FILED
United States Court of Appeals
Tenth Circuit

April 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JLPR, LLC, a Utah limited liability company,

Plaintiff - Appellant,

v.

UTAH DEPARTMENT OF AGRICULTURE AND FOOD; UTAH DIVISION OF PURCHASING AND GENERAL SERVICES; SCOTT ERICSON; KERRY GIBSON; KELLY PEHRSON; ANDREW RIGBY; CODY JAMES; NATALIE CALLAHAN; MELLISSA URE; BRANDY GRACE; CHRISTOPHER W. HUGHES; MARK ANDERSON; ZAC CHRISTENSEN; STEPHANIE CASTRO; STANDARD WELLNESS UTAH, LLC; TRUE NORTH OF UTAH, LLC; STATE OF UTAH,

Defendants - Appellees.

No. 22-4052
(D.C. No. 2:21-CV-00436-TS)
(D. Utah)

ORDER AND JUDGMENT*

Before **MORITZ**, **EID**, and **ROSSMAN**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

JLPR, LLC, appeals the district court's dismissal of its amended complaint against the state of Utah, multiple state employees, and two competitors alleging constitutional violations related to the award of a medical cannabis license. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

In 2018, Utah passed the Utah Medical Cannabis Act (the "Act"). *See* 2018 Utah Laws 3rd Spec. Sess. (H.B. 3001). The Act allowed the Utah Department of Agriculture and Food (DAF) to award a limited number of medical marijuana cultivation licenses. JLPR applied for a license in 2019. At that time, DAF could award up to ten licenses. It received 81 applications, of which 33, including JLPR's, met the minimum threshold requirements for further consideration. DAF ultimately awarded eight licenses, but it did not award one to JLPR. JLPR challenged the denial of its application through all state administrative phases and sought judicial review in the Utah Court of Appeals, which affirmed the agency's decision. *See JLPR LLC v. Procurement Pol'y Bd.*, 492 P.3d 784, 786 (Utah Ct. App. 2021).

In 2021, JLPR filed an 11-count federal complaint against the State of Utah, DAF, the Utah Division of Purchasing and General Services, several individual state employees, and two medical marijuana businesses that did receive licenses. JLPR amended its complaint shortly after filing. The amended complaint included claims for "Due Process Under the United States Constitution," Aplt. App. at 46, and "Equal Protection Under the United States Constitution," *id.* at 49, against the State, the state agencies, and the individual defendants. It also included state-law claims against all

defendants. The complaint requested declaratory relief that "Utah Code § 4-41a-205 (and related) are either unconstitutional or were applied unconstitutionally as to JLPR," *id.* at 56, and injunctive relief either compelling the award of a medical cannabis license to JLPR or, in the alternative, prohibiting the award of any new medical cannabis licenses without first awarding one to JLPR, *see id.* at 57.

All defendants filed motions to dismiss under Fed. R. Civ. P. 12(b)(6). The district court granted the motions, dismissing the federal claims for failure to state a claim upon which relief can be granted and declining to exercise supplemental jurisdiction over the state-law claims. The court concluded first that because the manufacture and distribution of marijuana is still illegal under federal law, *see* 21 U.S.C. § 812(c), Schedule I (c)(10); § 841 (a)(1), JLPR could not recover under the illegal act doctrine—the maxim that "[n]o court will lend its aid to a party who founds his claim for redress upon an illegal act." *The Florida*, 101 U.S. 37, 43 (1879). Second, the court concluded JLPR's amended complaint did not describe a cognizable liberty or property interest to support its due process claim, nor did it plead a factual basis for its equal protection claim. Third, the court declined to exercise supplemental jurisdiction over JLPR's remaining state-law claims and dismissed them without prejudice. This appeal followed.

DISCUSSION

"We review de novo a district court's decision on a Rule 12(b)(6) motion for dismissal for failure to state a claim. Under this standard, we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light

most favorable to the plaintiff." *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019) (italics, citation, and internal quotation marks omitted).

We agree with the district court that the amended complaint did not state a claim for federal due process or equal protection violations. And JLPR does not challenge the dismissal of its state-law claims. We therefore need not decide whether and to what extent the illegal act doctrine bars JLPR's claims, nor do we reach the alternative bases for dismissal the state defendants propose.

I. The district court correctly dismissed JLPR's due process claims.

Under the Fourteenth Amendment, "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. We conduct "a two-step inquiry" when a plaintiff alleges a state has violated this clause: "(1) whether the plaintiff has shown the deprivation of an interest in life, liberty, or property and (2) whether the procedures followed by the government in depriving the plaintiff of that interest comported with due process of law." *Elliott v. Martinez*, 675 F.3d 1241, 1244 (10th Cir. 2012) (internal quotation marks omitted).

A. JLPR did not allege the deprivation of a liberty interest in its amended complaint.

JLPR argues it alleged a deprivation of both a liberty interest and a property interest, and the district court analyzed its Fourteenth Amendment claim under both theories. But the amended complaint did not allege the deprivation of a liberty interest, only a property interest, and when analyzing a motion to dismiss "the district

court, and consequently this court, are limited to assessing the legal sufficiency of the allegations contained within the four corners of the complaint. Therefore, extraneous arguments in an appellate brief may not be relied upon to circumvent pleading defects." *Jojola v. Chavez*, 55 F.3d 488, 494 (10th Cir. 1995) (citation omitted).

JLPR asserts that it did not need "magic words" to plead the deprivation of a liberty interest, *see* Aplt. Reply Br. at 11, but the amended complaint very clearly did not advance such a claim. It asserted that, through the actions complained of, the defendants "improperly den[ied] [JLPR] the statutory rights to a fair application process and review to which [it] is entitled," that they "also den[ied] [JLPR] a medical cannabis cultivation license[] despite its satisfaction of the objective criteria showing that [it] should have been awarded a license," and that in so doing, JLPR "[was] being deprived of *property rights* without due process of law and lacks an effective remedy." Aplt. App. at 47 (emphasis added). JLPR does not explain, nor can we discern, any reasonable reading of its amended complaint that permits the inference that it asserts that the denial of a medical cannabis license deprived it of liberty. We therefore limit our analysis of JLPR's due process claim to whether the state unconstitutionally deprived it of a property interest when it did not award JLPR a medical cannabis license.

B. JLPR did not adequately plead a claim for the deprivation of property.

Although JLPR's amended complaint did nominally allege the unconstitutional deprivation of a property interest, we agree with the district court that it did not show

it actually had such an interest. "The Supreme Court defines property in the context of the Fourteenth Amendment's Due Process Clause as a legitimate claim of entitlement to some benefit. An abstract need for, or unilateral expectation of, a benefit does not constitute property." *Hyde Park Co. v. Santa Fe City Council*, 226 F.3d 1207, 1210 (10th Cir. 2000) (internal quotation marks and citation omitted).

JLPR argues it had a property interest in a state cannabis cultivation license itself, which it alleged it was entitled to as "the most qualified applicant." Aplt. Opening Br. at 11; *see also* Aplt. App. at 27 (amended complaint alleging "JLPR was and is more qualified and should have been selected over some of the successful applicants."). But the Act does not guarantee a license to any applicant who meets discrete criteria. Rather, when there are more qualified applicants than awardable licenses, it vests the DAF with discretion to choose which companies it will grant such licenses. *See* Utah Code Ann. § 4-41a-205(3). And "where the governing body retains discretion and the outcome of the proceeding is not determined by the particular procedure at issue, no property interest is implicated." *Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1217 (10th Cir. 2003).

To the extent JLPR argues it had a protected Fourteenth Amendment interest not in a cannabis cultivation license in itself, but in a fairer process for review of its application than it in fact received, we again disagree. "[A]n entitlement to nothing but procedure cannot be the basis for a property interest . . . because process is not an end in itself, but instead serves only to protect a substantive interest to which the

individual has a legitimate claim of entitlement." *Teigen v. Renfrow*, 511 F.3d 1072, 1081 (10th Cir. 2007) (internal quotation marks and brackets omitted). JLPR did not have a legitimate claim of entitlement to a medical cannabis cultivation license, so the district court correctly dismissed its due process claim.

II. The district court correctly dismissed JLPR's equal protection claims.

Under the Fourteenth Amendment, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. JLPR pled a class-of-one equal protection claim. To state such a claim, a plaintiff must show that: (1) "others, similarly situated in every material respect were treated differently"; and (2) "this difference in treatment was without rational basis, that is, the government action was irrational and abusive, and wholly unrelated to any legitimate state activity." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1216 (10th Cir. 2011) (internal quotations marks and citation omitted). This is a "substantial burden" to overcome. *Id.* at 1217 (internal quotation marks omitted). And "[b]ecause a class-of-one plaintiff must show that the official action was *objectively* irrational and abusive, . . . pretext is not an issue. We ask not whether [Utah's] proffered justifications were sincere, but whether they were objectively reasonable." *Jicarilla Apache Nation v. Rio Arriba Cnty.*, 440 F.3d 1202, 1211 (10th Cir. 2006).

The district court denied this claim because it concluded that JLPR failed to adequately allege that it was substantially similar to other applicants in all material

respects. But because Utah had a rational basis to deny JLPR a medical cannabis distribution license, we affirm the dismissal of JLPR's equal protection claim without considering the sufficiency of its allegation that other applicants for a medical cannabis license were similarly situated to it in all material respects. *See Bixler v. Foster*, 596 F.3d 751, 760 (10th Cir. 2010) ("[W]e may affirm on any grounds supported by the record." (internal quotation marks omitted)).[1]

The amended complaint alleged DAF "heavily weighted community involvement to the point of it practically being a disqualifying criterion, making the category tied for second place as the most heavily weighted factor." Aplt. App. at 35–36. But community involvement was one of several statutorily defined criteria for awarding medical cannabis licenses, *see* Utah Stat. Ann. § 4-41a-205(3)(c), and JLPR offers no credible argument that it is *objectively* unreasonable for Utah to assign significance to this factor.

JLPR does allege DAF unduly favored applicants who emphasized community involvement in their applications and that individual DAF members improperly coached other companies in the preparation of their applications. But this line of

[1] In determining whether to affirm on an alternative ground, "we have been—as a matter of basic fairness—guided by whether the parties have fully briefed and argued the alternate ground, and whether they have had a fair opportunity to develop the factual record." *United States v. Chavez*, 976 F.3d 1178, 1204 n. 17 (10th Cir. 2020) (internal quotation marks omitted). Because the parties briefed and argued the rational basis issue before the district court and before this court, *see* Aplt. App. at 287; State Def. Resp. Br. at 44–46 (presenting rational basis argument on appeal); Aplt. Reply Br. at 10–11 (responding to same), we do not hesitate to reach the issue here.

argument—that DAF did a poor job of implementing the statutory criteria for medical cannabis license—relates to the subjective motivations of the decisionmakers, which are irrelevant in a class-of-one claim. *See Jicarilla v. Apache Nation*, 440 F.3d at 1211. Because Utah's proffered justification for denying JLPR a medical cannabis license was not irrational and abusive, JLPR failed to state a class-of-one equal protection claim.

III. The district court correctly dismissed JLPR's state-law claims.

After dismissing JLPR's federal claims, the district court declined to exercise jurisdiction over its remaining state law claims and dismissed them without prejudice. We would normally review this decision for abuse of discretion. *See Exum v. U.S. Olympic Comm.*, 389 F.3d 1130, 1139 (10th Cir. 2004). But because JLPR does not challenge this decision, we affirm dismissal of the state law claims without prejudice.

CONCLUSION

The judgment of the district court is affirmed. We deny as moot Appellee True North, LLC's motion to take judicial notice.

Entered for the Court

Nancy L. Moritz
Circuit Judge