



Johnson v. Caldwell et al

2019 | Cited 0 times | W.D. Virginia | July 12, 2019

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D CLu K IN Tlv UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

WALTER L. JOHNSON,

Civi l Acti on No. 7: 19CV00465 M EMORANDUM OPINION By: Hon. Glen E. Comad Seni or Uz l i ted St ates Di st rict Judge Plai nti ff, V. DONALD CALDWELL, et al. ,

Defendants.

Wal ter L. Jol mson, proceedi ng pro K, commenced thi s action by f il i ng a form complai nt agai ns t Donal d Cal dwel l , t he Commonweal t h' s Att or ney f or t he Ci t y of Roanoke, and Dougl as Hubez t a Vi rgi r l i a State Poli ce Speci al Agent. The pl ai nti ff has not pai d the fil i ng fee but wil l be grant ed l eave t o pr occe d k! f or ma oauperi s f or pur pos es of i ni ti al r evi ew of hi s compl ai nt . For t he fol lowi ng reasons , t he court concl udes t hat t he case mukt be di s mi s sed f or fai l t l r e t o s t at e a cl ai m, pt l r s uant t o 28 U. S. C. j 1915(e) (2) (B) (i i).

Backeround The fol lowi ng facts are t aken from the complai nt and the att ached exhi bi ts. See Goi nes v. Val l ey Cmt y. Ser vs. Bd. , 822 F. 3d 159, 166 (4t h Ci r. 2016) (not i ng t hat t he court may cons i der exl i bi t s t o a compl ai nt i n ass ess i ng i t s s uf f ki ency) .

I n September of 2013, l aw enforcement offi cers executed a search warrant at the pl ainti Y s residence as part of an i nvesti gati on by t he Vi rgi ni a Stat e Pol i ce. Dudng t he search, computers, hard dri ves, phot ographs, and ot her i tems of personal propert y were sei zed by l aw enforcement omcers. Ult i matel y, no charges were brought as a resul t of the search.

On Jul y 14, 2017, Cal dwel l , on behal f of t he Commonweal t h, moved t he Ci rcui t Court for the



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Cit y of Roanoke to order t he dest mct ion of 24 i t ems seized duri ng the invest igati on. E The Commonweal t h repr esent led) t o t he Court t hat t he l i s t ed i t ems (hadq been E cont nmi nat ed' wi t h cl l i l d por nogr aphy and E coul d not) be s ani t i zed or cl eaned f or any f ut t l r e commer ci al us e. ' ' Jul y 14, 2017 Order, Dkt . No. 2-1. The Ci rcui t Court granted the motion and ç l ordered t hat agents of t he Vi rgi ni a State Poli ce destroy sai d such i tems li sted on t he att ached doct unent at a ti me and i n a manner t hat i s mos t pr act i cabl e. ' ' I d. (capi t al i zat i on omi t t ed).The Court al so r eqt l i red t he f i l i ng of a cert i ficate upon compl eti on of t he destructi on.

The Commonwea1 t h fil ed the requested cert i ficate of destrnzcti on on September 26, 2017. ' The cert i ficate i ndicates that t he speci fied i t ems of personal propert y were dest royed by Hubert on Sept ember 25, 2017, pursuant to the Ci rcuit Court' s order. See Cert i ficate of Dest ruct i on, Dkt. No. 2-1 (G t pt l rs uant t o a wr i t t en or der of t he Roanoke Ci t y Ci rc ui t Court dat ed Jul y 14, 2017, t he foll owi ng i tems were destroyed at 1: 30 p. m. on the 25th day of September, 2017 . . . by Vi rgi ni a St at e Pol i ce Speci al Agent Dougl as R. Hubel t ').

At some point thereaft er, the pl ai nti ff contact ed t he Vi rgi nia Stat e Pol ice regardi ng t he i tems sei zed 9om hi s residence. On Jt me 11, 2019, a representati ve of the Vi rgi nia State Pol i ce email ed the plai nti ff mld advised hi m that t he propert y had been dest royed pursuant t o a court order i ssued on Jul y 14, 2017. cert i ficate of des% ct ion.

The pl ai nt iff subsequentl y recei ved a copy of t he order and the

On Jt me 24, 2019, t he pl ai nt i ff fi l ed a form compl ai nt agai nst Cal dwel l and Hubert . The pl ai nt i ff al l eges t hat he t G was nevef advi sed t ha t pr oceedhgs had been undert aken t o depr i ve (hi m) of (l l i s) proper t y. ' ' Compl . 3, Dkt . No. 2. Cons equent l y, t he pl ai nt i ff cl ai ms t hat t he def endant s depri ved l l i m of his propert y wi t hout due process of l aw, i n vi olat ion of t he Fourt eent h

2 Amendment. He seeks to recover compensatory and puni ti ve damages, and requests t hat t he defendants be removed from thei r posi ti ons.

Standard of Review Under 28 U. S. C. j 1915(e) , wl l i ch gover ns j . ! à f or ma pauper i s proceedi ngs, t he court has a manda t or y dut y t o scr een i ni ti al sl i ngs.Er i l i ne Co. S. A. v. Johnson, 440 F. 3d 648, 656- 57 (4t h Ci r. 2006) . The court mus t di smi ss a case G l at any t i me' ' i f t he court det ermi nes t hat t he compl ai nt ç s f ai l s t o st at e a cl ai m on whi ch rel i ef may be grant ed. ' ' 28 U. S. C. j 1915(e)(2)(B) (i i) .

The s t andar ds f or r evi ewi ng a compl ai nt f or di smi s sal under j 1915(e) (2) (B) (i i) ar e t he same as t hose which appl y when a defendant moves for dismissal under Federal Rule of Ci vi l Procedt l r e 12(b) (6). De' Lont a v. Ancel one, 330 F. 3d 630,633 (4t h Ci r. 2003). Thus, i n reviewing a complai nt under thi s stamte, the court must accept al1 wel l- pl eaded factual al l egat ions as t rue



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and view the complaint in the light most favorable to the plaintiff. *Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). To survive dismissal for failure to state a claim, a complaint must contain sufficient factual allegations to raise a right to relief above the speculative level and to state a claim to relief that is plausible on its face. *Bel Atl. Com. v. Twombly*, 550 U.S. 544, 555, 570 (2007).

Discussion Because the plaintiff characterizes this action as one for violation of his right to due process, the court considers the complaint as being brought pursuant to 42 U.S.C. § 1983. Section 1983 provides a cause of action against any person who, under color of state law, causes the deprivation of another person's rights under the Constitution or laws of the United States. 42 U.S.C. § 1983. For the following reasons, the court concludes that the plaintiff's complaint fails to state a plausible claim under § 1983 against either of the named defendants.

Turning first to the claim against Caldwell, the Supreme Court has held that prosecutors are absolutely immune from damages liability when they act as advocates for the State. *Savage v. Maryland*, 896 F.3d 260, 268 (4th Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 430-32 (1976)). Such immunity extends to prosecutive functions as societal with the judicial phase of the criminal process. *Nero v. Mosby*, 890 F.3d 106, 117-18 (4th Cir. 2018) (quoting *Imbler*, 424 U.S. at 430-31). It thus extends beyond the criminal process to conduct in civil proceedings where a government attorney is operating in an enforcement role in initiating... judicial proceedings. *Slcizmer v. Govorchin*, 463 F.3d 518, 525 (6th Cir. 2006). To determine whether prosecutorial immunity applies, courts employ a functional approach, looking to the nature of the function performed, without regard to the identity of the actor who performed it. *Savaae*, 896 F.3d at 268 (internal quotation marks omitted). Additionally, the court must focus on the conduct for which immunity is claimed, not on the harm that the conduct may have caused or the question whether it was lawful. *Id.* (quoting *Bucldey v. Fitzsimmons*, 509 U.S. 259, 271 (1993)). *E.g.* When a prosecutor is functioning as an advocate for the State, it is clear that his or her actions are intimately associated with the judicial phase of the criminal process and thus protected by absolute immunity. *Id.* (citing *Imbler*, 424 U.S. at 430-31).

Applying these principles, the court concludes that Caldwell was acting in his role as an advocate for the Commonwealth when he requested the entry of the order directing the Virginia State Police to destroy the property seized from the plaintiffs' residence. Courts have held that prosecutors were acting as advocates for the State when they (a) filed motions as part of the judicial process. *Elmore v. City of Greenwood*, No. 3:13-cv-01755, 2014 U.S. Dist. LEXIS 120416, at *20 (O.S.C. June 27, 2014); see also *Cartier v. Bttrch*, 34 F.3d 257, 263 (4th Cir. 1994) (the 11th and 12th motions and preparations for appeal, Bttrch was still functioning as an



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4 advocat e f or t he St at e, and not i n an i nves t i ga t or y capaci t y. ' '). That i s pr eci sel y what occur r ed here; Caldwell Ii led a mot ion fordest ruct ion of propert y on behal f of the Commonweal t h. Consi stent wi t h t he foregoi ng decisi ons, the court concl udes t hat Cal dwell i s absolutely i mmt me f ' rom dnmàges li abil i ty relat ed to such acti on.

The court li kewi se concl udes t hat Hubert is absol ut el y i mml me from l iabil i ty, si nce ' he acted pursuant to the Ci rcui t Court' s order i n destroyi ng the propert y seized from the pl aint iffs resi dence. Court s have held that t he l aw provides i mmuni ty for t hose whose acti ons are t aken ç i i n obedi ence t o aj udi ci al orde r or t mder t he cour t ' s di r ec t i on. ' ' Mccray v. Maryl and, 456 F. 2d 1, 5 (4t h Ci r . 1972); s ee al s o Wel ch v. Saunders, 720 F. App' x 476, 480 (10t h Ci r . 2017) rl under t he doct ri ne of quas i - j udi ci al i mmuni ty, l of f i ci al s char ged wi t h t he dut y of execut i ng a f aci al l y val i d court order en joy absol ut e i mmuni ty f ' r om l i abi l i ty f or damages i n a s ui t chal l engi ng conduct pr escr i bed by t hat or der. ' ' ') (quot i ng Moss v. Kopp, 559 F. 3d 1155, 1 163 (101 Ci r. 2009;; Rol and v. Phi l l i ps, 19 F. 3d 552, 556 (1 1t h Ci r. 1994) (ç t g tz qaw enf orcement per s onnel , act i ng i n furt herance of t hei r offici al dut ies and relyi ng on a facial l y val id court order, are enti tled to absol ut e quas i - j udi ci al i mml l ni ty f ' r om s ui t i n a s ect i on 1983 act i om' '). ' l ' he avai l abi l i ty of i mml l ni ty i n such ci rcll mst ances ç G does not depend on t he oft ki al s researching t he l aw, checki ng court records, or doi ng anyt hi ng beyond looki ng at the face of t he order. ' ' Wel ch, 720 F. App' x at 481. ç t - fhus, for an order to be G faci al l y val id' means si mply that i t is val id on i t s face. ' ' 1d. ; see al so Rol and, 19 F. 3d at 556 (t s G l 7 aci al l y val i d' does not mean G l awful . ' An er r oneous or der can be val i d. ' ' ') (quot i ng Tl z mey v. O' Tool e, 898 F. 2d 1470, 1473 (10t h Ci r . 1990\$.

In t l z is case, the Ci rcui t Court ' s order, on i ts face, expressly directed agents of t he Vi rgi ni a St ate Poli ce t o destroy 24 speci t k i tems sei zed from t he pl aint ic s resi dence. Hubert , a Speci al Agent wi th the Vi rgi nia State Poli ce, acted pl z rsuant t o t hat order i n dest royi ng the li st ed i tems on

5 Sept ember 25, 2017. Because the pl ai nti ff is chal lengi ng conduct prescri bed by a facial ly val i d court order, the court concl udes t hat Hubert is absol ut el y i mmt me from l iabil i ty relat ed t o such conduct.

Fi nall y, t he court not es t hat federal di stri ct court s have t ç no aut hori ty to . . . independentl y remove st ate offici al s f rom oft sce. ' ' Fil es v. Ki ng, No. 1: 17-cv-01632, 2018 U. S. Dist. LEXIS 154737, at *9 (N. D. Al a. Jul y 31, 2018) . Cons equent l y, t he pl ai nt i ffs r eques t i n t hi s r egar d S f nei t her stat es a cl ai m on whi ch rel ief can be granted nor stat es a remedy wll i ch thi s court can awar d. ' ' J Z

Conclusi on For t he reasons s t at ed, t he cour t wi l l gr ant t he pl ai nt i ffs mot i on f or l eave t o proceed L q forma pauperis. However, t he complai nt wi l l be di smi ssed pt t rsuant to 28 U. S. C. j 1915(e)(2) (B)(i i).



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The Clerk is directed to send copies of this memorandum and the accompanying order to the plaintiff.

DATED: This 1st day of July

, 2019.

Senior United States District Judge

