STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL ANTHONY GRABINSKI,

Plaintiff-Appellant,

v

GOVERNOR, ATTORNEY GENERAL, DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, RICHARD A. HANDLON CORRECTIONAL FACILITY WARDEN, KEVIN R. CLINTON, AUDITOR GENERAL, and SECRETARY OF STATE,

Defendants-Appellees.

FOR PUBLICATION
October 15, 2019
9:20 a.m.

No. 339082
Court of Claims
LC No. 17-000001-MZ

Before: GLEICHER, P.J., and GADOLA and CAMERON, JJ.

PER CURIAM.

MCL 600.2963(8) precludes prisoners from filing new civil actions or civil appeals when they have outstanding court fees and costs from previous civil actions. The purpose of this provision is to limit serial frivolous lawsuits. This Court recently held, however, that the application of the statute is unconstitutional under certain circumstances. This case does not fall within that ambit. Accordingly, we uphold this Court's previous order and dismiss plaintiff's delayed application for leave to appeal.

I. BACKGROUND

In 2014, Michael Anthony Grabinski, a prisoner, filed an original action for habeas relief in this Court against the Kinross Correctional Facility Warden. This Court advised Grabinski that he was "responsible for paying [a] $375 fee and may not file another new civil appeal or original action in this Court until such time that either the Department of Corrections remits or plaintiff pays the entire outstanding balance due." *Grabinski v Kinross Correctional Facility Warden*, unpublished order of the Court of Appeals, entered March 2, 2015 (Docket No. 325955). This order was based on MCL 600.2963(8), which provides, "A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new

civil action or appeal until the outstanding fees and costs have been paid." Grabinski has yet to pay this obligation.

In 2017, Grabinski filed the current civil action in the Court of Claims against the governor, attorney general, secretary of state, auditor general, director of the corrections department, and the warden of the Richard A. Handlon Correctional Facility. Grabinski sought an injunctive order for the recovery of bonds, prevention of a prison transfer, release of withheld mail, and accommodation in a single-occupancy cell. In a separate "common law tort claim suit," Grabinski essentially asserted that he was a "Sovereign American" and therefore the state and federal government had no jurisdiction to hold him prisoner. The Court of Claims summarily dismissed the action for failure to comply with MCL 600.5507(2), which requires a prisoner litigant to "disclose the number of civil actions and appeals [he or she] has previously initiated."

Grabinski filed a delayed application for leave to appeal in this Court and concurrently filed a motion to waive the filing fee. This Court reminded Grabinski by letter that he was required to pay his outstanding balance of $375 from Docket No. 325955 or his current application would be dismissed pursuant to MCL 600.2963(8). Grabinski did not pay, and this Court dismissed his application for leave to appeal and denied his motion to waive fees as moot. *Grabinski v Governor*, unpublished order of the Court of Appeals, entered August 9, 2017 (Docket No. 339082).

Grabinski then sought relief from the Supreme Court and requested that his filing fees be waived in that Court as well. The Supreme Court initially denied Grabinski's motion to waive his fees and ordered that Grabinski be barred from filing further civil suits until his outstanding balance was paid. *Grabinski v Governor*, 901 NW2d 405 (2017). The Court subsequently vacated our order dismissing Grabinski's application and ordered this Court to reconsider our dismissal following our resolution of *In re Jackson* (Docket No. 339724). *Grabinski v Governor*, 503 Mich 868; 917 NW2d 83 (2018).

This Court has now resolved the appeal in *In re Jackson*. In *In re Jackson*, 326 Mich App 629, 631-632; 929 NW2d 798 (2018), this Court held that "MCL 600.2963(8) cannot constitutionally be applied to bar a complaint for superintending control over an underlying criminal case if the bar is based on outstanding fees owed by an indigent prisoner-plaintiff from an earlier case and the prisoner-plaintiff lacks funds to pay those outstanding fees."

II. ANALYSIS

As directed by the Supreme Court, we now reconsider this Court's dismissal of Grabinski's current application for leave to appeal based on his failure to pay outstanding fees in a prior appeal as directed by MCL 600.2963(8). This case is distinguishable from *Jackson* and the cases upon which *Jackson* relied. Accordingly, this Court properly dismissed Grabinski's application.

Jackson's holding was limited to the situation before it: the unconstitutional prohibition of an appeal in a case that was criminal in nature although designated as civil. In *Jackson*, 326 Mich App at 632, the prisoner-plaintiff filed an original complaint for superintending control in

this Court because the trial court in his criminal case failed to rule on a motion for reconsideration. The prisoner-plaintiff was required to file a separate civil action to force the criminal court's action because absent a final order in the criminal matter, the prisoner-plaintiff could not pursue a direct appeal. *Id*. at 636. The *Jackson* Court acknowledged that *Griffin v Illinois*, 351 US 12; 76 S Ct 585; 100 L Ed 2d 891 (1956), and a series of subsequent cases had deemed unconstitutional "legal rules that bar an indigent person from seeking review in a higher court because of an inability to pay filing fees or fees for the preparation of transcripts, particularly in the context of criminal appeals." *Jackson*, 326 Mich App at 635. This Court declined to be limited by "[f]ormalistic procedural labels," recognized the criminal nature of the superintending control complaint, and found unconstitutional MCL 600.2963(8)'s bar as applied. *Id*. at 636-637.

In *Jackson*, 326 Mich App at 638, the American Civil Liberties Union filed an amicus brief arguing "that application of MCL 600.2963(8) would be unconstitutional whenever it would bar an indigent prisoner from proceeding with a civil appeal or original action because of outstanding fees owed for an earlier civil case subject to MCL 600.2963." The *Jackson* panel declined to reach that issue, but noted that its opinion was "rooted in the heightened protection given to criminal defendants for access to the courts in criminal cases for purposes of securing the federal constitutional right to the appellate process." *Id*. The panel left "for another day" the issues of whether MCL 600.2963(8) could be used to block appellate access to an indigent prisoner "in a civil case that does not seek relief related to an underlying criminal case and that is not otherwise provided heightened protection for purposes of access to the courts (like termination of parental rights . . .) and whether application of MCL 600.2963(8) only to prisoners and not to indigent nonprisoners raises equal-protection concerns." *Id*.

Grabinski's current lawsuit sounds in tort; his claim is akin to a false imprisonment action. Grabinski is not seeking mandamus or superintending control to force the circuit court to act in an underlying criminal case. Accordingly, the holding in *Jackson* does not apply. And the reasoning in *Jackson* cannot be extrapolated to this case.

The holding in *Jackson* was based on "the heightened protection given to criminal defendants for access to the courts in criminal cases for purposes of securing the federal constitutional right to the appellate process." *Id*. at 638. Similar heightened protection is afforded to prisoners (and all parents) challenging the termination of their fundamental right to the care, custody, and management of their children. *Id*. at 635-636, citing *MLB v SLJ*, 519 US 102, 114; 117 S Ct 555; 136 L Ed 2d 473 (1996). In criminal and termination of parental rights cases, the indigent party is defending against a state effort to take away a fundamental or liberty interest. But "a constitutional requirement to waive court fees in *civil* cases is the *exception*, not the general rule." *MLB*, 519 US at 114 (emphasis added). In a general civil action, the state is not acting to take away a party's rights. Moreover, a civil litigant's status as a prisoner, without more, does not transform a civil action into a criminal matter entitled to heightened protection.

Ultimately, "fee requirements ordinarily are examined only for rationality" and a state's "need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement." *MLB*, 519 US at 123. Application of MCL 600.2963(8) to a typical or "mine run" civil case brought to this Court by a prisoner who owes outstanding fees to this Court for a prior case is not violative of constitutional due process or equal protection rights. The Legislature could

reasonably determine that prisoners are a group particularly likely to bring frivolous litigation. See, e.g., *Bruce v Samuels*, ___ US ___; 136 S Ct 627, 629-630; 193 L Ed 2d 496 (2016) (discussing Congress having enacted the Prison Litigation Reform Act of 1995 in reaction to a sharp rise in prisoner litigation); *Clifton v Carpenter*, 775 F3d 760, 767 (CA 6, 2014) ("There can be no doubt that reducing frivolous litigation is a legitimate state objective"); *Hughes v Tennessee Bd of Probation & Parole*, 514 SW3d 707, 721 (Tenn, 2017) (finding that a statutory provision similar to MCL 600.2963(8) had a rational basis of reducing frivolous lawsuits by prisoners). Accordingly, MCL 600.2963(8) has a rational basis in deterring frivolous prisoner litigation by requiring a prisoner to complete payment of outstanding fees to this Court for a prior civil case before being allowed to proceed with a new civil case in this Court.[1]

Cases may arise where a prisoner-plaintiff in a civil action could establish entitlement to an exception to MCL 600.2963(8). We will not speculate in this opinion about hypothetical scenarios in which this might occur. Under the circumstances of the current matter, MCL 600.2963(8) was not applied unconstitutionally.

We dismiss Grabinski's delayed application for leave to appeal.

/s/ Elizabeth L. Gleicher
/s/ Michael F. Gadola
/s/ Thomas C. Cameron

[1] We decline to address defendants' suggestion that we allow plaintiff an opportunity to plead "a prima facie case of either imminent harm or threat of physical injury," which could potentially entitle him to a constitutional exemption from MCL 600.2963(8). See *Mitchell v Federal Bureau of Prisons*, 587 F3d 415, 420; 388 US App DC 346 (2009). We discern nothing in Grabinski's application or the opinion and order appealed from that suggests any basis for concern in this regard. Thus, we leave for another panel to decide if a constitutional exception to the statute exists in such cases.