IN THE COURT OF APPEALS OF IOWA

No. 8-656 / 07-1275
Filed October 15, 2008

CURT DANIELS,
Plaintiff-Appellant,
vs.

STATE OF IOWA and
TIMOTHY BENTON,
Defendants-Appellees.

Appeal from the Iowa District Court for Jasper County, Peter Keller, Judge.

Plaintiff appeals a district court's dismissal of his lawsuit on claim and issue preclusion grounds. He also contends that a civil penalty rendered against him in an underlying proceeding is void. **AFFIRMED.**

Curt Daniels, Chariton, pro se appellant.

Thomas J. Miller, Attorney General, David R. Sheridan and David S. Steward (Environmental Law Division), Assistant Attorneys General, for appellee State.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

We must decide whether the district court erred in dismissing a lawsuit that was an outgrowth of a prior lawsuit. Finding no error, we affirm.

I. Background Facts and Proceedings

Curt Daniels operated a hog confinement feeding facility in Jasper County, Iowa. The State, on behalf of the Department of Natural Resources, sued him and an entity that he presided over, known as Indian Creek Corporation. The State alleged the defendants committed civil violations of waste handling requirements. In 2001, the district court tried the matter and concluded the State proved the violations. The court assessed a $95,000 civil penalty against Daniels and the corporation. The court also ordered injunctive relief.

Daniels made a series of filings seeking redress. First, he moved to set aside the judgment. The district court denied the motion. Second, he filed a notice of appeal. The appeal was dismissed as untimely. Third, he filed a petition for writ of certiorari with the Iowa Supreme Court. That petition was denied. Fourth, he filed a petition for writ of certiorari with the United States Supreme Court. That petition was also denied. Fifth, he filed a civil rights action in federal court. That action was dismissed. Sixth, he filed an appeal from the dismissal. The dismissal was upheld. Seventh, he filed a lawsuit in state court that was analogous to the present one. That lawsuit was voluntarily dismissed.

Meanwhile, State Assistant Attorney General Timothy Benton, the attorney who filed the original action on behalf of the State, signed a letter indicating that

the $95,000 judgment had been paid. In 2006, he assigned the judgment to an entity known as Hunters Retreat, LLC.[1]

This action came next. The action was filed by "Curt Daniels, doing business as Indian Creek Corp." and named the State of Iowa and Timothy Benton as defendants. Daniels alleged that the defendants violated his civil rights in several respects. Part of his lawsuit challenged the 2001 litigation and judgment and part of the lawsuit challenged the 2006 assignment. The district court dismissed the petition under the doctrines of claim and issue preclusion.

On appeal, Daniels challenges the district court's reasons for dismissing the action, argues against the State's alternate bases for affirmance and, for the first time, asserts that the 2001 judgment was void. We will consider three alternate bases for affirmance cited by the State[2] and the argument that the 2001 judgment is void.

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[1] Daniels alleges that the property was sold to Hunters Retreat at a sheriff's sale in 2004. Daniels further alleges that Hunters Retreat "redeemed" the $95,000 judgment from the Iowa Department of Natural Resources and subsequently obtained an assignment of the judgment. These additional facts do not alter our analysis below concerning whether there was a violation of the takings clause of the Fifth Amendment to the United States Constitution.

[2] The doctrine of issue preclusion "requires the issue to have been actually litigated." *Spiker v. Spiker*, 708 N.W.2d 347, 353 (Iowa 2006). Daniels's constitutional challenges to the 2001 judgment and the 2006 assignment were not actually litigated. Therefore, this doctrine does not apply. *Id.*

The doctrine of claim preclusion "prevents relitigation of all issues, whether raised or not, following judgment on the same cause of action." *Riley v. Maloney*, 499 N.W.2d 18, 20 (Iowa 1993). This doctrine would bar claims against the State challenging the 2001 proceedings and judgment, whether raised in that action or not. The doctrine would not bar Daniels's claim challenging the State's involvement in the 2006 assignment, as the assignment had yet to occur and this challenge could not have been fully and fairly adjudicated in the 2001 trial. *See Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 319 (Iowa 2002). The doctrine of claim preclusion also would not bar claims against Benton, as he was not in privity with the State. Although he was involved in the first action, he was involved as attorney for the State of Iowa. His interest, therefore, was different in kind than, for example, the interest of one who purchases property that is the subject of litigation. *Id.* The civil penalty ran in favor of

Our review of the district court's ruling is for correction of errors at law. *Turner v. Iowa State Bank & Trust. Co.*, 743 N.W.2d 1, 2–3 (Iowa 2007). In reviewing a ruling on a motion to dismiss, we are obligated to view the allegations of the petition in the light most favorable to the plaintiff. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994).

II. Alternate Grounds for Affirmance

An appellate court may affirm a district court's ruling on any ground raised in the district court even if the district court did not rely on those grounds. *Id.*

A. "Person" Under Section 1983

A section 1983 action cannot be brought against a state, as a state and its agencies are not "persons" within the meaning of section 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65, 71, 109 S. Ct. 2304, 2309, 2312, 105 L. Ed. 2d 45, 54, 58 (1989). Accordingly, all claims against the State are barred.

A section 1983 claim also cannot be brought against state officials acting in their official capacity. *Id.*, 491 U.S. at 71, 109 S. Ct. at 2312, 105 L. Ed. 2d. at 58. Daniels's petition names Timothy Benton "personally," but his allegations appear to be based on Benton's acts in his official capacity. Because we are obligated to view the petition in a light most favorable to Daniels, we will afford him the benefit of the doubt on whether the allegation raises an "official capacity"

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the State, not Timothy Benton in his individual capacity, and he could not individually enforce that judgment. Because the claim preclusion doctrine would not fully resolve the claims raised by Daniels, we look to the alternate grounds for affirmance cited by the State.

claim or an "individual capacity" claim. We will assume he raised the claims against Benton in his individual capacity. Accordingly, we decline to affirm the dismissal of the claims against Benton on the ground that he was not a person under section 1983.

B. Absolute Immunity

Prosecutors are immune from a 28 U.S.C. § 1983 lawsuit for initiating a prosecution and presenting the state's case. *Imbler v. Pachtman*, 424 U.S. 409, 431, 96 S. Ct. 984, 995, 47 L. Ed. 2d 128, 144 (1976). Attorneys who represent agencies also may be absolutely immune from suit. *Butz v. Economou*, 438 U.S. 478, 517, 98 S. Ct. 2894, 2916, 57 L. Ed. 2d 895, 923 (1978) ("We therefore hold that an agency attorney who arranges for the presentation of evidence on the record in the course of an adjudication is absolutely immune from suits based on the introduction of such evidence."); *see also Murphy v. Morris*, 849 F.2d 1101, 1105 (8th Cir. 1988) (extending absolute immunity to assistant attorney generals defending state officials in prisoner civil rights litigation).

In this instance, the State Attorney General was empowered to initiate legal proceedings on behalf of the Iowa Department of Natural Resources. Iowa Code § 455B.191(4) (2001). Based on this law, we conclude Timothy Benton was immune from suit under section 1983 in connection with the claims arising from his initiation and maintenance of the 2001 litigation.

Remaining are the allegations against Benton concerning the 2006 assignment. Prosecutors are not afforded absolute immunity when they perform administrative functions, or those that are not "intimately associated with the judicial phase of the criminal process." *Beck v. Phillips*, 685 N.W.2d 637, 645

(Iowa 2004). Based on this principle, the Iowa Supreme Court declined to find a prosecutor absolutely immune from suit for correspondence to local law enforcement officials about "how future criminal prosecutions should be conducted and how his office would deal with those cases." *Id.* Viewing the petition in the light most favorable to Daniels, we conclude absolute immunity does not extend to Daniels's allegation that Benton violated his constitutional rights by assigning the judgment in 2006.

C. Qualified Immunity

"In any section 1983 action, a plaintiff must still prove a violation of the underlying constitutional right." *Bailey v. Lancaster*, 470 N.W.2d 351, 356 (Iowa 1991). "The elements of proof . . . must be tailored to fit the particular constitutional guarantee that has allegedly been violated." *Id.* These principles become important in assessing the qualified immunity issue.

That is because the threshold question to determine qualified immunity is: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct 2151, 2156, 150 L. Ed. 2d 272, 281 (2001). "If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity." *Id.*

Daniels appears to allege that Benton's 2006 assignment of the $95,000 judgment violated the takings clause of the Fifth Amendment to the United States Constitution. U.S. Const. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be

taken for public use, without just compensation."). Accepting the facts in his pleading as true, we can discern no basis for a violation of the takings clause premised on the assignment.[3] *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 548, 125 S. Ct. 2074, 2087, 161 L. Ed. 2d. 876, 894 (2005) (identifying the several bases for takings claims); *Broyles v. Iowa Dep't of Soc. Servs.*, 305 N.W.2d 718, 721 (Iowa 1981) (stating assignments of judgments are authorized). As there was no constitutional violation, Benton was entitled to dismissal of this claim. *See Scott v. Harris*, ___ U.S. ___, 127 S. Ct. 1769, 1774, 1779, 167 L. Ed. 2d. 686, 692, 697 (2007) (declining to reach qualified immunity issue where there was no constitutional violation in the first instance). We conclude Benton was entitled to dismissal of the claims premised on the 2006 assignment. Although this conclusion falls under the subheading "Qualified Immunity," it flows from our threshold determination that there was no constitutional violation.

III. Void Judgment

Daniels finally claims that the judgment entered against him in 2001 is void. He cites the absence of criminal due process and "the fraudulent elements" of the Jasper County proceeding. A void judgment can be attacked at any time. *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992).

We begin with Daniels's assertion that he was not afforded "criminal due process." Daniels's argument is as follows. A civil penalty was imposed against

[3] Daniels also alleges that the State's citations for regulatory violations amounted to a "regulatory taking." *See Harms v. City of Sibley*, 702 N.W. 2d 91, 98 (Iowa 2005) (stating takings clause may apply to "regulations that completely deprive an owner of '*all* economically beneficial us[e]' of her property" (emphasis in original) (citation omitted)). This allegation is a constitutional challenge that could have been raised in the 2001 action and is barred by the law providing that the State is not a "person," as well as the doctrine of claim preclusion as it relates to the State. The claim is also barred by the doctrine of absolute immunity as it relates to Benton.

him pursuant to Iowa Code section 455B.191(1); that statute is actually criminal in nature; the penalty, therefore, is a criminal penalty; and he "was entitled to all the privileges which are constitutionally entitled to a person who is prosecuted for a forfeiture of his property by reason of committing a criminal offense."

The Iowa Supreme Court rejected a virtually identical argument in *Clinton Cmty. Sch. Dist. v. Anderson*, 322 N.W.2d 73 (Iowa 1982). There, the court held a provision of chapter 455B civil in nature. *Clinton*, 322 N.W.2d at 76. That provision contained the same reference to a "civil penalty" as the provision at issue here. *Compare* Iowa Code § 455B.49(1)(1981) *with* 455B.191(1) (2001). Based on *Anderson*, we conclude Iowa Code section 455B.191(1) is civil in nature. Therefore, Daniels was not entitled to criminal due process protections and the judgment against him was not void.

We turn to Daniels's assertion that "fraudulent elements" voided the judgment. This allegation is, in turn, based on an allegation that there was "false, misleading, and highly prejudicial testimony." The assertion might render the judgment voidable but does not render the judgment void. See *Johnson*, 489 N.W.2d at 414 (judgment considered void where court acted "without or in excess of its jurisdiction." It is an assertion that must be raised within a specified period of time. *See* Iowa R. Civ. P. 1.1012(2) (authorizing motion to vacate judgment for fraud in obtaining judgment); 1.1013(1) (requiring filing within one year after entry of judgment). As Daniels failed to raise this challenge within the timeframe prescribed by rule 1.1013(1), we need not address it.

We affirm the district court's dismissal of Daniels's petition.

AFFIRMED.