2016 IL App (5th) 160034-U

NO. 5-16-0034

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DAVID MEDLOCK,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Madison County.
	)	
v.	)	No. 15-MR-283
	)	
PLAINS ALL AMERICAN PIPELINE, L.P., and	)	
PLAINS PIPELINE, L.P.,	)	Honorable
	)	John B. Barberis, Jr.,
Respondents-Appellees.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing the Rule 224 petition pursuant to section 2-619(a)(9) where the exhibits attached to the motion clearly show that the petitioner had knowledge of potential defendants.

¶ 2 The petitioner, David Medlock (Medlock), commenced the underlying action to identify potential defendants in causes of action that he may have stemming from a crude oil spill in July 2015. On November 12, 2015, Medlock filed a petition for discovery pursuant to Supreme Court Rule 224 (Rule 224) (Ill. S. Ct. R. 224 (eff. May 30, 2008)), naming respondents Plains All American Pipeline, L.P. and Plains Pipeline, L.P. (Pipeline) as entities in possession of knowledge and documents that would establish the

identities of these potential defendants. The instant appeal arises from the circuit court's order of January 8, 2016, granting Pipeline's objection to and combined section 2-615 and 2-619(a)(9) motion to dismiss Medlock's amended petition (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)) and dismissing Medlock's amended Rule 224 petition. For the following reasons, we affirm.

¶ 3 On November 12, 2015, Medlock filed a verified petition for discovery pursuant to Rule 224, which included allegations, based on information and belief, that an oil spill was discovered on or about July 10, 2015, near the border of Bond and Madison Counties, Illinois, and that the oil spilled into the surrounding waters of Silver Creek and Silver Lake. The petition alleged that the spill had and would continue to have a detrimental effect on the surrounding environment and properties, including Medlock's property, resulting in substantial damages. The petition also alleged, on information and belief, that the damages were a direct result of the negligent and unlawful acts and omissions by potential defendants and that Pipeline was in possession of knowledge and documents that would establish the identities of these potential defendants. Medlock requested that the circuit court enter an order requiring Pipeline to produce identifying information on potential defendants. Attached to the petition were two sets of 54 requests for the respondents to produce documents, each asking for production of "all documents that identify persons or entities" coming within the scope of the 54 categories.

¶ 4 On November 24, 2015, Pipeline filed an objection to and combined motion to dismiss petition pursuant to sections 2-615 and 2-619(a)(9) of the Illinois Code of Civil Procedure (motion to dismiss) (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)), as well as a

supporting memorandum of law. Pipeline asserted that pursuant to section 2-615, the petition was improperly filed because by naming Pipeline as respondents, Medlock identified potentially responsible parties for the injuries claimed, and that the discovery sought goes beyond the permissible scope of a petition under Rule 224. Pipeline also asserted that pursuant to section 2-619, Medlock's petition was barred as an improper use of Rule 224, because he had previously filed suit against Pipeline in federal court, demonstrating his knowledge of the identity of persons or entities that are allegedly responsible for the damages. In support of this contention, Pipeline attached as exhibits a class action complaint, a first amended class action complaint, and a second amended class action complaint, all naming Pipeline as defendants in the United States District Court for the Southern District of Illinois.

¶ 5 In this first class action complaint, filed July 14, 2015, plaintiff Kevin Nodine alleged that on July 10, 2015, a fitting burst on one of Pipeline's pump stations near Highland, Illinois, allowing 4,000 gallons of crude oil to spill into the surrounding waterways, which thereby threatened to contaminate Silver Lake. Nodine alleged that the defendants were the owners, operators, and had the custody and control of the oil pipeline and pump station, had a continuing duty to protect Nodine and other persons from harm caused by the oil spill, and that Nodine and others suffered injuries and harm from the spill as a direct result of Pipeline's activities. Nodine alleged several theories of liability against Pipeline, for which he sought money damages and a permanent injunction.

¶ 6 On July 20, 2015, a first amended class action complaint was filed in the federal suit, adding Medlock as a plaintiff. The first amended complaint reiterated the

allegations and relief sought against Pipeline in the original complaint, and additionally alleged that Medlock was a resident of Highland, Illinois, also seeking money damages and injunctive relief.

¶ 7 On September 14, 2015, Nodine and Medlock filed a second amended class action complaint, again alleging that the oil spill was "a direct result of [Pipeline]'s negligent and unlawful acts and omissions." Nodine and Medlock alleged the same causes of action against Pipeline, but added allegations of the citizenship of the parties, sufficient to show that subject matter jurisdiction existed in the federal court, and allegations that the oil spilled in to the creek adjacent to Medlock's property.

¶ 8 Pipeline filed a motion to dismiss the second amended class action complaint pursuant to the Federal Rules of Civil Procedure 12(b)(1) and (6). Fed. R. Civ. P. 12(b)(1), (6). Subsequent to this filing, Nodine and Medlock filed a notice of voluntary dismissal without prejudice, and the case was dismissed without prejudice on November 4, 2015. Eight days later, Medlock filed his Rule 224 petition that is the subject matter of this proceeding.

¶ 9 Returning to the timeline of this proceeding, Medlock's Rule 224 petition and Pipeline's motion to dismiss came before the circuit court, the Honorable Donald Flack, on December 10, 2015. After hearing arguments, the trial court granted Pipeline's section 2-615 motion on the basis that the petition alleged insufficient facts to demonstrate a causal connection between the potential defendants' conduct and Medlock's damages, but gave Medlock leave to file an amended petition. The court denied the section 2-619 motion as moot in light of its other ruling.

¶ 10 On December 17, 2015, Medlock filed a first amended verified petition for discovery pursuant to Rule 224. The amended petition made substantially the same allegations as the original, but added additional factual allegations regarding his causes of action against the potential defendants.

¶ 11 On December 22, 2015, Pipeline again filed an objection to and combined motion to dismiss, this time in regards to Medlock's amended petition, pursuant to sections 2-619(a)(9) and 2-615 of the Illinois Code of Civil Procedure (second motion to dismiss) (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)). Pipeline also filed a supporting memorandum of law, the pleadings and order that were filed previously in the federal court, and a verification as to the federal pleadings and order. Medlock filed responses to the second motion to dismiss and memorandum of law and Pipeline filed a reply; this matter then came before the trial court.

¶ 12 On January 8, 2016, the circuit court, the Honorable John Barberis, heard argument from the parties. Counsel for Pipeline asserted that because Medlock already knew of two potentially responsible parties, as demonstrated by the voluntarily dismissed proceedings in federal court, the purpose of his Rule 224 petition has already been served and Medlock's petition should therefore be dismissed. Counsel for Medlock responded that there were two pleading motions before the court–Pipeline's section 2-615 and section 2-619(a)(9) motions–and Medlock's amended Rule 224 petition was now a pleading sufficient to survive a motion to dismiss under section 2-615, as it corrected the deficiencies for which Judge Flack had granted Pipeline's previous section 2-615 motion to dismiss. Counsel for Medlock also asserted that there was no authority for granting the

motion under section 2-619(a)(9), because Pipeline may not speculate that Medlock will refile the case in federal court and conduct discovery there. Counsel for Medlock requested that the court deny the motion under both standards, concluding that "if your Honor is so inclined, I would be willing to proceed to the merits of our petition *** at your discretion."

¶ 13 Counsel for Pipeline responded that it was disingenuous to assert that Medlock may not file another lawsuit, as the federal suit was filed under Rule 11 of the Federal Rules of Civil Procedure, which means that the parties had a good faith basis for the allegations being made; further, as Medlock identified Pipeline as a potentially responsible party in the federal pleading, there was no need for identification through a Rule 224 petition and the proper course of action was for Medlock to file a lawsuit and therein proceed in discovery.

¶ 14 Counsel for Medlock reiterated that he had sufficiently pled a Rule 224 petition sufficient to survive a motion to dismiss pursuant to section 2-615, and the existence of a dismissed lawsuit is not an affirmative matter that requires a Rule 224 petition to be dismissed pursuant to section 2-619(a)(9). In response, the court stated the following:

> "My understanding is that while it's not necessary for him to be successful on his motion that he prove that there was a case that had been filed anywhere else, Federal Court, State Court, wherever, and it was then dismissed, I don't know that that's necessarily the point of his arguments with regard to why this should not be dismissed. I think the thing that the Court has to determine isn't whether or not a lawsuit has been filed against one of the potential defendants in this case but

whether or not there is evidence out there anywhere to suggest that plaintiff knows of responsible parties, and in suggesting that its knowledge is based on the fact that there was a lawsuit, I think that can be taken into account. *** [Counsel for Pipeline's] argument is well taken in regard to do you have enough information of at least one or two defendants that you can bring a suit here or elsewhere and proceed with discovery under the rules. So for that reason I'm going to find that the motion to dismiss the 224 petition is granted."

¶ 15 When asked to clarify its ruling, the court stated that the ruling was not based on the fact that a prior lawsuit had been filed naming the current respondents as defendants, as the knowledge that Pipeline owned property where the leak occurred could come from other sources of public record. The court stated that it was deciding that there was sufficient information that Medlock knew that Pipeline owned property where the oil leak occurred, resulting in damage to Medlock's property, and as such Medlock knew that "at least Plains American Pipeline and Plains Pipeline LP are people who can be named as defendants in any action [Medlock] wishes to take."

¶ 16 The trial court filed a written order that same day, ruling that "Respondents' motion is hereby granted and Petitioner's amended petition is hereby dismissed for the reason that the record indicates that the purpose of Rule 224 has already been served in that Petitioner has information as to the potentially responsible parties for the cause of action Petitioner wishes to pursue." Medlock appeals this ruling.

¶ 17 On appeal, Medlock argues that the trial court erred in granting Pipeline's combined motions to dismiss. In regards to Pipeline's section 2-615 motion, Medlock

asserts that Pipeline did not present grounds upon which a section 2-615 motion to dismiss may be granted, and that Medlock alleged sufficient facts to establish a *prima facie* case; as to the section 2-619(a)(9) motion, Medlock asserts that a previously filed and dismissed lawsuit naming Pipeline does not preclude discovery under Rule 224. Medlock also argues that the court misinterpreted Illinois law in finding that it was charged with determining "whether or not there is evidence out there anywhere to suggest that plaintiff knows of responsible parties." Finally, he argues that the court erred in failing to grant his amended verified Rule 224 petition.

¶ 18 Ordinarily, we review an order granting or denying a Rule 224 petition for an abuse of discretion, though where a trial court's exercise of discretion relies upon a conclusion of law, our review is *de novo*. *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 710 (2010). However, the crux of Medlock's argument stems from the standard of review applicable in this matter, as he asserts there is a distinction between refusing to grant a Rule 224 petition on the merits and dismissing a Rule 224 petition pursuant to the granting of a motion to dismiss, as was the case here.

¶ 19 Medlock argues that the merits of the petition were never reached at the hearing, and because the trial court ruled on Pipeline's combined motion to dismiss, we are to review the trial court's decision to grant the combined motion to dismiss the Rule 224 petition as we would any other motion to dismiss brought under both sections 2-615 and 2-619; that is, applying a *de novo* review, accepting all well-pleaded facts in the complaint as true, and drawing all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. The complaint is to

be construed liberally and should only be dismissed when it appears that the plaintiff could not recover under any set of facts. *Id.* To defeat the section 2-615 motion to dismiss, Medlock claims that he was only required to sufficiently state a cause of action– the merits of his case were not to be considered. See *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139, 1144 (2001). In regards to the section 2-619(a)(9) motion, Medlock argues that no authority supports Pipeline's contention that a voluntarily dismissed federal case should bar Medlock from later pursuing discovery pursuant to Rule 224.

¶ 20 Pipeline responds that Rule 224 states only that in order to challenge discovery believed to be unnecessary, a respondent must appear at a hearing held to determine whether such order shall be entered. Ill. S. Ct. R. 224(a)(2) (eff. May 30, 2008). As such, though it may have been superfluous, Pipeline took "affirmative action" and filed a combined motion to dismiss to challenge the petition,[1] but based its response on the fact that discovery was unnecessary because the purpose of the rule has been satisfied, *i.e.*, the evidence before the trial court demonstrated that Medlock already knew of potentially responsible parties for his cause of action.

[1]A review of the Illinois case law reveals only one case where an appellate court directly states that a respondent filed a motion to dismiss in response to a Rule 224 petition; the respondent was not challenging the merits of the petitioner's case but rather the constitutionality of Rule 224. See *Shutes v. Fowler*, 223 Ill. App. 3d 342, 343 (1991).

¶ 21 A motion to dismiss under section 2-615 tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, but asserts an affirmative defense outside the complaint that serves to defeat the cause of action. *Kean v. Wal-Mart Stores, Inc*., 235 Ill. 2d 351, 361 (2009). If the defects are not apparent on the face of the pleadings, affidavits may be employed to bring affirmative matters to light which would bar the litigation. *Cramsey v. Knoblock*, 191 Ill. App. 3d 756, 764 (1989). Section 2-619(a)'s purpose is to provide litigants with a method of disposing of issues of law and easily proved issues of fact–*relating to the affirmative matter*–early in the litigation. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 30.

¶ 22 Our courts have agreed that in a Rule 224 petition, the facts outlining the causes of action that the petitioner has against the person whose identity is sought must be sufficient to overcome a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)), although the unidentified individual is not required to file such a motion. *Guava LLC v. Comcast Cable Communications, LLC*, 2014 IL App (5th) 130091, ¶ 62. Thus, regardless if a motion to dismiss a Rule 224 petition is in fact filed by a respondent, we are to scrutinize the legal sufficiency of that petition as if it were a complaint. See *id*. We therefore proceed by reviewing *de novo* whether Medlock's complaint may be defeated, either by not stating a claim upon which relief may be granted, or that a defect, defense, or affirmative matter raised by Pipeline serves to defeat Medlock's allegations. See *Coghlan*, 2013 IL App (1st) 120891, ¶ 24.

¶ 23 We find that the affirmative matter raised by Pipeline in its section 2-619(a)(9) motion contains easily proved issues of fact defeating Medlock's claim. The federal court pleading attached to Pipeline's petition constituted verification by Medlock that he had knowledge of Pipeline as potential defendants. While Pipeline was not required to file its combined motion to dismiss in response to Medlock's Rule 224 petition, neither was Pipeline prohibited from raising this issue via section 2-619 where the affirmative matter of Medlock's knowledge of potential defendants was so simply shown by exhibit.

¶ 24 We note also that even if we were to proceed onto the merits of the petition, it would ultimately be insufficient. Illinois Supreme Court Rule 224 provides that "[a] person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery." Ill. S. Ct. R. 224(a)(1)(i) (eff. May 30, 2008). The petition must be verified and must set forth "(A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought." Ill. S. Ct. R. 224(a)(1)(ii) (eff. May 30, 2008). A hearing must be held before the court can grant or deny a Rule 224 petition in order to prevent "fishing expeditions." *Beale v. EdgeMark Financial Corp.*, 279 Ill. App. 3d 242, 254 (1996); *Shutes v. Fowler*, 223 Ill. App. 3d 342, 345 (1991).

¶ 25 Our courts have repeatedly held that the use of a Rule 224 petition is limited to discovery of the identity of a potential defendant. *Roth v. St. Elizabeth's Hospital*, 241 Ill. App. 3d 407, 414-15 (1993); *Malmberg v. Smith*, 241 Ill. App. 3d 428 (1993). When the identity of a person or entity who may be responsible in damages has been ascertained, the purpose of the rule has been accomplished and the action under Rule 224

should be dismissed. *Gaynor v. Burlington Northern & Santa Fe Ry.*, 322 Ill. App. 3d 288, 294 (2001).

¶ 26 Pipeline asserts that the voluntarily dismissed federal court pleadings, submitted for the record in this case, establish Medlock's knowledge of the identity of Pipeline as entities potentially responsible in damages, as Medlock expressly alleged that Pipeline was "liable" and a "responsible party" in the federal pleadings. In support of this argument, Pipeline primarily relies on this court's decision in *Gaynor v. Burlington Northern & Santa Fe Ry.*, 322 Ill. App. 3d 288 (2001).

¶ 27 In *Gaynor*, the plaintiff's employer hired an investigative agency to determine if employees who called in sick were really attending a golf tournament. *Id.* at 289. This resulted in a right to publicity claim, and the plaintiff filed a Rule 224 proceeding to compel the employer and the agency to turn over the videotape. *Id.* at 290. The plaintiff wished to identify not only unknown defendants, but also other potentially injured plaintiffs. *Id.* On that same day, the petitioner filed a separate suit against the investigative agency for damages allegedly arising from the incident. *Id.*

¶ 28 In regards to the petitioner's search for both unknown defendants and additional plaintiffs, the court concluded that the petitioner's request to find additional plaintiffs was outside the scope of a Rule 224 proceeding. *Id.* at 295. In regards to whether the trial court properly granted the Rule 224 petition, the court reviewed Illinois case law and concluded that multiple decisions have held that Rule 224 is inapplicable when the identity of the potential defendant is already known. *Id.* at 292. Here, the petitioner had filed an action against a known defendant on that same day. *Id.* at 296. As such, the

court reasoned, the petition must be dismissed because the identity of potential defendants and the connection of such defendants to the injury alleged were known to the petitioner at the time the Rule 224 petition was filed. *Id*.

¶ 29 Medlock asserts that *Gaynor* is unavailing, as it speaks to contemporaneously filed lawsuits, it focuses on the scope of the discovery sought, and because the standards and burdens are different here in a motion to dismiss than in *Gaynor*'s dismissal on the merits. However, we have already addressed Medlock's concerns about viewing this case from the standard of a motion to dismiss, and we find unpersuasive that *Gaynor* is not instructive due to the fact that the petition was contested due to the scope of the petitioner's inquiry and not, as here, the necessity of the discovery sought. We also must disagree that the factual difference between this case and *Gaynor*'s contemporaneously filed lawsuits is relevant to our analysis, as case law confirms that knowledge of the identity of a party potentially responsible in damages is fatal to a petitioner's Rule 224 petition.[2] As revealed in Medlock's federal court pleadings, he was indeed aware of a

[2]We note that Medlock cites *Beale v. EdgeMark Financial Corp.*, 279 Ill. App. 3d 242 (1996), for his contention that he should not be precluded from ascertaining additional connecting facts to further refine the universe of potential defendants so long as the attempted discovery does not seek to delve into any actual details of the wrongdoing. *Id.* at 252-53. Noting that previous cases had not precluded discovery solely on the basis of the petitioner's knowledge of a name only, but on the known connection of each individual to the injury, *Beale* held that on occasion, the identification

potentially responsible party in damages. We conclude, therefore, that the effect of filing a suit and thereafter dismissing it is not different than filing a suit contemporaneously with the Rule 224 petition; in either case, the petitioner has demonstrated that he was aware of a potentially responsible party in damages. When it is apparent from the record that the identity of the potential defendant is known, Rule 224 is inapplicable and it would be error for the trial court to grant such a petition. *Malmberg*, 241 Ill. App. 3d at 432.

¶ 30 Furthermore, knowledge of every conceivable responsible party is not required before a petition under Rule 224 is deemed unnecessary. *Roth*, 241 Ill. App. 3d at 416. Illinois courts have made clear that Rule 224 is for the sole purpose of allowing the

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of a defendant may require more than simply a name; on those occasions, discovery under Rule 224 is not limited to ascertaining only a name. *Id.* at 254. However, we note first that *Beale*'s expansion of the scope of Rule 224 has been consistently distinguished in the years following its publication (see, *e.g.*, *Gaynor*, 322 Ill. App. 3d at 312 (2001); *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, ¶ 16 (2015)), and that even under this standard, knowledge of the connection of an individual to the injury involved precludes further discovery under the rule. Medlock knows the identity of the respondents, owners of the oil pipeline that may be responsible for its leak. The connection between Medlock's alleged injury and the identity of the potential defendants is already known. As Medlock has no need for additional connecting facts to further refine the universe of defendants having potential liability, *Beale* is unavailing.

petitioner to identify someone against whom he can pursue a suit; Rule 224 procedure is inappropriate where a case can be filed and the petitioner may utilize the general discovery provisions of Rule 201 *et seq.* or the provisions of section 2-402 to determine responsibility for damages. See *Roth*, 241 Ill. App. 3d at 416. Here, the record reflects that Pipeline has been ascertained as a potentially responsible party for Medlock's damages; if Medlock chooses to pursue his cause of action for the oil spill damages, he may file a complaint and conduct discovery under traditional discovery rules. *Id.*; see *Gaynor*, 322 Ill. App. 3d at 296 ("For further discovery, petitioner has had the ability to utilize [section 2-402 of] the Code of Civil Procedure *** and the general discovery provisions of the supreme court rules [citation].").

¶ 31 For substantially the same reasons as we have discussed above, we reject Medlock's arguments that the trial court misinterpreted Illinois law, and his argument that the trial court erred in failing to grant his amended verified Rule 224 petition even though Medlock met the pleading requirements set forth in the rule. We hold that the circuit court did not err in dismissing the Rule 224 petition pursuant to section 2-619(a)(9) where the exhibits attached to the motion clearly show that Medlock had knowledge of potential defendants.

¶ 32 Affirmed.