2017 IL App (3d) 160073-U

Order filed July 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

CALVIN MERRITTE, Plaintiff-Appellant, v. THOMAS TEMPLETON, in His Official Capacity as La Salle County Sherriff, and TROY HOLLAND, in His Official Capacity as La Salle County Assistant State's Attorney, Defendants-Appellees.	))))))))))))	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois, Appeal Nos. 3-16-0073 and 3-16-0125 Circuit No. 12-MR-121 Honorable Eugene P. Daugherity, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in refusing to consider claims that were barred by *res judicata* and beyond the scope of remand. Plaintiff was not entitled to a civil penalty, attorney fees, or costs. The circuit court did not err in denying plaintiff's motion for substitution of judge and/or motion to change venue.

¶ 2 In this proceeding for declaratory judgment and injunctive relief regarding a request for information under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)), *pro se* plaintiff, Calvin Merritte, an inmate of the Illinois Department of Corrections, appeals the

denial of motions he filed after the cause was remanded for the production of a redacted photograph. Specifically, plaintiff sought the production of additional documents, additional proceedings to determine if more documents were subject to disclosure, a civil penalty, attorney fees and costs, and a substitution of judge/change of venue. We affirm.

¶ 3 FACTS

¶ 4 On June 1, 2012, plaintiff filed a "Complaint for Declaratory Judgement and Injunctive Relief" against defendants, Thomas Templeton and Troy Holland, in their official capacities. Templeton is the La Salle County sheriff, and Holland is a former La Salle County assistant State's Attorney. Holland became a judge during the pendency of these proceedings.

¶ 5 Plaintiff's complaint sought further relief on a FOIA request he had sent to the La Salle County jail approximately five months earlier. The FOIA request sought materials relating to an incident in which plaintiff allegedly bit John Knepper, a correctional officer, while plaintiff was an inmate at the county jail. The jail had released some documents to plaintiff, but claimed that other materials were exempt from disclosure or were not in the jail's possession. Plaintiff believed he was entitled to the production of additional materials that had been withheld. Specifically, the complaint sought the following relief (1) an order that defendants produce an index of the withheld documents and state their reasons for withholding the documents, (2) an *in camera* inspection of the withheld documents, (3) an injunction preventing defendants from withholding the requested documents, (4) an order to produce all records sought in the FOIA request, and (5) costs and fees pursuant to section 11(i) of the FOIA (5 ILCS 140/11(i) (West 2012)).

¶ 6 Plaintiff attached to his complaint the FOIA request he had sent to the county jail. The FOIA request sought the following (1) Knepper's medical records relating to an incident

involving plaintiff in the jail on June 6, 2008, (2) plaintiff's grievances regarding the incident, (3) records of disciplinary action taken against Knepper for misconduct occurring while Knepper was performing his duties, and (4) "[a]ny and all other information related to the incident." The request was approved in part and denied in part by the agency. Holland, an assistant State's Attorney for La Salle County, determined that some of the materials requested were exempt. Holland sent plaintiff a document entitled "Response" which stated:

> "1. Denied based on 5 ILCS 140/7(1)(a) disclosure of John Knepper's medical record is specifically prohibited by federal and state law.
>
> 2. No such records are kept at the LaSalle County Jail.
>
> 3. Final outcome, John Knepper was suspended without pay on December 4, 2008 through January 23, 2009. The remaining request is denied based on 5 ILCS 140/7(1)(n).
>
> 4. See record enclosed. Incident report of 6/6/08.
>
> NOTE: All of this information has been provided to you in previous requests."

¶ 7 Defendant filed an application to sue or defend as a poor person pursuant to section 5-105 of the Code of Civil Procedure (Code) (735 ILCS 5/5-105 (West 2012)). The circuit court allowed defendant's application.

¶ 8 The circuit court denied plaintiff's complaint, finding that plaintiff's FOIA request "was fully and adequately complied with." Plaintiff appealed.

¶ 9 On appeal, defendants confessed error, agreeing that "the cause should be remanded to allow them to 'cure any inadvertent errors.' " *Merritte v. Templeton*, No. 3-12-0507, slip op. at 2

(June 5, 2013) (summary order) (*Merritte I*). We accepted defendants' confession of error, finding that "the record indicate[d] that some of the information plaintiff requested may not have fallen within the exemptions listed in section 7 of the FOIA and that defendants made inadvertent errors in the responses they provided." *Id*. We reversed the denial of the complaint and remanded the matter to the circuit court for further proceedings. *Id*.

¶ 10 On remand, defendants produced two incident reports prepared by correction officers Amy Taylor and Robin Ballard. Defendants stated that they inadvertently left the reports out of the response to plaintiff's FOIA request.

¶ 11 On September 16, 2013, plaintiff filed a request for admissions, which requested that defendants admit the following allegations (1) a video recording of the incident on June 8, 2008, existed, (2) there existed additional documents and records relating to the incident besides the ones defendants had already produced, (3) Mark Greene photographed the bite mark on Knepper's arm following the incident, (4) additional documents or records of Knepper's misconduct in the performance of his duties existed, and (5) investigative reports of the incident exist which were never disclosed to plaintiff. In response to the request for admissions, defendants (1) denied that a video recording existed, (2) admitted that there were additional records relating to the incident that they had not given to plaintiff, (3) admitted that Greene took a photograph of the bite mark on Knepper's arm, (4) admitted that there were records of Knepper's misconduct but denied the remainder of that request, and (5) denied that there were investigative reports of the incident that they had not given to plaintiff.

¶ 12 On November 21, 2013, the court dismissed plaintiff's complaint, finding that defendants had fully complied with the FOIA request.

¶ 13 On December 9, 2013, plaintiff filed a motion to reconsider. A telephone hearing was scheduled on plaintiff's motion to reconsider for January 14, 2014. On the day of the hearing, plaintiff was not present via telephone. A counselor at Lawrence Correctional Center, where plaintiff was incarcerated, advised the court that plaintiff was aware of the hearing that day but chose to go to lunch rather than attend. The court then denied the motion to reconsider due to plaintiff's failure to prosecute the motion.

¶ 14 On January 31, 2014, plaintiff filed an "Affidavit and Motion to Reconsider Hearing on Motion to Reconsider and Brief in Support Filed December 9, 2013." In his motion, plaintiff stated that his housing unit officer told him that a correctional officer would retrieve him when it was time for the hearing on the motion to reconsider. However, plaintiff went to lunch and was never told when it was time for the hearing. Plaintiff stated that he was unable to attend the hearing without being escorted by a correctional officer. The record does not indicate that this motion was ever ruled upon.

¶ 15 Plaintiff appealed. On July 23, 2015, we entered an order affirming in part and reversing in part the circuit court's order dismissing plaintiff's complaint. *Merritte v. Templeton*, 2015 IL App (3d) 140014-U, ¶ 2 (*Merritte II*). In affirming the court's order in part, we found that (1) Knepper's medical records were exempt from disclosure, (2) defendants possessed no grievances filed by plaintiff that they could disclose, (3) defendants fully complied with plaintiff's request for Knepper's disciplinary records by informing him of the final outcome of Knepper's disciplinary proceedings, and (4) defendants did not violate FOIA by failing to produce a video recording, as they consistently denied that such a recording exits. *Id*. ¶¶ 19, 22, 26, 31. However, after applying a balancing test to determine whether a photograph of Knepper showing the alleged bite mark on his arm was exempt as private information, we found that a redacted

photograph which did not show Knepper's face was not exempt from disclosure. *Id*. ¶ 39. Therefore, we reversed the order of the circuit court insofar as it found that disclosure of the redacted photograph was not required. *Id*. We remanded the matter to the circuit court. *Id*. ¶ 41.

¶ 16 On August 18, 2015, defendants filed a copy of a letter sent to plaintiff. The letter stated:

> "Dear [plaintiff]:
>
> Pursuant to the 3rd District Appellate Court's Order dated July 23, 2015, enclosed please find a one page copy of photographs depicting John Knepper's left wrist and purported bite mark.
>
> Tender of the redacted photographs brings us into compliance with the Appellate Court's July 23, 2015 order and brings this matter to a full and final conclusion."

¶ 17 Attached to the letter was a sheet of paper containing seven photographs of Knepper's wrist. The photographs were printed in color.

¶ 18 Our mandate issued on October 27, 2015. The circuit court held a telephone hearing on December 3, 2015. At the hearing, plaintiff stated that he did not believe the photographs defendants tendered to him were authentic. Plaintiff also requested that defendants pay him "the $2500 and the $5000 for intentionally withholding the public record." The court ruled that the correspondence and photographs defendants sent to plaintiff on August 17, 2015, complied with the appellate court's order. The circuit court stated, "I'm not approving any fees at this time because 99 percent of the FOIA request that you made that I dismissed was affirmed." The court advised plaintiff to raise any additional issues he wanted to raise in a written motion within 21 days.

¶ 19 On December 21, 2015, plaintiff filed a motion titled "Motion for Summary Judgement, or Alternatively Motion for Judgement on the Merits." The motion argued that the court should order defendants to produce a "categorical list" of all information plaintiff sought in his FOIA request, whether it was in their possession or they had previously destroyed it. Plaintiff requested that the circuit court conduct an *in camera* inspection of the list and determine whether defendants complied with the FOIA.

¶ 20 Additionally, plaintiff argued that he "should be awarded between $2,500 and $5,000 because the Defendants intentionally withheld the redacted photographs of Knepper in violation of FOIA when they knew that they were required to disclose them redacted."

¶ 21 Also on December 21, 2015, plaintiff filed a "Motion for *Forum Non Conveniens*." In his motion, plaintiff requested that the court transfer the matter to a different county and that the matter be transferred to federal court. Plaintiff also enumerated various rulings and actions taken by various La Salle County judges in his criminal and civil cases. The motion argued that none of the judges in La Salle County should rule on plaintiff's pleadings since they were colleagues of Holland, who had become a judge after plaintiff filed his lawsuit. The motion alleged that Judge Eugene Daugherity, who had been presiding over plaintiff's case after remand, ignored the law and accepted any argument defendants made. The motion also claimed that the court reporters failed to accurately transcribe plaintiff's arguments and the circuit clerk failed to timely file plaintiff's pleadings in the correct case. Plaintiff requested as alternative relief that the court recharacterize the motion as a motion to substitute Judge Daugherity.

¶ 22 Judge Daugherity construed plaintiff's "Motion for *Forum Non Conveniens*" as a motion for substitution of judge and ordered that a hearing be conducted before a different judge. On January 5, 2016, a hearing on the motion was held before Judge Joseph P. Hettel. Plaintiff

explained that he intended for his motion to be heard outside of the La Salle County courthouse and objected to the motion being heard by a La Salle County judge. The court denied plaintiff's request. Plaintiff argued that Judge Daugherity was prejudiced against him because he failed to (1) perform an *in camera* comparison of the redacted photographs of Knepper with the original photographs to ensure their authenticity, (2) order defendants to pay fees to plaintiff for failing to produce the redacted photographs initially, (3) order defendants to produce a list of all the materials in their possession relating to the FOIA request so that the court could perform an *in camera* inspection of the list, and (4) reconsider the merits of the motion to reconsider that plaintiff filed prior to his previous appeal.

¶ 23 Judge Hettel denied plaintiff's motion. Judge Hettel reasoned that since the motion was essentially a motion to substitute judge, plaintiff was required to submit an affidavit along with the motion. Plaintiff failed to submit an affidavit. Hettel further reasoned that Judge Daugherity's prior substantive rulings were not a basis for substitution.

¶ 24 On January 13, 2016, a hearing was held before Judge Daugherity on plaintiff's "Motion for Summary Judgement, or Alternatively Motion for Judgement on the Merits." The court denied the motion. The court noted that in plaintiff's previous appeal, we affirmed the dismissal of plaintiff's FOIA request in all respects except for requiring defendants to produce a redacted photograph of Knepper's bite mark. The court found that defendants complied with the appellate court's order. The circuit court ruled:

> "[I]n all other respects all of the relief requested by [plaintiff] on the motion for summary judgment and motion for judgment on the merits is barred by *res judicata*, and further, the motion to reconsider and the arguments that [plaintiff] raised this morning

> are barred by *res judicata* and collateral estoppel, and the only issue that pended before the Court on remand was the production of the redacted photograph. This Court has determined that that was accomplished and that this portion of this case is over[.]"

¶ 25 ANALYSIS

¶ 26 On appeal, plaintiff raises various arguments challenging the circuit court's denial of his "Motion for Summary Judgement, or Alternatively Motion for Judgement on the Merits," "Complaint regarding the declaratory judgement aspect of the claims," and "Motion for *Forum Non Conveniens*." We first address plaintiff's arguments requesting that defendants be ordered to produce additional documents pursuant to his FOIA request and that additional proceedings be held. Second, we consider plaintiff's arguments that the circuit court erred failing to award him a civil penalty or costs and fees. We then address plaintiff's argument that the circuit court erred in denying his "Motion for *Forum Non Conveniens*." Finally, we rule on two motions plaintiff filed with this court during the pendency of this appeal.

¶ 27 I. Plaintiff's Requests for Additional Documents and Further Proceedings

¶ 28 It is difficult to summarize the arguments raised in plaintiff's appellate brief. The first two subsections of the brief are titled "Did Judge Daugherity Err When He Denied [Plaintiff's] Summary Judgement Motion or Alternative Motion for Judgement on the Merits?" and "Did Judge Daugherity Abuse His Discretion When He Denied [Plaintiff's] Complaint Regarding the Declaratory Judgement Aspect of the Claims?" Both subsections raise various arguments that defendants must produce additional documents to comply with the FOIA request and that we must remand for further proceedings to determine whether even more documents must be

produced. We do not reach the merits of these arguments, as they were outside the scope of the circuit court's jurisdiction on remand and also were barred by the doctrine of *res judicata*.

¶ 29 Where, as in the instant case, "a judgment of a trial court is reversed and the cause is remanded by this court with specific directions as to the action to be taken, it is the duty of the trial court to follow those directions." *Bjork v. Draper*, 404 Ill. App. 3d 493, 502 (2010).

> "If specific directions are not given [in the mandate], the trial court should examine the opinion and determine what further proceedings would be consistent with the opinion. Any other order issued by the trial court is outside the scope of its authority and void for lack of jurisdiction." *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44.

¶ 30 Our order in *Merritte II* affirmed the dismissal of plaintiff's complaint on all grounds except the production of the redacted photographs of the alleged bite mark on Knepper's arm. See *Merritte II*, 2015 IL App (3d) 140014-U, ¶ 39. Thus, the only issue properly before the circuit court on remand was whether defendants complied with our instructions to provide plaintiff with a redacted photograph of the bite mark on Knepper's arm. On appeal, plaintiff does not raise any argument challenging the photographs of Knepper's arm that were produced on remand.

¶ 31 Instead, plaintiff sets forth various arguments requesting the production of additional documents and further proceedings on his complaint. Pursuant to the doctrine of *res judicata*, the order in *Merritte II* served as a bar to further litigation on all other arguments that plaintiff actually raised or could have raised in his prior appeal. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004) ("The doctrine of *res judicata* provides that a final judgment on the merits rendered by a

court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties *** involving the same claim, demand, or cause of action. The bar extends to all matters that were offered to sustain or defeat the claim in the first action, as well as all matters that could have been offered for that purpose."). Accordingly, we find the circuit court properly determined that all the issues raised in the "Motion for Summary Judgement, or Alternatively Motion for Judgement on the Merits" requesting production of materials other than the redacted photographs or further proceedings to determine if additional records should be produced were barred by the doctrine of *res judicata.* See *id.*

¶ 32 Additionally, because the only matter pending before the circuit court on remand was the production of the photographs, we lack jurisdiction to consider plaintiff's arguments that he was entitled to additional documents and further proceedings. See *Anundson v. City of Chicago,* 15 Ill. App. 3d 1032, 1037 (1973) ("When a judgment is reversed and the cause is remanded with specific directions as to the action to be taken by the trial judge, the only issue properly presented [on a second appeal] is whether the order is in accord with the mandate and direction of the reviewing court.").

¶ 33 Contrary to plaintiff's argument on appeal, the fact that the circuit court allowed him to file additional pleadings on remand did not mean that the doctrine of *res judicata* no longer applied to issues that were already litigated or could have been litigated in his prior appeal. Rather, the court was merely asking that plaintiff put his arguments into writing before it ruled on the arguments, including determining whether or not the arguments were barred.

¶ 34 We specifically reject plaintiff's reliance on *People v. Jones,* 315 Ill. App. 3d 500, 504 (2000). In *Jones*, the defendant's conviction had been reversed and the matter had been remanded for a new trial. *Id.* at 501. The *Jones* court held that, on remand, the circuit court erred

in failing to reconsider certain pretrial rulings. *Id*. at 504. The court reasoned that principles of collateral estoppel do not "bar relitigation of a pretrial ruling after remand, where special circumstances are present." *Id.*

¶ 35 In the instant case, unlike in *Jones*, the cause was not remanded for a new trial where the merits of the case would be decided again. Rather, in the prior appeal, we affirmed the dismissal of plaintiff's complaint in all respects except regarding production of a redacted photograph of Knepper's injury. All issues relating to the dismissal of the complaint other than production of the photograph were disposed of by our prior order and were not before the circuit court on remand.

¶ 36 II. Civil Penalty

¶ 37 Plaintiff also argues that the circuit court erred in failing to assess a civil penalty against defendants for failing to initially produce the redacted photograph of Knepper's injury and the incident reports prepared by Taylor and Ballard. Section 11(j) of the FOIA provides:

> "If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence." 5 ILCS 140/11(j) (West 2012).

¶ 38 Initially, we find that plaintiff's argument that the court erred in failing to assess a civil penalty against defendants for their failure to produce the incident reports of Taylor and Ballard before the first appeal is barred by the doctrine of *res judicata* because it could have been raised in plaintiff's second appeal. See *Arvia*, 209 Ill. 2d at 533. We also note that defendants stated

that they inadvertently failed to produce the incident reports initially, and plaintiff has produced no evidence to the contrary.

¶ 39 We also find the court did not err in failing to assess a civil penalty against defendants for their failure to initially produce a redacted photograph of Knepper's injury. Plaintiff has offered no evidence that defendants "willfully and intentionally failed to comply" with the FOIA by failing to initially produce a redacted photograph or otherwise acted in bad faith. Rather, plaintiff merely asserts that defendants failed to produce the photograph until the case was remanded.

¶ 40 III. Fees and Costs

¶ 41 Plaintiff also argues that the circuit court erred in failing to assess fees and costs against defendants. Section 11(i) of the FOIA provides:

> "If a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court shall award such person reasonable attorneys' fees and costs. In determining what amount of attorney's fees is reasonable, the court shall consider the degree to which the relief obtained relates to the relief sought." 5 ILCS 140/11(i) (West 2012).

¶ 42 We find that plaintiff was not entitled to attorney fees because he represented himself during these proceedings and thus incurred no attorney fees. *Brazas v. Ramsey*, 291 Ill. App. 3d 104, 110 (1997). Additionally, as defendant was permitted to proceed *in forma pauperis*, he incurred no costs. Therefore, plaintiff is entitled to no relief under section 11(i).

¶ 43 IV. "Motion for *Forum Non Conveniens*"

¶ 44 Plaintiff contends that the circuit court erred in denying his "Motion for *Forum Non Conveniens*." Specifically, plaintiff argues that he was entitled to a change of venue or a substitution of judge. For the reasons that follow, we reject these arguments.

¶ 45 A. Substitution of Judge

¶ 46 1. Substitution as of Right

¶ 47 Plaintiff argues that he was entitled to a substitution of judge without cause as of right. Initially, we find that plaintiff forfeited this argument by failing to include it in his "Motion for *Forum Non Conveniens*." *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 41 ("An appellant who fails to raise an issue in the circuit court forfeits that issue on appeal."). Additionally, we find that the argument fails on its merits. Section 2-1001(a)(2) of the Code provides:

> "(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties." 735 ILCS 5/2-1001(a)(2) (West 2014).

¶ 48 Here, the "Motion for *Forum Non Conveniens*" was filed after Judge Daugherity had ruled on several substantial issues. For example, Judge Daugherity had already ruled that defendants had complied with our instructions after remand. Therefore, plaintiff was not entitled to a substitution of judge as of right.

¶ 49 2. Substitution for Cause

¶ 50 Plaintiff also argues that he was entitled to a substitution of judge for cause. Specifically, plaintiff contends that Judge Daugherity was prejudiced against him because Daugherity violated the FOIA in failing to order defendants to produce an index of the documents they claimed were exempt and in failing to conduct an *in camera* inspection of those documents. Plaintiff also calls attention to the fact that Judge Daugherity interrupted plaintiff's arguments and failed to award plaintiff costs, fees, and civil penalties. Finally, plaintiff asserts that Judge Daugherity was prejudiced because he was a colleague of Holland, one of the defendants in this case.

¶ 51 Section 2-1001(a)(3) of the Code provides:

> "(3) Substitution for cause. When cause exists.
>
> (i) Each party shall be entitled to a substitution or substitutions of judge for cause.
>
> (ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant."
>
> (iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause

> exists shall be conducted as soon as possible by a judge other than the judge named in the petition. ***. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition."
>
> 735 ILCS 5/2-1001(a)(3) (West 2014).

¶ 52 "A circuit court's determination as to whether sufficient cause exists to order substitution under section 2-1001 of the Code *** will be upheld unless it is contrary to the manifest weight of the evidence." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 150. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Id*.

¶ 53 In the instant case, Judge Hettel correctly determined that plaintiff did not comply with the formal requirements for a substitution of judge for cause, as it was not verified by affidavit.

¶ 54 Additionally, Judge Hettel's finding that plaintiff failed to establish cause for substitution was not against the manifest weight of the evidence. Our supreme court has held that a substitution for cause pursuant to section 2-1001(a)(3) of the Code "may be granted only where the party can establish actual prejudice." *Id.* ¶ 31.

¶ 55 Plaintiff failed to show actual prejudice with regard to his complaint that Judge Daugherity was biased because he was a colleague of Holland. Plaintiff brought this suit against Holland in his official capacity as an assistant State's Attorney of La Salle County. During the pendency of this case, Holland left his position with the State's Attorney's office and became a La Salle County judge. Although plaintiff insinuates that Judge Daugherity was prejudiced against him because he was Holland's colleague, plaintiff offers no actual evidence of prejudice.

See *Id.* ¶ 43 (holding that the mere "appearance of impropriety" is insufficient to substitute a judge for cause and actual prejudice must be shown) (Emphasis omitted.).

¶ 56 Plaintiff's remaining claims of bias consist of objections to Judge Daugherity's previous rulings in this case. Such allegations will typically not support a motion to substitute judge for cause. *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010) ("A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality."); *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002) ("Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant."). "[W]hile most bias charges stemming from conduct during trial do not support a finding of actual prejudice, there may be some cases in which the antagonism is so high that it rises to the level of actual prejudice." *O'Brien*, 2011 IL 109039, ¶ 31. Our supreme court has held:

> " ' "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." ' " (Emphases in original.) *Wilson*, 238 Ill. 2d at 554

(quoting *Eychaner*, 202 Ill. 2d at 281, quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 57 The record in this case does not show that Judge Daugherity had "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id*.

¶ 58 B. Change of Venue

¶ 59 Plaintiff also claims that since his "Motion for *Forum Non Conveniens*" was a motion for change of venue, all the judges in La Salle County should have recused themselves from ruling on the motion. Plaintiff contends that Judge Hettel erred in refusing to recuse himself from ruling on the "Motion for *Forum Non Conveniens*" because Hettel was once the State's Attorney of La Salle County and was Holland's colleague at the time he ruled on the motion. However, the venue statute does not require that a judge outside the county hear a motion for change of venue. Section 2-1001.5 of the Code provides:

> "(a) A change of venue in any civil action may be had when the court determines that any party may not receive a fair trial in the court in which the action is pending because the inhabitants of the county are prejudiced against the party, or his or her attorney, or the adverse party has an undue influence over the minds of the inhabitants.
>
> (b) Every application for a change of venue by a party or his or her attorney shall be by petition, verified by the affidavit of the applicant. The petition shall set forth the facts upon which the petitioner bases his or her belief of prejudice of the inhabitants of the county or the undue influence of the adverse party over their

> minds, and must be supported by the affidavits of at least 2 other reputable persons residing in the county. The adverse party may controvert the petition by counter affidavits, and the court may grant or deny the petition as shall appear to be according to the right of the case.
>
> (c) A petition for change of venue shall not be granted unless it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, but if any ground for change of venue occurs thereafter, a petition for change of venue may be presented based upon that ground." 735 ILCS 5/2-1001.5(a), (b), (c) (West 2014).

¶ 60 Plaintiff cites no law providing for the procedure he claims should have been followed in this case—namely, that his "Motion for *Forum Non Conveniens*" be heard by a judge in a different county based on his allegations that all the judges in La Salle County were biased against him. Accordingly, we find that the circuit court did not err in denying the motion.

¶ 61 V. Motions

¶ 62 Plaintiff filed two motions during the pendency of this appeal that we have taken with the case. First, plaintiff filed a motion entitled "*Pro Se* Request for Appellate Court to Take Judicial Notice." In this motion, plaintiff asked that we take judicial notice of certain materials in the record that he had difficulty accessing in prison. We grant this motion.

¶ 63 Additionally, plaintiff filed a motion entitled "Appellant's Motion for Reconsideration and *Pro Se* Objection to Court's Order 3/15/17." This motion objected to an order we entered waiving oral argument and submitting the case for disposition on the briefs only. Plaintiff

misinterpreted our order and construed it as implicitly denying his previously-filed motion for extension of time to file a reply brief. We subsequently granted his motion for extension of time, and plaintiff filed his reply brief. Therefore, we find this motion to be moot.

¶ 64 CONCLUSION

¶ 65 For the foregoing reasons, we affirm the judgment of the circuit court of La Salle County.

¶ 66 Affirmed.