DIVISION ONE
FILED: 12/27/2011
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**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

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| ROBERT EARL KRONCKE,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>CITY OF PHOENIX; MARVIN A. SONDAG; JUDITH A. TOWNSEND; MARCO LING; JOHN JUSLIN; SAM DELILLO; BRUCE BORCHERT; WILLIAM CRISWELL; PETER VAN HAREN,<br><br>Defendants/Appellees. | 1 CA-CV 10-0676<br><br>DEPARTMENT A<br><br>**MEMORANDUM DECISION**<br>(Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure) |

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-020850

The Honorable Samuel J. Myers, Judge

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART**

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Robert Earl Kroncke — Phoenix
Appellant Pro Se

Iafrate & Associates — Phoenix
by Michele M. Iafrate
Courtney R. Cloman
Attorneys for Defendants/Appellees

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**I R V I N E**, Judge

**¶1** Robert Earl Kronke appeals from the superior court's order dismissing with prejudice his civil complaint against the

City of Phoenix ("City"). For the reasons that follow, we affirm in part and reverse and remand in part.

**FACTS AND PROCEDURAL HISTORY**

**¶2** In 1996, Kronke was convicted of multiple counts of sexual assault, sexual abuse, kidnapping, aggravated assault and child molestation. He received a prison sentence of 326.5 years. Over the past decade, Kronke has filed numerous civil complaints against the City, accusing it of tampering with evidence in his criminal case. The relevant prior complaints are as follows.

**¶3** In No. CV 2002-010949, Kronke sued the City for money damages, conversion and violations of his constitutional rights pursuant to 42 U.S.C. § 1983. The trial court dismissed the case with prejudice. This Court affirmed on appeal and held that Kronke's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), *until and unless* Kronke's criminal convictions were invalidated. *See* 1 CA-CV 07-0637, 2008 WL 4183001 (March 13, 2008), at *1, ¶ 6.

**¶4** In No. CV 2004-000775, Kronke sued several City employees raising the same tort and § 1983 claims. The trial court dismissed the complaint for failure to serve certain defendants and failure to state a claim against others. This court affirmed. *See* 1 CA-CV 07-0827, 2008 WL 2153154 (Oct. 9, 2008), at *2, ¶ 9.

**¶5** In No. CV 2006-009101, Kronke sued the City and

certain employees raising the same claims. The trial court dismissed the complaint with prejudice. This court affirmed but remanded with instructions that the § 1983 claims be dismissed without prejudice. 1 CA-CV 07-0142, 2009 WL 1900447 (July 2, 2009), at *6, ¶ 28. On remand, the trial court amended its ruling accordingly.

**¶6** In No. CV 2008-002783, Kronke sued the City raising the same claims. The trial court dismissed on grounds of collateral estoppel, res judicata, failure to comply with the mandatory notice of claim statute, Arizona Revised Statutes ("A.R.S.") section 12-821.01(A) (2003), and the holding in *Heck*. This Court affirmed. 1 CA-CV 08-0642, 2009 WL 168902 (June 16, 2009) at *1, ¶ 1.

**¶7** This appeal arises directly from No. CV 2008-020850, which raised in part the same tort and § 1983 claims against the City. The complaint further requested the superior court to declare the decisions in Nos. CV 2002-010949, CV 2004-000775, CV 2006-009101 and CV 2008-002783, void for lack of subject matter jurisdiction. The complaint also alleged claims against certain Arizona judges, but those have since been dismissed with prejudice. Because that ruling has not been timely appealed, those judges are not parties to this case.

**¶8** The superior court later granted the City's own request for dismissal with prejudice, and Kronke timely appealed

from that order. In March 2010, this Court issued a decision order, 1 CA-CV 09-0335, denying the appeal against the City as premature because the trial court's order lacked Arizona Rule of Civil Procedure ("Rule") 54(b) language. In June, the superior court placed the case on inactive status and ordered abatement on July 15, 2010.

**¶9** Meanwhile, the superior court had issued Administrative Order No. 2008-134 in October 2008, declaring Kronke a "vexatious litigant" and ordering him to apply for leave to file and obtain approval before filing any further complaints, motions or pleadings. In April 2009, the superior court amended Administrative Order No. 2008-134 without substantive changes. Kronke appears to have applied for leave to file the following: (1) a request to extend the case on the inactive calendar; (2) amended motion to set and certificate of readiness; (3) motion to vacate and relief from the Administrative Order No. 2008-134; and (4) motion for relief from judgment. Finding that these motions were a continuation of his conduct as a vexatious litigant, the superior court denied the application and refused to accept them for filing.

**¶10** On August 6, 2010, the trial court entered an order with Rule 54(b) language dismissing with prejudice the claims against the City. In a separate order entered that day, it ruled that CV 2008-020850 had abated and ordered the entire case

dismissed with prejudice. After filing a timely notice of appeal, Kronke continued to apply for leave to file additional motions and documents, including five amended notices of appeal and a "Motion for Relief of Void Judgment," which the trial court also denied and ordered sealed. They were subsequently ordered unsealed in the trial court, rendering moot that issue and the related motion on appeal.

**¶11** Although the trial court later accepted the amended notices of appeal, the additional motions and documents were never accepted for filing. Therefore, this appeal involves only (1) the order dismissing with prejudice the complaint against the City and (2) the administrative decision rejecting Kronke's application for leave to file the Motion for Relief From Void Judgment.

**DISCUSSION**

**¶12** We review a trial court's grant of a motion to dismiss for an abuse of discretion but review de novo issues of law. *Dressler v. Morrison*, 212 Ariz. 279, 281, ¶ 11, 130 P.3d 978, 980 (2006). We review de novo issues of statutory interpretation. *DeVries v. State*, 221 Ariz. 201, 204, ¶ 6, 211 P.3d 1185, 1188 (App. 2009). We will affirm dismissal if the plaintiff is not entitled to relief under any facts that can be proven in the complaint. *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996).

**¶13** On appeal, Kronke contends that the trial court erred by refusing to vacate the decisions dismissing his previous complaints against the City. Kronke argues the trial court lacked subject matter jurisdiction over those claims because § 1983 claims do not accrue unless and until his criminal convictions are invalidated. Kronke contends the dismissals were therefore void and could be collaterally attacked in the superior court. We disagree.

**¶14** The superior court lacks jurisdiction to review an appellate court's determination and is bound by the decisions of this Court. *Tovrea v. Superior Court (Thurman)*, 101 Ariz. 295, 297, 419 P.2d 79, 81 (1966). Therefore, Kronke could not collaterally attack prior decisions affirmed by this court in any new complaint filed in the superior court.

**¶15** Kronke incorrectly relies on *Schilz v. Superior Court (Pickrell)*, 144 Ariz. 65, 695 P.2d 1103 (1985) to assert otherwise. In *Schilz*, our supreme court held that the superior court may not give full faith and credit to a New Mexico court's child-support order without first determining whether that court had personal jurisdiction over an Arizona resident. *Id.* at 71, 696 P.2d at 1109. Neither personal jurisdiction nor the full-faith and credit clause are relevant in this case.

**¶16** Moreover, the fact that Kronke's previous claims may not have accrued does not determine the trial court's subject

matter jurisdiction. Whether it was appropriate for the trial court to have decided his prior § 1983 claims because they were not ripe for review is an issue of justiciability. *See* Black's Law Dictionary 882 (8th ed. 2004) ("The quality or state of being appropriate or suitable for adjudication by a court. See MOOTNESS DOCTRINE; RIPENESS. Cf. STANDING.").

**¶17** "Subject matter jurisdiction," in contrast, is the power of a court to hear and determine a controversy. *Marks v. LaBerge,* 146 Ariz. 12, 15, 703 P.2d 559, 562 (App. 1985). In Arizona, the superior court has general jurisdiction to decide all controversies unless otherwise carved out by the Arizona Constitution and placed in an inferior court. *State v. Payne,* 223 Ariz. 555, 559, ¶ 9, 225 P.3d 1131, 1135 (App. 2009).

**¶18** Because the superior court was the correct court for Kronke to bring his § 1983 claims, it had subject matter jurisdiction to decide his claims. Consequently, the decisions to dismiss them were not void for lack of subject matter jurisdiction. We thus find no error in the trial court's refusal to vacate those prior decisions as void on that ground.

**¶19** Next, we turn to the claims actually raised in this particular complaint. As to the current § 1983 claims, the City agrees that the trial court must dismiss them *without* prejudice pursuant to *Heck*. Therefore, we vacate in part only the portion of the order dismissing with prejudice these claims.

**¶20** Turning to Kronke's tort claims raised in this complaint, we hold that dismissal with prejudice was proper on the alternative ground that they have been barred by his failure to comply with the mandatory notice of claim statute. Pursuant to A.R.S. § 12-821.01, a claim against a public employee or public entity is barred where, as here, no notice of claim is filed within 180 days after the cause of action accrues. Accordingly, we find no error in dismissing with prejudice these claims.

**¶21** Kronke argues that we may not consider A.R.S. § 12-821.01(A) or any other defense sua sponte. He argues that doing so discriminates against him as a pro se litigant. In Kronke's prior appeal, 1 CA-CV 09-0526, ¶ 22, we rejected this same claim as spurious, noting that an appellate court may affirm if the trial court is correct for *any reason*. *See City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985). Moreover, Kronke has not presented any evidence of disparate treatment.

**¶22** Kronke next raises several issues challenging the enforcement of the trial court's Administrative Order No. 2008-134, which declared him a vexatious litigant. Kronke argues that the administrative order is void and demands that it be vacated. We decline to do so, however, because we have no jurisdiction to provide review of administrative orders. *See* A.R.S. § 12-2101

(2003) (holding no jurisdictional basis for appeal of an administrative order). The trial court's refusal to lift the stay and grant Kronke's applications for leave to file additional motions and documents was made pursuant to the administrative order. Kronke cites no legal authority for why we should review them in this appeal. Moreover, the motion for relief that Kronke requests this Court to review has never been accepted for filing and is not properly before this Court. Such issues should have been raised by petition for special action and will not be addressed in this appeal.

**¶23** Kronke requests review of the superior court's order to shred certain documents from another case, No. CV 2007-006489. The issue has already been raised in 1 CA-SA 10-0177, wherein we accepted special action jurisdiction but denied relief. Pursuant to Rule 8(b), Arizona Rules of Procedure for Special Actions, Kronke had thirty days after the filing of our decision to challenge our decision by petition for review to the Arizona Supreme Court. The record does not show that he has done so. Accordingly, Kronke may not raise the issue in this appeal.

**¶24** Kronke challenges the trial court's denial of his motion for Rule 11(a) sanctions against the City. We review the trial court's order denying Rule 11 sanctions for an abuse of discretion. *See Roberts v. City of Phoenix*, 225 Ariz. 112, 123, ¶ 45, 235 P.3d 265, 276 (App. 2010). The City responded to the

motion by arguing that neither it nor its counsel has done anything warranting sanctions, Kronke provided no evidence that they violated Rule 11 in any manner, and ruling on the motion for sanctions would be premature while the motion to dismiss was pending. The trial court denied the motion as moot after dismissing the complaint against the City. Kronke has also provided no evidence of wrongdoing. The City does not act in bad faith by defending on grounds the prior decisions were not void. Therefore, we find no error.

**¶25** Upon the City's motion, this Court has determined that Kronke is a vexatious litigant who must first obtain leave of the Court before pursuing any further civil appeal. 1 CA-AO 11-0002 (entered July 28, 2011). Kronke has moved for reconsideration of that order. After consideration, we deny his request.

**¶26** Finally, Kronke requests costs pursuant to Arizona Rule of Civil Appellate Procedure 21. Kronke is a vexatious litigant, who is not entitled to costs. In the exercise of our discretion, we deny his request.

**CONCLUSION**

**¶27** For the foregoing reasons, we vacate in part the dismissal with prejudice only as it pertains to the § 1983 claims against the City raised in this complaint, and remand with instructions that the ruling be amended to reflect

dismissal without prejudice of those claims. We affirm the trial court's order dismissing with prejudice all other claims.

/s/
PATRICK IRVINE, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Presiding Judge

/s/
DANIEL A. BARKER, Judge