No. 20-

In the
Supreme Court of the United States

JOHN E. GROVE,

Petitioner,

v.

STEPHEN A. GROOME,
an individual, BUENA VISTA
SANITATION DISTRICT, and the
CHAFFEE COUNTY DISTRICT
COURT,

Respondents.

On Petition For a Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

COGSWELL LAW OFFICES
JOHN M. COGSWELL
Attorney for Petitioner
P.O. Box 1430
Buena Vista, CO 81211
(303) 887-3923
suzanne.cogswelllaw@gmail.com

QUESTION PRESENTED FOR REVIEW

Circumstances. The Chaffee County District Court ("Colorado district court"), the appellate court for reviewing small claims court judgments, deprived Petitioner John E. Grove ("Grove") of his constitutional and statutory right to appeal a $7,041.00 attorney fee judgment entered by the small claims court against Grove in favor of the sanitation district. Grove received no relief from Colorado courts. He filed for violation of the Civil Rights Act and the Fifth Amendment in the U.S. District Court for the District of Colorado ("district court"). The district court dismissed Grove's claim against the Colorado district court on the grounds there was no authority to sue the Colorado district court. The Tenth Circuit affirmed the district court's dismissal of Grove's claims against the Colorado district court not because Grove had no authority to assert the claims but because he did not have a protected property interest.

Question for Review. Does Grove have an interest in his property which is protected by the Fifth and Fourteenth Amendments such that he has a civil rights claim and takings claim against a state district court which deprived Grove of his right to appeal a $7,041.00 small claims court attorney fee judgment against him and thereby allowed the sanitation district using a judgment lien to take $7,041.00 of Grove's money?

RELATED CASES STATEMENT

John Grove v. Stephen A. Groome, Buena Vista Sanitation District, Chaffee County District Court, No. 19-1228, 817 Fed. Appx. 551 (10th Cir. 2020), Tenth Circuit Court of Appeals. Judgment entered on July 15, 2020. Petition for Rehearing denied on July 7, 2020.

John Grove v. Stephen A. Groome, Buena Vista Sanitation District, Chaffee County District Court, No. 18-CV-1571, 2018 WL 10879451 (D. Colo.). Judgment entered on December 4, 2018. Order denying Motion for New Trial and to Vacate Judgment entered on May 29, 2019.

John E, Grove v. Buena Vista Sanitation District, No. 2015 CV 5, Chaffee County District Court, State of Colorado. No judgment ever entered.

TABLE OF CONTENTS

Page

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

OPINIONS BELOW

The official and unofficial reports of the opinions and orders entered in the case by courts are:

John Grove v. Stephen A. Groome, Buena Vista Sanitation District, Chaffee County District Court, 817 Fed. Appx. 551 (10th Cir. 2020) (not selected for publication).

Tenth Circuit Order, dated July 7, 2020, denying Grove's petition for rehearing.

John Grove v. Stephen A. Groome, Buena Vista Sanitation District, Chaffee County District Court, 2018 WL 10879451 (D. Colo.).

STATEMENT OF JURISDICTION

The Tenth Circuit's jurisdiction was invoked under 28 U.S.C. § 1254(1). The Tenth Circuit's opinion was rendered on June 2, 2020. Grove's petition for rehearing was timely filed and denied on July 7, 2020 which by letter of the clerk of the court for the Tenth Circuit was made effective July 15, 2020. The time for filing this Petition as extended by the Court's March 19, 2020 order is December 4, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

> …nor shall any person…be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. …nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…"

Colorado Rules of Civil Procedure 519 for Small Claims Court

"…appeal procedure shall be as provided in Section 13-6-410…and C.R.C.P. 411."

C.R.S. § 13-6-310(1)

Appeals from final judgments and decrees of the county court [includes small claims court] shall be taken to the district court for the judicial district in which the county court entering such judgment is located. Appeal shall be based upon the record made in the county court.

C.R.S. § 13-6-410(1)

An appeal of a claim. A record shall be made of all small claims court proceedings, and either the plaintiff or defendant may appeal pursuant to county court rules. Upon appeal, all provisions of laws and rules concerning appeals from the county court shall apply, including right to counsel….

If either party in a civil action believes that the judgment of the county court is in error, that party may appeal to the district court by filing a notice of appeal in the county court within 14 days after the date of entry of judgment….

Colorado Constitution Article II Section 6

Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice shall be administered without sale, denial or delay.

Suing Courts, 79 U. of Chi. L. Rev. 553, 560-600 (2012).

Right to Appeal, 91 N.C.L. Rev. 1219 (2013).

STATEMENT OF CASE

Jurisdiction

The basis for federal jurisdiction in the court of first instance was 28 U.S.C. § 1331 and 42 U.S.C. § 1343(a)(3). Grove's claim against the Colorado district court was that his property was taken by the Colorado district court by depriving Grove of due process and his right to appeal without just compensation in violation of the Fifth and Fourteenth Amendments.

Material Facts

In January 2015, Grove, acting *pro se*, filed a complaint in small claims court against the sanitation district for $5,330.00 in damages for violating his constitutional due process rights and disregarding its own regulations by requiring him to purchase an additional sewer tap. On March 6, 2015, after a brief hearing, the small claims court dismissed his complaint without prejudice based on lack of standing and the absence of jurisdiction. The small claims court did not enter a judgment.

The small claims court also granted the sanitation district leave to file a motion for attorney fees. On April 20, 2015, the small claims court awarded the sanitation district attorney fees and entered judgment accordingly. The judgment included a ruling made by the small claims court that collection on the judgment was conditioned on appeal. ("If you file an appeal, the attorney's fees will be stayed

until your appeal is addressed.") The sanitation district filed a judgment lien against Grove's property.

Grove timely appealed the judgment to the Colorado district court under applicable rules and law. The Colorado district court deprived Grove of his right to appeal by doing nothing, with respect to such appeal despite repeated requests. Grove's efforts to obtain relief from other Colorado courts by *mandamus* and otherwise were denied and rebuked without hearing or reason.

Colorado district court

All of Grove's efforts to obtain judicial relief were of no help and none of the Colorado courts made any ruling on whether Grove was entitled to an appeal and whether he had been deprived of that right. Not a single Colorado court made any decision as to whether Grove had a right to appeal nor explain why his right to appeal had been ignored. To this day no reason has ever been given by any state or federal court as to why Grove was deprived of his right to appeal or why he has never been given a hearing on this subject, nor an explanation why he was deprived of his appeal.

Once the small claims court entered the attorney fee judgment against Grove, the sanitation district filed a lien on Grove's property and collected the full amount of $7,041.00 when Grove sold his property even though he had never had any review as to whether the judgment was valid.

The case for making the right to appeal a due process right is set forth in the *Right to Appeal,* 91 N.C.L. Rev. 1219 (2013) and was never questioned by any Colorado or federal court.

Case law provides that deprivation of due process occurs when a defendant's conduct exposes a plaintiff to "the arbitrary exercise of the powers of government" or denies an individual "protection…against arbitrary action of government." *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998); *Parratt v. Taylor*, 451 U.S. 527, 535 (1981) and *West v. Atkins*, 487 U.S. 42, 48 (1988). Further, the "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). No such protection or opportunity was given to Grove.

The small claims court judgment became a nullity because of the absence of process as outlined above. Such absence of process was also present in the proceedings before the Colorado district court further depriving Grove of his property and right to appeal, both of which deprivations were protected by his right to due process. In *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010), this court said, "a void judgment is a legal nullity" and "… it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final…" In law, the attorney fee judgment against Grove was a nullity when he was deprived of his right to appeal.

Federal District Court

In 2018, Grove filed a complaint in the district court. Grove's claim against the Colorado district court was that it deprived him of: (1) due process; (2) his right to appeal the attorney fee judgment; and (3) his property, all in violation of the Fifth and Fourteenth Amendments. Pursuant to Rule 12(b)(6), the district court dismissed Grove's complaint against the Colorado district court because Grove provided no legal authority to support his takings claim despite his citation of *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, 560 U.S. 702, 704 (2010). Grove appealed to the Tenth Circuit.

The Tenth Circuit

The Tenth Circuit, relying on *West Virginia CWP Fund v. Stacy*, 671 F.3d 378, 386 (4th Cir. 2011) and *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1339-40 (Fed. Cir. 2011) (*en banc*), held that the Colorado district court's taking of Grove's property "does not create an unconstitutional taking because the award does not infringe a property interest within the meaning of the Takings Clause." *Grove v. Groome*, 817 Fed. Appx. at 557. The Tenth Circuit further said:

> But even if a takings claim could otherwise lie against a court, a money award would trigger the Fifth Amendment's Takings Clause only if he had a protected property interest. He doesn't, so this claim was properly dismissed.

Id. at 557.

The Tenth Circuit confirmed the district court's dismissal of Grove's takings claim for two reasons. First, the court found that Grove's "award [*obligation*] to pay money does not create an unconstitutional taking because the award does not

infringe a property interest within the meaning of the Takings Clause." The Tenth Circuit did not show why Grove had an obligation or an "award to pay" a judgment as to which he received no appeal.

The Tenth Circuit's cited authorities do not support its first conclusion. Each of the U.S. Supreme Court cases it cited dealt with the legislative imposition of an obligation to pay money. Such obligations stand in stark contrast to takings in a judicial proceeding of identifiable property such as Grove's $7,041.00. In those cited cases, this Court held that, while legislative impositions of an obligation to pay money relating to compensation were not takings, taking claims were not prohibited in a case where there was an identifiable property interest. *Stacy* at 386. The Tenth Circuit also relied on *Commonwealth Edison*, a case which also involved a legislative imposition of an obligation to pay related to compensation. *Commonwealth Edison* held that "taking cases, in which the Government is alleged to have taken property without just compensation under the Fifth Amendment," can constitute a taking of property requiring compensation under *Lucas v. South Caroline Coastal Council*, 505 U.S. 1003, 1027-28 (1992). As *Commonwealth Edison* said:

> In short, while a taking may occur when a specific fund of money is involved, the mere imposition of an obligation to pay money, as here, does not give rise to a claim under the Takings Clause of the Fifth Amendment.

Id. at 1340. A "specific fund of money" is involved here, meaning that the Tenth Circuit's reliance on *Stacy* and *Commonwealth Edison* is inappropriate.

Furthermore, the Tenth Circuit's supporting cases have no relevance here because the small claims court imposed a judgment on Grove adorned with all the protections of the law associated with whether the judgment was appropriate. Grove's property was clearly protected: (1) by his right to appeal that judgment; (2) by the small claims court ruling that the judgment was not subject to execution until there had been an appeal; and (3) by the Fifth and Fourteenth Amendments. No court should be able to deprive a judgment debtor of his due process right to appeal the judgment. To do so would be arbitrary and illegal unless the appeal was dismissed which was not the case here.

The Tenth Circuit's backup argument was:

> But even if a takings claim could otherwise lie against a court, a money award would trigger the Fifth Amendment's Takings Clause only if he had a protected property interest. He doesn't, so this claim was properly dismissed.

This far-fetched position should be disregarded. The Tenth Circuit gave no reason whatsoever why Grove's interest was not protected. Grove clearly had a protected property interest. He owned the $7,041.00 and was protected by the Fifth and Fourteenth Amendments from any taking of that money without due process. In this case, the Colorado district court's action enabled the sanitation district to take money belonging to Grove because of what the Colorado district court did and is responsible for all foreseeable consequences of depriving Grove of his right to appeal. The Tenth Circuit brushed this off as though a deprivation of due process involving a small amount of money was a waste of its time or to protect the Colorado district court and the district court from their egregious errors.

Reasons for Allowance of Writ

First, the Tenth Circuit plainly disregarded the rulings of the court in *Stacy* and *Commonwealth Edison.* As a fallback, it made an arbitrary and erroneous conclusion that Grove did not have a protected interest in his $7,041.00.

Second, while the Tenth Circuit did not question *Stop the Beach*, as did the district court, which ignored that case, *Stop the Beach* was a plurality decision and it would benefit the law if it were reviewed by this Court and decided by a majority decision.

Third, Grove has been denied due process by every single court, state and federal, that has looked at this case. Grove has never had a hearing and he has never been provided an explanation why he has been denied his right to appeal. It is time for this Court to remedy the injustice that has occurred and teach these lower courts a lesson.

ARGUMENT

I. The Tenth Circuit has wrongfully sanctioned (1) the unconstitutional deprivation of Grove's property, right to due process and right to appeal and (2) the irresponsible, arbitrary and injudicious actions of lower courts which allowed such deprivations.

The Colorado district court deprived Grove of his constitutional and due process right to have a review of a small claims court judgment thereby allowing the sanitation district to take Grove's property. The Colorado Supreme Court and Colorado Court of Appeals were irresponsible in allowing this to happen. The federal district court dismissed Grove's claim for damages against the Colorado district court based on the Fifth and Fourteenth Amendments. Its reason for doing

this was that Grove had no authority for such a claim. Yet, Grove did have authority to assert his claim against the Colorado district court based on *Stop the Beach*. The Tenth Circuit, with no rational basis whatsoever and in disregard of the rulings in the very cases it cited, *Stacy* and *Commonwealth Edison*, affirmed on the grounds that Grove had no protected interested in his money taken. In fact, Grove doubts any other Federal Circuit would agree with it.

Whether a plaintiff can claim takings or other damages against a state court that has allowed a third-party to take property of the plaintiff by depriving the plaintiff of his due process rights and right to review is an important question of federal law that has not been, but should be, settled by this Court.

COGSWELL LAW OFFICES
JOHN M. COGSWELL
Attorney for Petitioner
P.O. Box 1430
Buena Vista, CO 81211
(303) 887-3923
suzanne.cogswelllaw@gmail.com

7300\23394\USSupCt\902353-Cogswell-Grove-Petition.JMC-FINAL

APPENDIX A

817 Fed.Appx. 551
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 10th Cir. Rule 32.1.
United States Court of Appeals, Tenth Circuit.

John GROVE, Plaintiff-Appellant,

v.

Stephen A. GROOME; Buena Vista Sanitation District; Chaffee County District Court, Defendants-Appellees.

No. 19-1228
|
FILED June 2, 2020

Synopsis

Background: Individual brought action against Colorado county district judge in his personal capacity, municipal sanitation district, and county district court, raising claims arising from county district court litigation in which individual unsuccessfully challenged sanitation district's requirement that he buy additional sewer tap. The United States District Court for the District of Colorado, Michael E. Hegarty, United States Magistrate Judge, dismissed complaint with prejudice for lack of subject-matter jurisdiction and for failure to state claim, 2018 WL 10879451, and denied individual's motion for relief from judgment and motion to amend judgment, the latter of which the District Court converted from motion for new trial, 2019 WL 9244881. Individual appealed.

Holdings: The Court of Appeals, Bacharach, Circuit Judge, held that:

dismissal of individual's § 1983 claim against county district judge for damages should have been without prejudice insofar as *Rooker-Feldman* doctrine precluded jurisdiction over claim;

injunction against county district judge was unavailable under § 1983 insofar as individual had not asserted claim against him in his official capacity;

individual failed to state claim against sanitation district under federal statutory subsection regarding conspiracies to interfere with civil rights by obstructing justice or intimidating parties, witnesses, or jurors insofar as individual acknowledged in complaint that sanitation district had not acted in concert with county district judge;

award of attorneys' fees by county district court had not violated Fifth Amendment's Takings Clause;

the District Court had not been required to wait to permit amendment of complaint before entering judgment;

denial of motion for relief from judgment had been proper; and

denial of motion to amend judgment had been proper insofar as individual had failed to identify any issues that could not have been raised earlier.

Ordered accordingly.

***553** (D.C. No. 1:18-CV-01571-MEH) (D. Colorado)

Attorneys and Law Firms

John M. Cogswell, Cogswell Law Offices, P.C., Buena Vista, CO, for Plaintiff-Appellant

Amy Christine Colony, Office of the Attorney General for the State of Colorado, Denver, CO, for Defendants-Appellees Stephen A. Groome, Chaffee County District Court

William Thomas O'Connell, III, Katherine M. L. Pratt, Wells Anderson & Race, Denver, CO, for Defendant-Appellee Buena Vista Sanitation District

Before BACHARACH, BALDOCK, and PHILLIPS, Circuit Judges.

ORDER AND JUDGMENT*

Robert E. Bacharach, Circuit Judge

*554 This case began when a municipal sanitation district required the plaintiff, Mr. John Grove, to buy an additional sewer tap. He objected and sued the sanitation district in small claims court. He lost, appealed to the county district court, and sought various forms of relief in the state court of appeals and the state supreme court. When these efforts failed, Mr. Grove turned to federal district court, suing the county district judge, his court, and the sanitation district.

The federal district court dismissed the suit, and Mr. Grove unsuccessfully sought post-judgment relief. He appeals both the dismissal and denial of post-judgment relief. We conclude that the federal district court should have made the dismissal without prejudice on the claim for damages against the county district judge. In all other respects, however, we affirm.

1. The Claims Against the County District Judge

In suing the county district judge, Mr. Grove invoked 42 U.S.C. § 1983 and sought both damages and an injunction. The federal district court concluded that (1) the county district judge enjoyed immunity from damages and (2) an injunction was unavailable because Mr. Grove had disavowed an official-capacity claim and declaratory relief could have provided a remedy on a proper showing.

Damages. On the claim for damages, we must ensure that the federal district court had subject-matter jurisdiction. *Gillmor v. Thomas*, 490 F.3d 791, 797 (10th Cir. 2007). Jurisdiction is absent under the Rooker-Feldman doctrine when an appellant seeks reversal based on the invalidity of a state-court judgment. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp*, 544 U.S. 280, 283-84, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (Rooker-Feldman doctrine is jurisdictional); *Miller v. Deutsche Bank Nat'l Tr. Co. (In re Miller)*, 666 F.3d 1255, 1261 (10th Cir. 2012) (Rooker-Feldman doctrine applies to challenges involving the correctness of a state-court judgment).

The Rooker-Feldman doctrine precludes federal jurisdiction over the claim for damages against the county district judge. This claim stems from the county district judge's alleged error in dismissing Mr. Grove's appeal of the award of attorneys' fees to the sanitation district. To prevail on this claim, Mr. Grove needed to show that the county district judge had erred in dismissing his appeal. Mr. Grove could challenge the ruling by appealing in state court, not by asking the federal district court to award damages based on the county district judge's error. 28 U.S.C. § 1257.

Mr. Grove argues that the Rooker-Feldman doctrine doesn't apply because the county district judge never reviewed his submissions or expressly dismissed his appeal of the fee award. But the county district judge dismissed the appeal and denied Mr. Grove's motions seeking reconsideration of the dismissal, and the state appellate courts declined further review. Given these rulings, Mr. Grove cannot *555 avoid the Rooker-Feldman doctrine even if the county district judge had initially failed to consider the submissions or to expressly dismiss the appeal of the fee award.

But the applicability of the Rooker-Feldman doctrine affects this disposition. Because the doctrine is jurisdictional, the dismissal of this claim should have been without prejudice. *Garner v. Gonzales*, 167 F. App'x 21, 24 (10th Cir. 2006) (unpublished); *see Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) (noting that dismissal for lack of jurisdiction must be without prejudice).

Injunction. Mr. Grove sought not only damages but also an injunction. The requested injunction would be prospective and wouldn't disrupt the state courts' rulings, so the injunction would not implicate the Rooker-Feldman doctrine. *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1237-38 (10th Cir. 2006).

Given our jurisdiction over the injunction claim, we conduct de novo review. *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505, 507 (10th Cir. 1991). In applying de novo review, we conclude that the federal district court correctly dismissed the injunction claim because (1) Mr. Grove had sued the county district judge only in his personal capacity and (2) declaratory relief was available.

Injunctions are available under § 1983 only against public entities and public officers sued in their official capacities. *Brown v. Montoya*, 662 F.3d 1152, 1161 n.5 (10th Cir. 2011). So Mr. Grove "agrees with the [federal] District Court that an injunction claim is against a judge in his official capacity." Appellant's Opening Br. at 22. But Mr. Grove did not sue the county district judge in his official capacity. To the contrary, Mr. Grove insisted that he had "meticulously avoided any claims against [the county district judge] in his official capacit[y]." Appellant's App'x, vol. 1 at 112. Given Mr. Grove's insistence that he hadn't asserted an official-capacity claim, he could not obtain an injunction against the county district judge.

Even if Mr. Grove had sued the county district judge in his official capacity, an injunction would remain unavailable. To obtain an injunction, Mr. Grove needed to show that declaratory relief was unavailable. 42 U.S.C. § 1983.

Mr. Grove argues that he had alleged the unavailability of declaratory relief by unsuccessfully urging the state court to address his appeal on the merits. For the sake of argument, we may assume that those efforts could be construed as requests for declaratory relief. But even so, Mr. Grove has not shown declaratory relief was unavailable; he has shown only that he did not prevail. More is required to show the unavailability of declaratory relief. *See Prost v. Anderson*, 636 F.3d 578, 589 (10th Cir. 2011) (recognizing, in the context of 28 U.S.C. § 2255 motions, that the availability of a remedy turns on whether it provides "an adequate and effective remedial mechanism for testing" the claimant's argument, rather than whether the claimant can prevail on the merits); *see also Arndt v. Koby*, 309 F.3d 1247, 1255 (10th Cir. 2002) (explaining that the failure to prevail on a "claim does not make it any less 'available' as a legal remedy").[1]

2. The Claims Against the Sanitation District

Mr. Grove sued not only the county district judge but also the sanitation district. ***556** Mr. Grove claimed that the sanitation district had (1) deprived him of due process by improperly opposing many of his filings and (2) conspired with the county district judge to disallow an appeal of the attorneys' fee award.

Due Process. Like any defendant, the sanitation district was allowed to oppose relief; its opposition did not constitute a deprivation of due process.

Mr. Grove argues that the sanitation district's attorney violated Colorado Rule of Civil Procedure 11. But this rule simply authorizes sanctions, not civil liability.

Mr. Grove relies not only on the Colorado rule but also on *Bottone v. Lindsley*, 170 F.2d 705 (10th Cir. 1948). There we noted that it's "conceivable" that misuse of the state judicial process could result in a denial of due process. 170 F.2d at 707. We added, however, that this possibility could exist only if "the state court proceedings ... have been a complete nullity, with a purpose to deprive a person of his property without due process of law." *Id.*

Mr. Grove contends that the state-court proceedings were a nullity because he was unable to obtain consideration of his appeal of the fee award. We disagree. Proceedings could constitute a nullity only if they were "legally void." *Nullity*, Black's Law Dictionary (11th ed. 2019). Proceedings do not become legally void simply because the court erred. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010) (" 'A judgment is not void ... simply because it is or may have been erroneous.' ") (quoting *Hoult v. Hoult*, 57 F.3d 1, 6 (1st Cir. 1995)). We've never held that a party's objection resulted in a denial of due process or rendered a state-court proceeding a nullity. To do so would violate the fundamental "principle that 'no action lies against a party for resort to civil courts.' " *Lucsik v. Bd. of Educ.*, 621 F.2d 841, 842 (6th Cir. 1980) (per curiam) (quoting *United States Steel Corp. v. United Mine Workers of Am.*, 456 F.2d 483, 492 (3d Cir. 1972)).

Mr. Grove's allegations in the complaint show that he could press his arguments in both the county district court and in the state appellate courts. Even if the county district court had erred in treating the appeal as untimely or in failing to expressly rule on timeliness of the fee appeal, we'd lack any basis to regard the state-court proceedings as a complete nullity.

Conspiracy. Mr. Grove also alleged conspiracy, invoking 42 U.S.C. § 1985(2). To recover, Mr. Grove needed to show that at least two persons acted in concert. *Brooks v. Gaenzle*, 614 F.3d 1213, 1227-28 (10th Cir. 2010). But Mr. Grove acknowledged in the complaint that the county district judge and sanitation district had not acted in concert. Appellant's App'x, vol. 1 at 21.

Mr. Grove argues that (1) he didn't need to show concerted action and (2) the court could not decide the issue through a motion to dismiss. We reject both arguments.

In denying the need to show concerted action, Mr. Grove points to *Snell v. Tunnell*, 920 F.2d 673 (10th Cir. 1990). *Snell* said that an express agreement was unnecessary. 920 F.2d at 702. But both before and after *Snell*, we had expressly required concerted action for claims under § 1985. *Abercrombie v. City of Catoosa*, 896 F.2d 1228, 1230 (10th Cir. 1990); *Brooks*, 614 F.3d at 1227-28.

Mr. Grove also argues that in ruling on a motion to dismiss, the court could not preclude the possibility of concerted action.

But in the complaint, Mr. Grove conceded that concerted action was absent. This concession was fatal.

*557 Even if Mr. Grove had shown concerted action, he would have had to show that the conspiracy was targeting him based on class-wide or racial discrimination. *Smith v. Yellow Freight Sys., Inc.*, 536 F.2d 1320, 1323 (10th Cir. 1976). Though the district court did not rely on the absence of class-wide or racial discrimination, the court could have relied on these grounds to dismiss the conspiracy claim against the sanitation district. *A.M. ex rel. F.M. v. Holmes*, 830 F.3d 1123, 1146 n.11 (10th Cir. 2016).[2] Given the absence of any allegations involving class-wide or racial discrimination, amendment of the complaint would have been futile.

3. The Claim Against the County District Court

Mr. Grove also sued the county district court, claiming that the award of attorneys' fees constituted a violation of the Fifth Amendment's Takings Clause. But an award to pay money does not create an unconstitutional taking because the award does not infringe a property interest within the meaning of the Takings Clause. *See W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 386 (4th Cir. 2011); *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1339-40 (Fed. Cir. 2001) (en banc).[3]

Mr. Grove argues that a takings claim can lie against a court, relying on *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702, 713-15, 130 S.Ct. 2592, 177 L.Ed.2d 184 (2010). But even if a takings claim could otherwise lie against a court, a money award would trigger the Fifth Amendment's Takings Clause only if he had a protected property interest. He doesn't, so this claim was properly dismissed.

4. Mr. Grove's Motion Under Rule 60(b)(6)

After the federal district court entered judgment, Mr. Grove moved under Rule 60(b)(6) to obtain leave to amend the complaint. He hoped to add an official-capacity claim against the county district judge for acting in concert with the sanitation district. The federal district court denied relief.

Timing of the Federal Judgment. On appeal, Mr. Grove argues that the federal district court should have either waited to enter judgment or allowed relief from the judgment to permit amendment of the complaint. In reviewing this argument, we apply the abuse-of-discretion standard. *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1242 (10th Cir. 2006). The district court did not abuse its discretion. The federal rules of civil procedure do not contain any requirement for the district court to wait before entering a judgment.

Amendment of the Complaint. Mr. Grove contends that the county district court should have applied the liberal standard for amendment of the complaint. But if Mr. Grove wanted to amend, he needed to submit the proposed amendment. D.C.COLO.LCivR 15.1(b).

Mr. Grove failed to submit a proposed amended complaint with his post-judgment *558 motion. So the federal district court did not abuse its discretion in denying the post-judgment motion.

Even if Mr. Grove had amended the complaint, it would have remained subject to dismissal for two reasons: (1) The availability of declaratory relief would have prevented entry of an injunction even if the county district judge had been sued in his official capacity, and (2) Mr. Grove had conceded the absence of concerted action.

Mr. Grove now says that he would have amended to allege a conscious commitment to a common scheme. But in federal district court, Mr. Grove didn't explain how he could satisfy the element of concerted action in light of his earlier concession. Absent such an explanation, the district court did not abuse its discretion in denying leave to amend the complaint.

5. Mr. Grove's Motion for a New Trial

Mr. Grove also unsuccessfully moved for a new trial in federal district court. But the federal district court hadn't conducted a trial. So the court construed the motion as one to amend the judgment under Federal Rule of Civil Procedure 59(e) and denied relief.

We review this ruling under the abuse-of-discretion standard. *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997). The court did not abuse its discretion. Rule 59(e) is unavailable for matters that were or could have been presented earlier. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Mr. Grove failed to identify any issues that couldn't have been raised earlier. So the court didn't abuse its discretion in denying the Rule 59(e) motion.

6. Disposition

We remand with instructions to dismiss without prejudice the claim for damages against the county district judge. In all other respects, we affirm the dismissal and denial of the post-judgment motions.

All Citations

817 Fed.Appx. 551

Footnotes

* Oral argument would not materially help us to decide this appeal. We have thus decided the appeal based on the appellate briefs and the record on appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).
This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

1 Mr. Grove says that the federal district court should have discussed the underlying facts, but he does not explain how that discussion would affect the availability of declaratory relief.

2 Mr. Grove acknowledges that the sanitation district raised this issue in the motion to dismiss. Appellant's Reply Br. at 21. But he contends that we can't affirm on this ground because the district court didn't rely on it. *Id.* Mr. Grove is mistaken. We can affirm on any ground supported by the record. *See* text accompanying note.

3 *Stacy* and *Commonwealth* involved legislative awards rather than judicial awards. But the reasoning would apply equally to judicial awards.

End of Document

APPENDIX B

2018 WL 10879451
Only the Westlaw citation is currently available.
United States District Court, D. Colorado.

John GROVE, Plaintiff,

v.

Stephen A. GROOME, Buena Vista Sanitation District, and Chaffee County District Court, Defendants.

Civil Action No. 18-cv-01571-MEH
|
Signed 12/04/2018

Attorneys and Law Firms

John M. Cogswell, Cogswell Law Offices, P.C., Buena Vista, CO, for Plaintiff.

Amy Christine Colony, Colorado Attorney General's Office, Katherine M.L. Pratt, William Thomas O'Connell, III, Wells Anderson & Race, LLC, Denver, CO, for Defendants.

ORDER

Michael E. Hegarty, United States Magistrate Judge.

***1** Before the Court are two Motions to Dismiss Plaintiff John Grove's Complaint. Defendant Buena Vista Sanitation District ("BVSD") filed its motion on August 17, 2018. ECF No. 13. Defendants Chaffee County District Court and Judge Stephen A. Groome (collectively, the "Judicial Defendants") filed a separate motion on September 12, 2018. ECF No. 25. In this suit, Plaintiff seeks damages and injunctive relief due to alleged deprivations of his constitutional rights. He asserts these deprivations occurred when Defendants denied him the right to appeal an award of attorneys' fees entered against him during litigation in the Colorado state court system. Plaintiff's Complaint asserts six claims[1] against the various Defendants. Collectively, the two motions seek to dismiss the entire complaint. For the reasons that follow, I **grant** both motions.

BACKGROUND

I. Statement of Facts

The following are factual allegations (as opposed to legal conclusions, bare assertions, or merely conclusory allegations) made by Plaintiff in the Complaint, which are taken as true for analysis under Fed. R. Civ. P. 12(b)(6) pursuant to *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff initiated the Colorado state court litigation in January 2015, when he filed a complaint in Colorado small claims court that alleged BVSD violated his constitutional rights and its own regulations by requiring him to purchase an additional sewer tap at the cost of $5,330. Compl. ¶ 5, ECF No. 1. On March 6, 2015, the small claims court issued an order that dismissed the suit without prejudice and permitted BVSD leave to file a motion for attorneys' fees. *Id.* ¶ 6. On March 15, 2015, Plaintiff filed a motion for reconsideration and a motion "to reopen the evidence" in the small claims court. *Id.* ¶ 7. BVSD opposed the motions and separately moved for the court to award attorneys' fees. *Id.* On April 20, 2015, the court issued an order that "declin[ed] to hear" Plaintiff's motion to reconsider and awarded BVSD $7,041 in attorneys' fees. *Id.*

Plaintiff alleges that on May 4, 2015, he appealed the March 6, 2015 order dismissing his suit and the April 20, 2015 order awarding attorneys' fees to Defendant Chaffee County District Court. *See id.* ¶¶ 3, 9. Defendant Stephen A. Groome presided over that matter. *See id.* ¶ 3. On June 16, 2015, BVSD filed a motion to dismiss the appeal, arguing that it was untimely, because it was not filed within fourteen days of the underlying order, as is required under Colorado law. *Id.* ¶ 11. On July 16, 2015, the district court granted the motion to dismiss the appeal, because it was not timely filed. *Id.* This order did not mention Plaintiff's appeal of the award of attorneys' fees. *Id.*

Plaintiff then embarked on a lengthy series of appeals of the district court order that dismissed his appeal. In these subsequent appeals, Plaintiff argued the district court never addressed his appeal of the April 20, 2015 order that awarded attorneys' fees against him. *Id.* ¶ 12. Plaintiff argues that this aspect of the appeal to the district court was timely, and the court erred when it did not recognize this. *See id.*

***2** First, on July 27, 2015, Plaintiff filed a motion to reconsider in the district court, which it denied. *Id.* On October 9, 2015, he filed a motion for hearing on the order denying reconsideration, which the district court also denied. *Id.* ¶ 13. On October 6, 2015, he sought a writ of mandamus from the Colorado Supreme Court, which that court denied

two days later. *Id.* ¶ 15. On October 30, 2015, he filed a petition for certiorari with the Colorado Supreme Court, which it denied on June 20, 2016. *Id.* ¶ 16. On November 12, 2015, Plaintiff filed a motion for attorneys' fees and costs in the district court and requested a hearing; *id.* ¶ 17; the district court denied the motion on December 8, 2015. *Id.* On June 27, 2016, Plaintiff moved the district court to enter judgment in his favor and vacate the award of attorneys' fees against him, which it denied. *Id.* ¶ 18. On August 19, 2016, Plaintiff filed another petition for writ of mandamus from the Colorado Supreme Court. *Id.* ¶ 19. After that was denied, he filed another petition for certiorari in the same court, which it also denied. *Id.* ¶¶ 19–20.

On December 9, 2016, BVSD collected the award of attorneys' fees from Plaintiff, *see id.* ¶ 21, but that did not bring his attempts to have the award overturned to an end. On June 13, 2017, he filed another motion in the district court, because, he argued, the district court never reached a decision on his appeal of the award of attorneys' fees. *Id.* ¶ 22. The district court denied this motion on August 4, 2017. *Id.* ¶ 23. On September 11, 2017, Plaintiff appealed this decision to the Colorado Court of Appeals. *Id.* ¶ 24. BVSD moved to dismiss the appeal on September 26, 2017, and the court granted BVSD's motion on October 6, 2017. *Id.*

II. Procedural History

Plaintiff filed this suit on June 22, 2018. ECF No. 1. In his Complaint, Plaintiff asserts six claims for relief against the various Defendants, although he has voluntarily abandoned the fourth claim. *See* ECF No. 18. The remaining claims are: Claim One against Judge Groome for violation of his right to due process under 42 U.S.C. § 1983; Claim Two against BVSD for violation of his right to due process under § 1983; Claim Three against BVSD and Judge Groome for conspiring to violate his right to equal protection of the law under 42 U.S.C. § 1985(2); Claim Five against Chaffee County District Court for a violation of the Takings Clause; and Claim Six against all Defendants for attorneys' fees under 42 U.S.C. § 1988(b). Defendants now submit the present Motions to Dismiss that collectively seek to dismiss all the claims.

LEGAL STANDARD

I. Fed. R. Civ. P. 12(b)(1)

Rule 12(b)(1) empowers a court to dismiss a complaint for "lack of subject matter jurisdiction." Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff's case, but only a determination that the court lacks authority to adjudicate the matter. *See Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994) (recognizing federal courts are courts of limited jurisdiction and may only exercise jurisdiction when specifically authorized to do so). A court lacking jurisdiction "must dismiss the cause at any stage of the proceeding in which it becomes apparent that jurisdiction is lacking." *Full Life Hospice, LLC v. Sebelius*, 709 F.3d 1012, 1016 (10th Cir. 2013). A Rule 12(b)(1) motion to dismiss must be determined from the allegations of fact in the complaint, without regard to mere conclusory allegations of jurisdiction. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001). The burden of establishing subject matter jurisdiction is on the party asserting jurisdiction. *Butler v. Kempthorne*, 532 F.3d 1108, 1110 (10th Cir. 2008). Accordingly, Plaintiff in this case bears the burden of establishing that the Court has jurisdiction to hear his claims.

Generally, Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction take two forms. *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995).

> First, a facial attack on the complaint's allegations as to subject matter jurisdiction questions the sufficiency of the complaint. In reviewing a facial attack on the complaint, a district court must accept the allegations in the complaint as true.
>
> ***3** Second, a party may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends. When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations. A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1). In such instances, a court's reference to evidence outside the pleadings does not convert the motion to a Rule 56 motion.

Id. at 1002–03 (citations omitted). The present motion launches a facial attack on this Court's subject matter jurisdiction; therefore, the Court will accept the truthfulness of the Complaint's factual allegations for its Rule 12(b)(1) analysis.

II. Fed. R. Civ. P. 12(b)(6)

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556

U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff pled facts which allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id. Twombly* requires a two-prong analysis. First, a court must identify "the allegations in the complaint that are not entitled to the assumption of truth," that is, those allegations which are legal conclusions, bare assertions, or merely conclusory. *Id.* at 678–80. Second, the Court must consider the factual allegations "to determine if they plausibly suggest an entitlement to relief." *Id.* at 681. If the allegations state a plausible claim for relief, such claim survives the motion to dismiss. *Id.* at 680.

Plausibility refers "to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.' " *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012) (quoting *Robbins v. Oklalahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008)). "The nature and specificity of the allegations required to state a plausible claim will vary based on context." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). Thus, while the Rule 12(b)(6) standard does not require that a plaintiff establish a prima facie case in a complaint, the elements of each alleged cause of action may help to determine whether the plaintiff has set forth a plausible claim. *Khalik*, 671 F.3d at 1191.

However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. The complaint must provide "more than labels and conclusions" or merely "a formulaic recitation of the elements of a cause of action," so that "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.' " *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the complaint has made an allegation, "but it has not shown that the pleader is entitled to relief." *Id.* (quotation marks and citation omitted).

DISCUSSION

*4 Of the five remaining claims, Plaintiff asserts two against BVSD.[2] He also asserts one claim against Judge Groome and one claim against Chaffee County District Court. The remaining claim is for an award of attorneys' fees under 42 U.S.C. § 1988(b).

I. Claims Against BVSD

Plaintiff asserts his second and third claims for relief against BVSD. The second claim is under 42 U.S.C. § 1983 and alleges BVSD deprived Plaintiff of his constitutional right to due process. Plaintiff's theory for asserting this claim lies in BVSD's opposition to his numerous appeals throughout the Colorado state court system. The third claim is under 42 U.S.C. § 1985(2). This claim also names Judge Groome as a Defendant and alleges they conspired to deprive Plaintiff of the equal protection of the law.

A. Claim Two Under 42 U.S.C. § 1983

BVSD asks me to dismiss Plaintiff's second claim for a denial of due process, because his own allegations indicate he received an abundance of process throughout the Colorado state court system. BVSD's Resp. 3–4, ECF No. 13 ("Plaintiff has had what can only be described as copious amounts of process."). However, I find dismissal of this claim is warranted for a different reason.

Plaintiff's theory for alleging that BVSD deprived him of a constitutional right lies in its opposition to his numerous appeals. For example, Plaintiff alleges that "BVSD filed a[ ] ... brief in opposition to [his]" November 12, 2016 motion in district court. Compl. ¶ 17. Similarly, Plaintiff alleges that BVSD filed a brief in opposition to his June 27, 2016 motion to enter judgment in his favor in the district court. *Id.* ¶ 18. Plaintiff argues BVSD "knew [he] was entitled to [an] appeal and opposed all efforts of [Plaintiff] to realize his appeal right." Pl.'s Resp. to Def. BVSD's Mot. to Dismiss 5, ECF No. 19. He further argues BVSD "had a duty to tell the district court that [Plaintiff] was entitled to an appeal but it did not do this." *Id.* at 2. From this opposition, Plaintiff asserts that BVSD deprived him of his right to due process. *See* Compl. ¶ 41 ("BVSD filed papers with the ... courts to deprive [Plaintiff] of his right to appeal secured by the ... constitutional right to due process by refusing to acknowledge [his] timely appeal and opposing [his] efforts to obtain review of the ... attorney fee judgment against him.").

Plaintiff does not support his theory that a party that opposes an appeal thereby deprives the opposing party of a right to

due process with any citation to legal authority, nor have I found any that supports such a claim. Plaintiff's argument that BVSD "refused to acknowledge" his right to appeal and "took positions contrary to the facts and in violation of the law," *id.* ¶ 4, simply does not support a claim that BVSD deprived him of a right to due process. Therefore, I dismiss Plaintiff's second claim under 42 U.S.C. § 1983 for failure to state a claim.

B. Claim Three Under 42 U.S.C. § 1985(2)

*5 Plaintiff brings his third claim under 42 U.S.C. § 1985(2). That statute provides in relevant part:

> [I]f two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws ... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 1985(2)–(3).

Here, Plaintiff argues "[Judge] Groome and ... BVSD conspired for the purpose of hindering, obstructing, or defeating the due course of justice ... with intent to deny [Plaintiff] ... the equal protection of the law ...." Compl. ¶ 45. However, Plaintiff's own allegations undermine this claim. He explicitly alleges BVSD and Judge Groome did not make an agreement with the intent to deprive him of the equal protection of the law. Compl. ¶ 47 ("[Judge] Groome and ... BVSD conspired, not in the sense that they made an agreement, but because they had a single objective ...."). He further concedes "there is no evidence that there was any such agreement between the parties." Pl.'s Resp. to Def. BVSD's Mot. to Dismiss 6.

Nevertheless, Plaintiff argues BVSD and Judge Groome are liable under this statute, because "they had a single objective ... to deny [Plaintiff] the right to appeal the April 20, 2015 attorney fee judgment even though they did not act in concert or know the details of the plan ...." Compl. ¶ 47. But, Plaintiff's allegation that BVSD and Judge Groome "did not act in concert" defeats this claim. To state a claim under § 1985 " 'a plaintiff must allege specific facts showing an agreement and concerted action amongst the defendants' because '[c]onclusory allegations of conspiracy are insufficient to state a valid § 1983 claim.' " *Brooks v. Gaenzle*, 614 F.3d 1213, 1228 (10th Cir. 2010) (alteration in original) (quoting *Tonkovich v. Kan. Bd. of Regents*, 159 F.3d 504, 533 (10th Cir. 1998)). This applies equally to § 1985 claims. *See id.* at 1227–28 ("[The Tenth Circuit] ha[s] generally held a federal conspiracy action brought under either [§ 1983 or § 1985] requires at least a combination of two or more persons acting in concert and an allegation of a meeting of the minds, an agreement among the defendants, or a general conspiratorial objective."). Here, Plaintiff alleges no "specific facts" showing an agreement, and in fact concedes no such agreement existed. For these reasons, I grant both Defendants' motion to dismiss this claim.

II. Claims Against the Judicial Defendants

A. Claim One Under 42 U.S.C. § 1983

Plaintiff's first claim against Judge Groome asserts that the judge deprived him of his due process right to appeal the attorneys' fees judgment against him. Compl. ¶¶ 31–38 ("[Judge] Groome had a duty under 42 U.S.C. § 1983 not to deprive [Plaintiff] of his right to appeal."). Plaintiff asserts the claim against Judge Groome "in his individual capacity," *id.* ¶ 34, and seeks attorneys' fees, damages, declaratory relief, "a permanent injunction enjoining [Judge] Groome from ever again denying any person his or her constitutional right of appeal," and "an order compelling [Judge] Groome, when requested by a party, to hold a hearing for a period of five years on every dispositive motion filed in any case over which he presides," *id.* ¶ 38.

*6 First, Plaintiff states explicitly that this claim is asserted against Judge Groome in his individual capacity. Pl.'s Resp. to Mot. to Dismiss by Judicial Defs. 5, ECF No. 26 ("[Plaintiff] has meticulously avoided asserting any claims against [Judge] Groome undertaken in his official capacities."). However, this forecloses any right to injunctive relief. *Brown v. Montoya*, 662 F.3d 1152, 1161 n.5 (10th Cir. 2011) ("Section 1983 plaintiffs may sue individual-capacity defendants only for money damages and official-capacity defendants only for injunctive relief."). Section 1983 does provide for injunctive relief against a judicial officer acting in his judicial capacity if "a declaratory decree was violated or declaratory relief was unavailable." These circumstances are not present here. Plaintiff does not allege that Judge Groome violated a declaratory decree in his Complaint. While Plaintiff does allege "declaratory relief was unavailable to [him]," Compl. ¶ 37, this allegation is a legal conclusion that is not entitled to the presumption of truth, *Iqbal*, 556 U.S. at 678 ("[T]he tenet that a court must accept as true all of the allegations contained

in a complaint is inapplicable to legal conclusions."); *see Catanach v. Thomson*, 718 F. App'x 595, 599 (10th Cir. 2017) (finding a plaintiff's claim for injunctive relief against a judicial officer barred by section 1983 where he did "not allege ... declaratory relief was unavailable"). Plaintiff's argument that declaratory relief was unavailable, because he did not get that relief while litigating in the Colorado state court system, *see* Pl.'s Resp. to Mot. to Dismiss by Judicial Defs. 7, is unavailing. Just because he did not get the relief he sought does not mean it was unavailable.

To the extent this claim seeks damages, it is also barred, because Judge Groome is entitled to judicial immunity. "A long line of [the Supreme Court's] precedents acknowledges that, generally, a judge is immune from a suit for money damages." *Mireles v. Waco*, 502 U.S. 9, 9 (1991). This immunity is overcome only when a judge acts "in the complete absence of all jurisdiction" or when taking "nonjudicial actions." *Id.* at 11–12.

Here, Plaintiff attempts to argue that Judge Groome "is not personally immune from suit," because his actions "were not taken in [his] judicial capacity or because this lawsuit arises from his action in complete absence of all jurisdiction ...." Compl. ¶ 34. This argument is meritless. *See Banks v. Geary Cty. Dist. Court*, 645 F. App'x 713, 717 (10th Cir. 2016) (dismissing an argument that a state judge presiding over a state prosecution was acting in absence of jurisdiction). Plaintiff alleges Judge Groome presided over his appeal in Colorado district court from a Colorado county court. Compl. ¶¶ 3, 8–9. This is the proper method of appeal in Colorado. *See* Colo. Rev. Stat. § 13-6-310(1). There is no reasonable dispute that Judge Groome was acting within his jurisdiction at the relevant time, and he is immune from Plaintiff's first claim to the extent it seeks damages. *See Banks*, 645 F. App'x at 717 (finding a plaintiff could not "reasonably dispute" a judge's jurisdiction). Therefore, I dismiss this claim.

To be perfectly clear, I unambiguously recognize Plaintiff's argument. Plaintiff argues that Judge Groome was not acting in a judicial capacity and was acting in complete absence of jurisdiction, because he never explicitly ruled on Plaintiff's appeal of the award of attorneys' fees entered against him. Pl.'s Resp. to Mot. to Dismiss by Judicial Defs. 9 ("[Judge] Groome never made a decision relating to [Plaintiff's] appeal of the attorney fee judgment and, as such, it was his inaction for which [Plaintiff] seeks relief based both upon 'non-judicial actions' and ... actions ... taken in the complete absence of all jurisdiction."). But I conclude that this allegation does not strip Judge Groome of his entitlement to judicial immunity. "Although unfairness and injustice to a litigant may result on occasion, 'it is a general principle of the highest importance to the proper administration of justice that a judicial officer ... shall be free to act upon his own convictions, without apprehension of personal consequences to himself.' " *Mireles*, 502 U.S. at 10 (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872)). A judicial act in error does not mean that the act was not in a judicial capacity. *Id.* at 12–13 ("If judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error ....' " (quoting *Stump v. Sparkman*, 435 U.S. 349, 356 (1978)).

B. Claim Five Under the Takings Clause

*7 Plaintiff's fifth claim asserts a Takings Clause violation against Chaffee County District Court. Under this claim, Plaintiff seeks the $7,041 he paid to BVSD plus "all of the attorney fees" he incurred. Compl. ¶ 55. In response to this claim, the district court argues that "Plaintiff provides no established legal theory for recognizing a Takings Clause claim here, where the alleged 'taking' was Plaintiff's satisfaction of an obligation to pay attorneys' fees as imposed by the state court." Judicial Defs.' Mot. to Dismiss 17, ECF No. 25. I agree with the Judicial Defendants.

To support this claim, Plaintiff baldly asserts that "[t]he State of Colorado, whether acting by the legislative or judicial branches of its government, cannot take private property without just compensation." Compl. ¶ 54. However, Plaintiff provides no legal authority that supports a Takings Clause claim for a monetary payment of an award of attorneys' fees to satisfy a judgment entered against him. Such a result would mean that any award of attorneys' fees against a litigant in favor of the government is also an unconstitutional taking. This is plainly not the case. I therefore dismiss this claim.

III. Claim Six Against All Defendants

Plaintiff's last claim seeks an award of attorneys' fees, but this claim cannot stand independently. "Section 1988 was intended to complement the various acts that create federal claims for relief for violations of federal civil rights. Without a violation of another federal civil rights statute, § 1988 does not provide an independent right of action." *Shields v. Shetler*, 682 F. Supp. 1172, 1175 (D. Colo. 1988) (citation omitted). I have dismissed all of Plaintiff's other claims, and this claim cannot provide an independent right of action. Therefore, I dismiss this claim too.

CONCLUSION

Plaintiff does not state a cognizable claim against any Defendant. Therefore, BVSD's Motion to Dismiss [filed August 17, 2018; ECF No. 13] and the Judicial Defendants' Motion to Dismiss [filed September 12, 2018; ECF No. 25] are **granted**. The Clerk of the Court is **ORDERED** to close this case.

All Citations

Slip Copy, 2018 WL 10879451

Footnotes

1 Plaintiff has voluntarily abandoned his fourth claim for aiding and abetting, which he asserted against BVSD. *See* ECF No. 18.

2 I note that BVSD does not assert sovereign immunity as a defense to Plaintiff's claims under 42 U.S.C. §§ 1983 and 1985. The Supreme Court has refrained from deciding whether "Eleventh Amendment immunity is a matter of subject-matter jurisdiction ...." *Wis. Dept. of Corr. v. Schacht*, 524 U.S. 381, 391 (1998). While a court may raise the issue of sovereign immunity sua sponte, *see V-1 Oil Co. v. Utah State Dep't of Pub. Safety*, 131 F.3d 1415, 1420 (10th Cir. 1997), it is not required to do so, *Nelson v. Geringer*, 295 F.3d 1082, 1098 (10th Cir. 2002) ("[J]udicial consideration of Eleventh Amendment issues sua sponte is discretionary, not mandatory."). "Unless the State raises the matter, a court can ignore it." *Wis. Dept. of Corr.*, 524 U.S. at 389. Therefore, I do not address this issue.

End of Document

APPENDIX C

FILED
United States Court of Appeals
Tenth Circuit

July 7, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOHN GROVE,

Plaintiff - Appellant,

v.

STEPHEN A. GROOME, et al.,

Defendants - Appellees.

No. 19-1228
(D.C. No. 1:18-CV-01571-MEH)
(D. Colo.)

ORDER

Before **BACHARACH**, **BALDOCK**, and **PHILLIPS**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk