppel) to bar his request for documents in this particular case. While it is true that *res judicata* and collateral estoppel are equitable doctrines that will not be applied where it would be unfair or unjust to do so (see *Nowak*, 197 Ill. 2d at 390; *Bull Valley*, 355 Ill. App. 3d at 636), we are not persuaded that equity would demand that the doctrines not be applied in the instant case. The underlying purpose of *res judicata* and collateral estoppel is to promote judicial economy by preventing repetitive litigation and to protect parties from the harassment of having to relitigate the same claim or issue. See *Richter*, 2016 IL 119518, ¶ 21; *Du Page Forklift Services, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001). Those are the exact circumstances of the present case. Bailey has already litigated this issue in prior cases and his requests for the discovery materials in those cases were denied. We see no injustice in refusing to allow Bailey to litigate that demand yet again. We,

therefore, affirm the trial court's judgment granting Strzelecki and McGrath's 2-619(a)(4) motion to dismiss Bailey's complaint for declaratory judgment.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 18 Affirmed.