2021 IL App (3d) 200315

Opinion filed September 30, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

THE COUNTY OF TAZEWELL, a Body Politic and Corporate, *ex rel.* SHELLY I. HRANKA, Individually and in Her Official Capacity as Auditor of the County of Tazewell,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-20-0315 Circuit No. 19-L-92
DAVID ZIMMERMAN, Individually and in His Official Capacity as Chairman of the Board of the County of Tazewell; VICKI GRASHOFF, Former Auditor of the County of Tazewell; and STEWART UMHOLTZ, in His Official Capacity as State's Attorney of the County of Tazewell,	)	The Honorable Daniel M. Cordis, Judge, presiding.
Defendants-Appellees.	)	

PRESIDING JUSTICE McDADE delivered the judgment of the court, with opinion.
Justices Holdridge and Wright concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiff, Shelly I. Hranka, filed a civil complaint against the defendants—David Zimmerman, Vicki Grashoff, and Stewart Umholtz—alleging that Tazewell County suffered economic damages when it unknowingly paid Zimmerman monthly commuting expenses for

several years in violation of the Counties Code (55 ILCS 5/1-1001 *et seq.* (West 2016)). The circuit court granted the defendants' motion to dismiss, and Hranka appealed. On appeal, Hranka argues that the court erred when it (1) granted the defendants' motion to dismiss with prejudice, (2) denied her petition for appointment of special prosecutor, and (3) denied her motion for leave to file an amended complaint. We affirm in part and dismiss in part.

¶ 2 I. BACKGROUND

¶ 3 In October 2019, Hranka filed a civil complaint on behalf of Tazewell County. She brought the case in her official capacity as the auditor of Tazewell County, alleging that the chairperson of the Tazewell County Board, Zimmerman, had been unlawfully compensated for commuter mileage from his home to his office. Zimmerman was sued in his official capacity, as was Grashoff, who was the Tazewell County auditor before Hranka and who allegedly approved, either knowingly or unknowingly, the unlawful compensation scheme. Umholtz was also sued in his official capacity as the Tazewell County State's Attorney because he allegedly had "a *per se* conflict of interest" in that he was statutorily bound to represent the County and the other defendants in their official capacities in this case and could not, at the same time, prosecute the claims against them.

¶ 4 Count I of the complaint claimed that Umholtz had a *per se* conflict of interest and sought, *inter alia*, the appointment of a special prosecutor for Hranka's particular case. Count II claimed that Zimmerman received compensation from the County for commuting between his home and his office, which allegedly violated section 5-1018 of the Counties Code (5-1018) because that commute did not constitute official county business. In total, Hranka alleged that Zimmerman was unlawfully compensated $22,143.52 over a nine-year period. Count III claimed a conspiracy between Zimmerman and Grashoff. Additional out-of-sequence counts alleged

fraud on the part of Zimmerman, violations by Zimmerman of certain Tazewell County ordinances, unauthorized agency by Zimmerman in that he allegedly entered into a contract for legal services without the approval of the Tazewell County Board, and constructive fraud on the part of Zimmerman.

¶ 5 The defendants filed a motion to dismiss Hranka's complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)), alleging, *inter alia*, that Hranka lacked standing to bring the suit because the Counties Code granted the County Board the sole authority to bring suit and the state's attorney the sole authority to prosecute such actions. In addition, the defendants argued that Hranka had not suffered any injury, as the complaint clearly alleged that it was the County that had been injured, and that the Tazewell County Code did not prohibit reimbursement for commuting from home to work.

¶ 6 On May 1, 2020, the circuit court held a hearing on several outstanding matters, including the motion to dismiss. In part, the court ruled that Hranka had the right to seek the appointment of a special prosecutor in the case as a private citizen. The motion to dismiss was taken under advisement.

¶ 7 On May 8, 2020, the circuit court issued a written order. The court ruled that Hranka lacked standing to bring the action, but that she nonetheless had a right to bring the petition to seek the appointment of a special prosecutor. However, the court denied that petition after finding that Umholtz did not have an actual conflict of interest. Thus, the court dismissed count I of the complaint with prejudice and ruled that, as a result, the remaining counts were also dismissed with prejudice due to Hranka's lack of standing to sue on behalf of Tazewell County.

¶ 8 Hranka filed a motion to reconsider and a motion for leave to file an amended complaint. After a hearing, the circuit court denied both motions. Hranka appealed.

¶ 9 II. ANALYSIS

¶ 10 In this case, the circuit court granted the defendants' section 2-615 motion to dismiss with prejudice after ruling that (1) Hranka lacked standing to bring the action and (2) no special prosecutor would be appointed because Umholtz did not have an actual conflict of interest. In her brief, Hranka presents numerous arguments regarding how the court allegedly erred, focusing largely on whether Umholtz had an actual conflict of interest. She essentially ignores the standing issue, and even when she approaches an argument regarding standing in the middle of her lengthy analysis section, she neither cites nor discusses the law of standing. However, she does claim in her reply brief that the defendants waived any issue of standing because they did not bring their motion under section 2-619 of the Code. *Id.* § 2-619. Hranka is incorrect.

¶ 11 A motion to dismiss brought pursuant to section 2-615 of the Code challenges the legal sufficiency of a complaint by alleging facial defects. *Id.* § 2-615. A motion to dismiss brought pursuant to section 2-619 of the Code does not challenge the legal sufficiency of the claim but rather alleges some defect or defense outside of the pleading defeats the claim. *Id.* § 2-619. An allegation that a case should be dismissed because the plaintiff lacks standing is an affirmative defense properly brought under section 2-619(a)(9). *Crusius v. Illinois Gaming Board*, 348 Ill. App. 3d 44, 48 (2004). While the defendants included their standing argument in a motion labeled a section 2-615 motion to dismiss, that error was not fatal.

¶ 12 It is well settled that the substance of a motion, not the label, determines its classification. *Loman v. Freeman*, 375 Ill. App. 3d 445, 448 (2006). Moreover, the issue of standing was briefed and argued before the trial court, so Hranka could make no claim that she would be prejudiced if we construed that part of the motion as being brought pursuant to section 2-619(a)(9). See *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54.

¶ 13 A court considering a section 2-619 motion "should construe the pleadings and supporting documents in the light most favorable to the nonmoving party. [Citation.] The court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that may reasonably be drawn in plaintiff's favor." *Id.* ¶ 55. Whether a motion to dismiss is brought pursuant to section 2-615 or 2-619, we review the circuit court's decision on such motions *de novo*. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002).

¶ 14 "The doctrine of standing ensures that issues are raised only by parties having a real interest in the outcome of the controversy." *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 35. "A party must assert its own legal rights and interests, rather than assert a claim for relief based upon the rights of third parties." *Id.* ¶ 36. It is the defendant's burden to plead and prove a lack of standing. *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004).

¶ 15 Section 1-6003 of the Counties Code provides:

> "It shall be the duty of the county boards of each of the counties of this State to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties, and all suits which it may become necessary to prosecute or defend to enforce the collection of all taxes charged on the state assessment." 55 ILCS 5/1-6003 (West 2016).

Further, in relevant part, section 3-9005(a) of the Counties Code provides the following regarding the duties of the State's Attorney:

> "(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit

court for his county, in which the people of the State or county may be concerned.

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(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity." *Id.* § 3-9005(a)(1), (3).

¶ 16 These statutes, as well as case law, make clear that "[u]nder the Counties Code, the State's Attorney has exclusive authority to prosecute all actions on behalf of the County." *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 482 (2005) (discussing *Ashton v. County of Cook*, 384 Ill. 287 (1943) and *McKay v. Kusper*, 252 Ill. App. 3d 450 (1993)). In this case, Hranka sought to sue on behalf of Tazewell County in her official capacity as auditor. However, there is nothing in the Counties Code that (1) permits her to initiate such an action, whether under the provisions related to the county auditor (55 ILCS 5/3-1001 to 1008 (West 2016)) or otherwise (see *id.* §§1-1001 to 7-1001), or (2) to proceed with any such suit with any counsel other than the State's Attorney. Under these circumstances, we hold that Hranka lacked standing to bring or proceed with this action.

¶ 17 Despite Hranka's lack of standing to bring this action, she still had the right to bring a petition for appointment of special prosecutor. See *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 229 (2009). Her second argument on appeal is that the circuit court erred when it denied her petition.

¶ 18 We review a circuit court's decision on a petition to appoint a special prosecutor for an abuse of discretion. *In re Appointment of Special Prosecutor*, 2019 IL App (1st) 173173, ¶ 20.

¶ 19 Section 3-9008(a-10) of the Counties Code provides:

> "The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause or proceeding. If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding." 55 ILCS 5/3-9008(a-10) (West 2016).

¶ 20 The fatal flaw in Hranka's argument is that her request for the appointment of a special prosecutor was limited specifically to the case she filed—the case that we have held, as did the circuit court, that she had no standing to bring (*supra* ¶ 16). Because her action was properly dismissed with prejudice, the question of whether a special prosecutor should be appointed in the case has been rendered moot.[1] See, *e.g.*, *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1162-63 (2000) (holding that "[a]n issue is moot when intervening events have rendered it impossible for a reviewing court to grant the complaining party effectual relief"). Accordingly, we dismiss that portion of Hranka's appeal without further analysis.

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[1]Hranka does not address mootness in her brief on appeal; therefore, she makes no claim that an exception to the mootness doctrine applies. Nevertheless, we find that no exception applies in this case. See, *e.g.*, *In re Alfred H.H.*, 233 Ill. 2d 345, 355-63 (2009) (discussing the public-interest, capable-of-repetition-yet-evading-review, and collateral-consequences exceptions to the mootness doctrine).

¶ 21 Lastly, Hranka argues that the circuit court erred when it denied her motion for leave to file an amended complaint.

¶ 22 "The decision to grant a motion to amend pleadings is within the discretion of the circuit court, and a reviewing court will not reverse the circuit court's decision absent an abuse of discretion." *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69.

¶ 23 In relevant part, section 2-616(a) of the Code provides that "[a]t any time before final judgment amendments may be allowed on just and reasonable terms." 735 ILCS 5/2-616(a) (West 2016). In general, an order that grants a motion to dismiss with prejudice is a final judgment. *O'Hara v. State Farm Mutual Automobile Insurance Co.*, 137 Ill. App. 3d 131, 133 (1985). "A judgment or decree is final and reviewable if it either terminates the litigation between the parties, either on the entire controversy or some definite part thereof, so that, if affirmed, the trial court has only to proceed with execution." *Id.*

¶ 24 In this case, the circuit court dismissed Hranka's action with prejudice. That order was a final judgment in that it terminated the litigation between the parties. Accordingly, under the plain terms of section 2-616(a) of the Code, Hranka was no longer entitled to leave to amend her complaint. 735 ILCS 5/2-616(a) (West 2016).

¶ 25 III. CONCLUSION

¶ 26 The judgment of the circuit court of Tazewell County is affirmed in part and dismissed in part.

¶ 27 Affirmed in part and dismissed in part.

No. 3-20-0315

Cite as:	*County of Tazewell ex rel. Hranka v. Zimmerman*, 2021 IL App (3d) 200315
Decision Under Review:	Appeal from the Circuit Court of Tazewell County, No. 19-L-92; the Hon. Daniel M. Cordis, Judge, presiding.
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Attorneys for Appellee:	Stewart J. Umholtz, State's Attorney, of Pekin (Michael Holly, Assistant State's Attorney, of counsel), for appellees.