FILED
United States Court of Appeals
Tenth Circuit

December 26, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PAUL ANTHONY HATTON,

Plaintiff - Appellant,

v.

THE HONORABLE DOUGLAS L. COMBS, Justice of the Oklahoma Supreme Court; THE HONORABLE PATRICK WYRICK, Justice of the Oklahoma Supreme Court; THE HONORABLE TOM COLBERT, Justice of the Oklahoma Supreme Court; THE HONORABLE YVONNE KAUGER, Justice of the Oklahoma Supreme Court; THE HONORABLE JOHN F. REIF, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES R. WINCHESTER, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES E. EDMONSON, Justice of the Oklahoma Supreme Court; THE HONORABLE NOMA D. GURICH, Justice of the Oklahoma Supreme Court; THE HONORABLE JUDGE ROBERT DICK BELL; THE HONORABLE JUDGE LARRY E. JOPLIN; THE HONORABLE JUDGE KENNETH L. BUETTNER; THE HONORABLE JUDGE E. BAY MITCHELL; THE HONORABLE JUDGE BRIAN JACK GOREE; THE HONORABLE JUDGE BARBARA G. SWINDON, in their official capacities,

Defendants - Appellees.

No. 19-6067
(D.C. No. 5:18-CV-01219-C)
(W.D. Okla.)

ORDER

Before **LUCERO**, **O'BRIEN**, and **CARSON**, Circuit Judges.

This matter is before the court on appellant Paul Anthony Hatton's *Petition for Rehearing With Suggestion for Rehearing En Banc*. Also before us is Mr. Hatton's *Motion to Supplement the Record.*

Upon consideration, panel rehearing is denied by the original panel members. *See* Fed. R. App. P. 40. In addition, the *Petition* was also circulated to all the judges of the court in regular active service who are not disqualified. Fed. R. App. P. 35(a). As no judge on the original panel or the en banc court requested that a poll be called, the request for en banc rehearing is likewise denied.

In addition, the *Motion to Supplement the Record* is denied. The Clerk is directed to issue the mandate for this appeal forthwith. *See* Fed. R. App. P. 40.

Entered for the Court

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

FILED
United States Court of Appeals
Tenth Circuit

December 10, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PAUL ANTHONY HATTON,

Plaintiff - Appellant,

v.

THE HONORABLE DOUGLAS L. COMBS, Justice of the Oklahoma Supreme Court; THE HONORABLE PATRICK WYRICK, Justice of the Oklahoma Supreme Court; THE HONORABLE TOM COLBERT, Justice of the Oklahoma Supreme Court; THE HONORABLE YVONNE KAUGER, Justice of the Oklahoma Supreme Court; THE HONORABLE JOHN F. REIF, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES R. WINCHESTER, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES E. EDMONSON, Justice of the Oklahoma Supreme Court; THE HONORABLE NOMA D. GURICH, Justice of the Oklahoma Supreme Court; THE HONORABLE JUDGE ROBERT DICK BELL; THE HONORABLE JUDGE LARRY E. JOPLIN; THE HONORABLE JUDGE KENNETH L. BUETTNER; THE HONORABLE JUDGE E. BAY MITCHELL; THE HONORABLE JUDGE BRIAN JACK GOREE; THE HONORABLE JUDGE BARBARA G. SWINDON, in their official capacities,

Defendants - Appellees.

No. 19-6067
(D.C. No. 5:18-CV-01219-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **LUCERO**, **O'BRIEN**, and **CARSON**, Circuit Judges.

Paul Anthony Hatton appeals the district court order dismissing his pro se complaint for injunctive and declaratory relief under 42 U.S.C. § 1983 against the justices of the Oklahoma Supreme Court (OSC) and the judges of the Oklahoma Court of Civil Appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.[1]

Background

After an Oklahoma state district court entered summary judgment against Hatton in a lawsuit involving his mortgage, he filed an appeal in the OSC. The OSC designated the case as an accelerated appeal under Oklahoma Supreme Court Rule 1.36, which governs the procedure for appeals from summary judgments and other specified dismissal orders. R. at 119; *see* Okla. Sup. Ct. R. 1.36(a). Although the rule provides that briefs are generally not allowed in accelerated appeals, the OSC issued an order indicating that Hatton "may file a motion for leave to submit

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because Hatton is proceeding pro se, "we liberally construe [his] pleadings." *Braxton v. Zavaras*, 614 F.3d 1156, 1159 (10th Cir. 2010).

appellate briefs." R. at 269; *see* Okla. Sup. Ct. R. 1.36(g) (providing that "no briefs will be allowed" unless ordered by the court and that motions for leave to submit briefs "shall be deemed denied unless affirmatively granted by the court"). Hatton did not seek leave to file a brief in his appeal. Instead, he filed this action in federal court seeking both an injunction barring the state appellate court judges from enforcing Rule 1.36 in his appeal and a declaration that the rule is unconstitutional.

Defendants moved to dismiss the complaint for lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim. The district court dismissed Hatton's claims for injunctive relief under the Anti–Injunction Act (AIA), 28 U.S.C. § 2283. Then, weighing the five factors set forth in *State Farm Fire & Casualty Co. v. Mhoon*, 31 F.3d 979, 983 (10th Cir. 1994), the court concluded that Hatton was not entitled to declaratory relief. This appeal followed.

Discussion

1. Dismissal of Claims for Injunctive Relief

Hatton first argues the AIA does not bar his claims for injunctive relief and that the district court thus erred by dismissing his complaint on that basis. We agree that the AIA does not apply here, but we conclude that the district court nevertheless properly dismissed those claims.

We review de novo the district court's dismissal of a complaint for lack of subject-matter jurisdiction or for failure to state a claim upon which relief can be granted. *Trackwell v. U.S. Gov't*, 472 F.3d 1242, 1243 (10th Cir. 2007). Whether

the AIA bars Hatton's claims for injunctive relief is also a question of law that we review de novo. *Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004).

The district court determined that Hatton's claims for injunctive relief were barred under the AIA, which ordinarily prohibits injunctions against state-court proceedings. *See* § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."); *see also Mitchum v. Foster*, 407 U.S. 225, 228–29 (1972) (AIA imposes an absolute ban on federal injunctions against pending state court proceeding absent one of the recognized exceptions). In so concluding, the court determined that none of the exceptions to the AIA applied here.

Relying on *Mitchum*, Hatton argues that the AIA does not bar his claims because it does not bar federal courts from issuing injunctions in § 1983 actions. *See* 407 U.S. at 242–43 (§ 1983 is an Act of Congress that falls within § 2283's "expressly authorized" exception). But even if the AIA does not bar his claims for injunctive relief, § 1983 does: it expressly disallows injunctive relief against a judicial officer "for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." § 1983; *see also Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011) ("Although we have previously said that a plaintiff may obtain an injunction against a state judge under 42 U.S.C. § 1983, those statements were abrogated by the Federal Courts Improvement Act of 1996, which provides that injunctive relief against a

judicial officer shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.") (alterations and internal citations and quotation marks omitted). Hatton did not allege that defendants violated a declaratory judgment or that declaratory relief was unavailable.[2] Accordingly, we conclude that the district court properly determined that Hatton's claims for injunctive relief were barred, but for reasons other than those stated in the dismissal order. *See GF Gaming Corp. v. City of Black Hawk, Colo.*, 405 F.3d 876, 882 (10th Cir. 2005) (appellate court may affirm a dismissal order on any ground supported by the record, even grounds not relied on by the district court).

2. Denial of Claim for Declaratory Relief

We also reject Hatton's contention that the district court erred by denying his claim for declaratory relief.

Under the Declaratory Judgment Act, a district court "may declare the rights and other legal relations of [an] interested party seeking [declaratory relief]." 28 U.S.C. § 2201(a) (emphasis added). The five factors district courts consider in deciding whether to exercise their discretion to hear and decide claims for declaratory judgment are:

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[2] We note that the fact that Hatton did not prevail on his claim for declaratory relief does not mean declaratory relief was unavailable. *See Arndt v. Koby*, 309 F.3d 1247, 1255 (10th Cir. 2002) (explaining that "[t]he fact that [the plaintiff] ultimately has not prevailed on her section 1983 claim does not make it any less 'available' as a legal remedy"); *see also Prost v. Anderson*, 636 F.3d 578, 589 (10th Cir. 2011) (recognizing that the inquiry in determining whether a remedy is available is whether it provides "an adequate and effective remedial mechanism for testing" the plaintiff's argument, not whether the argument can prevail on the merits).

> [1] whether a declaratory action would settle the controversy; [2] whether it would serve a useful purpose in clarifying the legal relations at issue; [3] whether the declaratory remedy is being used merely for the purpose of procedural fencing or to provide an arena for a race to *res judicata*; [4] whether use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and [5] whether there is an alternative remedy which is better or more effective.

Mhoon, 31 F.3d at 983 (internal quotation marks omitted).

In reviewing a district court's denial of declaratory relief, we do "not engage in a *de novo* review of all the various fact-intensive and highly discretionary factors involved." *Id.* Rather, we ask only whether the district court's "assessment of them was so unsatisfactory as to amount to an abuse of discretion." *Id.* A district court abuses its discretion when its decision is "arbitrary, capricious, whimsical, or manifestly unreasonable," and we will reverse its decision only if we conclude the court "made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Mid-Continent Cas. Co. v. Vill. at Deer Creek Homeowners Ass'n*, 685 F.3d 977, 981 (10th Cir. 2012) (internal quotation marks omitted).

Here, the district court determined that the fourth and fifth *Mhoon* factors weighed in favor of denying Hatton's claim for declaratory relief. Specifically, it concluded that (1) any order for declaratory relief regarding the constitutionality of Rule 1.36 and the propriety of the state courts' application of that rule to Hatton's appeal would create friction between the federal and state courts and encroach on the OSC's exercise of its authority to adopt and enforce rules of procedure for Oklahoma courts; and (2) Hatton had another adequate remedy—he could seek leave to file a

brief in his state-court appeal pursuant to Rule 1.36(g) and raise his challenges to the rule in the OSC.

Hatton complains that the district court did not expressly consider the other *Mhoon* factors, and he maintains that the fact that his state-court appeal and federal suit are not "parallel declaratory judgment" proceedings with identical parties and claims requires a different result. Aplt. Opening Br. at 13. Contrary to Hatton's contention, however, there is no requirement that a district court consider "at least four and, usually, all [five] of the *Mhoon* factors," *id.* at 14, and no single factor in the declaratory judgment calculus is determinative, *United States v. City of Las Cruces*, 289 F.3d 1170, 1183 (10th Cir. 2002). True, in deciding whether a controversy would more appropriately be settled in a pending state court action and whether the federal declaratory judgment action would therefore serve no useful purpose (the first and second *Mhoon* factors), a district court should consider the proceedings' similarity. *City of Las Cruces*, 289 F.3d at 1183. But there is no requirement that the state and federal actions be identical, and their similarity is just one of the many considerations a federal court must balance when deciding whether to grant declaratory relief. *Id.* We find no abuse of discretion in the district court's conclusion that considerations of federalism, efficiency, and comity weighed against resolving Hatton's challenges to a state-court procedural rule in a federal declaratory judgment action.

Conclusion

We affirm the order dismissing Hatton's complaint. We deny as moot his motion for expedited disposition of the appeal and his request for leave to file supplemental facts in support of that motion. We grant Hatton's motion for leave to proceed on appeal without prepayment of costs or fees, and we remind him of his obligation to pay the full amount of the appellate filing and docketing fees.

Entered for the Court

Joel M. Carson III
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PAUL ANTHONY HATTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-18-1219-C
	)	
JUSTICES OF THE OKLAHOMA SUPREME COURT AND JUDGES OF THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Now before the Court is Defendants' Motion to Dismiss. (Dkt. Nos. 13, 15.[1]) Plaintiff filed a response (Dkt. No. 16), and Defendants did not file a reply. The motion is now at issue.

I. Background

Plaintiff is currently involved in a lawsuit in Oklahoma state court. Specifically, Plaintiff was sued in Garvin County over allegedly unpaid mortgage payments. See Embrace Home Loans v. Hatton, Case No. CJ-2017-97 (Garvin County, Okla.). After summary judgment was entered against him, he appealed his case to the Oklahoma Supreme Court. See Embrace Home Loans v. Hatton, Case No. SD 117581 (Okla. 2018.) That court then designated his case as an accelerated appeal under Oklahoma Supreme

[1] Defendants filed their Motion to Dismiss and Amended Motion to Dismiss on the same day. Defendants note that this was to include some exhibits that were inadvertently excluded on the original filing. See (Dkt. No. 15, p. 1, n. 1.) For purposes of this Order, the Court will rely on Defendants' Amended Motion to Dismiss.

Court Rule 1.36—which governs the appellate procedure for summary judgments and certain other specified dismissals. See Id.; See also 12 Okla. Stat. Rule 1.36. This rule involves many provisions, but the most relevant for this case is Rule 1.36(g), which prevents parties from filing appellate briefs "[u]nless otherwise ordered by the appellate court," and requires a party to file a motion for leave to submit an appellate brief. 12 Okla. Stat. Rule 1.36.

Plaintiff's state court appeal is ongoing, and is currently stayed until the resolution of this case. See Hatton, Case No. SD 117581 (Order Dated January 30, 2019.) To date, Plaintiff has not attempted to move the Oklahoma Supreme Court to grant him leave to submit an appellate brief. See generally Hatton, Case No. SD 117581. Nonetheless, he brought this action against the justices of the Oklahoma Supreme Court as well as the judges of the Oklahoma Court of Civil Appeals—all in their official[2] capacities—seeking (1) a declaration that Rule 1.36 is unconstitutional, and (2) an injunction barring Defendants from enforcing the rule against him. (Pl.'s Compl., Dkt. No. 1, p. 1, 69-73.) Defendants have moved to dismiss his claims, maintaining that Plaintiff is not entitled to the injunctive or declaratory relief he seeks. See (Dkt. No. 15.)

[2] Originally, Plaintiff had allegedly improperly served Defendants. See (Dkt. No. 9.) After Defendants raised the issue, Plaintiff made a subsequent attempt at service and believes he has cured it. See (Dkt. No. 17.) Because the case must be dismissed on other grounds, the Court finds that it need not address whether Plaintiff's subsequent service was sufficient.

II. Standard

The standard for consideration of motions to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(6) is set forth in the Supreme Court's decision in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007), and the subsequent decision in Ashcroft v. Iqbal, 556 U.S. 662 (2009). In those cases, the Supreme Court made clear that to survive a motion to dismiss, a pleading must contain enough allegations of fact which, taken as true, "state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. Plaintiffs must "nudge[] their claims across the line from conceivable to plausible" to survive a motion to dismiss. Id. Thus, the starting point in resolving the Motion is to examine the factual allegations supporting each claim that Defendant wishes the Court to dismiss. The Court will accept all well-pleaded factual allegations in the Complaint as true and construe them in the light most favorable to the nonmoving party. Peterson v. Grisham, 594 F.3d 723, 727 (10th Cir. 2010). However, conclusory allegations need not be accepted as true. Kansas Penn Gaming, LLC v. Collins, 656 F.3d 1210, 1214 (10th Cir. 2011).

III. Discussion

a. Injunctive Relief

Plaintiff first seeks injunctive relief against Defendants. But his claims may be invalid under the Anti-Injunction Act (the "Act"), which provides that:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.

The Act was conceived out of "respect for state courts." Smith v. Bayer Corp., 564 U.S. 299 (2011). Thus, the Act broadly requires that state courts "shall remain free from interference by federal courts." Atlantic Coast Line R. Co. v. Locomotive Engineers, 398 U.S. 281, 282, (1970). As laid out above, however, that principle is subject to "three specifically defined exceptions." Id. at 286. But those exceptions are narrow—they are "not [to] be enlarged by loose statutory construction." Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146 (1988) (alteration in original). Therefore, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." Atlantic Coast Line, 398 US at 297.

Here, Plaintiff has not identified any applicable exceptions to the rule that a federal court may not enjoin state court proceedings. Regardless, however, the Court finds that none of these exceptions apply in this case. Accordingly, the Court finds that Plaintiff is not entitled to injunctive relief.[3]

b. Declaratory Relief

Plaintiff also seeks declaratory relief against Defendants. When determining whether declaratory relief is appropriate, courts should ask:

> (1) whether a declaratory action would settle the controversy; (2) whether it would serve a useful purpose in clarifying the legal relations at issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race to res judicata "; (4) whether use of a declaratory action would increase friction between our

[3] Notably, Defendants offer multiple theories in support of the dismissal of Plaintiff's claims. See (Dkt. No. 15.) Because the Court finds that the claims must be dismissed under the Act, however, the Court finds that it need not address Defendants' other arguments.

federal and state courts and improperly encroach upon state jurisdiction; and (5) whether there is an alternative remedy which is better or more effective.

State Farm Fire & Cas. Co. v. Mhoon, 31 F.3d 979 (10th Cir. 1994).

The Court finds that these factors weigh in favor of denying declaratory relief. First, Plaintiff has an alternative remedy—he could raise this issue before the Oklahoma Supreme Court directly. Moreover, because all defendants are state court judges, any declaratory relief from this Court would certainly create friction between the federal and state courts and improperly encroach upon the state court's jurisdiction. Finally, the relief Plaintiff seeks would not settle any controversy—it would actually create a new one and disrupt many ongoing appeals within the State of Oklahoma. This is particularly true in light of this Court's finding above that it may not enjoin Defendants in this suit. Thus, any declaratory relief would only cause needless confusion. In sum, the Court finds that Plaintiff's request for declaratory relief should be denied.

CONCLUSION

For these reasons, (1) Defendants Motion to Dismiss (Dkt. Nos. 13, 15) is GRANTED, and this case is DISMISSED. Accordingly, (1) Plaintiff's Motion for Preliminary Injunction and Declaratory Relief (Dkt. No. 3); (2) George Mothershed's Motion to Intervene as Party Intervenor-Plaintiff (Dkt. No. 5); (3) Plaintiff's Motion for Leave to File Motion for Rule 23 Class Certification (Dkt. No. 7); and (4) Plaintiff's Motion to Continue Stay (Dkt. No. 11) are all DENIED as MOOT.

IT IS SO ORDERED this 1st day of April, 2019.

ROBIN J. CAUTHRON
United States District Judge