2017 IL App (4th) 160597-U

NO. 4-16-0597

FILED
July 25, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ANTHONY JAMES GRASON,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Macon County
KARL MEURLOT and CYNTHIA DEADRICK, d/b/a C. DEADRICK DEVELOPMENT, INC., and EVENT PLUS; and MARK A. WOLFER, d/b/a MARK WOLFER AND ASSOCIATES,	)	No. 16L41
	)	
	)	Honorable
	)	Scott B. Diamond,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff failed to establish the trial court erred in dismissing his claims against defendants in this case.

¶ 2 On April 8, 2016, plaintiff, Anthony James Grason, filed a complaint against Karl Meurlot and Cynthia Deadrick, d/b/a C. Deadrick Development, Inc., and Event Plus (C. Deadrick); and Mark Wolfer, d/b/a Mark A. Wolfer and Associates. On July 12, 2016, the trial court entered a written order dismissing the case with prejudice. As to Mark Wolfer, d/b/a Mark A. Wolfer and Associates, the court noted Grason made no allegations against either Wolfer individually or Wolfer and Associates. The court also noted Cynthia Deadrick was an improper party as no allegations were made against her personally. Further, the court found Grason's cause of action barred by collateral estoppel and *res judicata*, and it constituted improper claim-splitting. Grason had a previous foreclosure case (Macon County case No. 08-CH-121) involving

these same defendants and the same piece of property. This court is quite familiar with the foreclosure case, as it has been the subject of multiple appeals. See *HSBC Bank U.S.A., N.A. v. Grason*, No. 4-10-0090 (April 11, 2011) (*Grason I*); *HSBC Bank U.S.A., N.A. v. Grason*, 2012 IL App (4th) 110788-U (Sept. 19, 2012) (*Grason II*); *HSBC Bank U.S.A., N.A. v. Grason*, 2014 IL App (4th) 131066-U (May 1, 2014) (*Grason III*); *HSBC Bank U.S.A. v. Grason*, 2015 IL App (4th) 140776-U (April 7, 2015) (*Grason IV*). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In his complaint, Grason sought damages from defendants for "unauthorized adverse possession of [his] residential property to include usage of residential property in a commercial capacity." The property in question is located at 4202 West Route 36 in Decatur. This same piece of property was the subject of the mortgage foreclosure action brought by HSBC Bank U.S.A. (HSBC) against Grason in Macon County case No. 08-CH-121. As the parties are familiar with the facts in that case, we only address them as necessary.

¶ 5 The initial foreclosure sale in this case occurred on May 5, 2009. *Grason III*, 2014 IL App (4th) 131066-U, ¶ 4. Cynthia Deadrick and Mark Wolfer, on behalf of Karl Meurlot, purchased the property for $260,401. *Grason IV*, 2015 IL App (4th) 140776-U, ¶ 4. The sale left Grason with a deficiency judgment of $215,543.28. *Id.* Grason appealed, arguing the sale violated an automatic stay created by a bankruptcy petition he filed on May 5, 2009, prior to the sale. Over the next four years, the parties engaged in extensive litigation over whether the sale happened before the bankruptcy petition was filed and whether Grason was an eligible debtor entitled to the protections of an automatic stay. *Id.* ¶¶ 5-9.

¶ 6 Grason proceeded *pro se* during the majority of this litigation. On July 18, 2013, the bankruptcy court issued an order finding HSBC was bound by the automatic stay and the

foreclosure sale was void because Grason was an eligible debtor when he filed his bankruptcy petition prior to the foreclosure sale. *Id.* ¶ 8.

¶ 7 On July 29, 2013, after extensive litigation in state and federal court, Grason filed a motion asking the trial court to vacate the foreclosure sale, refund the sale proceeds to Meurlot, and vacate the order approving the report of sale and distribution. *Id.* ¶ 9. Grason also asked the court to allow him to retake possession of the property. *Id.*

¶ 8 On October 29, 2013, the trial court allowed Grason's motions to vacate the sale and the order confirming the sale. The court also ordered the sale proceeds refunded to Meurlot and vacated the deficiency judgment against Grason. However, over Grason's objection, the court also allowed Meurlot's and C. Deadrick's petition to intervene and appointed C. Deadrick as receiver for the property, denying Grason's motion for possession of the property. *Id.* ¶ 10.

¶ 9 In July 2014, the property was sold again at public auction pursuant to the June 2008 judgment of foreclosure. HSBC had the highest bid at the sale, $714,622.26. HSBC's bid satisfied the amount due under the judgment ($432,180.14) and the interest due on the judgment ($235,923.84) and various other charges. *Id.* ¶ 11. HSBC's bid covered the amount Grason owed on the mortgage and postjudgment interest, and no deficiency judgment was entered against Grason. *Id.* ¶ 18.

¶ 10 According to his complaint, Grason did not have possession of or access to the property from June 30, 2009, until July 31, 2014, but he retained title to the property because the initial foreclosure sale was void. Defendants used the property for commercial purposes and profited from the property during this period. Defendants paid no rent, taxes, or payment of any kind to Grason or HSBC during this period. Defendants refused to identify and itemize the

profits obtained from the property during their occupancy, even for the period when C. Deadrick was the court-appointed receiver.

¶ 11 On May 25, 2016, defendants Meurlot, Cynthia Deadrick, C. Deadrick, and Wolfer filed motions to dismiss Grason's case, arguing the case was barred by judgments issued in the prior foreclosure action (Macon County case No. 08-CH-121). Further, Cynthia Deadrick was not a proper party as no allegation was made against her individually. Defendants also argued Grason's complaint was not warranted by existing law and was filed to harass defendants.

¶ 12 On June 20, 2016, Grason responded, arguing the motions to dismiss were improper "hybrid" motions. Grason also argued *res judicata* did not prohibit his claim.

¶ 13 On July 8, 2016, the trial court held a hearing on the pending motions. On July 12, 2016, the court issued a written judgment dismissing Grason's claim with prejudice. As to Mark Wolfer, d/b/a Mark A. Wolfer and Associates, the court noted Grason made no allegations against either Wolfer individually or Wolfer and Associates. The court also found Grason's cause of action barred by collateral estoppel, *res judicata*, and the doctrine against claim-splitting. The court also noted Cynthia Deadrick was an improper party as no allegations were made against her personally.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Grason argues the trial court erred in dismissing his complaint against the defendants in this case. While Grason has ably represented himself in prior appeals to this court, his arguments in this appeal are difficult to understand. As this court often notes, we are entitled to have issues clearly addressed. It is not the function of this court to perform research or make

arguments for an appellant. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 522 (2001).

¶ 17 We first address Grason's complaint the motions to dismiss in this case were improper hybrid motions. Citing *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674, 802 N.E.2d 1270, 1276 (2003), Grason states, "[a] hybrid motion is one in which the movant fails to designate whether the motion is filed under Section 2-615 or Section 2-619 or otherwise fails to identify the grounds for dismissal under the separate sections of the Code."

¶ 18 As for Mark A. Wolfer, d/b/a Mark A. Wolfer and Associates' motion to dismiss pursuant to both sections 2-615 and 2-619(a)(2) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619(a)(2) (West 2016)), the motion is clear. Wolfer points out Grason's complaint contains no allegations against either Wolfer in his individual capacity or while doing business as some other named entity. On this point, Wolfer is arguing Grason's complaint should be dismissed pursuant to section 2-615 of the Code because it does not state a cause of action against him as a matter of law. The complaint contains no allegations of wrongdoing against him or his alleged business entity. Wolfer also argues Grason's complaint against "Mark A. Wolfer and Associates" should be dismissed pursuant to section 2-619(a)(2) of the Code because "Mark A. Wolfer and Associates" does not exist and cannot be sued. Granted, Wolfer should have filed his motion pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)), which allows for combined motions to dismiss, and divided his arguments into distinct parts. However, we fail to see how this prejudiced Grason in any form.

¶ 19 As for the motion to dismiss filed on behalf of Karl Meurlot and Cynthia Deadrick, d/b/a C. Deadrick, this motion only cited section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) as authority for dismissing Grason's claim. These defendants argued Grason's

claim should be dismissed pursuant to section 2-619(a)(4) of the Code (735 ILCS 5/2-619(a)(4) (West 2016)) because the case was barred by a prior state court judgment (No. 08-CH-121) and a judgment from the United States Bankruptcy Court (No. 14-70344). Cynthia Deadrick argued Grason's claims against her should be dismissed pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2016)) because Grason made no allegation against her personally, but instead made allegations against C. Deadrick, an Illinois corporation. Again, we fail to see how Grason was prejudiced by the form of this motion to dismiss. A "hybrid" motion does not require reversal if the opposite party was not prejudiced. *Falcon v. Thomas*, 258 Ill. App. 3d 900, 902, 629 N.E.2d 789, 790 (1994).

¶ 20 We note Grason makes no argument in his brief as to the substance of the trial court's dismissal of Mark A. Wolfer d/b/a Mark A. Wolfer & Associates or Cynthia Deadrick. As a result, Grason forfeited any argument he had regarding the dismissal of Cynthia Deadrick or Mark A. Wolfer d/b/a Mark A. Wolfer & Associates. *Bryant*, 324 Ill. App. 3d at 533, 755 N.E.2d at 521-22. This leaves us to address whether the trial court erred in dismissing Grason's claim against Karl Meurlot, d/b/a C. Deadrick.

¶ 21 We first look at whether the trial court erred in dismissing Grason's claim against Meurlot and C. Deadrick based on *res judicata*. Pursuant to *res judicata* principles, a final judgment by a court of competent jurisdiction acts as a bar to a later suit between the same parties involving the same cause of action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883, 889 (1998). Three requirements must exist before *res judicata* applies: (1) a final judgment on the merits was reached by a court of competent jurisdiction; (2) identity of parties or their privies; and (3) an identity of cause of action. If these elements exist, the principle of *res judicata* will bar both every matter actually determined and every matter that

could have been raised and determined in the initial action. *Id.* Grason seems to ignore this last point.

¶ 22 The defendants argued plaintiff's claim in this case was barred by the final prior judgment in case No. 08-CH-121, which was the mortgage foreclosure case filed against Grason. A trial court's order confirming the sale and approving the proposed distribution of the sale proceeds constitutes the final and appealable order in a foreclosure case. *CitiMortgage, Inc. v. Sharlow,* 2014 IL App (3d) 130107, ¶ 19, 4 N.E.3d 580. In *Grason IV*, this court affirmed the trial court's distribution of the proceeds of the foreclosure sale. *Grason IV*, 2015 IL App (4th) 140776-U, ¶ 2. Grason did not challenge the court's order confirming the sale. *Id.* ¶ 35. As this court noted in *Grason IV*:

> "Understandably, Grason does not want to have another foreclosure sale as he could potentially be saddled with a deficiency judgment. In fact, in his reply brief, he states he 'is not seeking the effect of setting aside the sale nor seeking to vacate judgment.' " *Id.*

After this court affirmed, our supreme court denied Grason's petition for leave to appeal (*HSBC Bank U.S.A. v. Grason*, No. 119133 (Sept. 30, 2015)), and the United States Supreme Court denied Grason's petition for a writ of *certiorari* (*HSBC Bank U.S.A. v. Grason*, 136 S. Ct. 1456 (Mar. 21, 2016). We clearly have a final judgment in the foreclosure case.

¶ 23 We next determine whether Karl Muerlot and C. Deadrick were parties to the foreclosure case. We need not address the other named defendants in this case because we previously found Grason forfeited any claim the trial court erred in dismissing those defendants on different grounds.

¶ 24 Muerlot's and C. Deadrick's involvement in the foreclosure case was extensive. Meurlot was the winning bidder in the first foreclosure sale and argued as early as June 2011 that Grason's bankruptcy filing did not affect the foreclosure sale. *Grason IV*, 2015 IL App (4th) 140776-U, ¶ 6. He also sought to reopen Grason's federal bankruptcy case for purposes of quashing the automatic stay. *Id*. ¶ 8 (quoting *In re Grason*, 486 B.R. 448, 461 (Bankr. C. D. Ill. 2013)). In August 2013, Meurlot and C. Deadrick filed a petition to intervene as a matter of right and requested C. Deadrick be appointed receiver for the property, which the trial court allowed in October 2013. *Id*. ¶¶ 9-10. Because "[a]n intervenor shall have all the rights of an original party" (735 ILCS 5/2-408(f) (West 2016)), Meurlot and C. Deadrick were parties to the prior action with Grason.

¶ 25 Finally, we must determine whether this case and the foreclosure case have a similar identity. Grason argues the issues raised in this case have not been previously adjudicated. As stated earlier, the fact Grason did not litigate these issues in the foreclosure case is not controlling. *Res judicata* bars every matter actually determined and every matter that could have been raised and determined in the initial action. *River Park*, 184 Ill. 2d at 302, 703 N.E.2d at 889. Almost 20 years ago, our supreme court instructed courts to apply the transactional test instead of the same evidence test to determine whether two cases share a similar identity for *res judicata* purposes. *Id*. at 310-11, 703 N.E.2d at 893. Under the transactional approach:

> "[A] claim is viewed in 'factual terms' and considered 'coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; *** and regardless of the variations in the evidence needed to support the theories or

rights.' " *Id*. at 309, 703 N.E.2d at 892 (quoting Restatement (Second) of Judgments § 24, Comment *a*, at 197 (1982)).

The supreme court went on to state:

> "[P]ursuant to the transactional analysis, separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. [Citation.] Of course, under the transactional analysis, the nature of the evidence needed to prove the claims at issue remains relevant for purposes of demonstrating that the claims arise from the same group of operative facts. Unlike the same evidence test, however, the transactional test permits claims to be considered part of the same cause of action even if there is not a substantial overlap of evidence, so long as they arise from the same transaction. [Citation.]" *Id*. at 311, 703 N.E.2d at 893.

This case and the foreclosure case constitute the same cause of action pursuant to the transactional analysis.

¶ 26 The foreclosure case and Grason's claim here arise out of the same operative set of facts. Both cases revolve around HSBC's foreclosure of what was Grason's property and involve the same parties fighting over the proceeds of that property. Grason is still trying to be compensated for things done to and on the property during the foreclosure proceedings. The time to argue over any money owed by Meurlot and C. Deadrick as a result of its possession of the property after the void sale and C. Deadrick's role as receiver has passed. The amount of money Grason was entitled to as a result of the foreclosure proceedings and sale has already been decided.

¶ 27 Grason argues the mortgage foreclosure action (case No. 08-CH-121) "lacked the scope and authority to address" the issues Grason raised in this case. According to Grason, the only relief a person can seek in a foreclosure action is the proceeds from the sale. He relies on section 2-1301(g) (735 ILCS 5/2-1301(g) (West 2016)) and section 15-1509(c) (735 ILCS 5/15-1509(c) (West 2016)) of the Code as authority for this argument. However, he does not explain how these two statutes apply to his situation. As stated earlier, it is not the obligation of this court to make arguments for an appellant, and we are not going to do so here.

¶ 28 A legal reason might exist why Grason could not have raised these issues in the foreclosure action. However, we are not going to accept Grason's attempt to dump the burden of determining what the legal reason might be. See *Bryant*, 324 Ill. App. 3d at 533, 755 N.E.2d at 522. Grason should have raised these issues during the foreclosure case. If something prohibited Grason from doing so, we are sure counsel for either Meurlot or HSBC would have argued the point. If the trial court refused to allow him to proceed on these issues, he could have raised the issue in his fourth appeal to this court. He did not do so, and it is too late now. Grason's rights with regard to the property and the proceeds of the foreclosure sale have already been decided.

¶ 29 We also note equity does not require this court to relax the rules of *res judicata* on Grason's behalf. Because of his tenacity in the trial court and this court during his foreclosure case, Grason went from having a deficiency judgment of $215,543.28 to no deficiency judgment at all.

¶ 30 III. CONCLUSION

¶ 31 We affirm the trial court's dismissal of Grason's complaint.

¶ 32 Affirmed.