Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 9, 2020
Certiorari to the Court of Appeals, 2019CA737 District Court, El Paso County, 2018CV238	
Petitioner: David K. Jenner, **v.** **Respondents:** Colorado Department of Corrections, Canteen Correctional Industries, and Time Computation Departments.	Supreme Court Case No: 2020SC550
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 9, 2020.

COLORADO COURT OF APPEALS DATE FILED: June 11, 2020

Court of Appeals No. 19CA0737
El Paso County District Court No. 18CV238
Honorable Eric Bentley, Judge

David K. Jenner,

Plaintiff-Appellant,

v.

Colorado Department of Corrections, Canteen Correctional Industries and Time Computation Departments,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE RICHMAN
Dunn and Yun, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 11, 2020

David K. Jenner, Pro Se

Vaughan & DeMuro, David R. DeMuro, Denver, Colorado, for Defendants-Appellees

¶ 1 In this civil action, plaintiff, David K. Jenner appeals a district court judgment granting the C.R.C.P. 12(b)(5) motion to dismiss filed by defendants, the Colorado Department of Corrections (DOC), and two of its departments, Canteen Correctional Industries and the Time Computation Department. Jenner also appeals an award of attorney fees to defendants. We affirm.

I. Background

¶ 2 Jenner is an inmate in the custody of the DOC. In 2018, proceeding pro se, he sued defendants, asserting claims pursuant to C.R.C.P. 57, 42 U.S.C. § 1983 (2018),[1] Colorado's Uniform Declaratory Judgments Law and State Administrative Procedure Act, and the Due Process Clauses of the United States and Colorado Constitutions.

¶ 3 In his complaint, Jenner claimed that the DOC had violated (1) his procedural due process rights; and (2) section 17-24-126, C.R.S. 2019, as well as DOC Admin. Reg. 200-11(IV)(J), by failing to operate the canteen for the exclusive benefit of inmates.

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[1] Jenner has not appealed the dismissal of his § 1983 claim, and we do not address it.

¶ 4 In support of this claim, Jenner alleged that the DOC was selling televisions to inmates that were only fully operable with a remote. He further alleged that after he had purchased a television, the DOC prohibited the possession of remotes. Jenner also alleged that the canteen had discontinued the sale of name-brand chips in favor of generic chips that came in reduced quantities at higher prices. He asserted that the DOC's actions were calculated to maximize profits, to the detriment of inmates.

¶ 5 Jenner also claimed that the DOC had improperly calculated his parole eligibility date. In support of this claim, he alleged that the DOC calculated his parole eligibility date pursuant to section 17-22.5-403(2), (3), C.R.S. 2019, and that this section should not have been applied because it is unconstitutionally vague.

¶ 6 Jenner sought compensatory and punitive damages for his claims concerning the canteen, and declaratory and injunctive relief with respect to both claims.

¶ 7 In response, the defendants filed a Rule 12(b)(5) motion to dismiss, which the district court granted. The court concluded that Jenner had not alleged a violation of any constitutionally protected

property right, and that neither section 17-24-126 nor regulation 200-11 created fiduciary duties for the DOC, or a private right of action to enforce such duties. The district court also denied Jenner's claim regarding his parole eligibility date. In connection with the dismissal of these claims, the court awarded attorney fees pursuant to section 13-17-201, C.R.S. 2019. Jenner now appeals the dismissal of his claims and the award of attorney fees.

II. Standard of Review and Pleading Requirements

¶ 8 We review a district court's ruling on a Rule 12(b)(5) motion de novo, accepting the complaint's factual allegations as true and viewing them in the light most favorable to the plaintiff. *Scott v. Scott*, 2018 COA 25, ¶ 17.

¶ 9 To survive a Rule 12(b)(5) motion to dismiss, a complaint must state a "plausible" claim for relief, raising the prospect of obtaining relief above a "speculative level." *Warne v. Hall*, 2016 CO 50, ¶ 9 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)). Under this standard, while we accept the factual allegations underlying the claim as true, "facts pleaded as legal conclusions

(i.e., conclusory statements) are not entitled to the assumption that they are true." *Scott*, ¶ 19.

¶ 10 Jenner asserts that because he proceeded pro se, his allegations should have been liberally construed and he should not have been held to *Warne*'s "heightened" pleading standard. *See People v. Bergerud*, 223 P.3d 686, 696-97 (Colo. 2010). However, "pro se litigants are bound by the same rules of civil procedure as attorneys licensed to practice law in this state." *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004). Pro se parties must therefore fulfill basic pleading requirements. *See People v. Cali*, 2020 CO 20, ¶ 34 (noting that courts need not rewrite pleadings for pro se litigants); *People v. Vogel*, 2020 COA 55, ¶ 23. We reject Jenner's claim that *Warne*'s standard is so "heightened" as to be entirely inapplicable to pro se parties.

III. Claims

A. Procedural Due Process

1. Law

¶ 11 Constitutional due process protections limit the state's ability to infringe upon a person's substantive and procedural rights. U.S. Const. amends. V, XIV; *see also* Colo. Const. art. 2, § 25; *M.S. v.*

People, 2013 CO 35, ¶ 9. However, procedural due process protections apply only when the state has deprived a person of constitutionally recognized liberty or property interests. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 570 (1972). Therefore, to state a claim for a procedural due process violation, a litigant must allege that he has a protected interest, and that the state deprived him of that interest without adequate procedural safeguards. *Paul v. Davis*, 424 U.S. 693, 710-11 (1976); *Citizen Ctr. v. Gessler*, 770 F.3d 900, 916 (10th Cir. 2014); *M.S.*, ¶ 10. Such an interest may arise from the guarantees of the Constitution itself or from state law. *Paul*, 424 U.S. at 710-11.

¶ 12 Where, as here, an inmate claims a property interest in the conditions of his confinement, we need not parse particular statutory or regulatory language to determine whether the statute or regulation creates a mandatory entitlement in an inmate, and thus, a protected property interest. *Sandin v. Conner*, 515 U.S. 472, 477-84 (1995); *Steffey v. Orman*, 461 F.3d 1218, 1221 (10th Cir. 2006) (applying *Sandin*'s analysis of a liberty interest claim to a property interest claim). The Supreme Court rejected this mode of

analysis in *Sandin*. 515 U.S. at 474-84. Rather, we determine whether a litigant has a constitutionally protected property interest by examining the nature of the right claimed in response to a particular deprivation. *Id.* at 483-84. Only deprivations that "impose[] an 'atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life'" will trigger the recognition of a constitutionally protected property right in the conditions of confinement. *Steffey*, 461 F.3d at 1221 (quoting *Sandin*, 515 U.S. at 484).

2. Analysis

¶ 13 Here, Jenner relies on the language of section 17-24-126 to demonstrate the existence of a property right. According to its plain language, section 17-24-126(1) creates a "special revolving enterprise account" in the state treasury, to be used by the DOC "to establish and operate a canteen for the use and benefit of the inmates of state correctional facilities." *See also* § 17-24-106(1)(t) (empowering the DOC to operate the canteen "for the use and benefit of the inmates"). The statute states that the canteen "shall not be operated in any manner for the personal profit of any

employees of the division or any inmates of state correctional facilities." § 17-24-126(2).

¶ 14 Jenner additionally relies on regulation 200-11(IV)(J) to support his due process claim. The regulation provides that the use of funds from the operation of the canteen will be supervised by a committee, which will "[a]ct as trustees for the Canteen." It also reiterates that canteen services are "for the use and benefit of the offenders and not in any manner for the personal profit of any employee or offender." DOC Admin. Reg. 200-11(IV)(L).

¶ 15 Construing Jenner's briefs liberally, we perceive his argument to be that because the statute and regulation require that the canteen be operated for the benefit of inmates, inmates who have purchased reasonably priced brand-name chips and functioning televisions from the canteen have a constitutionally protected property interest in continued access to them.[2] We disagree.

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[2] Although Jenner alleges that his claims are "too vast to list," and that grounds of the complaint should not be limited to overcharging for chips and deprivation of television access, we are tasked with determining whether the facts alleged in the complaint are sufficient to state a valid claim. Therefore, we must examine the particular facts stated in the complaint. We cannot add allegations or

¶ 16 An inmate has no constitutionally recognized property interest in continued access to a functioning television or remote control in his cell. *Cosco v. Uphoff*, 195 F.3d 1221, 1224 (10th Cir. 1999) (noting that states typically regulate the type of items inmates may have in their cells); *see also Rahman X v. Morgan*, 300 F.3d 970, 974 (8th Cir. 2002) (stating that an inability to watch television in one's cell is not a significant hardship in the prison context); *King v. Frank*, 328 F. Supp. 2d 940, 945 (W.D. Wis. 2004) (concluding that the denial of a television is not a significant hardship under *Sandin*); *Manley v. Fordice*, 945 F. Supp. 132, 136 (S.D. Miss. 1996) (adopting a magistrate's conclusion that "there is simply no right to television while incarcerated created under the United States Constitution"), *aff'd*, 132 F.3d 1455 (5th Cir. 1997).

¶ 17 Similarly, the Due Process Clause does not protect an inmate's right to access high-quality, reasonably priced chips through the canteen. *Tokar v. Armontrout*, 97 F.3d 1078, 1083 (8th Cir. 1996) ("[W]e know of no constitutional right of access to a prison gift or

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consider conclusory charges of general wrongdoing. *People v. Cali*, 2020 CO 20, ¶ 34.

snack shop."); *French v. Butterworth*, 614 F.2d 23, 25 (1st Cir. 1980) (concluding that there is no constitutional basis to demand that inmates be allowed to purchase items at or near cost); *see Pepper v. Carroll*, 423 F. Supp. 2d 442, 449 (D. Del. 2006) (noting there is no Eighth Amendment right to purchase food as cheaply as possible through the prison commissary).

¶ 18 Neither of these deprivations are sufficiently significant, as a matter of law, to trigger the recognition of a corresponding property right. Nor did Jenner's complaint allege that he was denied any particular procedural protections in relation to these rights, a deficiency that also requires dismissal. We therefore conclude that the district court properly dismissed this claim.

B. Violation of Statute and Regulation

¶ 19 Jenner's next argument appears to be that, when read together, section 17-24-126(2) and regulation 200-11(IV)(J) create a statutory trust for the benefit of inmates. Jenner claims that he may enforce the DOC's fiduciary duties under the Uniform Declaratory Judgments Law, §§ 13-51-101 to -115, C.R.S. 2019;

C.R.C.P. 57; and the State Administrative Procedure Act, §§ 24-4-101 to -108, C.R.S. 2019. This claim fails for two reasons.

1. No Statutory Trust

¶ 20 First, the language of section 17-24-126 and regulation 200-11 do not require canteen funds to be held in trust by the DOC for the benefit of inmates.

¶ 21 Funds received by the state are divided into two categories, the general fund and special funds. § 24-75-201, C.R.S. 2019. The canteen fund created by section 17-24-126 is a special fund because its deposits do not come from the general fund, and it was established by the legislature for a specific purpose. *Barber v. Ritter*, 170 P.3d 763, 775 (Colo. App. 2007) (citing § 24-75-201), *aff'd in part and rev'd in part*, 196 P.3d 238 (Colo. 2008). In *Barber*, a division of this court held that "a special fund does not become a 'trust' merely because the legislature designates a purpose for which it may be expended." *Id.* Rather, the existence of a trust is determined by the statutory language, which must be "specific, and the intent to impose a trust or other fiduciary duty must be manifest." *Id.*

¶ 22 In examining the language of section 17-24-126(1), we note that it does not contain the word "trust," nor does it label any of the DOC's responsibilities under the statute as "fiduciary" or "trustee" duties. Rather, it states that it "hereby create[s]" a special account, and that the moneys therein "are appropriated for the purposes set forth in subsection (3)." § 17-24-126(1). Subsection (3) of section 17-24-126 specifies that

> [i]tems in the canteen shall be sold to inmates . . . at prices set so that revenues from the sale are sufficient to fund all expenses of the canteen and vending machines . . . and to produce a reasonable profit. . . . Any profits arising from the operation of the canteen and vending machines shall be expended for the educational, recreational, and social benefit of the inmates and to supplement direct inmate needs.

¶ 23 We read this language as simply designating a purpose for the canteen funds. The statute creates the canteen fund and then appropriates its contents "for the purposes set forth" later in the statute. Subsection (3) lists these purposes. The statute does not contain any verbiage indicating that the legislature had a manifest "intent to impose a trust or other fiduciary duty" beyond the language defining the purpose of the fund. *Barber*, 170 P.3d at

775. We therefore conclude that section 17-24-126 does not create a statutory trust in favor of inmates.

¶ 24 Moreover, although regulation 200-11(IV)(J) states that a committee of DOC employees will "[a]ct as trustees for the Canteen . . . Account" and "[f]ollow statutory definitions of how net profits may be expended," the DOC asserts that the regulation should not be interpreted to create a trust in canteen funds because the DOC does not have the authority to place state funds in trust. We generally accept the regulatory interpretation adopted by the agency if it is legally reasonable and supported by the record. *Nededog v. Colo. Dep't of Health Care Policy & Fin.*, 98 P.3d 960, 962 (Colo. App. 2004). Because we conclude that the legislature did not intend to create a trust via section 17-24-126, we find the DOC's position that its implementing regulation cannot create such a trust to be reasonable and supported by the record. *See Table Servs., LTD v. Hickenlooper*, 257 P.3d 1210, 1217 (Colo. App. 2011) (stating that an administrative agency may not issue regulations exceeding its statutory authority); *see also Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 519 (Colo. 1985) (noting that only the

legislature has the power to appropriate money). Therefore, the regulation did not create a trust in favor of inmates, and Jenner's allegation of breach of fiduciary duty necessarily fails.

2. No Private Right of Action

¶ 25 Second, the statute creates no private right of action for inmates who wish to enforce it.

¶ 26 To have the standing to bring a legal claim, a plaintiff must have "suffered (1) an injury-in-fact to (2) a legally protected interest." *City of Arvada ex. rel. Arvada Police Dep't v. Denver Health & Hosp. Auth.*, 2017 CO 97, ¶ 19. When a statute does not expressly protect an interest through a private right of action, such a right may be implied. *Id.* at ¶ 21. However, courts will not recognize an implied right of action in the absence of a "clear expression" of legislative intent. *Id.* at ¶ 22 (quoting *State v. Moldovan*, 842 P.2d 220, 227 (Colo. 1992)).

¶ 27 To determine whether a private civil remedy may reasonably be implied, we examine three factors: (1) whether the potential plaintiff falls within the class of persons intended to receive the benefits of the statute; (2) whether the legislature intended to create

a private right of action; and (3) whether implying a civil remedy would comport with the purposes of the legislative scheme. *Id.* at ¶ 27.

¶ 28 Here, Jenner, an inmate, falls within the class of persons intended to receive the benefits of the statute. Section 17-24-126 is clear that the canteen fund is for the "use and benefit of the inmates." Nonetheless, the statute is devoid of any language indicating an intent to create a private right of action. It is utterly silent on the issue. Moreover, the purpose of the Correctional Industries Act, in which section 17-24-126 appears, is to "[c]reate a division of correctional industries which is profit-oriented" and to assume "responsibility for training offenders in general work habits, work skills, and specific training skills that increase their employment prospects when released." § 17-24-102(1)(a), C.R.S. 2019. Under the Act, the DOC is to "[p]rovide an environment for the operation of correctional industries that closely resembles the environment for the business operations of a private corporate entity." § 17-24-102(1)(c). Allowing inmates to use section 17-24-126 to demand particular conditions of confinement would

hamper these purposes, preventing the DOC from making decisions that are "profit-oriented" and geared toward training offenders in the operation of a going concern.

¶ 29 Because the statutory language does not indicate that the legislature intended to create a private right of action, and the recognition of such a right would not comport with the purposes of the legislative scheme, we decline to read a private right of action into section 17-24-126.[3]

C. Parole Eligibility Date

¶ 30 While offenders are normally eligible for parole after they have served 50% of their sentences, minus earned time, offenders convicted of committing certain sexual assaults who also have two prior convictions that "would have been a crime of violence as

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[3]Although defendants did not raise this issue, we also recognize that Jenner's claim for violation of section 17-24-126, C.R.S. 2019, appears to be barred under the doctrine of issue preclusion because he previously raised and litigated this issue. *See Jenner v. Exec. Dir., Colo. Dep't of Corr.*, (Colo. App. No. 14CA1341, Dec. 31, 2015) (not published pursuant to 35(f)) (*Jenner II*); *see Foster v. Plock*, 2017 CO 39, ¶ 13 (discussing issue preclusion). We may take judicial notice of our own records, and we do so here. *Harriman v. Cabela's Inc.*, 2016 COA 43, ¶ 64.

defined by section 18-1.3-406, C.R.S. [2019]," are not eligible for parole until they have served 75% of their sentences. § 17-22.5-403(1)-(3). The DOC asserts that Jenner is required to serve 75% of his sentence before he is parole eligible, pursuant to section 17-22.5-403(2), (3). Jenner asserts that the DOC should not have applied this statute because the phrase "would have been a crime of violence" is unconstitutionally vague.

¶ 31 Jenner's claim fails because it is barred by the doctrine of claim preclusion.

1. Law

¶ 32 Claim preclusion prevents a litigant from repeatedly re-litigating the same cause of action. It bars the litigation of a prior claim when "(1) 'the judgment in the prior proceeding was final'; (2) 'the prior and current proceeding involved identical subject matter'; (3) 'the prior and current proceeding involved identical claims for relief'; and (4) 'the parties to both proceedings were identical or in privity with one another.'" *Foster v. Plock*, 2017 CO 39, ¶ 12 (quoting *Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 2015 CO 64, ¶ 36).

¶ 33 When determining whether suits involve the "identical subject matter," courts should evaluate whether the same evidence would be used to prove both claims. *Id.* at ¶ 28. Similarly, when deciding whether the proceedings involve "identical claims," courts must disregard "the form of the action and instead look at the actual injury underlying the first proceeding." *Id.* at ¶ 29. Different claims involve the same injury when they concern "all or any part of the transaction, or series of connected transactions, out of which the [original] action arose." *Id.* (alteration in original) (quoting *Argus Real Estate, Inc. v. E-470 Pub. Highway Auth.*, 109 P.3d 604, 609 (Colo. 2005)).

¶ 34 Importantly, claim preclusion bars not only claims actually asserted in another suit, but also claims that *could have been* asserted. *Id.* Once a judgment enters in an action, it extinguishes the plaintiff's remedies against the defendant regarding all, or any part, of the transaction from which the action arose. *Argus*, 109 P.3d at 609 (citing Restatement (Second) of Judgments § 24 (Am. Law Inst. 1982)). It thereby prevents parties from drawing out litigation by splitting claims into separate actions. *Id.*

2. Analysis

¶ 35 Here, Jenner has made multiple attempts to split challenges to his parole eligibility date into separate actions.

¶ 36 In 2006, he filed suit against the DOC, some of its employees, and Colorado's attorney general, pursuant to C.R.C.P. 106(a)(2), (4). *See Jenner v. Ortiz*, 155 P.3d 563 (Colo. App. 2006) (*Jenner I*). In *Jenner I*, he challenged the application of section 17-22.5-403(2), (3) to his parole eligibility date, asserting that it enhanced his sentence in manner that was declared unconstitutional in *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The district court dismissed his complaint pursuant to Rule 12(b)(5). The *Jenner I* division affirmed the judgment, concluding that because a person released on parole is still in constructive custody for the remainder of his sentence, "the DOC's actions affecting plaintiff's parole eligibility date have not altered the sentence imposed on him, and the constitutional sentence enhancement requirements . . . are irrelevant to the DOC's actions." *Jenner I*, 155 P.3d at 565.

¶ 37 Jenner subsequently challenged the constitutionality of section 17-22.5-403(3) in *Jenner v. Executive Director, Colorado Department of Corrections*, (Colo. App. No. 14CA1341, Dec. 31, 2015) (not published pursuant to 35(f)) (*Jenner II*), and, pursuant to Crim. P. 35(a) and (c), in *People v. Jenner*, (Colo. App. No. 16CA0972, Mar. 29, 2018) (not published pursuant to 35(e)) (*Jenner III*).[4]

¶ 38 Claim preclusion bars this action because (1) the parties in this action, *Jenner I*, and *Jenner II* are identical, and each of these cases resulted in final judgments; (2) each case would require the presentation of evidence concerning the DOC's method of calculating Jenner's parole eligibility date, so they concern identical subject matter; and (3) although the formal claims brought in each case may differ, the underlying injury is the same — the enlargement of the time Jenner must serve before he is eligible for parole.

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[4] Because *Jenner III* is a criminal case, the parties in *Jenner III* are not identical to the parties in *Jenner I* and *II*, although they may be in privity with one another. We therefore do not rely on *Jenner III* in our claim preclusion analysis.

¶ 39 Jenner argues that claim preclusion does not bar his claim because he did not assert, in *Jenner I*, that section 17-22.5-403(2), (3) was unconstitutionally vague. However, he *could* have done so, and claim preclusion extinguishes Jenner's remedies with regard to all or any part of the DOC's decision concerning his parole eligibility date. *Argus*, 109 P.3d at 609. The district court therefore properly dismissed Jenner's claim under the doctrine of claim preclusion.

IV. Attorney Fees

¶ 40 After the district court announced its fee award pursuant to section 13-17-201, Jenner objected, claiming that the award was improper. In support of this objection, Jenner argued that section 13-17-102(6), C.R.S. 2019,[5] not section 13-17-201, should control the award of fees because section 13-17-201 applies broadly to any tort claim dismissed under Rule 12(b), while section 13-17-102(6) is

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[5] Jenner also argued in the district court that 13-17-102(7), C.R.S. 2019, would apply. However, he makes no such argument here. We therefore do not address it.

more specific. It applies only when at least one party is proceeding pro se.

¶ 41 In their response, the defendants asserted that a similar argument had been rejected in *Houdek v. Mobil Oil Corp.*, 879 P.2d 417, 422-25 (Colo. App. 1994), and that *Houdek*'s rationale would apply in this case.

¶ 42 Although the response did not raise any arguments that invited new objections to the award, in his surreply, Jenner argued for the first time that because the DOC did not raise the Colorado Governmental Immunity Act (CGIA) as a defense, "this raises a question as to whether the action lies in tort . . . ." We assume that by raising the DOC's failure to cite the CGIA, Jenner was pointing out that fees may only be awarded under section 13-17-201 in "actions brought as a result of . . . an injury to person or property *occasioned by the tort* of any other person . . . ." (Emphasis added.)

¶ 43 In its final written fee order, the district court did not specifically address which of Jenner's claims sound in tort. It simply rejected Jenner's argument that section 13-17-102(6) controls the award of fees in this case.

¶ 44 On appeal, Jenner raises both objections that he raised in the district court. Because Jenner only asserted in his surreply that his claims were not tort claims, the district court declined to specifically address that assertion. Therefore, we need not do so. *See Parks v. Edward Dale Parrish LLC*, 2019 COA 13, ¶ 31 (noting that where the party appeals costs on a basis not asserted in the district court, the issue is not preserved, and we need not consider it).

¶ 45 However, if we were to address it, Jenner's claim for breach of fiduciary duty, his demand for compensatory relief (including a demand that he be reimbursed for the cost of his television), and his demand for punitive damages pursuant to section 13-21-102(1)(a), C.R.S. 2019, appear to sound in tort. *Accident & Injury Med. Specialists, P.C. v. Mintz*, 2012 CO 50, ¶ 21 ("The breach of fiduciary duty cause of action is a tort to remedy economic harm suffered by one party due to a breach of duties owed in a fiduciary relationship."); *Mortg. Fin., Inc. v. Podleski*, 742 P.2d 900, 902 (Colo. 1987) ("The language of [the punitive damages statute], 'for a wrong done to the person, or to personal or real property,' contemplates

tortious conduct."). It was therefore well within the district court's discretion to award fees under section 13-17-201. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991, 997 (Colo. App. 2011) (concluding that an award of fees was proper where plaintiff chose to include tort claims to obtain relief beyond what was available under alternate claims); *Dubray v. Intertribal Bison Coop.*, 192 P.3d 604, 607 (Colo. App. 2008).

¶ 46 We also reject Jenner's argument that section 13-17-102(6) controls because it is more specific than section 13-17-201. While we acknowledge that in the course of construing statutes that seem to conflict, Colorado courts have noted that a specific statutory provision may act as an exception to a more general provision, no such conflict arises here. *See People v. Stellabotte*, 2018 CO 66, ¶ 32. The two statutes create alternative grounds for the award of fees depending on the facts of the case, and each has its own limitations. Section 13-17-201 mandates an award of fees whenever an action that sounds in tort is dismissed under Rule 12(b). By its terms, it permits no exceptions. *Crandall v. City of*

Denver, 238 P.3d 659, 663 (Colo. 2010); *Hewitt v. Rice*, 119 P.3d 541, 546 (Colo. App. 2004), *aff'd*, 154 P.3d 408 (Colo. 2007).

¶ 47 To the extent the two statutes may be said to conflict when pro se litigants are involved, we are persuaded that the rationale employed in *Houdek* applies here. The *Houdek* division concluded that section 13-17-201 controls over section 13-17-102 because section 13-17-201 is the more specific statute and was enacted after section 13-17-102. 879 P.2d at 425 (noting that the more specific statute controls over the general and the provisions of the most recently enacted statute control). Section 13-17-201 therefore authorizes the assessment of fees against Jenner in this case, and the district court did not err in awarding such fees.

V. Conclusion

¶ 48 We affirm the judgment dismissing Jenner's claims and the award of fees to the defendants.

JUDGE DUNN and JUDGE YUN concur.