

Second District Appellate Decision Digest

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The content, citations, and analysis provided are for informational use only. No legal advice is being presented herein. An in-person consultation coupled with in-depth and independent research should be made before citing a case.

Cases are arranged by type, and then chronologically by decision posting date with the most recent appearing last in the section. We are pleased to now offer Criminal Decisions in this Digest alongside Civil Decisions.

Administrative Law and Procedure

Kalisz v. Board of Education of Kildeer Countryside Community Consolidated School District 96, 2021 IL App (2d) 200095

Date Published: 1/11/2021

Facts: In 2016, the plaintiff was a full-time tenured teacher employed by defendant. Plaintiff notified her supervisor that she was being investigated by the Department of Children and Family Services (DCFS) concerning an allegation of abuse involving her children. As a matter of procedure, the Board commenced its investigation, and the plaintiff was suspended with pay. Plaintiff had several meetings with the Board. The Board subsequently received a copy of the DCFS report. Information in the report was inconsistent with what the plaintiff had stated in her meetings. After the final meeting between Plaintiff and HR, HR notified the plaintiff of the recommendation she was making to the Board, which was to issue a notice of remedial warning. Plaintiff and union representatives were invited to a closed session where discussion would be had before deciding on the issue of the warning. They did not appear. The Board approved the issuance of the notice of remedial warning and sent notice to plaintiff.

A few years later, plaintiff taught eighth-grade social studies at one of the Board's elementary schools. The Board became aware that the plaintiff was often leaving her fourth-period classroom. This prompted the Board to begin a formal investigation. HR recommended to the Board that the plaintiff be dismissed. The Board adopted that position, and plaintiff requested a hearing before an independent hearing officer. A hearing was conducted before a hearing officer. After hearing, the hearing officer found that the plaintiff demonstrated a lack of professional judgment and a failure to follow proper procedures. The officer found that, because plaintiff was warned in 2016 to not repeat instances of inappropriate and unprofessional judgment, her conduct violated the

notice of remedial warning and concluded that the plaintiff's dismissal complied with the School Code because she had failed to remediate her behavior. The Board adopted the hearing officer's findings of fact and recommendation without modification and passed a resolution affirming the plaintiff's dismissal.

Plaintiff sued. The trial court determined that the 2017-2018 conduct was not sufficiently similar and causally related to the 2016 notice to remedy. In other words, the plaintiff was not warned that her conduct in leaving her classroom would violate the 2016 notice to remedy. Accordingly, the trial court found the Board's decision in error.

Issues on Appeal: Whether the trial court erred in vacating the final administrative decision of the Board, in that, was the Board's decision against the manifest weight of the evidence.

Holding: Affirmed

Analysis: The purpose of the tenure provisions of the School Code is to provide tenured teachers with job security to ensure continued service by experienced teachers, thus improving the quality of Illinois schools. Because compliance with procedures set forth in the School Code is jurisdictional, if a warning is not given with respect to a remediable cause, the board lacks jurisdiction to dismiss the teacher. On appeal, the appellate court will review the decision of the administrative agency and not the ruling of the circuit court.

The record indicates that the plaintiff acknowledged that her conduct when leaving the classroom to call for personal matters was unprofessional. The frequent departures were further exacerbated by the fact that after her fifth-period class, the plaintiff was not scheduled to instruct any other classes and had the remainder of the school day for planning purposes. The plaintiff's unprofessional and improper conduct occurred less than

two years after the notice to remedy was issued. Because of this, there is no clear error, nor was the Board's decision to discharge the plaintiff arbitrary, unreasonable, or not based on the requirements of service.

Attorney and Client

People v. Vatamaniuc, 2021 IL App (2d) 180379

Date Published: 1/29/2021

Facts: Following trial, Defendant was convicted of first degree murder and was sentenced to 54 years' imprisonment. He was 17 years old at the time. The evidence demonstrated that, in 2013, Defendant and codefendants were together at the home of another. They passed a firearm between them. One of the codefendants set up a meeting to buy drugs, the trio walked to the meeting spot. There, the person selling the marijuana was shot in the back of the head and killed. His body was placed into the trunk and the trio later buried the body and bleached the car. The body was found later that evening by a woman walking her dog. Defendant was indicted on several counts. In pretrial, Defendant's attorney engaged in plea negotiation with the prosecution. A written offer was extended to the Defendant with a deadline of October 21. This offer was never accepted, and counsel went on to file other pretrial motions. More than six months later, counsel filed a motion to enforce the plea agreement.

The circuit court denied defendant's motion to enforce the plea agreement, reasoning that the offer lapsed on October 21, among others. The court offered the Defendant a chance to allege ineffective counsel, which he declined to do. The State later filed a motion to disqualify counsel due to a conflict of interest, whereby Defense counsel was representing a State's witness in Defendant's case in an unrelated criminal matter. Defendant thereafter retained new counsel. After a bench trial, Defendant was found guilty.

Issues on Appeal: Whether the Defendant received ineffective assistance of counsel during plea negotiations as defense counsel failed to properly convey details of the plea offer and whether Defendant's sentence is a de facto life sentence.

Holding: Reversed and Remanded.

Analysis: To show ineffective assistance of counsel, a defendant must satisfy two prongs, namely that (1) counsel's performance fell below an objective standard of reasonableness and (2) the deficient performance resulted

in prejudice. To establish prejudice where a plea offer has lapsed or was rejected because of counsel's deficient

performance, a defendant must demonstrate a reasonable probability that, absent his attorney's deficient advice, he would have accepted the plea offer. Here, there was no prejudice because the Defendant fails to identify anything in the record that predates the expiration of the offer. Defendant only offers his own testimony that he would have accepted the offer. a defendant's own subjective and self-serving assertion that he or she would have accepted the plea offer without his or her attorney's deficient advice is insufficient to establish prejudice. Furthermore, Defendant's counsel indicates in the record that he conveyed the offer prior to its expiration, and that he had not heard any agreement to the offer from his client. Therefore, with no evidence to show that the offer would have been accepted, this argument fails.

As to the issue of a de facto sentence (after a long expose of recent developments in case law), the appellate court that the Defendant's sentence is de facto for life, and that it does not comport with applicable law. Here, the court gave a cursory mention of applicable factors involving de facto life sentences, but provided little explanation as to how it applied them to defendant's particular circumstances. Put simply, the circuit court did not address defendant's potential for future criminality or find that he could not be rehabilitated or indicate that the de facto life sentence was chosen because defendant was beyond the possibility of rehabilitation.

Foreclosures and Real Estate Transactions

BMO Harris Bank, N.A. v. Malarz, 2021 IL App (2d) 190984

Date Published: 1/20/2021

Facts: In 2011, Defendant was found in default and a judgment order for foreclosure entered. In 2017, Defendant filed an appearance through counsel together with a motion to vacate the default judgment and to quash service. In February 2018, the petition was withdrawn without prejudice and the case was "closed" by order of the court. In August 2018, new counsel appeared for Defendant and filed a motion to reopen the case and to file a second amended petition to quash. Plaintiff moved to dismiss and strike the motion, arguing timeliness. The court granted the motion to dismiss/strike. Defendant now appeals.

Issues on Appeal: Whether the second petition was timely.

Holding: Affirmed

Analysis: Section 15-1505.6(a) of the Foreclosure Law provides that, in a residential mortgage foreclosure proceeding, when a party moves to dismiss the cause or to quash service of process on the basis that the trial court lacked personal jurisdiction, the party must do so within 60 days of either the date he or she first files an appearance or the date he or she first participates in a hearing without filing an appearance, whichever is earlier. In other words, the moment a party files an appearance or begins to participate in the suit, a 60-day clock begins to run for the party to object to personal jurisdiction. The failure to do so constitutes a waiver. Therefore, as Defendant's operative petition was filed outside this period, a waiver ensued and dismissal of the petition was appropriate.

McHenry Savings Bank v. Moy, 2021 IL App (2d) 200099

Date Published: 1/20/2021

Facts: This is a bank's third foreclosure complaint against the Defendant. The previous foreclosure complaints had been dismissed with prejudice. The bank filed this suit after declaring the Defendant in default. The Defendant filed a motion to dismiss for res judicata, which was denied. The bank proceeded on a summary judgment motion, which the court granted. The property was subsequently sold and the court approved the sale.

Issues on Appeal: Whether res judicata prohibits the lawsuit.

Holding: Affirmed

Analysis: For res judicata to apply, three requirements must be met: "(1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) identity of cause of action; and (3) identity of parties or their privies." Here, as the parties acknowledge, the dispute centers on whether the second requirement, identity of cause of action, was met. Illinois law uses the "transactional test" to determine whether two causes of action are identical for res judicata purposes.

Generally, where a money obligation is payable in installments, a separate cause of action arises on each installment. Here, the facts, conditions, and issues involved in the first two cases were different from those in this case. The current action does not arise from the same set of operative facts as the first two actions. The facts cited are completely unrelated to the facts of this action. Just because the Defendant was successful in a previous

action related to the mortgage, when a mortgagor prevails in a foreclosure action by demonstrating that she was not in default on the payments alleged to be in default, or by a dismissal with prejudice, the result is to place the mortgagor and mortgagee back in the same contractual relationship with the same continuing obligations. Therefore, a new default constituted a new cause of action.

Post Conviction Proceedings

People v. Conley, 2020 IL App (2d) 180953

Date Published: 1/21/2020

Facts: In 2005, defendant John D. Conley was charged with predatory criminal sexual assault of a child along with other crimes. In 2007 and again in 2011, Conley applied for discharge or conditional release under the Sexually Dangerous Persons Act, which were previously affirmed. Under the law, a sexually dangerous person may seek judicial review of the adequacy of the care and treatment provided them by the Department of Corrections. In his Petition for review, Conley alleged that his treatment was "constitutionally inadequate" and therefore not designed to effect his recovery as required by section 8 of the SDP Act. Conley alleged that he required substance abuse treatment, which he had not received. Conley's Petition asked the trial court to order the Director to modify the treatment plan. The Director was granted leave to intervene, and filed a motion to dismiss. After hearing, the trial court granted the Motion to dismiss and Conley now appeals.

Issues on Appeal: Whether the petition was properly dismissed as a failure to state a cause of action.

Holding:

Analysis: While Conley's Petition generally states a cause of action and there would exist triable facts (i.e. Whether Conley actually needs substance abuse treatment and whether he should receive such treatment) Conley has failed to exhaust his administrative remedies. In general, a party's failure to exhaust administrative remedies is a straightforward basis for disposing of that party's complaint by way of a motion to dismiss under either section 2-615 or section 2-619. Although sexually dangerous persons have been

civily committed rather than criminally imprisoned, they are nevertheless "offenders" who have been committed to the Director's custody and are therefore subject to the grievance procedures outlined for administrative review.

Until those remedies are exhausted, Conley cannot state a cause of action with the courts. It should be noted that Conley may seek judicial review of treatment decisions after all administrative remedies have been availed of and exhausted. The Complaint never stated that Conley had sought administrative review of his treatment and did not allege any exception to the doctrine of exhaustion.

Probate

In re Estate of Ries, 2021 IL App (2d) 191027

Date Published: 1/19/2021

Facts: Decedent was a public aid recipient. The Illinois Department of Healthcare and Family Services ("Department") paid her medical expenses for almost 11 years. Decedent commenced a medical malpractice suit for a spinal cord injury that resulted in her complete disability. The Department asserted a lien against any potential recover seeking to recover expenses it had paid on her behalf that were specifically attributable to her tort injury. Decedent died while the suit was still pending.

The Department filed against the Estate a claim for the entirety of the medical expenses it had paid on her behalf during her lifetime. After negotiation, the Department's lien was reduced. The Estate then brought a petition to adjudicate the lien. After hearing, the Court entered judgment in favor of the Estate. The Court subsequently denied a motion to reconsider.

Issues on Appeal: (1) whether the court improperly ruled that the Probate code required the Department to choose between recovering benefits paid out as a result of an injury, or, instead, benefits paid pre-injury; (2) whether the court improperly ruled that, because the Estate's remaining funds derived solely from the personal-injury lawsuit, the Department's settlement of its lien against the lawsuit served to defeat its claim against the Estate.

Holding:

Analysis: Reversed and Remanded In short, the Department was not limited by its settlement negotiations, and the Probate act allows the Department to seek recovery of its lien from the share of the estate, not just from settlement proceeds in a suit. There is no support in the Code, case law, or equity for the trial court's decision that the Department was foreclosed from pursuing a claim against the Estate for expenses paid on

the decedent's behalf before her injury, merely because the sole asset in the Estate was comprised of settlement funds from the personal-injury action in which the Department accepted a reduced amount for its lien related to that injury. The Department's settlement of one claim was clear, the remaining claim could still be pursued.

About the Contributor

Andrew J. Mertzzenich is appellate counsel at Prime Law Group, LLC. Andrew has argued before the Second District Appellate Court for the State of Illinois and contributes opinions on amicus briefs for organizations wishing to file into cases. Andrew also presents CLE on Appellate Practice for bar associations throughout the area and provides consultation services to local attorneys and litigants on how best to approach their appellate issues. He publishes the quarterly *Second District Civil Decision Digest* with several local bar associations.

Outside of law, Andrew is a passionate musician. He is Principal Organist at Court Street United Methodist Church in Rockford, IL. Andrew also volunteers with the Land of Lincoln Theatre Organ Society as a technician and performer. He donates regularly to several causes and sits on the Boards of the American Guild of Organists – Rockford Chapter and the Land of Lincoln Theatre Organ Society. He is also a regular listener and contributor to National Public Radio (NPR).



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