

SUPREME COURT OF MISSISSIPPI

James Lofton a/k/a James Bernard Lawson v. United States of America, United States Government, State of Mississippi, and Southern Plantations

785 So. 2d 287 (Miss. 2001) · No. No. 2000-CP-00671-SCT · Decided May 17, 2001

SUMMARY

The Supreme Court of Mississippi affirmed dismissal of James Lofton's pro se 42 U.S.C. § 1983 complaint for failure to state a claim. The court held that Lofton did not identify any person acting under color of state law, could not sue the State under § 1983, improperly raised the Prison Litigation Reform Act constitutional challenge for the first time on appeal, and was not entitled to default judgment because only the State had been served and it timely responded.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Justice; Pittman, C.J.; Mills, J.; Cobb, J.
JURISDICTION	Mississippi
DECIDED	May 17, 2001
DOCKET	No. 2000-CP-00671-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Hinds County Circuit Court's dismissal under Mississippi Rule of Civil Procedure 12(b)(6) of a pro se complaint asserting claims under 42 U.S.C. §§ 1983 and 1985.
STANDARD OF REVIEW	A Rule 12(b)(6) motion presents a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	James Lofton a/k/a James Bernard Lawson v. United States of America, United States Government, State of Mississippi, Southern Plantations

TOPICS

- motions to dismiss
- section 1983
- default judgment
- service of process
- appellate procedure

PRACTICE AREAS

civil procedure

civil rights

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court violated Lofton's constitutional rights by dismissing his pro se complaint under Rule 12(b)(6) without allowing him to present evidence.
2. Whether Lofton could raise on appeal his constitutional challenge to the Prison Litigation Reform Act of 1995 when he had not raised that issue in the circuit court.
3. Whether Lofton was entitled to a default judgment when only the State of Mississippi had been served and the State timely responded.

HOLDINGS

1. Dismissal was proper because Lofton's complaint failed to state a claim under 42 U.S.C. § 1983: it did not identify a person acting under color of state law, and the State of Mississippi was not a person subject to § 1983 liability.
2. Lofton could not raise his constitutional challenge to the Prison Litigation Reform Act for the first time on appeal.
3. Lofton was not entitled to a default judgment because process was not served on the defendants other than the State, and the State timely responded.

KEY QUOTATIONS

“The two essential elements of a § 1983 claim are: (1) the conduct complained of was committed by a person acting under the color of state law; and (2) this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.” (290)

“Because process was never served on any of the defendants except the State of Mississippi, which timely responded, Lofton was not entitled to a default judgment.” (290)

FACTUAL BACKGROUND

Lofton, who was incarcerated at Unit 32 of the Mississippi state penitentiary at Parchman, filed a pro se complaint seeking substantial compensatory and punitive damages, land, and a home. The complaint made general allegations and did not identify any specific person acting under color of state law who allegedly committed the violations. Only the State of Mississippi was served, and it timely responded to the complaint.

PROCEDURAL HISTORY

Lofton filed an in forma pauperis complaint in the Hinds County Circuit Court against four defendants. Only the State of Mississippi was properly served; the State filed a Rule 12(b) motion to dismiss, and Lofton filed a motion for default judgment. The circuit court dismissed the complaint for failure to state a claim, and the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- T.M. v. Noblitt, 650 So. 2d 1340, 1342 (Miss. 1995)
- Tucker v. Hinds County, 558 So. 2d 869, 872 (Miss. 1990)
- UHS-Qualicare, Inc. v. Gulf Coast Community Hospital, Inc., 525 So. 2d 746, 754 (Miss. 1987)
- American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999)
- Barrett v. Miller, 599 So. 2d 559, 563 (Miss. 1992)
- Wright v. White, 693 So. 2d 898, 904 (Miss. 1997)
- Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989)
- Crowe v. Smith, 603 So. 2d 301, 305 (Miss. 1992)
- Parker v. Mississippi Game & Fish Commission, 555 So. 2d 725, 730 (Miss. 1989)

OPINION

PER CURIAM.

785 So. 2d 287 (2001) James LOFTON a/k/a James Bernard Lawson v. UNITED STATES of America, United States Government, State of Mississippi and Southern Plantations. No. 2000-CP-00671-SCT. Supreme Court of Mississippi. May 17, 2001. *288 James Lofton, Appellant pro se. Office of the Attorney General by Jane L. Mapp, for Appellees.

Before PITTMAN, C.J., MILLS and COBB, JJ. COBB, Justice, for the Court: ¶ 1. James Lofton filed a pro se, in forma pauperis complaint styled "42 U.S.C. § 1983-85 Complaint" in the Hinds County Circuit Court, First Judicial District.

The complaint named four defendants: The United States of America, United States Government, State of Mississippi, and Southern Plantations. Only the State of Mississippi was properly served with process, and rather than filing an answer, the State filed a motion to dismiss pursuant to M.R.C.P. 12(b). Lofton responded with a Motion for Default Judgment. Apparently no hearing was *289 held on either motion, and the circuit judge granted the State's motion to dismiss, citing failure to state a claim upon which relief can be granted, pursuant to M.R.C.P.

12(b)(6). Aggrieved, Lofton filed a notice of appeal, raising three issues, all of which claim violation of federal constitutional rights, as follows: WHETHER THE APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FIRST, FIFTH, SIXTH, SEVENTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED BY THE TRIAL COURT SUMMARILY DISMISSING HIS PRO SE COMPLAINT, THEREBY: I.

DENYING APPELLANT THE OPPORTUNITY TO PRESENT PROOF OF HIS CLAIM OF DEPRIVATION.

II. DENYING APPELLANT THE OPPORTUNITY TO ADDRESS HIS CONTENTIONS THAT THE AMENDED PROVISIONS OF THE PRISON LITIGATION REFORM ACT (PLRA) OF 1995 ARE UNCONSTITUTIONAL III. DENYING APPELLANT A RULING ON HIS MOTION FOR DEFAULT JUDGMENT WITHIN THE TIME REQUIRED BY LAW Finding no error in the trial court's ruling, we affirm. FACTS ¶ 2. At the time Lofton filed this civil action, he was incarcerated in Unit 32 of the state penitentiary at Parchman.[1] Lofton's complaint only makes general allegations and identifies no specific persons acting under the color of state law who were responsible for any of the wrongs he alleged had been done.

Lofton seeks \$7,121,925 in compensatory damages and \$12,201,895 in punitive damages, as well as 500 acres of land and a family home at the government's expense. STANDARD OF REVIEW ¶ 3. A motion to dismiss under Rule 12(b)(6) of the Mississippi Rules of Civil Procedure raises an issue of law. *T.M. v. Noblitt*, 650 So. 2d 1340, 1342 (Miss.1995); *Tucker v. Hinds County*, 558 So. 2d 869, 872 (Miss.1990); This Court conducts de novo review on questions of law. *UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., Inc.*, 525 So. 2d 746, 754 (Miss.1987). ANALYSIS ¶ 4. Lofton does not seem to understand the purpose of Rule 12(b)(6) and argues the trial court erred in dismissing his complaint without giving him the opportunity to present evidence to support his claims.

The State correctly points out that Lofton failed to raise a claim that could be supported. Lofton filed his complaint pursuant to 42 U.S.C. § 1983 which provides in pertinent part: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured *290 by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

The two essential elements of a § 1983 claim are: (1) the conduct complained of was committed by a person acting under the color of state law; and (2) this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50, 119 S. Ct. 977, 985, 143 L. Ed.

2d 130, 143 (1999); *Barrett v. Miller*, 599 So. 2d 559, 563 (Miss.1992). Lofton's complaint did not name any persons who acted under the color of state law. ¶ 5. This Court has held that the State and state agencies are not "persons" that Congress intended to subject to liability, and therefore, cannot be sued under § 1983 in state court. *Wright v. White*, 693 So.

2d 898, 904 (Miss.1997) (citing *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989)). As a result, Lofton failed to meet the first element of a § 1983 claim and the State's Rule 12(b) motion was properly granted. ¶ 6. Next Lofton argues that the Prisoner Litigation Reform Act of 1995, P.L. No. 104-134, Tit.

VIII, 110 Stat. 1321-66 (Apr. 26,1996) is unconstitutional under the U.S. Constitution. However, he failed to raise this issue in the circuit court and thus is barred from raising it for the first time on appeal. This Court has repeatedly held that no new issues may be raised on appeal. *Crowe v. Smith*, 603 So. 2d 301, 305 (Miss.1992); *Parker v. Mississippi Game & Fish Comm'n*, 555 So.

2d 725, 730 (Miss.1989) (the trial judge will not be put in error on a matter which has not been presented to him). ¶ 7. Finally, Lofton clearly does not understand the requirement for proper service of process before a default judgment may be entered.

Because process was never served on any of the defendants except the State of Mississippi, which timely responded, Lofton was not entitled to a default judgment. See M.R.C.P. 4, 12(a) & 55. CONCLUSION ¶ 8. The circuit judge properly granted the State's motion to dismiss for failure to state a claim under which relief could be granted. Finding no error in the judgment of the circuit court, we affirm. ¶ 9.

AFFIRMED. PITTMAN, C.J., BANKS and McRAE, P.JJ., SMITH, MILLS, WALLER, DIAZ and EASLEY, JJ., concur. NOTES [1] Lofton clearly stated in his complaint that the action was "unrelated to M.D.O.C and/or his confinement."

Although the trial court erroneously granted Lofton's application to appeal in forma pauperis, the State failed to address this error and the issue of costs on appeal.