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APPENDIX A

NO. 4-21-0232

IN THE APPELLATE COURT OF ILLINOIS FOURTH DISTRICT

FILED
November 1, 2022
Carla Bender
4th District Appellate
Court, IL

JOHN LUGO,
Plaintiff-Appellant,

v.

AVENA L. STURM,
Defendant-Appellee.

Appeal from the Circuit Court of Woodford County
No. 18CH48

Honorable Michael L. Stroh, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of
the court.
Justices Turner and Cavanagh concurred in the
judgment.

SUMMARY ORDER

"You can't always get what you want,
But if you try sometime you'll find,
You get what you need."
Mick Jagger & Keith Richards

In September 2018, plaintiff, John Lugo, filed a *pro se* complaint to quiet title against defendant, Avena L. Sturm, in conjunction with a boundary dispute between their adjoining properties. Sturm moved to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)), arguing the trial court had no subject matter jurisdiction because Lugo improperly brought an action in equity when an adequate remedy at law existed. The trial court granted Sturm's motion, but this court reversed in *Lugo v. Sturm*, 2019 IL App (4th) 180775-U. Upon remand, the case progressed with glacial speed due to Lugo filing numerous motions and seeking prolonged discovery. The parties appeared before the trial court on January 16, 2020, and Sturm's counsel informed the court she offered to move the fence in exchange for Lugo dropping the litigation. Though he could not cite authority entitling him to attorney fees or costs, Lugo stated he also wanted costs and fees from Sturm. The trial court directed the parties to negotiate and scheduled a settlement conference for February. Nothing came from the negotiations.

The case meandered another year until the parties appeared before the trial court for a hearing on

cross-summary-judgment motions on January 27, 2021. After hearing arguments from both sides, but before rendering a decision, the trial court inquired of Lugo 's counsel:

"Here's my other question, maybe you can explain this to me, almost a year ago to the day, we were scheduled for a hearing on a motion for summary judgment.

I believe it is the same motion for summary judgment we are doing right now, and the Court granted the parties an opportunity to engage in settlement negotiations and they went out in the hall to do so, and no settlement was reached. All along it has been proffered by the defendant in this case that they'll move the fence. What exactly is your client seeking other than the movement of the fence?"

Counsel stated he needed to talk with Lugo and the parties left the courtroom to engage in settlement negotiations. After a short recess, the parties reported they reached a "tentative agreement," namely "entry of a stipulated judgment that would require [Sturm] to move the fence off of Mr. Lugo's property" and Lugo would forgo attorney fees and costs. Since counsel had not yet reduced the agreement to writing, the trial court inquired of the parties to confirm they reached a settlement. The parties attested no one coerced, forced,

or threatened them to make the agreement, and Lugo told the court Sturm moving her fence would resolve the case. Counsel said they would draft an agreed order and present it to the court within 30 days. If the parties could not finalize the agreement within that time, then the trial court would rule on the summary judgment motions.

As the parties negotiated details for the judgment in February, Lugo abruptly informed Sturm they could not reach an agreement and indicated his intent to move forward to a ruling on summary judgment. On March 3, 2021, Sturm filed a motion to enforce settlement agreement, arguing "Lugo has refused to sign off on the Stipulated Judgment consistent with the terms of the oral settlement agreement" and requesting "that this Court enter the proposed Judgment as attached as Exhibit A." Lugo opposed the motion, filed a motion to strike, and the parties appeared for a hearing on March 29, 2021. After argument, the trial court reminded the parties of the January 27 proceedings where a settlement had been reached and confirmed by both parties in open court. The trial court granted Sturm's motion to enforce the settlement agreement and ordered her to move the fence "on or before May 13, 2021." The court struck the provision from the written judgment where Lugo released Sturm from any claims or causes of action for attorney fees or costs. The trial court informed Lugo he could file a motion for attorney fees or costs if he believed he was entitled to them.

Sturm hired Hohulin Residential Fence to move

the fence, which it did the week of April 12, 2021. Central Illinois Consulting, Inc., surveyed the property and confirmed in an April 19, 2021, letter that "[a]ll of the fencing, concrete, and form tubes are completely on Mr. & Mrs. [Sturm's] property." One week later, on April 26, 2021, Lugo appealed the trial court's judgment enforcing the stipulated judgment, arguing Sturm failed to prove the parties reached a settlement agreement.

Our supreme court has explained: "A case on appeal is rendered moot where the issues that were presented in the trial court do not exist any longer because intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief." *In re India B.*, 202 Ill. 2d 522, 542, 782 N.E.2d 224, 236 (2002). In other words, "[w]here the issues involved in the trial court no longer exist," this court "will not review a case merely to decide moot or abstract questions, to establish a precedent, or to determine the right to, or the liability for, costs, or, in effect, to render a judgment to guide potential future litigation." (Internal quotation marks omitted.) *People ex rel. Newdelman v. Weaver*; 50 Ill. 2d 237, 241, 278 N.E.2d 81, 83 (1972). "In cases where the issues have become moot, the appeals typically have been dismissed." *Weaver*, 50 Ill. 2d at 241. Lugo's complaint sought to quiet title and to move Sturm's fence from his property because damages would not adequately compensate him. Taking as true Sturm's exhibits confirming she moved the fence in April 2021 and the fence now sits entirely on her property, there is nothing to decide here and no effectual relief to be

granted. *India B.*, 202 Ill. 2d at 542. We note Lugo never filed a motion seeking attorney fees or costs, nor has he cited any authority entitling him to such on appeal. Even if he had, we would not opine on whether he could receive such relief. See *Weaver*; 50 Ill. 2d at 241 (reviewing courts will not determine potential costs or fees for moot litigation). Since on appeal Lugo challenges only the trial court's judgment enforcing the settlement and ordering the fence moved-and the fence has been moved-we cannot afford him effectual relief. Even if we found the trial court erroneously enforced the settlement agreement, there would still be no relief we could afford him. Accordingly, we find this appeal is moot. *India B.*, 202 Ill. 2d at 542; see also *Baker v. Forest Preserve District of Cook County*, 2015 IL App (1st) 141157, ¶ 35, 33 N.E.3d 745 ("A case is moot when plaintiffs have secured what they basically sought and a resolution of the issues could not have any practical effect on the existing controversy.").

For the reasons stated, in accordance with Illinois Supreme Court Rule 23(c)(3) (eff. Jan. 1, 2021), we dismiss this appeal as moot.

Appeal dismissed.

APPENDIX B

**2019 IL App(4th) 180775-U
NO. 4-18-0775**

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

FILED
June 10, 2019
Carla Bender
4th District Appellate
Court, IL

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JOHN LUGO,
Plaintiff-Appellant,

v.

AVENA L. STURM,
Defendant-Appellee.

Appeal from the Circuit Court of Woodford County
No. 18CH48

Honorable Michael L. Stroh, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of
the court.

Justices Turner and Cavanagh concurred in the
judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded, finding the circuit court erred in granting defendant's motion to dismiss.

¶ 2 In September 2018, plaintiff, John Lugo, filed a *pro se* complaint to quiet title and for other relief against defendant, Avena L. Sturm, in conjunction with a boundary dispute between their adjoining properties. Sturm filed a motion to dismiss, which the circuit court granted.

¶ 3 On appeal, Lugo argues the circuit court erred in granting Sturm's motion to dismiss his complaint. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 In September 2018, Lugo filed a *pro se* complaint to quiet title and for other relief. He alleged he is the owner of real estate at 218 East Walnut Street in Washburn and Sturm owns the adjoining property at 214 East Walnut Street. The complaint alleged Sturm claimed to own 0.8 feet beyond her boundary line. Lugo sought to quiet title to the

disputed portion, which amounts to 45 square feet of land. Lugo claimed Sturm was interfering with his use of the disputed portion of property and erected a fence that caused damage to mature trees on his land. Lugo also claimed he had no adequate remedy at law because (1) it would be impossible for him to determine the precise amount of damage he would suffer if Sturm's conduct was not restrained and (2) he would be deprived of the use of his property, which cannot be compensated in damages. Lugo asked the circuit court to determine the correct location of the boundary line, quiet his title, and order injunctive relief.

¶ 6 In October 2018, Sturm filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2016)), arguing the circuit court had no subject matter jurisdiction because Lugo improperly brought an action in equity when an adequate remedy at law existed. Sturm cited *Livingston County Building & Loan Ass 'n v. Keach*, 219 Ill. 9, 76 N.E. 72 (1905), and stated the Illinois Supreme Court had held that where the true boundaries of two properties are in dispute, no action can lie in equity since there is an adequate remedy at law.

¶ 7 In his response, Lugo stated Sturm informed him in May 2018 of her desire to erect a fence on the boundary line that separated their properties. Prior to the construction of the fence, Lugo had a survey conducted to document the boundary line. In August 2018, Sturm erected the fence, and Lugo had a second survey conducted. The second survey revealed Sturm

had constructed the fence on Lugo's property along a line that was 0.3 feet east of the boundary line. Lugo asked Sturm to remove the fence, but she declined. Citing *Cragg v. Levinson*, 238 Ill. 69, 87 N.E. 121 (1908), Lugo argued the circuit court should exercise jurisdiction in this case to prevent a multiplicity of suits.

¶ 8 In November 2018, the circuit court held a hearing on the motion to dismiss. A bystander's report of the proceedings has been included in the record. Sturm's attorney stated there was no dispute over the property line between the respective properties and, as such, a court of equity was not the proper court to hear the case. Lugo stated he had been engaged in a 15-year-long dispute with Sturm about the property line. Lugo claimed Sturm signed an affidavit agreeing the true boundary line was noted in the first survey and Sturm had not disputed the altered boundary line created by her fence, which constituted an admission of an ongoing trespass. The bystander's report indicated the circuit court reviewed the parties' case law, found Lugo had not yet established his right at law, and granted Sturm's motion to dismiss. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 Lugo argues the circuit court erred in granting Sturm's motion to dismiss based on the belief that his right had not been established at law. We agree.

¶ 11 "A section 2-619 motion to dismiss admits the

legal sufficiency of the plaintiffs claim, but asserts affirmative matter that defeats the claim." *Hubble v. Bi-State Development Agency*, 238 Ill. 2d 262, 267, 938 N.E.2d 483,488 (2010). Here, Sturm asserted Lugo's complaint should be dismissed under section 2-619(a)(1) of the Procedure Code, which provides for the dismissal of a claim where "the court does not have jurisdiction of the subject matter of the action***." 735 ILCS 5/2-619(a)(1) (West 2016). The dismissal of a complaint based on the lack of subject matter jurisdiction is reviewed *de novo*. *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583.

¶ 12 "With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). That has been the case in Illinois since a 1964 constitutional amendment significantly altered the basis of circuit court jurisdiction by "granting circuit courts 'original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.'" *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 30, 32 N.E.3d 553 (quoting Ill. Const. 1870, art. VI (amended 1964), § 9). The current Illinois Constitution, which was adopted in 1970, retained the aforementioned amendment and provides as follows: "'Circuit Courts shall have original jurisdiction of all justiciable matters'" and that "'Circuit Courts shall have such power to review administrative action as

provided by law.'" *LVNV Funding*, 2015 IL 116129, ¶ 30 (quoting Ill. Const. 1970, art. VI, § 9). Thus, "[u]nder the 1970 Illinois Constitution, the distinction between courts of law and equity has been abolished, so that our court system is now a unified one with original jurisdiction of justiciable matters." *In re Marriage of Isaacs*, 260 Ill. App. 3d 423, 427, 632 N.E.2d 228, 232 (1994). The abolishment is reflected in Illinois Supreme Court Rule 132 (eff. Jan. 4, 2013), which requires civil complaints to contain in the caption a designation, such as "'at law'" or "'in chancery,'" but expressly provides "[m]isdesignation shall not affect the jurisdiction of the court."

¶ 13 "Our current constitution does not define the term 'justiciable matters,' nor did our former constitution, in which this term first appeared." *Belleville Toyota*, 199 Ill. 2d at 335, 770 N.E.2d at 184. Our supreme court has found "a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335, 770 N.E.2d at 184.

¶ 4 In the case *sub judice*, Lugo filed his *pro se* complaint in equity to quiet title to the disputed portion of land. Sturm filed a motion to dismiss under section 2-619(a)(1) of the Procedure Code (735 ILCS 5/2-619(a)(1) (West 2016)), arguing the circuit court had no subject matter jurisdiction because Lugo improperly brought an action in equity when an adequate remedy at law existed. However, under our

modern court system, an adequate remedy is a limitation on equitable relief, not jurisdiction. See *Sjogren v. Maybrooks, Inc.*, 214 Ill. App. 3d 888, 892, 573 N.E.2d 1367, 1368 (1991); see also *In re Estate of Zoglauer*, 229 Ill. App. 3d 394, 398, 593 N.E.2d 93, 96 (1992) (stating "[t]he allocation of judicial responsibility to various divisions of the circuit court does not reflect any constitutional barriers to jurisdiction, but rather only administrative convenience"); *Meyer v. Murray*, 70 Ill. App. 3d 106, 115, 387 N.E.2d 878, 885 (1979) (noting the law and chancery divisions of the circuit court are "for administrative purposes only and no longer constitute jurisdictional barriers"). The court had subject matter jurisdiction over this controversy and thus erred in granting Sturm's motion to dismiss under section 2-619(a)(1). Accordingly, we reverse the court's judgment and remand the case for further action consistent with this order.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we reverse the circuit court's judgment and remand with directions.

¶ 17 Reversed and remanded.

APPENDIX C

**[SUPREME COURT OF ILLINOIS SEAL
AND LETTERHEAD]**

**John Lugo
218 E. Walnut Street
Washburn IL 61570**

January 25, 2023

**In re: John Lugo, petitioner, v. Avena L.
Sturm, respondent. Leave to appeal,
Appellate Court, Fourth District.
129132**

**The Supreme Court today DENIED the Petition for
Leave to Appeal in the above entitled cause.**

**The mandate of this Court will issue to the Appellate
Court on 03/01/2023.**

Very truly yours,

/s/ Cynthia A. Grant

Clerk of the Supreme Court