

SUPREME COURT OF NEBRASKA

Holmstedt v. York County Jail Supervisor

275 Neb. 161 (Neb. 2008) · No. No. S-05-906 · Decided February 29, 2008

SUMMARY

The Supreme Court of Nebraska reviewed the dismissal of Duane S. Holmstedt’s 42 U.S.C. § 1983 action against York County jail and law-enforcement defendants. The court adopted the Eighth Circuit rule requiring a plaintiff to expressly and unambiguously state that public officials are sued in their individual capacities; otherwise, the suit is treated as one against them in their official capacities. Because Holmstedt served the individual defendants rather than York County’s chief executive officer or clerk, the court held that service was insufficient and remanded with directions to affirm dismissal of the action against all defendants.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	February 29, 2008
DOCKET	No. S-05-906
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Further review of a Nebraska Court of Appeals decision reversing dismissal of the claims against individual defendants and affirming dismissal of the York County Sheriff's Department.
STANDARD OF REVIEW	Questions of law are reviewed independently.
PRECEDENTIAL VALUE	Published opinion; binding Nebraska Supreme Court precedent.
PARTIES	Duane S. Holmstedt v. York County Jail Supervisor (name unknown), York County Sheriff's Department, Dale Radcliff, Paul Vrbka, Ray Silverstrand

TOPICS

- service of process
- personal jurisdiction
- section 1983
- pleadings
- appellate procedure

PRACTICE AREAS

civil rights

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Nebraska courts should use the Eighth Circuit's express-and-unambiguous pleading rule, rather than the course-of-proceedings test, to determine whether public officials in a § 1983 action are sued in their individual or official capacities.
2. Whether the individual defendants were sued only in their official capacities.
3. Whether service on the named county employees was sufficient to serve them in their official capacities and confer personal jurisdiction.
4. Whether the court needed to reach the Rule 12(b)(6) failure-to-state-a-claim arguments after determining that service and personal jurisdiction were deficient.

HOLDINGS

1. When a motion to dismiss raises Rule 12(b)(6) grounds together with Rule 12(b)(2), (4), or (5) grounds, the court should consider the personal-jurisdiction, process, and service issues first and reach Rule 12(b)(6) only if jurisdiction and service are sufficient.
2. In Nebraska state courts, a plaintiff seeking to sue a public official in an individual capacity under § 1983 must expressly and unambiguously state that capacity in the complaint; otherwise, the official is presumed to be sued only in an official capacity.
3. Holmstedt sued the individual defendants only in their official capacities because his complaint did not expressly and unambiguously state that he sued them individually.
4. Service on the named county employees was insufficient because an official-capacity § 1983 suit against county employees is treated as a suit against York County, which must be served through the county's chief executive officer or clerk under Neb. Rev. Stat. § 25-510.02(2).

KEY QUOTATIONS

"in order to sue a public official in his or her individual capacity, "a plaintiff must expressly and unambiguously state so in the pleadings, otherwise, it will be assumed that the defendant is sued only in his or her official capacity."" (at 323)

"Applying the Eighth Circuit rule, we review the complaint and conclude that the individual defendants in the present case were not sued in their individual capacities but were sued only in their official capacities." (at 324)

FACTUAL BACKGROUND

Holmstedt alleged that York County law-enforcement and jail personnel abused him during his arrest, interrogation, and later periods of incarceration, including striking him, denying him an attorney and medical care, and coercing him to provide information. He filed a pro se complaint under 42 U.S.C. § 1983 seeking

damages and criminal prosecution of the defendants. He served the individual defendants directly, but did not serve York County's chief executive officer or clerk as required for service on the county.

PROCEDURAL HISTORY

Holmstedt filed a pro se 42 U.S.C. § 1983 action in the York County District Court. The district court dismissed the action against all defendants under Nebraska Rule of Pleading in Civil Actions 12(b)(2), (4), (5), and (6). The Court of Appeals affirmed dismissal as to the Sheriff's Department but reversed as to the individual defendants. The Nebraska Supreme Court granted further review, reversed the Court of Appeals, and remanded with directions to affirm dismissal as to all defendants.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Nebraska Court of Appeals with directions to affirm the York County District Court's dismissal of the action as to all defendants.

CASES CITED

- Holmstedt v. York County Jail Supervisor, 15 Neb. App. 893, 739 N.W.2d 449 (2007)
- State v. McCulloch, 274 Neb. 636, 742 N.W.2d 727 (2007)
- Anderson v. Wells Fargo Fin. Accept., 269 Neb. 595, 694 N.W.2d 625 (2005)
- Sinochem International v. Malaysia International Shipping, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007)
- Sucampo Pharmaceuticals v. Astellas Pharma, 471 F.3d 544, 548 (4th Cir. 2006)
- Moore v. City of Harriman, 272 F.3d 769 (6th Cir. 2001)
- Johnson v. Outboard Marine Corp., 172 F.3d 531, 535 (8th Cir. 1999)
- Baker v. Chisom, 501 F.3d 920 (8th Cir. 2007)
- Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989)
- Egerdahl v. Hibbing Community College, 72 F.3d 615, 620 (8th Cir. 1995)
- Kentucky v. Graham, 473 U.S. 159, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)
- Nebraska Methodist Hospital System v. Department of Health, 249 Neb. 405, 543 N.W.2d 466 (1996)