

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0879

LANGE WALKER ALLEN, II

VERSUS

HON. RAYMOND S. CHILDRESS; HON. AUGUST J. HAND; HON. RICHARD
A. SWARTZ, JR.; HON. PETER J. GARCIA; HON. WILLIAM J. BURRIS;
HON. MARTIN E. COADY; HON. SCOTT C. GARDNER; HON. ALLISON H.
PENZATO; HON. REGINALD T. BADEAUX, III; HON. WILLIAM J. KNIGHT;
HON. MARY C. DEVEREUX; AND HON. DAWN AMACKER

Judgment rendered December 23, 2014.

KUHN, J CONCURS + ASSIGNS REASONS

Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2013-15991
Honorable Robert J. Burns, Sr., Judge Ad Hoc

JOHN A. HOLLISTER
MANDEVILLE, LA

ATTORNEY FOR
PLAINTIFF-APPELLANT
LANGE WALKER ALLEN, II

L. WALKER ALLEN, II
MADISONVILLE, LA

PRO SE

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL
DAVID G. SANDERS
DOUGLAS G. SWENSON
ASST. ATTORNEYS GENERAL
BATON ROUGE, LA

ATTORNEYS FOR
DEFENDANTS-APPELLEES
HON. RAYMOND S. CHILDRESS,
ET AL.

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

On December 27, 2013, plaintiff, Lange Walker Allen, II ("Mr. Allen"), filed a petition for violation of civil rights against Hon. Raymond S. Childress; Hon. August J. Hand; Hon. Richard A. Swartz, Jr.; Hon. Peter J. Garcia; Hon. William J. Burris; Hon. Martin E. Coady; Hon. Scott C. Gardner; Hon. Allison H. Penzato; Hon. Reginald T. Badeaux III; Hon. William J. Knight; Hon. Mary C. Devereux; and Hon. Dawn Amacker (collectively referred to hereinafter as "the Judges of the 22nd JDC") in connection with an order that he pay \$1,000.00 into the 22nd JDC's Judicial Expense Fund after being found in contempt of court by Hon. Mary C. Devereux. Mr. Allen alleged that despite repeated demands for the return of his money, the Judges of the 22nd JDC unlawfully retained possession of his money, entitling him to general, special, and punitive damages, plus attorney fees and costs, pursuant to 42 U.S.C. §§1983 and 1988.¹

In response to Mr. Allen's claims, the Judges of the 22nd JDC filed a peremptory exception raising the objection of no cause of action. On March 26, 2014, Mr. Allen amended his petition to assert a class action on behalf of all those persons similarly ordered to pay fines into the 22nd JDC's Judicial Expense Fund where such fines were imposed contrary to law and were unlawfully retained by the Judges of the 22nd JDC. The matter proceeded to a hearing before the trial court on March 26, 2014, at which time the issues were argued and submitted for consideration. Thereafter, the trial court rendered judgment in favor of the Judges of the 22nd JDC sustaining the exception and offering the following reasons for judgment:

Before this court is the exception of no cause of action filed by the judges of the 22nd JDC. Today I sustain the exception of no cause of action against all the judges named in this lawsuit, [and] dismiss this case with prejudice

I take this action based on the following: In a no cause of action the court has to accept the well-pled allegations of the petition as true. So I have before me an original petition and an amended petition. I'm sustaining the exception for no cause of action as to both the original

¹ We note that since the filing of the instant appeal, Mr. Allen's money has been returned to him. Mr. Allen admits in brief to this court that on August 7, 2014, "the Judicial Administrator prepared and sent to him a check, drawn on the [22nd JDC's Judicial Expense Fund] in the sum of \$1,000.00."

petition and the amended petition. The amended petition simply attempts to make this a class action.

....

I'll deal firstly with the lawsuit against Judge Devereux. Considering the entire petition and considering the allegations as true, it's clear to me that Judge Devereux is entitled to absolute judicial immunity. She was certainly acting in her capacity as a judge for each and every one of the actions complained of by the petitioner and as such enjoys, in my view, absolute judicial immunity for the actions that she's taken.

Our courts have repeatedly said judicial officers are entitled to absolute immunity from claims for damages arising from acts performed in the exercise of their judicial functions. And even a judge that has acted without having subject matter jurisdiction does not render himself or herself subject to a lawsuit such as this if the judge was acting in the course of his or her duties, as I believe certainly Judge Devereux was.

....

So I believe Judge Devereux enjoys absolute judicial immunity in her actions in this case. She held a party in contempt and that's certainly a judicial function. The plaintiff's petition states that when she took the action in open court the plaintiff said she was acting in her official capacity as a judge.

....

Now, as to the other judges that have been named in this lawsuit, I agree with the defense here that a fair reading of the petition it seems that the judges are being held responsible for the acts of Judge Devereux. There is certainly no vicarious liability when it comes to a 1983 action. And so I'm granting the exception as to all the other judges other than Judge Devereux because they have nothing to do with the actions that she took in holding Mr. Allen in contempt and ordering him to pay a fine in this case. So I don't see how they have any responsibility whatsoever.

As to the claim that somehow the judges can be sued in this case because of the fact that they administer this fund, I believe that they, all the judges, enjoy judicial immunity in that regard. And if there are some funds that were illegally collected, as I mentioned earlier, perhaps there is the right to file a mandamus against the fund. But as the petition now stands there is simply no cause of action that has been stated against these judges.

A judgment sustaining the exception and dismissing Mr. Allen's claims, with prejudice, was signed by the trial court on April 10, 2014.

It is from this judgment that Mr. Allen has appealed, assigning the following specifications of error for our review:

A. The trial court manifestly erred in determining that the management of the Judicial Expense Fund of the 22nd Judicial District Court is an adjudicative function rather than an administrative one, so that it ruled improperly that the decisions of the Judges of that Court, acting

collectively, regarding receipts into and disbursements out of that fund, are entitled to judicial immunity.

B. The trial court manifestly erred in treating Mr. Allen's suit against eleven of the twelve Judges of the 22nd JDC as an action in *respondeat superior* or some other form of vicarious liability for Judge Devereux's actions rather than as a suit asserting the individual and collective liability of all twelve Judges for their individual participation in the management of the Judicial Expense Fund and for their vicarious liability for the decisions and actions of their employee, the local Judicial Administrator.

The function of the peremptory exception raising the objection of no cause of action is to test the legal sufficiency of a pleading by determining whether the law affords a remedy on the facts alleged in the pleading. **Ourso v. Wal-Mart Stores, Inc.**, 2008-0780, pp. 3-4 (La. App. 1 Cir. 11/14/08), 998 So.2d 295, 298, writ denied, 2008-2885 (La. 2/6/09), 999 So.2d 785. The exception is triable on the face of the pleadings, and, for the purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Id.*, 2008-0780 at 4, 998 So.2d at 298. In reviewing a trial court's ruling sustaining an exception raising the objection of no cause of action, appellate courts conduct a *de novo* review, because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. **Torbert Land Co., L.L.C. v. Montgomery**, 2009-1955, p. 4 (La. App. 1 Cir. 7/9/10), 42 So.3d 1132, 1135, writ denied, 2010-2009 (La. 12/17/10), 51 So.3d 16.

Having thoroughly reviewed the record and applicable law, we find no error in the trial court's ruling on this exception. Accepting all of the allegations in the petitions as true, and applying the applicable legal principles to the facts herein, we find the trial court properly sustained the exception raising the objection of no cause of action. There are simply no factual allegations in Mr. Allen's petitions to support a cause of action against defendants. Thus, for the above and foregoing reasons, we affirm the April 10, 2014 judgment of the trial court and assess all costs associated with this appeal against plaintiff-appellant, Lange Walker Allen, II. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

**LANGE WALKER
ALLEN, II**

VERSUS


**HON. RAYMOND S.
CHILDRESS ET AL.**

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

NO. 2014 CA 0879

 **KUHN, J., concurring.**

I write separately to point out the lack of professionalism of counsel for appellant, Lange Walker Allen, II, by his inappropriate and disparaging remarks as well as by this improper tactic of claiming relief under 42 U.S.C. §§ 1983 and 1988, which is a clear collateral attack of the judgment entered against him in conjunction with a finding of contempt by the family court judge.

In Allen's brief, asserting that the family court judge was without authority to levy a fine after having found him in contempt of court, counsel states that in ordering payment to the Twenty-Second Judicial District Court Judicial Expense Fund, the judges "could not lawfully retain that improper fine in their institutional slush fund," thereby impugning every district court judge in the State of Louisiana. In another instance, Allen states that the family court judge's actions were committed with malice without articulating the alleged conduct that she undertook and that he asserts demonstrates malice on her part. Both of these comments are, in my opinion, highly offensive and lacking the basic decorum expected of a member of the legal profession.

Allen and his attorney state elsewhere in brief that Allen is presently prosecuting another peremptory exception in the family court case in which he asserts that "the Louisiana Constitution's plain language is restricted to the pre-2007 true (that is, free standing) Family Courts on the model of the Family Court of East Baton Rouge Parish and does not extend that jurisdictional option to the new, post-2007 hybrid district court divisions," specifically those of the Twenty-

Second Judicial District Court. This articulation evinces a clear attempt at legal maneuvering by Allen to circumvent the Louisiana Supreme Court's earlier decision. He also points out his intent to reassert "the two hybrid divisions' lack of subject-matter jurisdiction" before the Louisiana Supreme Court "this time not on the issue of legislative intent—which was the basis of the ... prior ruling – but on the Legislature's constitutional authority to grant such jurisdiction to them," without explaining how he can raise constitutional claims in a piecemeal fashion.

In his zealous assertion to entitlement to relief, Mr. Allen relies on *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988), for a legal proposition permitting §1983 claims against judges. But neither Allen nor his counsel advise this court in brief that the *Forrester* court expressly held that there is no absolute immunity for judges performing administrative acts and in reaching that conclusion balanced a judge's performance of administrative duties against the clear and obvious need to protect judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants. 108 S.Ct. at 543-45.

Lastly I note that Allen's claim for § 1983 is clearly a collateral attack of the contempt judgment that ordered him to pay a fine to the Twenty-Second Judicial District Court Judicial Expense Fund, the propriety of which is the subject of another appeal, and a proposition of which was addressed by the *Forrester* court.

For these reasons, I concur.