

May 16 2013 8:58 AM

Hon. Kathryn J. Nelson, Dept. 13
May 24, 2013 9:10 am
KEVIN STOCK
COUNTY CLERK
NO: 12-2-09594-4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

SAMUEL RAMIREZ-RANGEL, LETICIA
GONZALES-SANTIAGO, and JOSE SOLIS-
LEON,

Plaintiff,

-vs-

KITSAP COUNTY, JUSTIN T. CHILDS, in his
official capacity as a Kitsap County Sheriff's
Deputy, and SCOTT C. JENSEN, in his official
capacity as a Kitsap County Sheriff's Deputy,

Defendants.

NO. 12-2-09594-4

MOTION FOR ENTRY OF FINAL
JUDGMENT

I. MOTION

COME NOW Kitsap County, Justin Childs and Scott Jensen, by and through their
counsel of record, and move this Court for Entry of Final Judgment in this action, thereby
terminating all further proceedings in the above-entitled cause. This action is based upon the
records and files herein, CR 54, CR 57, CR 58, RCW 7.24 and/or CR 12(c).

///

II. MEMORANDUM

A. Introduction

All claims in this cause have effectively been terminated, and any remaining remedy requested fails as a matter of law.

The Plaintiffs' cause of action for damages for an alleged violation of their rights as guaranteed by Article 1, Section 7 of the Washington State Constitution (Claim I) was dismissed because no such cause of action exists at law. Similarly, Plaintiffs' cause of action for "Respondeat Superior" (Claim III) was dismissed because respondeat superior is a legal principal, not a cause of action which exists at law. Finally, Plaintiffs' cause of action for False Arrest (Claim II) was dismissed because the undisputed facts established that Deputies Jensen and Childs had probable cause to arrest the plaintiffs.

What remains of the plaintiffs' action is nothing more than a request for relief for causes of action which have been dismissed and/or nullified by the rulings of this court. Additionally, the declaratory relief Plaintiffs seek is not authorized by law, as requests for declaratory relief may not be utilized to seek advisory opinions of the Court. Accordingly, final judgment should be entered, and this matter brought to a close.

B. Procedural History

As originally filed, Plaintiff's Complaint¹ set forth three causes of action; that is:

Claim I: Violation of Washington State Constitution Article I, Section 7;

Claim II: False Arrest; and

Claim III: Respondeat Superior

¹ Complaint for Damages and Declaratory Relief

1 As a remedy for each of these causes of action, Plaintiffs' requested damages as well as
2 declaratory relief.²

3
4 The County defendants moved for and obtained an order of dismissal of any claims for
5 damages for Violation of Washington Constitution Art. I, Section 7 (Claim I), as well as
6 dismissal of claims for Respondeat Superior (Claim III) as an independent cause of action. Both
7 such claims were dismissed with prejudice.³

8
9 Subsequently, Defendants moved for summary judgment dismissal of the remaining
10 claims.⁴ Initially finding that a question of fact existed regarding the False Arrest Claim, this
11 Court denied the defendants' Motion for Summary Judgment Dismissal without specifically
12 addressing the motion for dismissal of declaratory relief. Upon Reconsideration of the denial of
13 summary judgment for the False Arrest Claim, this Court dismissed the False Arrest Claim
14 because there was no material question of fact as to the existence of probable cause to arrest at
15 the time of the Plaintiffs' detention.⁵

16
17 Thus, the only potential matter remaining from the language of the Complaint for which
18 final judgment has not yet clearly been rendered is Plaintiffs' request for declaratory relief
19 regarding a detention which they plead was an unconstitutional seizure. However, this court has
20 since ruled that it is undisputed there was probable cause for this detention. Accordingly, by
21 ruling of this court, the detention was lawful.

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27 ² Id at p. 9.

28 ³ Order Granting Motion for Dismissal Pursuant to CR 12(c).

⁴ Defendants' Motion for Summary Judgment Dismissal Pursuant to CR 56.

1 **C. Discussion**

2 1. No Viable Cause of Action Remains

3 All causes of action in this matter have effectively been dismissed. The second and third
4 causes of action (false arrest and Respondeat Superior) were dismissed by specific ruling of this
5 court.⁶ Similarly, the first cause of action (violation of Washington Constitution Article I,
6 Section 7) was dismissed with regard to any claim for damages.⁷ And, though no specific
7 judgment has yet been rendered regarding the request for declaratory relief for an alleged
8 constitutional violation, any such request is rendered moot by the Court's ruling that there was
9 probable cause for the detention of the Plaintiffs.
10

11 In their cause of action labeled "Violations of Washington State Constitution Article I,
12 Section 7," Plaintiffs allege that they were unlawfully seized and that such seizure amounts to a
13 violation of their "right to be free from prolonged detention by police officers where there is no
14 lawful basis to continue detention."⁸ However, this court's ruling that there is no material
15 question of fact regarding the existence of probable cause to arrest the plaintiffs precludes any
16 such conclusion that the detention was unlawful. The Court having ruled that the detention was
17 authorized by law, and having entered a final judgment regarding the same, Plaintiff is
18 collaterally estopped from further argument that the detention was unconstitutional.⁹
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23 ⁵ Order Granting Motion for Reconsideration and Granting Motion for Summary Judgment Dismissal of False Arrest
24 Claim.

25 ⁶ See, Order Granting Motion for Dismissal Pursuant to CR 12(c) and Order Granting Motion for Reconsideration
26 and Granting Motion for Summary Judgment Dismissal of False Arrest Claim.

27 ⁷ Order Granting Motion for Dismissal Pursuant to CR 12(c).

28 ⁸ Complaint for Damages and Declaratory Relief at p. 7, lines 13-16.

⁹ 14A WAPRAC § 35:32 ("The rule is that collateral estoppel bars relitigation of material, essential, or ultimate
facts.") *State v. Vasquez*, 148 Wash.2d 303, 308, 59 P.3d 648 (2002) (collateral estoppel bars relitigation of issues
of ultimate fact that have been determined by a final judgment.)

1 Accordingly, this Court's ruling upon the allegation of false arrest (which was premised
2 upon the same facts as was the claimed constitutional violation), precludes plaintiffs from re-
3 litigating the same issue under the caption of another claim.¹⁰
4

5 2. Failure to State a Claim upon which Relief can be Granted.

6 Regardless of the argument above, independent grounds warrant final judgment on
7 Plaintiffs' request for declaratory relief. In seeking declaratory relief for the claim discussed
8 above, Plaintiffs have failed to state a claim upon which relief can be granted.
9

10 "A motion to dismiss for failure to state a claim (CR 12(b)(6)) and a motion for judgment
11 on the pleadings (CR 12(c)) raise identical issues."¹ "Dismissal under CR 12 is appropriate only
12 if it is beyond doubt that the plaintiff cannot prove any set of facts to justify recovery."²
13

14 Here, there could be no set of facts which the plaintiffs could prove which would entitle
15 them to the declaratory relief they have requested. Accordingly, Defendants' motion for a final
16 judgment of dismissal of any remaining claim and request for relief should be granted as a matter
17 of law.
18

19 Per the prayer for relief set forth in their Complaint, Plaintiffs seek relief in the form of a
20 declaratory judgment. Specifically, they seek a judgment declaring that "Defendants are not
21 authorized to enforce federal immigration law" and that "Defendants do not have authority to
22 prolong a detention to interrogate the individuals detained about their immigration status."¹¹
23 However, because there is no remaining justiciable controversy, and because the declaratory
24

25 ¹⁰ *Williams v. Leone & Keeble, Inc.* 171 Wash.2d 726, 731, 254 P.3d 818, 821 (2011) ("Collateral estoppel requires
26 that (1) the identical issue was decided in the prior adjudication, (2) the prior adjudication resulted in a final
27 judgment on the merits, (3) collateral estoppel is asserted against the same party or a party in privity with the same
28 party to the prior adjudication, and (4) precluding relitigation of the issue will not work an injustice." *Citing, Clark*
v. Baines, 150 Wash.2d 905, 913, 84 P.3d 245 (2004).)

¹¹ Complaint for Damages and Declaratory Relief at p. 9, lines 5-7.

1 ruling requested would be nothing more than an advisory opinion, no set of facts can be proven
2 that would entitle Plaintiffs to the remedy requested, and per CR 12(c), their claim and request
3 for relief should be dismissed.
4

5 Before the court may assume jurisdiction and hear a case as a declaratory judgment
6 action, a justiciable controversy must be presented.¹² A justiciable controversy is¹³:

- 7 (1) an actual, present and existing dispute, or the mature seeds of one,
8 as distinguished from a possible, dormant, hypothetical,
9 speculative, or moot disagreement,
10 (2) between parties having genuine and opposing interests,
11 (3) which involves interests that must be direct and substantial, rather
than potential, theoretical, abstract or academic, and
12 (4) a judicial determination of which will be final and conclusive.

13 “The purpose of these requirements is to ensure the court will render a final decision on an actual
14 dispute between opposing parties with a genuine stake in the court’s decision.”¹⁴ Absent the
15 existence of these four elements, there is no justiciable controversy and the court “steps into the
16 prohibited area of advisory opinions.”¹⁵

17 In the present case, there is no remaining justiciable controversy. The court having ruled
18 that the detention was lawful upon the uncontroverted finding of the existence of probable cause
19 to arrest, there remains no “actual, present and existing dispute.”¹⁶ Any ‘dispute’ the requested
20 declaratory remedy might bear upon is speculative at best. Additionally, there are no genuine
21 and opposing interests between the plaintiffs and Deputies Jensen or Childs, or Kitsap County.
22
23

24 ¹² *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994).

25 ¹³ *Id.*

26 ¹⁴ *Superior Asphalt and Concrete Co. Inc., v. Washington Department of Labor and Industries*, 121 Wn.App. 601
606, 89 P.3d 316 (2004), *rev. denied*, 153 Wn.2d 1005 (2005).

27 ¹⁵ *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

28 ¹⁶ *See, Superior Asphalt and Concrete Co. Inc.*, 121 Wn.App. at 607.

1 Further, the plaintiffs have no remaining interest that is direct and substantial regarding
2 the declaratory remedy sought. The plaintiffs retain no present or direct interest in local
3 enforcement of federal immigration law. Indeed, the remedial declaration sought pertains only to
4 “potential, theoretical, abstract, or academic” matters (e.g. ‘what should happen when’ or ‘what
5 should happen if’).

7 Finally, the declaratory judgment sought is not a “judicial determination which will be
8 final and conclusive.” The judgment sought would bind but a single law enforcement agency in
9 Kitsap County, to the exclusion of police departments within the County for the cities of
10 Bainbridge Island, Poulsbo, Port Orchard and Bremerton, and the Washington State Patrol.

12 Thus, as there is no justiciable controversy, any decision this court might render regarding
13 the authority of the Defendants to enforce law or to detain would be nothing more than an
14 advisory opinion; an opinion which this Court is prohibited from making.¹⁷

16 Accordingly, in seeking declaratory judgment, Plaintiff has failed to state a claim upon
17 which relief can be granted, as no such relief is available to them; neither is there any remaining
18 claim upon which to base such relief.

20 III. CONCLUSION

21 For the foregoing reasons, final judgment in this cause should be entered, dismissing any
22 remaining claim and or request for relief.

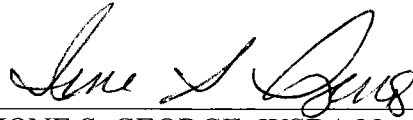
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28 ¹⁷ Id. at 606.

1 RESPECTFULLY SUBMITTED this 16th day of May, 2013.

2
3 RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

4
5 

6 IONE S. GEORGE, WSBA No. 18236

7 Chief Deputy Prosecuting Attorney

8 NEIL R. WACHTER, WSBA No. 23278

9 Senior Deputy Prosecuting Attorney

10 Attorneys for Defendants Kitsap County, Justin T.
11 Childs and Scott C. Jensen

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

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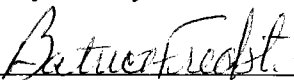
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SIGNED in Port Orchard, Washington this 16th day of May 2013.



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