

STATE OF MICHIGAN  
COURT OF APPEALS

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EBONY CRYSTAL MALCOM,

Plaintiff-Appellant,

v

WAYNE CIRCUIT COURT JUDGE,

Defendant-Appellee.

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UNPUBLISHED  
October 17, 2017

No. 333397  
Wayne Circuit Court  
LC No. 15-012572-CZ

Before: SAAD, P.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant, a Wayne Circuit Court judge who previously presided over criminal proceedings involving plaintiff that resulted in several felony convictions. Plaintiff's complaint was based on defendant not dismissing the criminal cases for a lack of jurisdiction. The trial court ruled that defendant was entitled to summary disposition under MCR 2.116(C)(7) (judicial immunity and collateral attack). We affirm.

Six criminal cases were initiated against plaintiff in 2012 in Wayne Circuit Court. In May 2012, months before trial, plaintiff mailed a document titled, "Affidavit: In the Nature of Writ of Error Coram Nobis & A Demand For Dismissal or State the Proper Jurisdiction," to numerous public officials and entities, including the Wayne County Clerk's Office and the Wayne County prosecutor. The document was not entered into the register of actions and it does not appear that the prosecutor filed a response. On November 12, 2012, defendant heard argument on plaintiff's jurisdictional claim and entered an order denying her motion to dismiss for lack of jurisdiction. Following a jury trial, plaintiff was convicted of 39 offenses and received a departure sentence of 8 to 20 years' imprisonment for a conviction for operating a criminal enterprise. See *People v Malcom*, unpublished opinion per curiam of the Court of Appeals, issued July 17, 2014 (Docket No. 315265). This Court held that the sentence did not constitute an abuse of discretion. *Id.* It does not appear that plaintiff argued in that appeal that defendant erred by not dismissing the cases for a lack of jurisdiction. The Supreme Court denied plaintiff's application for leave to appeal. *People v Malcom*, 497 Mich 972; 859 NW2d 515 (2015).

In September 2015, plaintiff filed this case against defendant under 42 USC 1983<sup>1</sup>. She asserted that defendant had a “legal obligation” to dismiss the criminal cases when the prosecutor did not respond to “the Writ of Error Coram Nobis.” Plaintiff averred that defendant’s actions deprived her of due process as guaranteed by the United States Constitution. In March 2016<sup>2</sup>, defendant moved the trial court for summary disposition under MCR 2.116(C)(7), arguing that she was “absolutely immune from suit” because she “was acting within the scope of her judicial authority pursuant to MCL 691.1407(5).” Defendant also argued that plaintiff’s action was an improper collateral attack on her criminal convictions.

The trial court ruled that defendant was entitled to absolute immunity under MCL 691.1407(5) because plaintiff’s complaint “is based solely on activities during which [defendant] was plainly acting as a judge within the scope of her judicial authority.” The trial court indicated that summary disposition was also appropriate because “Plaintiff’s civil suit here is an impermissible collateral attack on her criminal convictions.”<sup>3</sup> This appeal followed.

We review de novo a trial court’s decision on a motion for summary disposition. *Mitan v Campbell*, 474 Mich 21, 23; 706 NW2d 420 (2005). In considering a motion for dismissal based on governmental immunity under MCR 2.116(C)(7), we review the evidentiary support such as affidavits, depositions, and admissions, as well as pleadings, to determine whether the claim is barred by immunity. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); see also MCR 2.116(G)(5). A complaint’s allegations are accepted as true unless contradicted by the defendant. *Id.* But a court does not need to accept as true a party’s “legal conclusions” when ruling on a subrule (C)(7) motion. *Davis v City of Detroit*, 269 Mich App 376, 379 n 1; 711 NW2d 462 (2005). We also review de novo the applicability of governmental immunity as a question of law. *Denhof v Challa*, 311 Mich App 499, 510; 876 NW2d 266 (2015).

The government tort liability act, MCL 691.1401 *et seq.*, states in pertinent part:

(5) A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to

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<sup>1</sup> 42 USC 1983 “provides a remedy for the violation of rights guaranteed by the federal constitution or federal statutes.” *York v Detroit (After Remand)*, 438 Mich 744, 757-758; 475 NW2d 346 (1991).

<sup>2</sup> Plaintiff attempted to serve defendant via certified mail at Wayne Circuit Court. However, defendant retired in December 2014 and plaintiff did not restrict delivery of the summons and complaint to defendant as required by MCR 2.105(A)(2). As a result, defendant did not learn of plaintiff’s action until February 2016.

<sup>3</sup> The trial court also agreed with defendant that summary disposition was appropriate under MCR 2.116(C)(3) for insufficient process. However, because dismissal on that ground would be without prejudice, MCR 2.102(E)(1), the court reasoned that summary disposition should be granted with prejudice under MCR 2.116(C)(7). For those reasons, we will not address plaintiff’s arguments that the trial court erred in granting summary disposition under subrule (C)(3).

persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority. [MCL 691.1407(5).]

MCL 691.1407(5) “provides certain high-ranking officials with absolute immunity from tort liability[.]” *Petipren v Jaskowski*, 494 Mich 190, 204; 833 NW2d 247 (2013). To establish absolute immunity under MCL 691.1407(5), “an individual governmental employee must prove . . . (1) that he or she is a judge, legislator, or the elective or highest appointive executive official of a level of government and (2) that he or she acted within the scope of his or her judicial, legislative, or executive authority.” *Id.*

Judicial immunity is also a common law doctrine. *Mundy v McDonald*, 216 Mich 444, 454; 185 NW 877 (1921) (“The principle that judges and courts of superior jurisdiction are immune from actions based upon judicial acts may be said to be as old as the beginning of the English common law.”). This Court has looked to principles of judicial immunity developed by the United States Supreme Court:

It is well settled that judges are accorded absolute immunity from liability for acts performed in the exercise of their judicial functions. See *Forrester v White*, 484 US 219, 225; 108 S Ct 538; 98 L Ed 2d 555 (1988). The United States Supreme Court has noted that absolute immunity serves the dual purposes of protecting the finality of judgments and preserving the judicial independence by “insulating judges from vexatious actions prosecuted by disgruntled litigants.” *Id.* The Court has further noted that the broad scope of the immunity is not intended to protect the malicious or corrupt wrongdoer, but instead is “ ‘for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.’ ” *Pierson v Ray*, 386 US 547, 554; 87 S Ct 1213; 18 L Ed 2d 288 (1967) (citations omitted). [*Diehl v Danuloff*, 242 Mich App 120, 128-129; 618 NW2d 83 (2000).]

The United States Supreme Court has also stated that “[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’ ” *Stump v Sparkman*, 435 US 349, 356-357; 98 S Ct 1099; 55 L Ed 2d 331 (1978) (citation omitted). Notably, the United States Supreme Court has held that a “local judge” was immune from liability under 42 USC 1983 for presiding over an “unconstitutional conviction.” *Pierson*, 386 US at 551-554.

Plaintiff argues that the trial court erred in ruling that defendant was entitled to immunity under MCL 691.1407(5) because she has been “clear, concise, and direct, in documenting facts and circumstances that supports her claims of violations and misconducts that are beyond the scope of the [defendant’s] judicial duties and authority.” Plaintiff fails to explain how defendant acted outside the scope of her judicial authority. Rather, plaintiff highlights purported errors made by defendant in ruling on plaintiff’s “extraordinary writ.” But errors do not deprive a judge of judicial immunity. *Stump*, 435 US at 356-357. We do not need to accept as true plaintiff’s legal conclusion that defendant’s actions constituted a violation of due process. See *Davis*, 269 Mich App at 379 n 1.

Accepting plaintiff's factual allegations as true, *Maiden*, 461 Mich at 119, it appears that the Wayne County prosecutor's office did not respond to plaintiff's writ, which defendant interpreted as a motion to dismiss for a lack of jurisdiction. But plaintiff provides no authority for the proposition that a trial court must grant a motion when the opposing party does not respond. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims . . . and then search for authority either to sustain or reject his position."). Plaintiff also fails to provide authority in support of her argument that defendant erred by not addressing each of the five "stand-alone issues" she raised in her motion. But, in any case, even if defendant erred in the handling of plaintiff's motion, she would still be entitled to judicial immunity. See *Stump*, 435 US at 356-357.

Further, plaintiff's claim that Wayne Circuit Court lacked jurisdiction in the criminal proceedings was meritless. MCL 762.2 provides in part that "[a] person may be prosecuted for a criminal offense he or she commits while he or she is physically located within this state . . . ." MCL 762.2(1). Defendant's criminal activities took place in Wayne County, *Malcom*, unpub op at 1; therefore, the State of Michigan had territorial jurisdiction to prosecute her. MCL 762.2(1). And Wayne Circuit Court had subject-matter jurisdiction over plaintiff's criminal cases as "Michigan circuit courts are courts of general jurisdiction and unquestionably have jurisdiction over felony cases." *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). Finally, Wayne Circuit Court had personal jurisdiction over plaintiff because she was bound over after a preliminary examination. See *People v Goecke*, 457 Mich 442, 458-459; 579 NW2d 868 (1998).

In sum, in denying plaintiff's jurisdictional claim in the criminal proceedings, defendant was acting within the scope of her judicial authority. Accordingly, she is entitled to absolute immunity from tort liability. See MCL 691.1407(5); *Petipren*, 494 Mich at 204. Further, plaintiff provides no authority supporting her assertions that defendant erred in ruling on her motion. Even assuming that defendant erred, she is entitled judicial immunity. See *Stump*, 435 US at 356-357; *Pierson*, 386 US at 553-554. Finally, Wayne Circuit Court had jurisdiction over the criminal offenses brought against plaintiff.

The trial court also correctly ruled that plaintiff's civil action was an impermissible collateral attack on her criminal convictions. "An impermissible collateral attack occurs whenever challenge is made to judgment in any manner other than through a direct appeal." *People v Iannucci*, 314 Mich App 542, 544-545; 887 NW2d 817 (2016) (internal quotation marks and citation omitted). The primary relief sought by plaintiff in the civil action was the dismissal "with prejudice" of her criminal cases. That requested relief is effectively an attack on the criminal convictions through a channel other than direct appeal. We also note that 42 USC

1983 is not a vehicle for challenging an underlying criminal conviction. See *Heck v Humphrey*, 512 US 477, 486-487; 114 S Ct 2364; 129 L Ed 2d 383 (1994); *Preiser v Rodriguez*, 411 US 475, 499; 93 S Ct 1827; 36 L Ed 2d 439 (1973).

Affirmed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Thomas C. Cameron