

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN B. REDGE, f/k/a SUSAN
SCHMITCHEN REDGE,

Plaintiff-Appellant,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellee.

UNPUBLISHED
September 18, 2008

No. 276579
Ingham Circuit Court
LC No. 05-001329-AW

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

TALBOT, J. (*concurring*)

Although I concur in the final result precluding expungement of plaintiff's criminal record, I write separately to address more thoroughly plaintiff's allegations regarding procedural irregularities in the dismissal of her writ of mandamus.

On appeal, plaintiff correctly asserts the Ingham Circuit Court improperly permitted defendant to collaterally attack the validity of the original Lapeer Circuit Court order. As discussed previously by this Court:

The question of jurisdiction does not depend on the truth or falsehood of the charges, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry. [*Fox v Martin*, 287 Mich 147, 152; 283 NW 9 (1938) (citation omitted).]

While I believe the defendant could have successfully and, in a procedurally appropriate manner, secured the setting aside of the Lapeer Circuit Court order based on plaintiff's fraud or failure to disclose, I agree with plaintiff that the Ingham Circuit Court erred when it conducted an inquiry into the underlying validity of the order. Specifically:

Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, . . . and cannot be collaterally attacked. *Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause*

and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made. [*In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993) (citation omitted).]

Hence, while I concur in the final result, I disagree with the majority regarding the propriety of the actions of the Ingham Circuit Court.

/s/ Michael J. Talbot