Chavez v. Illinois State Police

United States District Court for the Northern District of Illinois, Eastern Division
July 10, 1997, Decided ; July 10, 1997, DOCKETED
No. 94 C 5307

Reporter: 1997 U.S. Dist. LEXIS 10012
PESO CHAVEZ, et al., Plaintiffs, vs. ILLINOIS STATE POLICE, et al., Defendants.

Disposition: [*1] Defendants' motion to strike plaintiffs' claims for equitable relief GRANTED and defendants' motion to dismiss plaintiffs' state law claims DENIED.

Counsel: For PESO CHAVEZ, individually and on behalf of all persons similarly situated, plaintiff: Jane M. Whicher, Harvey Michael Grossman, Imani Chiphe, Roger Baldwin Foundation of ACLU, Inc., Chicago, IL. Jonathan Klee Baum, Ted S. Helwig, Katten, Muchin & Zavis, Chicago, Il.

For ILLINOIS STATE POLICE, TERRANCE W GAINER, individually and in his official capacity as Director of the Illinois State Police, LARRY THOMAS, DANIEL GILLETTE, CRAIG GRAHAM, and other presently unknown officers of the Illinois State Police, in their individual capacities, ROBERT P CESNA, TROOPER BUTLER, DALE FRAHER, defendants: Roger Philip Flahaven, Iain D. Johnston, Illinois Attorney General's Office, Chicago, IL.

For HARVEY GROSSMAN, movant: Roger Pascal, Schiff, Hardin & Waite, Chicago, IL. For JANE M WHICHER, IMANI CHIPHE, JONATHON K BAUM, TED S HELWIG, movants: Roger Pascal, (See above). William T. Barker, Sonnenschein, Nath & Rosenthal, Chicago, IL.

Judges: EDWARD A. BOBRICK, United States Magistrate Judge. HONORABLE BLANCHE M. MANNING, JUDGE, UNITED STATES [*2] DISTRICT COURT

Opinion by: EDWARD A. BOBRICK

Opinion

HONORABLE BLANCHE M. MANNING, JUDGE

UNITED STATES DISTRICT COURT

HONORABLE JUDGE:

REPORT AND RECOMMENDATION of Magistrate Judge Edward A. Bobrick

Before the court is the motion of defendants Illinois State Police, *et al.*, to strike and dismiss the claims for equitable relief and supplemental state law claims of plaintiffs Peso Chavez, *et al.*

I. BACKGROUND

The plaintiffs originally filed this action in August of 1994. They presently allege claims under *42 U.S.C. § 1983* for violations of the *Fourth Amendment*, the Fourteenth Amendment's Equal Protection and Due Process Clauses, and certain federal regulations and state law provisions. Plaintiffs' claim is, essentially, that the Illinois State Police maintain a practice of stopping, detaining, and searching African-American and Hispanic motorists solely on the basis of race and without legally sufficient cause or justification. They ask for an injunction restraining this alleged practice. Plaintiffs bring their state law claims under the Illinois Constitution, and the common law regarding false imprisonment. Defendants now move for dismissal [*3] of plaintiffs' claim for equitable relief arguing that plaintiffs lack standing to bring such a claim. They also ask for dismissal of plaintiffs' state law claims for lack of jurisdiction. The allegations and facts underlying this action are set out at length in our Report and Recommendation of July 10, 1997, and we incorporate them herein by reference.

II. ANALYSIS

A. Injunctive Relief

The plaintiffs seek an injunction against the defendants' alleged practice of stopping, detaining, and searching motorists on the basis of race. (*Fourth Amended Complaint*, at PP 136-37; 144-45). In our Report and Recommendation of July 10, 1997, we found defendants entitled to summary judgment on these claims. In accord with that finding, plaintiffs' prayer for equitable relief should be dismissed. Should the court reject this recommendation, we find that more briefing on this issue would be necessary. Our reasons follow.

Defendants move to strike plaintiffs' claim for equitable relief under *Fed.R.Civ.P. 12(b)(1)*. They argue this court lacks subject matter jurisdiction over such a claim because the plaintiffs are without standing to pursue it. Under Article III of the Constitution, [*4] a plaintiff must

demonstrate standing in order to satisfy the "case or controversy" prerequisite to jurisdiction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101, 103 S. Ct. 1660, 1665, 75 L. Ed. 2d 675 (1983); *Sanner v. Board of Trade of City of Chicago*, 62 F.3d 918, 922 (7th Cir. 1995). "Plaintiffs must demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues' necessary for the proper resolution of constitutional questions." *Lyons*, 461 U.S. at 101, 103 S. Ct. at 1665. "The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as a result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate' and not 'conjectural or hypothetical.'" *Lyons*, 461 U.S. at 101-02, 103 S. Ct. at 1665. Defendants argue that plaintiffs failed to demonstrate the threat of such an injury sufficient to entitle them to equitable relief. Before we can address this issue, however, we note that the parties disagree over what the court may consider. The defendants maintain that we may look beyond the pleadings; the plaintiffs [*5] contend that we must confine our considerations to their complaint. Given the state of the law regarding this question in the Seventh Circuit, this disagreement is not surprising.

One line of cases appears to support defendants' position. Fairly recently, the Seventh Circuit addressed the question as follows:

> In ruling on a motion to dismiss for want of standing, the district court must accept as true all material allegations of the complaint and must draw all reasonable inferences therefrom in favor of the plaintiff. The plaintiff bears the burden of establishing that it meets the required elements of standing. *Where standing is challenged as a factual matter, the plaintiff bears the burden of supporting the allegations necessary for standing with "competent proof."* We have interpreted "competent proof" as requiring a showing by a preponderance of the evidence, or proof to a reasonable probability, that standing exists.*Retired Chicago Police Ass'n v. City of Chicago*, 76 F.3d 856, 862 (7th Cir. 1996) (citations omitted; emphasis added). The court held similarly in *NFLC, Inc. v. Devcom Mid-America, Inc.*, 45 F.3d 231, 237 (7th Cir. 1993); and in *Capitol* [*6] *Leasing Co. v. F.D.I.C.*, 999 F.3d 188, 191 (7th Cir. 1993), where it stated that "'the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.'" *Capitol Leasing*, 999 F.2d at 191 (*quoting Grafon Corp. v. Hausermann*, 602 F.2d 781, 783 (7th Cir. 1979).

Fairly dispositive -- but plaintiffs' position is not without support from the Seventh Circuit. In *Sanner*, the court addressed the issue as follows:

> We cannot, in reviewing a motion to dismiss, accept the chain of causation [defendant] urges. It is well-established that at this stage of pleading, we must accept the factual allegations contained in the complaint as true. *Northeastern Florida Contractors v. Jacksonville*, 508 U.S. 656, , 113 S. Ct. 2297, 2304, 124 L. Ed. 2d 586 (1993); *Gomez [v. Illinois State Bd. of Educ.]*, 803 F.2d [1030] at 1039 [(7th Cir. 1987)]. Adjunct to this principle is the requirement that we view those allegations in the light most favorable to the plaintiff and make all reasonable inferences in his [*7] favor. *Gomez*, 811 F.2d at 1039. "By the same token, the defendant cannot, in presenting its 12(b)(6) challenge, attempt to refute the complaint or to present a different set of allegations. *Id.*
>
> This standard is not altered by the fact that the [defendant] claimed the [plaintiffs] lacked standing under *Rule 12(b)(1)*.*Sanner*, 62 F.3d at 925. While it is difficult to resolve these lines of cases, there is a clue in *Northeastern Florida Contractors*("*NFC*"), on which the *Sanner* court relied. In *NFC*, the Supreme Court dealt with a Court of Appeals order that a complaint be dismissed for lack of standing. In the portion of the ruling cited by *Sanner*, the Court considered the allegations in the complaint and held that "because those allegations *have not been challenged* (by way of summary judgment motion, for example), we must assume they are true." _U.S. at _, 113 S. Ct. at 2304.

Here, however, the allegations of the complaint *have* been challenged; not by summary judgment motion but by 12(b)(1) motion. The *Sanner* court quoted *Gomez* as holding that a defendant cannot attempt to refute a plaintiffs' allegations by [*8] way of a 12(b)(6) motion, and then found the same rule applied to a 12(b)(1) motion. But a 12(b)(6) motion can -- by the presentation of matters outside the pleadings -- be converted into a motion for summary judgment. *Capitol Leasing*, 999 F.2d at 191. A 12(b)(1) motion cannot be so converted -- because of considerations of *res judicata*, *Winslow v. Walters*, 815 F.2d 1114, 1116 (7th Cir. 1987) -- but that is not to say that

matters outside the pleading cannot be taken into consideration when the allegations are challenged. We do not deal here with a case in a nascent stage -- it has gone to summary judgment with an extensive record. Accordingly, we find that following *Retired Chicago Police* and considering matters outside the pleadings is the appropriate course to take here. Because of the confusion over this question, however, plaintiff should be allowed to respond to defendants' factual assertions, should the court feel the need to reach this question.

B. State Law Claims

Plaintiffs bring claims alleging they were subjected to unlawful searches and seizures in violation of Article I, Section 6 of the Illinois Constitution, a claim alleging a violation of [*9] their equal protection rights under Article I, Section 2 of the Illinois Constitution, and a common law claim alleging false imprisonment. Defendants submit that this court lacks supplemental jurisdiction over the claims as they must be brought in the Illinois Court of Claims. This argument is based on the immunity rules provided by Illinois law.

In resolving this question, we are bound by state rules of immunity. *Magdziak v. Byrd*, 96 F.3d 1045, 1049 (7th Cir. 1996). Under Illinois law -- specifically the Court of Claims Act -- the Illinois Court of Claims possesses exclusive jurisdiction over all claims against the state of Illinois. *Id. citing*705 ILCS 505/8(d). Illinois law deems some suits against state employees to be suits against the state, and therefore within the exclusive jurisdiction of the Court of Claims. *Nelson v. Murphy*, 44 F.3d 497, 505 (7th Cir. 1995). "Suits against a public employee in his official capacity are suits against the state; suits against the employee in his personal capacity are not suits against the state; and a suit seeking damages for misconduct (in particular, for a violation of the Constitution) usually is a personal-capacity suit." [*10] *Id.* Indeed, it is presumed that a state or its department does not violate the laws or the constitution of that state and that, if such a violation does occur, it is solely an action of the servant or agent of the state. *Westshire Retirement and Healthcare Center v. Department of Public Aid*, 276 Ill.App.3d 514, 520, 658 N.E.2d 1286, 1291, 213 Ill. Dec. 265 (1st Dist. 1995). When a state officer performs illegally or purports to act under an unconstitutional act or under authority he does not have, a suit may be maintained against the officer and is not an action against the state. *Id.* The Court of Claims does not have exclusive jurisdiction over allegations that a state employee acted in violation of statutory or constitutional law, or in excess of his authority. *Nelson*, 44 F.3d at 505; *citing Healy v. Vaupel*, 133 Ill. 2d 295, 308, 549 N.E.2d 1240, 1247, 140 Ill. Dec. 368 (1990). Here, plaintiffs allege defendants violated constitutional law, meaning their claims are not within the Court of Claims' exclusive jurisdiction.

Defendants cite three cases which they claim are to the contrary, each involving allegations of a constitutional violation: *Jefferson v. Winnebago* [*11] *County*, 1995 U.S. Dist. LEXIS 2425 (N.D.Ill. Mar. 2, 1995) (*First Amendment*); *Subacz v. Witkowski*, 1993 U.S. Dist. LEXIS 18402 (N.D.Ill. 1993) (*Fourth Amendment*); and *Magdziak, supra* (Fourteenth Amendment). None of these cases, however, assessed supplemental jurisdiction over claims that the Illinois State Constitution was violated. *Jefferson* dealt with infliction of emotional distress, *Subacz* considered assault and battery, and *Magdziak* involved the Illinois Vehicle Code and Illinois State Police directives. 96 F.3d at 1047, 1049. Thus, defendants citation to these rulings fails to support their motion to dismiss. Accordingly, the defendants' motion should be denied as to plaintiffs' state law claims since plaintiffs have sued defendants "in their individual capacity only" (Fourth Amended Complaint at P12, 13 and 149).

III. CONCLUSION

For the foregoing reasons, it is hereby recommended that defendants' motion to strike plaintiffs' claims for equitable relief be GRANTED, and that defendants' motion to dismiss plaintiffs' state law claims be DENIED.

Respectfully submitted,

EDWARD A. BOBRICK

United States Magistrate Judge

DATE: [*12] July 10, 1997

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn,* 474 U.S. 140, 88 L. Ed. 2d 435, 106 S. Ct. 466 (1985); *The Provident Bank v. Manor Steel Corp.,* 882 F.2d 258 (7th Cir. 1989).