

United States Court of Appeals
For the Eighth Circuit

No. 17-3640

Kelly L. Smith; Karla G. Smith

Plaintiffs - Appellants

v.

Central Platte Natural Resources District, also known as CPNRD; Dick Mercer, the following individually and in their official capacity as Central Platte Natural Resources Board members; Jay Richeson, the following individually and in their official capacity as Central Platte Natural Resources Board members; Bryan Ketson, the following individually and in their official capacity as Central Platte Natural Resources Board members; Dwayne Margrits, the following individually and in their official capacity as Central Platte Natural Resources Board members; Bill Vasey, the following individually and in their official capacity as Central Platte Natural Resources Board members; Marvion Reichert, the following individually and in their official capacity as Central Platte Natural Resources Board members; Steve Sheen, the following individually and in their official capacity as Central Platte Natural Resources Board members; Keith Stafford, the following individually and in their official capacity as Central Platte Natural Resources Board members; Bob Schanou, the following individually and in their official capacity as Central Platte Natural Resources Board members; Jim Shiers, the following individually and in their official capacity as Central Platte Natural Resources Board members; Jim Bendfeldt, the following individually and in their official capacity as Central Platte Natural Resources Board members; Mick Reynolds, the following individually and in their official capacity as Central Platte Natural Resources Board members; Jerry Milner, the following individually and in their official capacity as Central Platte Natural Resources Board members; Jerry Wiese, the following individually and in their official capacity as Central Platte Natural Resources Board members; Ed Stoltenberg, the following individually and in their official capacity as Central Platte Natural Resources Board members; Leroy Arends; Alicia Haussler, the following individually and in their official

capacity as Central Platte Natural Resources Board members; Ed Kyes, the following individually and in their official capacity as Central Platte Natural Resources Board members; Ladd Reeves, the following individually and in their official capacity as Central Platte Natural Resources Board members; Charles Maser, the following individually and in their official capacity as Central Platte Natural Resources Board members; Barry Obermiller, the following individually and in their official capacity as Central Platte Natural Resources Board members; Lyndon Vogt, the following individually and in their official capacity as Central Platte Natural Resources District Employees- General Manager; Jesse Mintken, the following individually and in their official capacity as Central Platte Natural Resources District Employees - GIS Coordinator; Luke Zakrzewski, the following individually and in their official capacity as Central Platte Natural Resources District Employees- GIS Image Analyst; Brian Keiser, individually and in his official capacity as a Central Platte Natural Resources Board member

Defendants - Appellees

Appeal from United States District Court
for the District of Nebraska - Lincoln

Submitted: August 23, 2018

Filed: August 27, 2018

[Unpublished]

Before BENTON, SHEPHERD, and STRAS, Circuit Judges.

PER CURIAM.

Kelly Smith and Karla Smith appeal after the district court¹ dismissed their claims against the Central Platte Natural Resources District, its board members, and several of its employees. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

The Smiths argue that the district court procedurally erred in considering a successive Federal Rule of Civil Procedure 12(b) motion to dismiss, which they contend violated Federal Rule of Civil Procedure 12(g)(2). Upon careful de novo review, this court finds no basis for reversal. *See Kuelbs v. Hill*, 615 F.3d 1037, 1041 (8th Cir. 2010) (district court’s interpretation of Federal Rules of Civil Procedure is reviewed de novo). As to the defenses and objections raised by defendants in their successive Rule 12(b) motion, all had been asserted in an earlier motion to dismiss, except for an abstention argument based on *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), which the district court had authority to consider sua sponte. *See* Fed. R. Civ. P. 12(g)(2) (generally prohibiting filing of successive Rule 12 motion “raising a defense or objection that was available to the party but omitted from its earlier motion”); *Leyse v. Bank of Am. Nat’l Ass’n*, 804 F.3d 316, 320 (3d Cir. 2015) (Rule 12(g)(2) “is intended to eliminate unnecessary delay at the pleading stage by encouraging the presentation of an omnibus pre-answer motion in which the defendant advances every available Rule 12 defense simultaneously rather than interposing these defenses and objections in piecemeal fashion.”); *cf. Int’l Coll. of Surgeons v. City of Chi.*, 153 F.3d 356, 360-61 (7th Cir. 1998) (appellate court may raise *Burford* doctrine sua sponte); *Grimes v. Crown Life Ins. Co.*, 857 F.2d 699, 706-07 (10th Cir. 1988) (same; collecting cases).

The judgment is affirmed.

¹The Honorable John M. Gerrard, United States District Judge for the District of Nebraska.