2015 IL App (4th) 140572-U

NO. 4-14-0572

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 22, 2015
Carla Bender
4th District Appellate
Court, IL

WILLIE J. BOOKER, Plaintiff-Appellant, v. PATRICK QUINN, Governor of Illinois, and LISA MADIGAN, Attorney General for the State of Illinois, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 14CH122 Honorable John P. Schmidt, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of plaintiff's complaint with prejudice is affirmed because of his lack of standing.

¶ 2 Plaintiff, Willie J. Booker, filed a civil complaint against the Governor of Illinois, Patrick Quinn, and the Attorney General of Illinois, Lisa Madigan. Pursuant to section 619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)), defendants moved to dismiss the complaint with prejudice, and the trial court granted their motion. Plaintiff appeals.

¶ 3 In our *de novo* review, we affirm the trial court's judgment, and we award the State $50 in costs (see 55 ILCS 5/4-2002(a) (West 2012)). Also, we order plaintiff to provide us a written explanation, within 30 days, of why we should not impose sanctions upon him pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) for filing a frivolous appeal.

¶ 4 I. BACKGROUND

¶ 5 On March 17, 2014, plaintiff filed a complaint, in which he sought a declaratory judgment that the statute creating the offense of aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West 2012)) was unconstitutional in that (by his interpretation of the statute) it criminalized justifiable discharges of a firearm, such as the discharge of a firearm in self-defense. In addition to a declaration of unconstitutionality, he sought an injunction "prohibit[ing] the defendants and all officials acting in concert with the defendants from enforcing [section 24-1.2]."

¶ 6 On May 16, 2014, defendants filed a motion to dismiss the complaint, with prejudice, pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)). In their motion, they argued the complaint should be dismissed for three reasons. First, the complaint did not allege that plaintiff himself had suffered any injury from section 24-1.2, and hence he lacked standing to challenge the constitutionality of that statute. Second, the complaint was legally insufficient in that it failed to state a claim for relief. Third, sovereign immunity barred the claim in the complaint.

¶ 7 On May 29, 2014, plaintiff filed a memorandum, in which he argued that, "as a citizen of the state [of Illinois], [he] ha[d] standing to maintain this action challenging the constitutionality of the aggravated discharge of a firearm statute because the enforcement of the unconstitutional § 24-1.2(a)(2) injure[d] the public interest which resulted in Illinois citizens being deprived of their rights to due process and liberty under federal and state constitutions." He repeated that argument in an accompanying affidavit.

¶ 8 In a docket entry of June 9, 2014, the trial court granted defendants' motion for dismissal and struck the case.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Under Illinois law, the lack of standing is an affirmative defense to be raised by the defendant. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). A defendant may raise this affirmative defense in a motion for dismissal under section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2012)). It follows that a defendant likewise may raise this affirmative defense in a motion for dismissal under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)) ("Motions with respect to pleadings under Section 2-615 [(735 ILCS 5/2-615 (West 2012))], motions for involuntary dismissal or other relief under Section 2-619 [(735 ILCS 5/2-619 (West 2012))], and motions for summary judgment under Section 2-1005 [(735 ILCS 5/2-1005 (West 2012))] may be filed together as a single motion in any combination."). Thus, when raising the lack of standing in their motion for dismissal under section 2-619.1, defendants used an acceptable procedural vehicle.

¶ 12 The trial court's task, then, was to review the complaint and determine, from the allegations therein, whether plaintiff had standing to challenge the constitutionality of section 24-1.2 of the Criminal Code of 2012 (720 ILCS 5/24-1.2 (West 2012)). See *Martini v. Netsch*, 272 Ill. App. 3d 693, 695 (1995) ("Whether the plaintiff has standing to sue is to be determined from the allegations contained in the complaint."). When making that determination, the court was to accept as true all well-pleaded facts in the complaint, and from those well-pleaded facts the court was to draw all reasonable inferences in plaintiff's favor. See *International Union of Operating Engineers, Local 148 v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 45 (2005). Our standard of review is *de novo* (*International Union of Operating Engineers*, 215 Ill. 2d at 45), meaning that we perform the same analysis a trial court would perform (*Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011)).

¶ 13 Because plaintiff has chosen to appeal, his responsibility is to explain to us why his complaint did not deserve to be dismissed on any of the grounds set forth in the motion for dismissal. The issue of standing would be a good place to start, considering that it would be superfluous—indeed, erroneous—for us to address plaintiff's constitutional argument unless he had standing to make the argument in the first place. See *Harris Trust & Savings Bank v. Duggan*, 95 Ill. 2d 516, 527 (1983) ("It is well established that, where standing is lacking, it is inappropriate to consider the merits of the claims raised."). To convince us of his standing, plaintiff must cite relevant allegations of his complaint as well as relevant authorities, and he must explain why, under those authorities, the specified allegations in his complaint give him standing to challenge the constitutionality of section 24-1.2. See Ill. S. Ct. R. 341(h)(6), (h)(7) (eff. Feb. 6, 2013); *Martini*, 272 Ill. App. 3d at 695.

¶ 14 In our review of plaintiff's complaint, we do not find any allegation that plaintiff ever was convicted of aggravated discharge of a firearm. See *People v. Tellery*, 87 Ill. App. 3d 298, 300 (1980) ("[D]efendant was not convicted under the challenged provision."). Nor do we find any allegation that a charge of aggravated discharge of a firearm is pending against him. See *Illinois Municipal League v. Illinois State Labor Relations Board*, 140 Ill. App. 3d 592, 599 (1986) ("Courts do not rule on the constitutionality of a statute where the complaining party is only theoretically affected by the alleged invalidity of the provision ***.") It appears that plaintiff has filed a complaint for no reason other than to engage in an academic dispute over the constitutionality of section 24-1.2. It is as if he closed his eyes, opened title 720, and placed his finger on a page, with the intention of judicially challenging the offense on which his finger happened to alight.

¶ 15 In his brief, plaintiff attempts to portray section 24-1.2 as a constant oppressive presence in his life. He argues that section 24-1.2 "infringes upon [his] rights to liberty and due process" in that he has to "live under" the statute and "conform his conduct to [it]." He sees a potential injury in that, someday, he might fall afoul of the statute if the need arose for him to justifiably discharge a firearm at someone—in self-defense, for example. This argument suffers from two obvious fallacies. First, section 24-1.2 is subject to article 7 of the Criminal Code of 2012, an article entitled "Justifiable Use of Force; Exoneration," which, in section 7-1(a) (720 ILCS 5/7-1(a) (West 2012)), provides: "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force." So, even the potential injury that plaintiff describes is illusory. Second, assuming, merely for the sake of argument, that section 24-1.2 is not subject to section 7-1(a), "[a] party may question the constitutional validity of a statutory provision only if he or she has sustained or is in *immediate* danger of sustaining some direct injury as a result of enforcement of the statute." (Emphasis added.) *People v. Esposito*, 121 Ill. 2d 491, 512 (1988). Thus far, plaintiff has not been directly injured by section 24-1.2, and considering that, according to an allegation in his complaint, he is an inmate in Menard Correctional Center, it is unlikely he will possess a firearm in the immediate future (see 720 ILCS 5/24-1.1(b) (West 2012))—or, for that matter, in the distant future (see 720 ILCS 5/24-1.1(a) (West 2012)).

¶ 16 Alternatively, plaintiff argues he has standing "because the unconstitutional feature of § 24-1.2 is so pervasive it renders the entire act invalid," and he cites *People v. Mayberry*, 63 Ill. 2d 1, 6 (1976)). This is another random statement unsupported by reasoned

argument. Plaintiff does not explain why the supposed unconstitutionality of section 24-1.2 would render the entire Criminal Code of 2012 invalid.

¶ 17 Finally, plaintiff argues he "has standing to maintain this action because § 24-1.2 injures the public interest which results in Illinois citizens being deprived of their rights to liberty[,] freedom from incarceration[,] and due process by failing to allege a[] culpable intent." Then he cites *Lynch v. Devine*, 45 Ill. App. 3d 743, 749 (1977), which discusses a taxpayer's right to sue in equity to enjoin the illegal appropriation of public revenues. Plaintiff, however, is not suing as a taxpayer to enjoin the illegal appropriation of public revenues. Not only does he fail to explain the relevance of *Lynch*, but he also fails to mention that the supreme court disagreed with *Lynch* in *Glisson v. City of Marion*, 188 Ill. 2d 211, 222 (1999). Some apropos cases, which he does not cite, are *Eagle Books, Inc. v. Jones*, 130 Ill. App. 3d 407, 416 (1985), and *Village of Lake in the Hills v. Laidlaw Waste Systems, Inc.*, 143 Ill. App. 3d 285, 295 (1986), in which the appellate court held that a plaintiff lacked standing to argue an injury to the public in general.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment, and we award the State $50 in costs (see 55 ILCS 5/4-2002(a) (West 2012)). We also order plaintiff to provide us a written explanation, within 30 days, of why we should not impose sanctions upon him pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) for filing a frivolous appeal. We note that from 2013 to 2014, defendant has filed no less than 12 appeals to this court. Until such time as (1) defendant responds to this order and (2) this court determines what action to take, we direct the clerk of this court to disregard—*i.e.*, not to file—any new appeals submitted to this court by defendant.

¶ 20 Affirmed.