

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

AMIN ABD-RAHMAN SHAKUR, *Plaintiff/Appellant*,

v.

CHARLES L. RYAN, *Defendant/Appellee*.

No. 1 CA-CV 15-0798
FILED 3-28-2017

Appeal from the Superior Court in Maricopa County
No. CV2015-004162
The Honorable Colleen L. French, Judge *Pro Tempore*

AFFIRMED

APPEARANCES

Amin Abd-Rahman Shakur, Tucson
Plaintiff/Appellant

Arizona Attorney General's Office, Phoenix
By Daniel P. Schaack
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which
Judge Kent A. Cattani and Judge Margaret H. Downie joined.

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S W A N N, Judge:

¶1 Amin Abd-Rahman Shakur, an inmate in the custody of the Arizona Department of Corrections (“the Department” or “ADC”), appeals the superior court’s order dismissing his complaint against Charles L. Ryan, director of the Department. We affirm because the complaint is precluded under A.R.S. § 31-201.01(L).

FACTS AND PROCEDURAL HISTORY

¶2 In 2001, Shakur filed a civil rights action in federal court after ADC officials denied his request for a kosher diet. The district court granted summary judgment in favor of the Department. In 2008, the Ninth Circuit Court of Appeals reversed, holding that Shakur had viable claims under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act. *See Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008). After remand to the district court, the parties negotiated a settlement whereby the Department agreed to allow Shakur a kosher diet and Shakur agreed to dismiss his claims (“the Settlement Agreement”). The Settlement Agreement provided that Shakur could enforce its terms through the inmate grievance process, after which he could file an action in the district court. The parties stipulated to a dismissal with prejudice in accordance with the terms of the Settlement Agreement, and the district court dismissed the action.

¶3 In 2009, Shakur filed in the district court a motion to compel the Department to comply with the Settlement Agreement. After full merits-based briefing, the district court denied the motion on the basis that it lacked jurisdiction to enforce the terms of an agreement that was not incorporated into the dismissal order. The court concluded that Shakur “must seek relief from a court which has jurisdiction to hear such claims.”

¶4 In 2011, Shakur filed a complaint in the superior court seeking to enforce the Settlement Agreement. The court granted summary judgment in favor of the Department on all but one of Shakur’s claims. Shakur then moved to dismiss, conceding “he has no cause of action he can prove.” The court dismissed the action on the basis that the merits were “adjudicated and decided” in the summary-judgment proceedings, and the court awarded approximately \$41,000 in attorney’s fees to the Department.

¶5 In 2015, Shakur filed the action at issue in this appeal, alleging that the Department fraudulently misrepresented that he could enforce the Settlement Agreement in federal court, where he “[enjoyed] certain

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protected rights.” He sought damages of \$50,000, an order voiding the Settlement Agreement, and a stipulation that ADC would continue to provide “the religious protection of a religious diet” until either a new agreement was reached or new litigation concluded. Ryan moved to dismiss, arguing that Shakur’s claim was barred by A.R.S. § 31-201.01(L) and the doctrine of claim preclusion. After full briefing, the superior court granted the motion. Shakur appeals.

DISCUSSION

¶6 The superior court may grant a motion to dismiss if the plaintiff is not entitled to relief “under any facts susceptible of proof in the statement of the claim.” *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289, ¶ 5 (App. 2010) (citation omitted). We review de novo the court’s dismissal of a complaint for failure to state a claim. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012).

¶7 Shakur contends that the superior court erred by concluding that his claim was barred by A.R.S. § 31-201.01(L). We review questions of statutory interpretation de novo. *Tripati v. State*, 199 Ariz. 222, 223, ¶ 2 (App. 2000).

¶8 A.R.S. § 31-201.01(L) provides:

A person who is convicted of a felony offense and who is incarcerated while awaiting sentence or while serving a sentence imposed by a court of law *may not bring a cause of action seeking damages or equitable relief* from the state or its political subdivisions, agencies, officers or employees for injuries suffered while in the custody of the state or its political subdivisions or agencies *unless the complaint alleges specific facts from which the court may conclude that the plaintiff suffered serious physical injury or the claim is authorized by a federal statute.*

(Emphases added.) By its terms, therefore, the statute provides that Shakur may seek damages or equitable relief from Ryan only if (1) he alleges a serious physical injury, or (2) his claim is authorized by a federal statute.

¶9 Shakur does not contend that he suffered a serious physical injury. And though he does contend that his claim is authorized by a federal statute, it is not. Though his original federal action was authorized by 42 U.S.C. § 1983, he does not now claim a violation of his constitutional rights. He instead seeks damages and equitable relief arising from a

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common-law fraud claim. His claim therefore is precluded by § 31-201.01(L), and the superior court properly dismissed the action on that basis alone.

CONCLUSION

¶10 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA