Illinois Official Reports

Appellate Court

Jackson v. Hehner, 2021 IL App (1st) 192411

Appellate Court Caption	GEORGE JACKSON, Plaintiff-Appellant, v. WALTER PHILIP HEHNER, Individually and as an Assistant Cook County State's Attorney; APRIL MICHELLE PERRY, Individually and as an Assistant Cook County State's Attorney; KIMBERLY FOXX, Individually and as the Cook County State's Attorney; JENNIFER "JENNIE" COLEMAN, Individually and as an Assistant Cook County State's Attorney; STEPHANIE MILLER; Individually and as an Assistant Cook County State's Attorney; YOLANDA LIPPERT, Individually and as an Assistant Cook County State's Attorney; and UNKNOWN DOE SUPERVISORS 1 THROUGH 3, Individually and as Cook County State's Attorney Employees, Defendants-Appellees.
District & No.	First District, Third Division No. 1-19-2411
Filed	September 30, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 2018-IL-013303; the Hon. Christopher E. Lawler, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	George Jackson III, of Chicago, appellant *pro se*.

Kimberly M. Foxx, State's Attorney, of Chicago (Cathy McNeil Stein and Joseph A. Hodal, Assistant State's Attorneys, of counsel), for appellees.

Panel

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion.
Justices Ellis and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff George Jackson appeals the trial court's grant of defendants' motion to dismiss plaintiff's third amended complaint. The trial court dismissed his suit pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020)), based on defendants' immunity to suit.

¶ 2 For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 I. The Parties

¶ 5 Since a section 2-619 motion admits the legal sufficiency of the complaint, we describe below the complaint's allegations regarding the parties and events giving rising to the suit. See, *e.g.*, *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

¶ 6 The complaint alleges that plaintiff George Jackson is an attorney in Cook County who represented Anthony Jackson[1] in Anthony's successful posttrial motion to reverse his criminal conviction and obtain a new trial. The complaint further alleges that, in retaliation for plaintiff's success in uncovering misconduct by Cook County prosecutors and thereby obtaining a new trial,[2] the prosecutors made a formal complaint against plaintiff to the Illinois Attorney Registration and Disciplinary Commission (ARDC).

¶ 7 Defendant Kim Foxx is the Cook County State's Attorney. The complaint alleges that the remaining defendants named in this suit are prosecutors in her office.

¶ 8 II. The Claims

¶ 9 The complaint alleges: "This case is about rogue Prosecutors in the Office of the Cook County State's Attorney." Plaintiff alleges (1) that, in the criminal case against Anthony,

[1]Since plaintiff shares the same last name as Anthony, we refer to Anthony by his first name. Although the State in its brief to this court alleges that Anthony is plaintiff's brother, that fact is not alleged in plaintiff's complaint.

[2] In its brief to this court, the State asserts that Anthony received a new trial due to the ineffectiveness of his trial attorneys and that plaintiff was part of the team of attorneys who represented Anthony during the trial. Since a section 2-619 motion admits the sufficiency of the complaint, we rely solely on plaintiff's allegations in deciding this appeal. See *DeLuna*, 223 Ill. 2d at 59.

prosecutors suppressed exculpatory evidence, (2) that plaintiff uncovered the suppression, (3) that the prosecutors' "scheme" then expanded to discrediting plaintiff, and (4) that they reported him to the ARDC in 2016. Plaintiff alleges that defendants "collectively" engaged in "a scheme to defraud": by retaliating and relentlessly pressuring plaintiff, by attempting to conceal and by concealing the illegal suppression of exculpatory evidence, and by causing alterations to a certified transcript.

¶ 10 Plaintiff alleges that he both represented Anthony and testified at a hearing on Anthony's motion for a new trial on November 9, 2016. As a result of this hearing, the trial court reversed Anthony's conviction and granted him a new trial. Plaintiff alleges that evidence at the hearing established that defendants "caused material alterations to a certified transcript in the under[lying] trial." The complaint also alleges other misconduct by prosecutors during Anthony's criminal trial.

¶ 11 Defendants reported plaintiff to the ARDC, accusing him of moral turpitude and of engaging in conduct involving dishonesty and fraud. Plaintiff alleges that the purpose of these reports was to cause plaintiff such emotional distress that he would either withdraw from his representation of Anthony or render ineffective representation.

¶ 12 Specifically, plaintiff alleges that defendants filed a letter with the ARDC on December 12, 2016, enclosing the transcript from the November 9, 2016, hearing in Anthony's case. The ARDC received the letter on December 12, 2016, and opened an investigation.

¶ 13 Plaintiff alleges: "Although the [ARDC] ultimately did not take action against Plaintiff, the Agency maintains the case for three years and has the authority to revive the case within that time." Plaintiff alleges: "For three years Plaintiff must suffer emotional stress and distress knowing the Defendants could seek to revive the investigation ***."

¶ 14 Counts I through III and counts VI through VIII allege intentional infliction of emotional distress, while counts IX and X allege negligent infliction of emotional distress. Counts IV and V are solely against Kimberly Foxx, the Cook County State's Attorney, and allege negligent supervision and negligent entrustment.

¶ 15 III. Defendants' Motion to Dismiss

¶ 16 On August 12, 2019, defendants moved to dismiss the complaint pursuant to section 2-619,[3] which, as explained more fully below, argues for dismissal on grounds outside of the complaint itself. *Infra* ¶ 25.

¶ 17 Defendants argue (1) that Illinois Supreme Court Rule 775 (eff. Dec. 7, 2011) shielded defendants from liability for the filing of an ARDC complaint, (2) that plaintiff lacked standing to bring suit for alleged misconduct by prosecutors in a criminal case against plaintiff's client, and (3) that, even if plaintiff had standing, defendants are immune from plaintiff's claims of prosecutorial misconduct.

¶ 18 On August 13, 2019, the trial court entered a briefing order, with plaintiff's response due September 10, defendants' reply due September 24, and the case set for status on September 25.

[3]Defendants also moved for dismissal pursuant to section 2-615. See 735 ILCS 5/2-615 (West 2020). However, since the trial court did not dismiss on that basis, we focus on defendants' section 2-619 claims.

¶ 19 On September 25, 2019, plaintiff requested additional time to respond, and the trial court entered a revised briefing order, with plaintiff's response due October 2, defendants' reply due October 9, and the case set for status on October 11, 2019. On October 3, 2019, plaintiff filed a response.

¶ 20 On October 8, 2019, which was five days after plaintiff's filing of a response, plaintiff filed a written motion seeking leave to amend his response *instanter*, which the trial court granted. Plaintiff's written motion included a sentence asserting that Illinois Supreme Court Rule 775 was unconstitutional. The following sentence stated: "However, Plaintiff continues to research this issue in order to properly develop this argument and will submit these legal contentions in a separate Motion, as warranted."

¶ 21 On October 8, 2019, the trial court denied as untimely plaintiff's oral motion for leave to challenge the constitutionality of Illinois Supreme Court Rule 775. On October 18, 2019, plaintiff filed a motion to reconsider, arguing that he was not dilatory on the ground that he "has been under unabated prosecutorial and judicial attack."

¶ 22 On October 24, 2019, the trial court entered an eight-page written order dismissing plaintiff's suit pursuant to section 2-619. The trial court found that plaintiff's claims were based, in part, on an ARDC complaint filed against him and, in part, on alleged prosecutorial misconduct that occurred during a client's case. The trial court found (1) that, to the extent that his claims were based on an ARDC complaint, Rule 775 afforded absolute immunity from suit for statements in an ARDC complaint and (2) that, to the extent that his claims were based on alleged prosecutorial misconduct, "the absolute attorney litigation privilege" barred suit. *Jackson v. Hehner*, No. 18 L 13303, slip op. at 5-6 (Cir. Ct. Cook County). On November 22, 2019, plaintiff filed a notice of appeal, and this timely appeal followed.

¶ 23 ANALYSIS

¶ 24 I. Standard of Review

¶ 25 As noted, the trial court dismissed plaintiff's third amended complaint pursuant to section 2-619. "A motion to dismiss, pursuant to section 2-619 of the Code, admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *DeLuna*, 223 Ill. 2d at 59; *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). "[T]he movant is essentially saying ' "Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim." ' " *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31 (quoting *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008)). Dismissal is permitted based on certain listed "defects" (735 ILCS 5/2-619(a)(1)-(8) (West 2020)) or some "other affirmative matter" (735 ILCS 5/2-619(a)(9) (West 2020)) outside the complaint. *Reynolds*, 2013 IL App (4th) 120139, ¶ 31.

¶ 26 On an appeal from a section 2-619 dismissal, our standard of review is *de novo*. *Hernandez v. Lifeline Ambulance, LLC*, 2020 IL 124610, ¶ 14; *Solaia Technology*, 221 Ill. 2d at 579. *De novo* review means that we perform the same analysis a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). "Under the *de novo* standard of review, this court owes no deference to the trial court." *People v. Williams*, 2013 IL App (1st) 111116, ¶ 75 (citing *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 154 (2007)).

¶ 27 In ruling on a section 2-619 motion to dismiss, a court must interpret the pleadings and supporting materials in the light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). "[A] court must accept as true all well-pled facts in the plaintiff's complaint and any reasonable inferences that arise from those facts." *Hernandez*, 2020 IL 124610, ¶ 14. Additionally, we may affirm on any basis appearing in the record, whether or not the trial court relied on that basis and whether or not the trial court's reasoning was correct. *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 25; *Mullins v. Evans*, 2021 IL App (1st) 191962, ¶ 59.

¶ 28 II. Grounds Under Section 2-619

¶ 29 For a motion to be properly brought under section 2-619, the motion (1) must be filed "within the time for pleading" and (2) must concern one of nine listed grounds. 735 ILCS 5/2-619(a) (West 2020). In the case at bar, there is no indication that defendants failed to file a timely motion, so we turn to the grounds that defendants assert.

¶ 30 A section 2-619 motion is permitted on only the following grounds:

> "(1) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.
>
> (2) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.
>
> (3) That there is another action pending between the same parties for the same cause.
>
> (4) That the cause of action is barred by a prior judgment.
>
> (5) That the action was not commenced within the time limited by law.
>
> (6) That the claim set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy.
>
> (7) That the claim asserted is unenforceable under the provisions of the Statute of Frauds.
>
> (8) That the claim asserted against defendant is unenforceable because of his or her minority or other disability.
>
> (9) That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a) (West 2020).

¶ 31 Subsection (a)(9) permits dismissal when an affirmative matter outside of the pleadings bars the claim. 735 ILCS 5/2-619(a)(9) (West 2020). "Affirmative matter," in this context, "encompasses any defense other than a negation of the essential allegations of the plaintiff's cause of action." *Daniels v. Union Pacific R.R. Co.*, 388 Ill. App. 3d 850, 855 (2009).

¶ 32 Our supreme court has found: "Immunity from tort liability is an affirmative matter that may properly be raised in a section 2-619 motion." *Hernandez*, 2020 IL 124610, ¶ 14. Thus, this issue was properly raised by defendants in a section 2-619 motion.

¶ 33 III. Rule 775 Immunity

¶ 34 With respect to the claims arising from the ARDC complaint, defendants assert immunity pursuant to Rule 775, which provides absolute immunity against claims arising from

communications with the ARDC. See Ill. S. Ct. R. 775 (eff. Dec. 7, 2011) (providing "immun[ity] from all civil liability"); *Casamento v. Berendt*, 2018 IL App (2d) 180086, ¶ 17. The burden to prove immunity is on the parties seeking to assert it, which, in the case at bar, are defendants. *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 52.

¶ 35 This appeal requires us to interpret and apply Rule 775. Our review of a lower court's construction of a statute or rule is also *de novo*. *Hernandez*, 2020 IL 124610, ¶ 15. It is axiomatic that the primary goal in interpreting a statute or rule is to ascertain and give effect to the drafters' intent. *Hernandez*, 2020 IL 124610, ¶ 15. The best indication of that intent is the language itself, giving it its plain and ordinary meaning. *Hernandez*, 2020 IL 124610, ¶ 15. The words and phrases should be interpreted in relation to each other, and no word or provision should be rendered meaningless. *Hernandez*, 2020 IL 124610, ¶ 15.

¶ 36 Illinois Supreme Court Rule 775 (eff. Dec. 7, 2011) provides in full:

> "Any person who submits a claim to the Client Protection Program or who communicates a complaint concerning an attorney or allegations regarding the unauthorized practice of law to the Attorney Registration and Disciplinary Commission, or its administrators, staff, investigators or any member of its boards, shall be immune from all civil liability which, except for this rule, might result from such communications or complaint. The grant of immunity provided by this rule shall apply only to those communications made by such person to the Attorney Registration and Disciplinary Commission, its administrators, staff, investigators and members of its boards."

¶ 37 Rule 775 "afford[s] an absolute privilege to all communications made to the ARDC in a complaint regarding the unauthorized practice of law." *Casamento*, 2018 IL App (2d) 180086, ¶ 17. "This is apparent from the supreme court's use of the phrase 'shall be immune from all civil liability' in describing what type of immunity one has when filing a complaint with the ARDC regarding the unauthorized practice of law." *Casamento*, 2018 IL App (2d) 180086, ¶ 17. "By using such broad language, it is apparent that the supreme court did not intend that certain statements made to the ARDC would be privileged but others would not." *Casamento*, 2018 IL App (2d) 180086, ¶ 17.

¶ 38 Thus, plaintiff's claims arising from statements made in an ARDC complaint are immune from suit and were properly dismissed pursuant to section 2-619.

¶ 39 Plaintiff also claims on appeal that the trial court abused its discretion by denying as untimely his motion for leave to add a claim that Rule 775 is unconstitutional. See *Carlson v. Michael Best & Friedrich, LLP*, 2021 IL App (1st) 191961, ¶ 44 (a trial court's denial of a motion for leave to amend a pleading is reviewed for an abuse of discretion). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the position adopted by the trial court. *People v. Aljohani*, 2021 IL App (1st) 190692, ¶ 65.

¶ 40 In the case at bar, the complaint under consideration is the third amended complaint or plaintiff's fourth attempt to draft his claims.[4] Specifically, with respect to defendant's motion, plaintiff did not comply with two briefing orders. The trial court set a briefing schedule on August 13, 2019, that required plaintiff to file a response on September 10, 2019. Instead of

[4]It is arguably plaintiff's fifth attempt, in light of the fact that he filed both a first amended complaint and a "Corrected" first amended complaint three days later.

filing a response on September 10, plaintiff asked on September 25 for additional time, which was granted. The trial court gave plaintiff until October 2 to respond. Instead, plaintiff filed his response on October 3, 2019.

¶ 41 Five days after filing an untimely response, plaintiff filed a written motion for leave to further amend his response, which the trial court granted. The motion asserted in one sentence that Rule 775 was unconstitutional. The following sentence stated only that "Plaintiff continues to research this issue in order to properly develop this argument and will submit these legal contentions in a separate Motion, as warranted."

¶ 42 While the trial court granted plaintiff's motion for leave to amend his arguments after he had missed two prior deadlines, it denied plaintiff's oral motion for further leave to challenge the constitutionality of Rule 775. We can find no abuse of discretion in the trial court's decision that the delays had to come to an end. In addition, there is no indication that any further amendments could create a viable cause of action.

¶ 43 IV. Standing

¶ 44 With respect to plaintiff's claims of prosecutorial misconduct, defendants moved to dismiss in the court below for lack of standing, and they renew this argument on appeal.

¶ 45 Illinois courts have repeatedly held that a lack of standing qualifies under section 2-619's ninth listed ground: an "affirmative matter avoiding the legal effect of or defeating the claim" (735 ILCS 5/2-619(a)(9) (West 2014)). *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999); see also *Reynolds*, 2013 IL App (4th) 120139, ¶ 33 ("plaintiff's lack of standing is a proper affirmative matter pursuant to section 2-619(a)(9)"); *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 276 (2009); *Poulet v. H.F.O., L.L.C.*, 353 Ill. App. 3d 82, 89-90 (2004).[5] Thus, defendants' claim regarding plaintiff's lack of standing is also properly the subject of a section 2-619 motion to dismiss.

¶ 46 The issue of standing presents a question of law that this court reviews *de novo*. *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36. Since lack of standing is an affirmative defense, the burden of pleading and proving the defense is on the party asserting it. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010).

¶ 47 The doctrine of standing ensures that issues are raised only by parties having a real interest in the outcome of the controversy. *Powell*, 2012 IL 111714, ¶ 36. Standing is shown by demonstrating some injury to a legally cognizable interest. *Powell*, 2012 IL 111714, ¶ 36. A party must assert its own legal rights and interests, rather than assert a claim for relief based on the rights of third parties. *Powell*, 2012 IL 111714, ¶ 36.

¶ 48 In the case at bar, plaintiff is attempting to assert a claim for relief based on the rights of a third party, namely, his client. Plaintiff has no standing to raise, as a plaintiff in a separate civil case, a claim that prosecutors engaged in misconduct against a client of his in a criminal case.

¶ 49 "Moreover, one who has obtained by judgment all that has been asked for in the trial court cannot appeal from the judgment." *Powell*, 2012 IL 111714, ¶ 36. In the case at bar, according

[5]"Because lack of standing is an affirmative defense, it must be raised in a motion to dismiss brought pursuant to section 2-619(a)(9) of the Code, and not in a section 2-615 motion." *Clarke v. Community Unit School District 303*, 2012 IL App (2d) 110705, ¶ 36.

to plaintiff's allegations, Anthony Jackson sought and received a new trial based on the alleged prosecutorial misconduct.[6]

¶ 50 Since plaintiff has no standing to raise claims regarding misconduct against his client, we affirm the trial court's dismissal of plaintiff's claims arising from the alleged misconduct.

¶ 51 CONCLUSION

¶ 52 In sum, plaintiff is very emotional in his complaint and asserts claims arising (1) from statements made in an ARDC complaint and (2) from alleged prosecutorial misconduct against a client during a criminal trial. We find (1) that plaintiff's ARDC-related claims were immune from suit pursuant to Rule 775, (2) that plaintiff's misconduct claims were properly dismissed due to a lack of standing, and (3) that the trial court did not abuse its discretion by denying plaintiff's motion for leave to further amend his response to defendants' motion to dismiss.

¶ 53 For the foregoing reasons, the trial court's section 2-619 dismissal is affirmed.

¶ 54 Affirmed.

[6] As we already observed above, the State asserts that Anthony received a new trial due to the ineffectiveness of his trial attorneys. *Supra* ¶ 6 n.2. The State further asserts: "On May 24, 2017, Plaintiff was held in direct criminal contempt of court related to his involvement in the *Anthony Jackson* case." However, since this case was dismissed pursuant to section 2-619, we rely on the allegations of plaintiff's complaint in reviewing the merits of this appeal.