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SJC-13061

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET, WAKEFIELD, MASS.,  
& others.<sup>1</sup>

November 23, 2021.

Appeals Court. Civil Rights, Availability of remedy. Americans  
with Disabilities Act. Immunity from Suit. Judicial  
Immunity. Practice, Civil, Motion to dismiss.

The plaintiff, Richard D. Bostwick, brought this civil action in the Superior Court in 2015 against multiple defendants, including the Appeals Court, alleging various claims relating to property situated at 44 Chestnut Street in Wakefield. Three judges in the Superior Court dismissed the claims against all defendants through rulings on a series of

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<sup>1</sup> Unknown future property owners of 44 Chestnut Street, Wakefield, Mass.; unknown future title insurance companies providing title insurance for 44 Chestnut Street; Santander Bank, N.A. (Santander); Federal National Mortgage Association (Fannie Mae); Orlans Moran PLLC; Leonard J. Sims, Leonard J. Sims Co., General Contractors, and Leonard J. Sims Custom Carpentry; The Classic Group, Inc., previous known as Class Restorations, Inc.; Kyle Barnard; Philip Bates; Richard F. Gantt; unknown officers and directors of The Classic Group, Inc.; unknown insurance policy entities/companies insuring The Classic Group, Inc., and their officers and directors; Massachusetts Department of Public Health; Paul N. Hunter, individually and as director of the Childhood Lead Poisoning Prevention Program in the Massachusetts Department of Public Health; Donna Levin; Warren M. Laskey; Massachusetts Appeals Court; and Middlesex Superior Court.

motions, and the plaintiff appealed to the Appeals Court.<sup>2</sup> The plaintiff objected to the Appeals Court deciding the claims against it, and in service of "the efficient administration of justice," the Appeals Court reported to this court "that part of the appeal concerning the claims against the Appeals Court" pursuant to G. L. c. 211A, § 12. See Bostwick v. 44 Chestnut Street, Wakefield, Mass., 99 Mass. App. Ct. 1107 (2021).<sup>3</sup> For the reasons discussed *infra*, we affirm the judgment of the Superior Court judge dismissing the claims against the Appeals Court.

"We review the allowance of a motion to dismiss *de novo*" (citation omitted). Barbuto v. Advantage Sales & Mktg., LLC, 477 Mass. 456, 457 (2017). "In deciding whether a count in the complaint states a claim under Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), we accept as true the allegations in the complaint, draw every reasonable inference in favor of the plaintiff, and determine whether the factual allegations plausibly suggest an entitlement to relief under the law." *Id.* at 457-458.

The relevant pleading in this case is the plaintiff's first amended complaint, filed on December 2, 2015. The claims against the Appeals Court fall into two basic categories: (1) claimed violations of various Federal rights pursuant to 42 U.S.C. § 1983; and (2) claimed violations of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 et seq. For both categories of claims, the plaintiff seeks monetary damages.

The plaintiff's § 1983 claims require little discussion. The Superior Court properly dismissed these claims because the Appeals Court is not a "person" amenable to suit under that statute. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 64 (1989). Moreover, sovereign immunity bars suits for

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<sup>2</sup> A more detailed summary of the procedural history of the case and the nature of plaintiff's claims against each of the defendants is contained in the Appeals Court's decision. See Bostwick v. 44 Chestnut Street, Wakefield, Mass., 99 Mass. App. Ct. 1107 (2021).

<sup>3</sup> In its decision as to the remaining defendants, the Appeals Court remanded claims against two defendants (Santander and Fannie Mae) to the Superior Court for further proceedings, and otherwise affirmed the dismissals. See Bostwick, 99 Mass. App. Ct. 1107.

damages against a State or its agencies under § 1983. Id. at 67; Lopes v. Commonwealth, 442 Mass. 170, 178 (2004).

The plaintiff's ADA claims against the Appeals Court also fail, but for different reasons. Under the ADA, a State court, such as the Appeals Court, may be held liable for violating a duty to accommodate a person with a disability in cases "implicating the fundamental right of access to the courts." Tennessee v. Lane, 541 U.S. 509, 533-534 (2004). In applying this principle, courts have drawn a distinction between a court's administrative functions, which may form the basis for liability under the ADA, and judicial conduct, which enjoys absolute immunity from suit. See Geness v. Administrative Office of Pa. Courts, 974 F.3d 263, 274 n.12 (3d Cir. 2020), cert. denied, 141 S. Ct. 2670 (2021) ("The parties do not present and we are not aware of any legal authority that would permit [the defendant] to be found liable [under the ADA] based on judicial conduct"); Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001) (ADA claims against judge barred by judicial immunity where allegations concerned judicial acts, rather than administrative or other functions). See generally LaLonde v. Eissner, 405 Mass. 207, 210 (1989) ("It is a well-settled principle under our common law, too well settled to require discussion, that every judge, whether of a higher or lower court, is exempt from liability to an action for any judgment or decision rendered in the exercise of jurisdiction vested in him [or her] by law" [citation and quotation omitted]). Moreover, the plaintiff cannot avoid the absolute immunity afforded to judicial conduct by naming the Appeals Court as a defendant, rather than an individual judge or judges. See Geness, 974 F.3d at 274 n.12; DiPasquale v. Miln, 303 F. Supp. 2d 430, 431-432 (S.D.N.Y. 2004) (adding housing court as named defendant did not "alter the result" that ADA claims based on judicial conduct were barred by absolute judicial immunity).

Here, the plaintiff's ADA claims against the Appeals Court were based in large part on quintessential judicial conduct, for instance, the court's dismissal of an appeal by the plaintiff for lack of prosecution, along with a single justice's refusal to vacate the dismissal, see Bostwick vs. Sims, Appeals Court, No. 2014-P-1277, and in another case, the issuance of a decision affirming a Superior Court judgment dismissing a civil suit brought by the plaintiff, see Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014). For the reasons discussed supra, claims under the ADA based on judicial conduct are barred by

absolute judicial immunity, and therefore, the Superior Court judge's dismissal of any such claims was proper.<sup>4</sup>

Viewing the allegations in the light most favorable to the plaintiff, and excluding allegations indisputably based on judicial conduct, there remain some allegations of conduct by Appeals Court personnel that we must address. For instance, the plaintiff alleges that on two occasions, he went to the Appeals Court clerk's office and expressed concern that if he filed an appeal in a case against a defendant who had filed for bankruptcy he would be in violation of the "automatic stay" imposed by Federal bankruptcy law. According to the plaintiff, the Appeals Court clerks "stated that the [a]ppellate [c]lock under Rule 4 has started and there is no way to [s]top [i]t." On another occasion, the plaintiff alleges that the Appeals Court "refused to take any papers" from him in connection with an appeal. Even taking these allegations as true, the Superior Court judge correctly concluded that these allegations did not suggest a plausible claim for relief under the ADA.

To state a claim under Title II of the ADA, a plaintiff must allege "(1) that he [or she] is a qualified individual with a disability; (2) that he [or she] was either excluded from participation in or denied the benefits of some public entity's services, programs, or activities or was otherwise discriminated against; and (3) that such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." Parker v. Universidad de Puerto Rico, 225 F.3d 1, 5 (1st Cir. 2000). Here, the complaint is devoid of factual allegations to support a conclusion that the actions of which the plaintiff complains constituted discrimination by or exclusion from access to the Appeals Court on the basis of a disability.<sup>5</sup>

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<sup>4</sup> The Superior Court judge did not base his dismissal of these claims on the ground of judicial immunity, but we may affirm on any basis apparent in the record. See, e.g., Lopes v. Commonwealth, 442 Mass. 170, 181 (2004); Gabbidon v. King, 414 Mass. 685, 686 (1993), and cases cited.

<sup>5</sup> In portions of the complaint, the plaintiff suggests that "discrimination" can be implied merely because the plaintiff is pro se and indigent, and because he is litigating against State agencies and large institutional defendants. We reject this blanket contention. To the extent that there are other claims against the Appeals Court that we have not addressed, we have not overlooked them; rather, they also fail to plausibly suggest a claim for relief, and we decline to discuss them.

In sum, we affirm the order of the Superior Court judge dismissing all claims against the Appeals Court.

So ordered.

The case was submitted on briefs.

Richard D. Bostwick, pro se.

Maura Healey, Attorney General, & Abigail Fee, Assistant Attorney General, for the Appeals Court.