

APPENDIX

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APPENDIX A

NOT DESIGNATED FOR PUBLICATION
No. 128,006

IN THE COURT OF APPEALS OF THE STATE OF
KANSAS

DAVID GREENE JR., MARCIA GREENE, and
DAVID GREENE III,
Appellants,

v.

KANSAS DEPARTMENT OF REVENUE and
STEVE STOTTS, Director of Taxation, in his
Individual and Official Capacity,
Appellees.

MEMORANDUM OPINION

Appeal from Butler District Court; JANETTE
L. SATTERFIELD, judge. Oral argument held via
Zoom on August 18, 2025. Opinion filed September
26, 2025. Affirmed.

Braxton T. Moral, of Depew Gillen Rathbun &
McInteer, LC, of Wichita, for appellant.

Adam D. King, of Kansas Department of
Revenue, for appellee.

Before GARDNER, P.J., COBLE and BOLTON
FLEMING, JJ.

PER CURIAM: This appeal is before us after many years of litigation between the parties concerning the status of various tax assessments. David Greene Jr. and Marcia Greene, husband and wife, were operators of C and J Distributing (Greenes' Distributing). Greenes' Distributing sold cigarettes, candy, tobacco, and restaurant supplies to retailers. David and Marcia's sons, David Greene, III and Jonathan Greene, owned C and J Wholesale, LLC (Greenes' Wholesale), a company that sold novelty items, rented properties, and set up accommodations for events.

In August 2012, the Kansas Department of Revenue (KDOR) levied a \$460,000 tax assessment against the Greenes based on possession of a potpourri substance called "Diablo." The assessment was reversed by the Kansas Board of Tax Appeals (BOTA) in 2014, and this court affirmed the reversal. In 2016 the assessment was amended by KDOR to \$924,400 and levied against the Greenes and Greenes' Wholesale, which was affirmed by a BOTA ruling in December of 2017. The Greenes appealed the BOTA ruling and the district court ruled in their favor, which ruling was affirmed by this court in 2021. The Greenes then filed the present case against KDOR and its Director of Taxation, Steve Shotts, alleging the protracted proceedings by KDOR and Shotts constituted violations of 42 USC § 1983 and the Kansas Tort Claims Act (KTCA). The district

court granted KDOR's motion to dismiss the action, and the Greenes filed this appeal.

The Greenes raise four issues on appeal. First, they allege that the district court improperly dismissed the Greenes' Fifth Amendment claim under 42 U.S.C. § 1983. Second, they maintain that the district court erred in its ruling that only a judicial process is sufficient for maintaining a claim for abuse of process under the KTCA. Third, the Greenes argue that the district court incorrectly ruled that the Greenes' KTCA claim was subject to an exception under K.S.A. 75-6104(a)(6). Finally, the Greenes allege that the district court erred by dismissing the Greenes' claims before the parties could complete the discovery.

Because we find the Greenes do not allege facts warranting recovery under 42 USC § 1983 against either KDOR or Stotts, and the actions the Greenes complain of do not constitute "judicial process" under the KTCA, the district court did not err in granting the motion to dismiss, and we therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2012, KDOR levied a \$460,000 tax assessment against David Greene and Marcia Greene for possession of a potpourri substance named "Diablo" that the Kansas Board of Pharmacy had deemed a controlled substance. Whether Diablo was a controlled substance was a matter of much debate by KDOR, the Greenes, and others. In September 2014, the Kansas Board of Tax Appeals (BOTA) determined

that any assessments on the relevant chemical substances in Diablo were invalid. KDOR appealed to this court which affirmed the BOTA's decision in early 2016. See *In re Tax Appeal of Hasting*, No. 112,700, 2016 WL 763569 (Kan. App. 2016) (unpublished opinion).

But the dispute between the parties did not end there. In April 2016, KDOR amended the tax assessment against the Greenes after a new, separate substance was allegedly identified at a property rented out by Greenes' Distributing during a criminal investigation of nonparties. Based on the presence of this new substance, KDOR increased the assessment to \$924,400 and expanded the assessment to include Greenes' Wholesale. The Greenes objected to this amended assessment, and after an informal appeal conference, a KDOR hearing officer abated the amended assessment in September 2016. KDOR did not appeal this abatement.

Despite this abatement, KDOR still continued to seek enforcement of the original \$460,000 assessment, and litigation continued. In December 2017, BOTA issued an opinion that confirmed the original assessment and added penalties and interest, bringing the amount owed by David and Marcia Greene and Greenes' Wholesale as of August 31, 2017, to \$463,933.82, which included penalties and interest.

In response, in January 2018, David and Marcia Greene and Greenes' Wholesale filed a petition for judicial review of the BOTA opinion in Butler County District Court to determine the status of all

remaining assessments. The district court ruled in favor of the Greenes and Greenes' Wholesale, finding no outstanding tax assessments remained, and in May 2021, a panel of this court affirmed that decision. See *In re Tax Appeal of Greene*, No. 122,379, 2021 WL 1936066, (Kan. App. 2021) (unpublished opinion).

After many years of litigation, in August 2023, David Greene Jr, Marcia Greene, and David Greene III filed suit against defendants "Kansas Department of Revenue, [and] Steve Stotts, in his individual and official capacity." The Greenes' petition included three causes of action: (1) a 42 U.S.C. § 1983 claim against Stotts as Director of Taxation at KDOR; (2) a claim against KDOR under the Kansas Judicial Review Act (KJRA); and (3) an abuse of process claim against KDOR under the KTCA. The petition alleged that for 11 years, KDOR had engaged in a "crusade" against the Greenes that resulted in years of litigation as well as financial and emotional hardship.

The petition further alleged that through the date of filing the complaint, KDOR had retained \$62,500 in seized items from the Greenes in addition to failing to lift the initial \$460,000 tax assessment in a timely manner. As a result of these actions, the Greenes alleged that they lost their direct status with tobacco manufacturing contacts, resulting in \$50,000 in damages, as well as \$232,570 in lost income, and \$47,000 in attorney fees. The Greenes' petition claimed that Director Stotts and KDOR insisted on maintaining a fraudulent assessment against the Greenes and retained property in violation of the Greenes' Fourth Amendment Rights under the United

States Constitution. The summons for the petition was sent individually to both KDOR and Director Stotts.

In October 2023, KDOR responded to the Greenes' petition with a motion to dismiss. The motion alleged multiple deficiencies with the Greenes' complaint including a lack of subject matter jurisdiction, failure to comply with the requirements of the KJRA, failure to state a claim upon which relief can be granted, insufficient process or defective service of process, lack of personal jurisdiction, and immunity.

In response to KDOR's motion, the Greenes filed an amended petition. The amended petition abandoned the Greenes' KJRA claim while adding an allegation that in addition to violating their Fourth Amendment rights, the continuation of the tax assessment against the Greenes also infringed on their Fifth and Fourteenth Amendment rights. The petition acknowledged that as of October 20, 2023, KDOR had returned \$62,500 in seized property to the Greenes. The summons for the amended petition was sent only to the Office of the Attorney General.

KDOR again filed a motion to dismiss, noting the minimal differences between the Greenes' original petition and the amended petition. Due to these minimal differences, KDOR's second motion to dismiss was "substantially the same as their original motion" with the exception that the second motion omitted the section regarding the Greenes' failure to comply with the requirements of the KJRA.

The Greenes filed a response to the second motion to dismiss in November 2023. The response noted that KDOR's motion did not address the Greenes' addition of Fifth and Fourteenth Amendment claims under 42 U.S.C. § 1983. The Greenes' response discounted KDOR's argument that KDOR could not be sued under the KTCA, argued there was subject matter jurisdiction, maintained that the amended petition properly stated claims for which relief could be granted, and noted that with the amended petition, it had executed proper service upon the Kansas Attorney General. KDOR then filed a reply brief in which it reiterated many of the same points from its original motion.

In January 2024, the district court held a hearing on KDOR's motion to dismiss and took the motion under advisement. In April 2024, the district court granted KDOR's motion to dismiss. The Greenes filed a motion to reconsider which the district court later denied. The Greenes timely appealed.

DISCUSSION

Standard of Review

The arguments raised on appeal by the Greenes ultimately all stem from the district court's dismissal of the Greenes' amended petition. This court reviews such a legal decision under a de novo standard. *Platt v. Kansas State University*, 305 Kan. 122, 126, 379 P.3d 362 (2016).

When considering the district court's decision to dismiss a case, this court must consider the Greenes' well-pled facts and allegations to be true and view those claims in the light most favorable to the Greenes. "Stated another way, at the motion to dismiss stage, we ask: If everything the plaintiffs have pled is true, are they entitled to relief? If yes, a motion to dismiss should not be granted." *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 793, 549 P.3d 363 (2024).

It is not necessary for a plaintiff to detail a legal theory of relief so long as an opponent is apprised of the facts that would entitle a plaintiff to relief. *Oller v. Kincheloe's, Inc.*, 235 Kan. 440, 447, 681 P.2d 630 (1984). However, this court is not required to accept conclusory allegations on the legal effects of events the plaintiff has set out if the allegations do not reasonably follow from the plaintiff's description of what happened. *Bruggeman v. Schimke*, 239 Kan. 245, 247, 718 P.2d 635 (1986).

In its order granting KDOR's motion to dismiss, the district court first utilized a federal "plausibility" pleading standard:

"In order to survive a Motion to Dismiss, a complaint must contain sufficient factual matter, if accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)."

The district court then went on to cite part of the applicable Kansas standard:

"Consistent with this standard, the pled allegations taken from Plaintiff's Second Amended Complaint are deemed true for purposes of this Motion. We are yet required to resolve all facts and inferences which may be reasonably drawn in favor of the Defendants Greene. *Kerns v. G.A.C.*, 255 Kan. 264, 875 P.2d 949 (1994)."

We note that the district court improperly intermingled the federal pleading standard in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), with the more liberal Kansas pleading standard. See *Williams v. C-U-Out Bail Bonds, LLC*, 310 Kan. 775, 784-85, 450 P.3d 330 (2019) (on motion to dismiss, Kansas Supreme Court has declined to adopt federal standard of review that is more difficult for plaintiffs to meet than Kansas standard); see also *Howlett v. Rose*, 496 U.S. 356, 372, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990) (when plaintiff brings federal claim in state court, state court must apply substantive federal law but may apply its own procedural rules unless preempted by federal law).

Instead, the district court should have used the standard the Kansas Supreme Court has recognized for considering motions to dismiss under K.S.A. 60-212(b)(6). *League of Women Voters of Kansas*, 318 Kan. at 793. This mistake did not impact the district

court's analysis, but even if it had, this error is neutralized by the *de novo* standard of review exercised by this court on appeal. Thus, we find that while the district court was in error in the application of the federal pleading standard, that error is not reversible.

The district court's dismissal of the Greenes' 42 U.S.C. § 1983 claim was not made "sua sponte" and was not in error.

The Greenes maintain that the district court improperly dismissed their Fifth Amendment claim under 42 U.S.C. § 1983. The Greenes argue that the district court provided no meaningful reasoning for dismissing the claim, and that it did so *sua sponte* without KDOR requesting the dismissal.

As a preliminary matter, KDOR correctly notes that it addressed the Greenes' Fifth Amendment claim generally in its motion to dismiss. Although KDOR's arguments did not specifically refer to the Fifth Amendment claim, the defenses pertained to any claim under 42 U.S.C. § 1983. Because the Greenes brought their Fifth Amendment claim under 42 U.S.C. § 1983, KDOR's general arguments defending against the 42 U.S.C. § 1983 claim apply. For these reasons, the Greenes are incorrect that the district court dismissed their Fifth Amendment claim *sua sponte*.

Next, because the question of mootness is jurisdictional, this court must evaluate KDOR's assertion that even if the Greenes properly

established a Fifth Amendment claim in their amended petition, such a claim is now moot. In their petition for relief, the Greenes alleged "KDOR seized property, put David, Marcia, and Davy Greene all out of business, cost them hundreds of thousands of dollars in lost income, and cost them \$47,000 in attorney fees for a tax assessment it knew was fraudulent." In their motion to reconsider, the Greenes noted they "were subject to a tax lien and the taking of property in the face of a Court of Appeals ruling deeming it unconstitutional."

However, the Greenes conceded both in their amended petition and at the hearing on the motion to dismiss that KDOR had returned all property that had been seized in this case as of October 2023. Moreover, this court previously determined that no tax assessments remained against the Greenes as of 2021. *In re Tax Appeal of Greene*, 2021 WL 1936066, at *6.

Yet, the return of the seized property does not in and of itself resolve the Greenes' claims for business damage, lost income and attorney fees. Thus, an actual controversy remains, and the rights of the parties would be impacted by a judgment on this issue. See *Sierra Club v. Stanek*, 317 Kan. 358, 361, 529 P.3d 1271 (2023) (claim is moot if this court determines it is clearly and convincingly shown actual controversy has ended, only judgment that could be entered would be ineffectual for any purpose, and it would not impact any parties' rights); *State v. Phipps*, 320 Kan. 616, 618, 570 P.3d 1240 (2025) ("The definition of mootness is well settled."). Thus, the

Greenes' Fifth Amendment claim under 42 U.S.C. § 1983 is not moot.

We next consider whether the Greenes' Fifth Amendment claim under 42 U.S.C. § 1983 can be maintained against the listed parties. Under 42 U.S.C. § 1983, a plaintiff must demonstrate the conduct complained of was committed by a person acting under color of state law, and that this conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Connelly v. State Highway Patrol*, 271 Kan. 944, 957, 26 P.3d 1246 (2001).

The district court found that the Greenes could maintain the action against Director Stotts in his individual capacity, but that they had not alleged any facts in their petition to support such a claim. The district court also found that Director Stotts was immune from the action in his official capacity.

First, as to the status of KDOR as a defendant in this claim, as noted by the district court, a 42 U.S.C. § 1983 claim cannot be maintained against a state agency as it is not considered a "person" under the statute except with regard to injunctive relief. *Beck v. Kansas Adult Authority*, 241 Kan. 13, 17, 735 P.2d 222 (1987). Similarly, sovereign immunity bars 42 U.S.C. § 1983 claims that seek monetary damages against a director of a state agency. See *Prager v. Kansas Dep't. of Revenue*, 271 Kan. 1, 24-25, 20 P.3d 39 (2001).

This leaves only the Greenes' 42 U.S.C. § 1983 claim against Director Stotts in his individual capacity. The district court noted, "no evidence has been shown that the official (Stotts) violated a statutory or recognized constitutional right." But the real question is whether such conduct was alleged by the Greenes. The Greenes' amended petition directly references Director Stotts' conduct on two occasions: (1) when they claimed their damages were a result of Director Stotts and KDOR's "insistence on holding an assessment it knew to be fraudulent" over the Greenes and (2) that Director Stotts maintaining a "fraudulent assessment" against the Greenes violated their "rights under the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States." Therefore, the only conduct alleged by the Greenes is assessing taxes, which is an action within Director Stotts' official role at KDOR.

Because the Greenes did not allege Director Stotts personally engaged in any conduct outside of maintaining a tax assessment against their business, they have failed to state a constitutional claim under 42 U.S.C. § 1983 against Director Stotts in his individual capacity.

Lastly, the Greenes' constitutional claims also fail on the merits. The Greenes based their 42 U.S.C. § 1983 claim on a violation of the takings clause of the Fifth Amendment to the United States Constitution. The Fifth Amendment via the Fourteenth Amendment prohibits states from taking private property for public use without just compensation.

Palazzolo v. Rhode Island, 533 U.S. 606, 617, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001).

To succeed on the merits, the Greenes must have alleged conduct that is a "taking" under the Fifth Amendment. But the conduct alleged in the Greenes' Fifth Amendment claim only relates to a tax assessment. A prior panel of this court has held a tax assessment is not a taking. *Board of Douglas County Comm'rs v. Cashatt*, 23 Kan. App. 2d 532, Syl. ¶ 16, 933 P.2d 167 (1997).

Moreover, the Greenes must have contended that the alleged taking was for "public use." *Palazzolo*, 533 U.S. at 617. There is no allegation in the amended petition that satisfies this requirement. In addition, a party must establish that the property in question is one in which a vested interest exists, i.e., a constitutionally cognizable property interest. *Zimmerman v. Board of Wabaunsee County Comm'rs*, 293 Kan. 332, 348, 264 P.3d 989 (2011). A vested right is one that is so fixed, it is not dependent on any future act, contingency or decision to make it more secure. *Vaughn v. Nadel*, 228 Kan. 469, Syl. ¶ 3, 618 P.2d 778 (1980).

Even assuming that Director Stotts' conduct towards the Greenes did not serve a legitimate taxation purpose, none of the facts alleged in the Greenes' amended petition establishes the Greenes had a vested interest that was taken by KDOR for public use. The Greenes' allegations of lost income are speculative and thus do not fit the definition of a vested interest. And although neither party disputes

that KDOR retained physical possession of property of the Greenes until October 2023, the retention of that property did not benefit the public in any way.

For all of these reasons, the district court did not err by dismissing the Greenes' constitutional claims under 42 U.S.C. § 1983.

The district court properly dismissed the Greenes' abuse of process claim under the Kansas Tort Claims Act.

In analyzing the district court's dismissal of the Greenes' abuse of process claim, we must first evaluate the district court's determination that KDOR must be sued in conjunction with the State of Kansas under the KTCA. The district court relied on *Mid-American Credit Union v. Board of Sedgwick County Comm'rs*, 15 Kan. App. 2d 216, 806 P.2d 479 (1991), to note that under the KTCA, KDOR may only be sued for a claim in which the State is also a party. Because the Greenes did not name the State of Kansas as a party to their suit, the district court determined that KDOR did not have the capacity to be sued.

In *Mid-American Credit Union*, a panel of this court held that unless a statute specifies otherwise, "a subordinate government agency does not have the capacity to be sued." 237 Kan. at 224. It relied on the Kansas Supreme Court's interpretation of "State" in K.S.A. 75-6102(a) as "the state of Kansas and any department or branch of state government." 237 Kan. at 224; *Hopkins v. State*, 237 Kan. 601, 606, 702 P.2d 311 (1985). In *Mid-American Credit Union*, because

both the State and KDOR were listed on the suit and served with process, the panel found that the parties could be sued. 237 Kan. at 224.

Here, the Greenes did not name the State of Kansas as a party to the suit, nor did they serve the Office of the Attorney General when they filed their initial petition. After KDOR raised the potential deficiencies with the Greenes' petition, the Greenes filed an amended petition that did not name the State of Kansas as a party, but they did serve a copy of the amended petition on the Office of the Attorney General.

K.S.A. 2023 Supp. 60-219 requires a district court, when feasible, to join a necessary party by court order if they have not otherwise been joined as a party.

"(a) *Persons required to be joined if feasible.* (1) *Required party.* A person who is subject to service of process must be joined as a party if:
(A) In that person's absence, the court cannot accord complete relief among existing parties" K.S.A. 2023 Supp. 60-219 (a)(1)(A).

Because KDOR is a subordinate government agency that cannot be sued on its own without statutory authority, the court could not "accord complete relief among existing parties," and was thus obligated to order the required party be joined. K.S.A. 2023 Supp. 60-219 (a)(1)(A), (2). So, although the district court correctly ruled the Greenes could not sue KDOR on its own without the State also listed as

a party, because the Greenes had served the State with notice of the suit, the district court erred by failing to join the State by court order. See *Murphy v. City of Topeka*, 6 Kan. App. 2d 488, 492, 630 P.2d 186 (1981) (affirming dismissal of suit against city agency after plaintiff failed to comply with notice requirements). But this error is not reversible because the Greenes' abuse of process claim argument fails on the merits.

The district court correctly determined that an administrative process is insufficient to sustain a claim for an abuse of process under the Kansas Tort Claims Act.

The Greenes next dispute the district court's determination that an abuse of process claim must originate from a legal process rather than an administrative action. They maintain that the district court failed to follow past Kansas Supreme Court precedent holding that an administrative process is sufficient to state an abuse of process claim.

KDOR contends that administrative or non-judicial processes do not qualify as a "process" for purposes of establishing an abuse of process claim. KDOR also alleges the Greenes have failed to plead the essential elements to establish an abuse of process claim.

Under Kansas law, the elements for an abuse of process claim are a "knowingly illegal or improper use of the process done for the purpose of harassing or causing hardship, which resulted in damage" to the

plaintiff. *McShares, Inc. v. Barry*, 266 Kan. 479, 494, 970 P.2d 1005 (1998). At issue in this case is whether the "process" at issue must be a judicial process, or if administrative actions by agencies are sufficient.

The Kansas Supreme Court first incidentally considered what constitutes a "process" for an abuse of process claim in *Lindenman v. Umscheid*, 255 Kan. 610, 875 P.2d 964 (1994). In that case, the Court considered whether plaintiffs had established a viable claim for abuse of process after the Kansas Department of Health and Environment (KDHE) used an emergency suspension procedure to suspend the plaintiffs' daycare license. The plaintiffs alleged that an employee at KDHE misrepresented facts in their report and that this misrepresentation led to the emergency suspension. The Court never considered whether KDHE's actions properly constituted a "process" sufficient to sustain an abuse of process claim. Instead, the Court merely considered the parties' arguments regarding whether the plaintiffs were time-barred from raising their abuse of process claim. 255 Kan. at 621-24.

The question of what type of conduct is actionable as a "process" for an abuse of process claim was instead considered as an issue of first impression before a panel of this court in *Bloom v. Arnold*, 45 Kan. App. 2d 225, 230-32, 248 P.3d 752 (2011). In *Bloom* this court followed the majority of jurisdictions by holding that a claim is only valid when it alleges an abuse of judicial process. 45 Kan. App. 2d at 232. The panel explicitly discussed the holding in *Lindenman* and found that the holding did not

undercut "the prevailing law in Kansas limiting 'legal process' to only those proceedings that invoke the aid of judicial process." 45 Kan. App. 2d at 232. Therefore, under *Bloom*, a plaintiff cannot establish an abuse of process claim by alleging improper use of an administrative or other nonjudicial proceedings. 45 Kan. App. 2d at 232.

The Greenes have not persuasively argued why this court should not adopt the reasoning of the *Bloom* panel, particularly given that subsequent panels of this court have adopted *Bloom's* reasoning. See *Midwest Crane and Rigging, LLC v. State Corporation Commission*, No. 122,562, 2021 WL 3823415, at *3-4 (Kan. App. 2021) (unpublished opinion). And after applying the *Bloom* holding to this case, it is clear the Greenes have failed to plead facts that establish the necessary elements for an abuse of process claim.

Legal processes are those "proceedings begun by a writ, warrant, summons, order or mandate; proceedings which invoke the aid of judicial process or decree." *Robbins–Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.*, 229 Kan. 511, 515, 625 P.2d 494 (1981). More specifically, a legal process cannot include proceedings "carried on wholly outside of court . . . without the aid of its process or decree." 229 Kan. at 516. Here, none of the actions alleged to have been taken by KDOR involved a legal process.

The Greenes also argue that the district court improperly dismissed their abuse of process claim by determining that KDOR's actions were exempt from

liability under K.S.A. 75-6104(a)(6). But the Greenes' amended petition fails to definitively enumerate a specific act that they claim is an abuse of process. We need not consider whether the district court properly ruled that KDOR is exempt from the Greene's abuse of process claim under K.S.A. 75-6104(a)(6) because the abuse of process claim otherwise fails on its merits.

The district court did not err by dismissing the Greenes' amended petition for failing to establish the essential elements for an abuse of process claim.

The district court did not err by dismissing the case in its entirety prior to the completion of discovery.

Finally, the Greenes argue the district court erred by dismissing their amended petition against KDOR before the case could reach discovery. To support their position, they correctly argue that it is seldom warranted for a district court to grant a motion to dismiss prior to discovery. See *Halley v. Barnabe*, 271 Kan. 652, 656, 24 P.3d 140 (2001) (quoting *Noel v. Pizza Hut, Inc.*, 15 Kan. App. 2d 225, 231-32, 805 P.2d 1244 [1991]) (Kansas courts have "sound reasons for exercising judicial skepticism towards dismissal of a petition for failure to state a claim prior to the completion of discovery."). Although considered the exception, not the rule, a district court may dismiss a petition before discovery if the petition raises no legally cognizable claims. *Minjarez-Almeida v. Kansas Bd. of Regents*, 63 Kan. App. 2d 225, 232, 527 P.3d 931 (2023).

In summary, after carefully evaluating the merits of each of the Greenes' claims, and determining dismissal was appropriate, we find no error in the district court's decision to dismiss the Greenes' amended petition prior to the completion of discovery.

Affirmed.

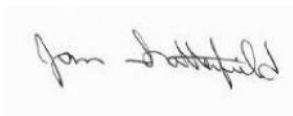
APPENDIX B

ELECTRONICALLY FILED
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CLERK OF THE BUTLER
COUNTY DISTRICT COURT
CASE NUMBER: BU-2023-
CV-000206
PII COMPLIANT



Court: Butler County District Court
Case Number: BU-2023-CV-000206
Case Title: David Greene, III, et al vs.
Kansas Department of
Revenue, et al
Type: ORD: Order Originated by
Judge Order on Motion for
Reconsideration

SO ORDERED,

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Jan Satterfield".

/s/ Honorable Jan
Satterfield, District Court
Judge

Electronically signed on 2024-06-07 10:25:13

IN THE 13TH JUDICIAL DISTRICT
BUTLER COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DAVID GREENE, III, et al)
)
) CASE NO.
) BU-2023-
) CV-000206
)
KANSAS DEPARTMENT)
OF)
REVENUE, et al)
)

ORDER WITH REGARD TO MOTION FOR
RECONSIDERATION

COMES NOW, the Court reviews and acknowledges Plaintiff's Motion to Reconsider and the same is denied. This Court does appreciate the position of the Plaintiffs and can even sympathize therein but nonetheless the Court must follow the law and Plaintiffs must state a claim for legal relief under present case law. As previously stated, at its inception, the taking was legal and tax assessment lawful and due process was afforded. Further, Kansas Department of Revenue may not be sued alone. Respondent Superior is not a legal theory recognized herein. There is no Fifth Amendment recognition in Kansas as taking in the context of failure to promptly return property as described by Plaintiffs.

The Court adopts the argument of Defendant and grants their motion. The Court agrees with the controlling features of Springer as cited by Defendant as well as adopts their argument.

Further matters asserted as issues are a matter for the appellate courts to discern and not one for reconsideration. Plaintiff's request is summarily denied.

APPENDIX C

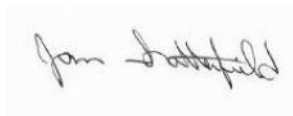
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CLERK OF THE BUTLER
COUNTY DISTRICT COURT
CASE NUMBER: BU-2023-
CV-000206
PII COMPLIANT



Court: Butler County District Court
Case Number: BU-2023-CV-000206
Case Title: David Greene, III, et al vs.
Kansas Department of
Revenue, et al
Type: ORD: Order
Originated by
Judge Ruling on
Defendant's
Motion to Dismiss

SO ORDERED,

A handwritten signature in black ink, appearing to read "Jan Satterfield", is centered within a light gray rectangular box. Below the box is a horizontal line.

/s/ Honorable Jan Satterfield,
District Court Judge

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09 16:31:42

IN THE 13TH JUDICIAL DISTRICT
BUTLER COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DAVID GREENE, III, et al)
)
) CASE NO.
) BU-2023-
) CV-000206
)
KANSAS DEPARTMENT)
OF)
REVENUE, et al)
)

**RULING ON DEFENDANT'S MOTION TO
DISMISS**

Jurisdiction over the person of the defendant may be acquired only by issuance and service of process in the method provided by statute or by voluntary appearance. *Kansas Board of Regents v. Skinner* 267 Kan. 808, 987 P.2d 1096 (1999). A *K.S.A. 60-304* serving, means, making service by any of the methods afforded in *K.S.A. 60-303*. *K.S.A. 60-304(d)(5)* states with regard to governmental bodies when the state or any governmental agency of the state, when subject to suit, can be served by serving the attorney general.

In this case, the defendant has filed an extension of time in which to answer, or respond to the Petition, and filed a Motion to Dismiss which is not a voluntary appearance that will equate to service of

process. A lawsuit is not commenced until service of process is obtained. The file and submitted evidence by plaintiff indicate the Attorney General of Kansas was served on November 8, 2023, by certified mail. In order to sue the state or any governmental agency, the attorney general or assistant attorney general must be served. Steve Stotts with the Kansas Department of Revenue Taxation Division was also served by certified mail on September 5, 2023, through his office.

In order to survive a Motion to Dismiss, a complaint must contain sufficient factual matter, if accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 LEd 2d 868 (2009). Consistent with this standard, the pled allegations taken from Plaintiff's Second Amended Complaint are deemed true for purposes of this Motion. We are yet required to resolve all facts and inferences which may be reasonably drawn in favor of the Defendants Greene. *Kerns v. G.A.C.*, 255 Kan. 264, 875 P2d 949 (1994). Plaintiffs cannot state a claim against defendant Stotts without evidence of his personal participation in deprivation of their property. Even if, Plaintiff contends, communication with Stotts occurred, Courts have previously found receipt of letters or grievances, by itself, does not amount to personal involvement. *Hull v. Colorado Bd of Governors*, 805 F Supp.2d 1094(D. Colo.) (2011). Essentially, the action must be permeated with fraud and corruption.

Mid-American Credit Union v Board of Sedgwick County Commissioners, 15 K.A. 2d 216, 806 P.2d 470 (1991), is a case in which Mid-American sued the Sedgwick County Board of Commissioners and the Kansas Department of Revenue (KDR), as well as the County Treasurer for negligence for failing to properly file a lien on a vehicle. The trial court found that KDR was not protected by governmental immunity or the Tort Claims Act for negligent acts committed by its employees. However, it noted that the KDR may not be sued alone under *Hopkins v State*, 237 Kan. 601, 702 P.2d 311 (1985), but it states KDR may be sued in conjunction with the State of Kansas. Since that time the adoption of K.S.A. 25-2354(f) has precluded the same. Numerous cases on appeal list KDR as a defendant but that is on an administrative driver's license appeal and is based on a statutory right to appeal to the district court for a de novo trial from an administrative process after exhausting all remedies under the Kansas Judicial Review Act found at *KS.A 77-601 et seq.*

KDR acts as an arm of the state, as it neither has autonomy to set its own policies, nor can it provide its own financing. *Lewis v. Kansas Dept of Revenue*, 380 E Supp 2d 1211 (2005). 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. The lack of capacity to be sued argument is separate and distinct from any immunity argument under the Kansas Tort Claims Act. Plaintiff fails to point the Court to any case supporting that the Department of Revenue can be

sued alone. Without the statutory authority to sue express or implied Kansas Department of Revenue does not have the capacity to be sued alone. Additionally, injunctive relief may be authorized under K.S.A. 60-907 (b) but that does not apply here. A Mandamus action may have been an appropriate remedy. Defendant's Motion to Dismiss must be granted. *See unpublished decision Fish v. Kobach, 2016 WL 4506334.* Attached herein.

When *K.S.A. 75-6101* (Kansas Tort Claims Act) came to be, for negligent and tortious acts, liability became the rule and immunity the exception. In *Hopkins* at page 609 it considered collection of a tax or special assessment to be a governmental function with the theory a private person can not govern so they would not be liable for negligent or wrongful acts or omissions committed during a governmental function. In addition, the act provided immunity for discretionary functions. Beyond that, any liability would have to be for malicious or wanton conduct. The State bears the burden of demonstrating it is entitled to immunity under the Kansas Tort Claims Act (KTCA). When an exception to liability is established (immunity), it is a jurisdictional bar. *K.S.A. 75-6104 0* provides an exception for liability for the assessment of taxes or special assessments. Albeit, Plaintiff argues they are not making a claim based on the assessment of taxes itself but rather the failure to return the seized property. The failure to return is akin to the taking. No independent duty existed.

In *Lewis v. Kansas Department of Revenue and Department of Labor*, 380 F. Supp 2d. 1211 (2005), a taxpayer brought a civil rights action under a 1983 action. It found that actions may be brought against governmental officials in their individual capacity. *Hover v. Unified Government of Wyandotte County et al*, 2014 WL 7184822, not reported in F supp, involved the seizing of personal property wrongfully and the failure to return said property to the rightful owners. That case reaffirms that a suit against KDR and its representatives must be in their individual capacity and not their official capacity. There are no substantive claims against Mr. Stotts in this complaint in his individual capacity. The Plaintiff must show defendant Stotts took deliberate action in directing a constitutional violation and allowed the violation to continue. Even so, Steve Stotts is shielded under qualified immunity. Understandably, the Fifth Amendment to the United States Constitution protects individuals from government action that appropriates their property without the due process of the law and without compensation. Citizens and businesses in Kansas have a fundamental right to own property. *Dissmeyer v. State*, 292 Kan. 37, 249 P 3d 444 (2011).

The Fourth Amendment assertion only applies to the initial seizure. Not to the failure to return property. The failure to return seized property does not give rise to a Fourth Amendment violation because the failure to return does not constitute an additional seizure beyond the original seizure. As previously stated, as to any Eleventh Amendment Immunity, state

agencies are considered arms of the state and entitled to Eleventh Amendment Immunity. *Lewis v. KDR*, 380 F Supp.2d 1211 (D. Kansas) (2005). However, no evidence has been shown that the official (Stotts) violated a statutory or recognized constitutional right under the circumstances.

Further, there is no showing of an abuse of process which has been defined as judicial process here. There are two essential elements for the tort of abuse of process: the existence of an ulterior motive and an improper act in the regular prosecution of a proceeding. That would be for a purpose other than that for which the process was intended to be used. The Fourteenth Amendment only protects against deprivations without due process. Due process was afforded here. It does not protect against all deprivations of life, liberty, or property by the state. Lindenman can be distinguished at page six (6), Umscheid performed the actual inspection which resulted in him (the official) suspending Lindenman's license. It was alleged Umscheid was bias, vindictive, and showed prejudice. Additionally, they alleged Umscheid's report contained misrepresentations and in essence fraud. The next day Lindenman passed the reinspection, but their license was not reinstated. *Lindenman v Umscheid*, 255 Kan. 610, 875 p.2d 964 (1994). Furthermore, the Kansas Judicial Review Act does not apply nor does the allegation comply with *K.S.A. 77-614 (b)*. This Petition fails to comply with KJRA's pleading requirements.

For all the foregoing reasons, Defendant's Motion to Dismiss is granted.

IT IS SO ORDERED.

APPENDIX D

Greene v. Kan. Dep't of Revenue

Supreme Court of Kansas
February 27, 2026, Filed

128,006

Reporter

2026 Kan. LEXIS 79 *; 2026 LX 176044

Greene v. Kansas Dept. of Revenue

Notice: DECISION WITHOUT PUBLISHED
OPINION

Prior History: *Greene v. Kan. Dep't of Revenue*, 576
P.3d 320, 2025 Kan. App. Unpub. LEXIS 412, 2025
WL 2737570 (Sept. 26, 2025)

Opinion

[*1] Petition for review Denied.

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