

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted March 6, 2024*

Decided March 6, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-2312

JOHN LUGO,
Plaintiff-Appellant,

v.

VILLAGE OF WASHBURN, ILLINOIS,
et al.,

Defendants-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 22-cv-1387-JES-JEH

James E. Shadid,
Judge.

ORDER

John Lugo sued the Village of Washburn, Illinois and one of its trustees, Ginger Humphrey, alleging that they violated his procedural due process rights under the Fourteenth Amendment. The district court dismissed his complaint for failure to state a claim, and we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In the summer of 2022, Lugo began landscaping his property and placed a dumpster on his land for the debris. Soon thereafter, Humphrey issued a complaint on behalf of the Village, fining Lugo \$25 for the violation of having a “[d]umpster blocking view.” The citation did not refer to any specific ordinance. It instructed Lugo to pay the fine or to appear at the county courthouse on a date and time to be provided. Lugo never paid the fine or moved his dumpster, and the Village never commenced legal proceedings to enforce the citation. But Lugo alleged that the threat of looming enforcement caused him mental distress. About eight months after issuing the first citation and while this litigation was ongoing, Humphrey issued another, nearly identical citation, which was marked as Lugo’s “Second Offense.”

Lugo sued the Village and Humphrey under 42 U.S.C. § 1983 for violating his due process rights. He maintained that, by issuing the citations, Humphrey deprived him of his protected property interest in placing a dumpster anywhere he saw fit on his land. He asserted that this deprivation took place without sufficient process because the citations failed to provide adequate notice of the ordinance violated and were not issued by an authorized person—both violations of state law. *See* Ill. S. Ct. R. 572(a). He also alleged that the Village was liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), because it had a custom, policy, or practice of allowing Humphrey to issue complaints even though state law does not authorize trustees to do so.

The defendants moved to dismiss the operative complaint under Federal Rule of Civil Procedure 12(b)(6), and the district court granted the motion. The court concluded that Lugo did not have a protected property interest in placing a dumpster in a specific location on his property. It explained that Lugo failed to cite a state law or other independent source granting him a property right protected by the Constitution.

We review de novo the decision to dismiss Lugo’s suit, accepting the complaint’s well-pleaded facts as true and drawing all reasonable inferences in Lugo’s favor. *Manistee Apartments, LLC v. City of Chicago*, 844 F.3d 630, 633 (7th Cir. 2016). A violation of procedural due process occurs when the government deprives the plaintiff of a cognizable property interest without due process. *Id.* Constitutional standards govern what process is due, but the underlying property interest must come from an independent source, such as state law.

On appeal, Lugo argues that the district court failed to recognize that his property interest in his land includes being able to place a dumpster where he sees fit. He points us to *River Park, Inc. v. City of Highland Park*, 23 F.3d 164 (7th Cir. 1994), and finds some traction there. In *River Park*, we noted that, although the corporate

landowner lacked a property interest in a particular zoning classification, its property interest in the land entitled it to assert that a municipality's regulation of that land deprived it of property without due process. *Id.* at 166. But we also explained that in the zoning context, "scant" process is required. *Id.* at 167. Indeed, "[n]o court thinks" that the Due Process Clause "means the state can't regulate property" including by enacting zoning regulations, "even though such measures limit the property owner's right to do what he wants with his property." *Mann v. Calumet City*, 588 F.3d 949, 952 (7th Cir. 2009) (collecting cases).

And, even if Lugo had some cognizable property interest despite the state's ability to regulate land use, the district court properly dismissed his due process claim. We may affirm on any ground supported by the record, so long as the issue was raised and the plaintiff had a fair opportunity to contest it. *See Greenpoint Tactical Income Fund LLC v. Pettigrew*, 38 F.4th 555, 565 (7th Cir. 2022). And here, as the Village argued in the district court, we cannot reasonably infer from the allegations in Lugo's complaint that he was deprived of his claimed property interest without due process. First, there has been no enforcement of the zoning ordinance: he was notified of a violation, but the Village took no steps to collect the fine, and Lugo did not move the dumpster. *See Nelson v. City of Chicago*, 992 F.3d 599, 606 (7th Cir. 2021) (procedural due process claim failed when plaintiff had property interest in municipal job but did not allege that she lost her job or was deprived of fair disciplinary process); *Manistee Apartments, LLC*, 844 F.3d at 634. Second, the only procedural missteps Lugo points to are that the citations were issued by an unauthorized official and they failed to identify the ordinance he violated. But these are missteps only because state law makes them so, and the federal Due Process Clause is not an enforcement mechanism for state procedural requirements. *Yates v. City of Chicago*, 58 F.4th 907, 909 (7th Cir. 2023); *GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 366 (7th Cir. 2019). Were the Village to attempt enforcement of the citations in state court, Lugo could assert that the citations are invalid because they do not comport with state or local law. But he cannot premise a federal due process claim on these alleged violations.

Finally, Lugo's claim against the Village must fail because he did not plead an underlying violation of his federal due process rights for which the Village could be liable under *Monell*. *See Braun v. Village of Palatine*, 56 F.4th 542, 552 (7th Cir. 2022).

AFFIRMED