

NEBRASKA SUPREME COURT

Schaeffer v. Frakes

313 Neb. 337 (2023) · No. No. S-21-930 · Decided January 27, 2023

SUMMARY

The Nebraska Supreme Court affirmed dismissal with prejudice of Bernard Schaeffer’s claims against the Nebraska Department of Correctional Services and related officials concerning his tentative release date. The court held that his 42 U.S.C. § 1983 claims were barred by claim preclusion because they arose from the same operative facts as his prior action concerning parole eligibility. It further held that the Administrative Procedure Act did not waive sovereign immunity for claims challenging the application or interpretation of state law rather than the validity of an agency rule or regulation.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Nebraska Supreme Court                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.                                                                                                                                                                                                                         |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                               |
| DECIDED               | January 27, 2023                                                                                                                                                                                                                                                                                       |
| DOCKET                | No. S-21-930                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal from the Lancaster County District Court's dismissal with prejudice of Schaeffer's claims under 42 U.S.C. § 1983 and the Nebraska Administrative Procedure Act. The Nebraska Supreme Court granted bypass of the Nebraska Court of Appeals.                                                     |
| STANDARD OF REVIEW    | A motion-to-dismiss ruling is reviewed de novo. The court accepts as true well-pled facts and reasonable inferences, but not legal conclusions. The applicability of claim preclusion and sovereign immunity, including subject matter jurisdiction, presents questions of law reviewed independently. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                         |
| PARTIES               | Bernard Schaeffer v. Scott Frakes, in his official capacity as director of the Nebraska Department of Correctional Services, Nebraska Department of Correctional Services, other department officials                                                                                                  |

## TOPICS

motions to dismiss

res judicata

subject matter jurisdiction

sovereign immunity

motion to amend

## PRACTICE AREAS

civil procedure

appellate procedure

administrative law

civil rights

post-conviction relief

## QUESTIONS PRESENTED

1. Whether Schaeffer's § 1983 claims concerning discharge of his assault sentences and application of good-time laws were barred by claim preclusion based on his earlier action concerning parole eligibility.
2. Whether Schaeffer's APA claims concerning DCS Policy 104.08 were barred by sovereign immunity because the policy was not a rule or regulation subject to the APA's limited waiver of immunity.
3. Whether the district court erred by dismissing the complaint without granting leave to amend.

## HOLDINGS

1. Claim preclusion barred Schaeffer's § 1983 claims because the prior judgment was rendered by a court of competent jurisdiction, was final and on the merits, involved the same parties or privies, and concerned the same cause of action based on the same operative facts, even though the present action asserted a different statutory basis and theory of recovery.
2. Neb. Rev. Stat. § 84-911 provides only a limited waiver of sovereign immunity for declaratory judgments concerning the validity of a state agency rule or regulation. It does not confer subject matter jurisdiction over a claim seeking judicial interpretation or application of statutes, and DCS Policy 104.08 was not a rule or regulation for purposes of the waiver.
3. The district court did not err by dismissing without granting leave to amend because the proposed amendment would not cure the claim-preclusion defect.

## KEY QUOTATIONS

*“The doctrine of claim preclusion bars relitigation not only of those matters actually litigated, but also of those matters which might have been litigated in the prior action.”* (313 Neb. at 346)

*“The Administrative Procedure Act does not confer jurisdiction for declaratory relief concerning judicial interpretation of a statute.”* (313 Neb. at 352)

## FACTUAL BACKGROUND

Bernard Schaeffer, a Nebraska inmate, had received a life sentence for a 1977 murder and consecutive sentences for two assaults. After his murder sentence was vacated and he was resentenced, the Nebraska Department of Correctional Services calculated his tentative release date as October 21, 2043; Schaeffer contended that his assault sentences had already been completed and that a different good-time law should apply. He had previously brought a § 1983 action challenging his parole eligibility date, which was dismissed for failure to state a claim and affirmed by the Nebraska Supreme Court. In the present action, he asserted that the same underlying failure

by DCS to apply Nebraska sentencing and good-time statutes violated his constitutional rights and the Administrative Procedure Act.

## PROCEDURAL HISTORY

Schaeffer sued the Nebraska Department of Correctional Services and officials concerning calculation of his tentative release date, asserting constitutional claims under 42 U.S.C. § 1983 and claims under the Administrative Procedure Act. The district court dismissed the complaint with prejudice, concluding that the § 1983 claims were barred by claim preclusion and, alternatively, by *Wilkinson v. Dotson*, and that the APA claims were barred by sovereign immunity. The Nebraska Supreme Court affirmed, holding that claim preclusion barred the § 1983 claims and any equivalent claims against officials, and that the APA did not waive sovereign immunity because the challenged policy was not a rule or regulation subject to review under Neb. Rev. Stat. § 84-911.

## DISPOSITION

affirmed

## CASES CITED

- *Wilkinson v. Dotson*, 544 U.S. 74, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005)
- *Schaeffer v. Frakes*, 306 Neb. 904, 947 N.W.2d 714 (2020)
- *Marie v. State*, 302 Neb. 217, 922 N.W.2d 733 (2019)
- *Farmers State Bank v. Germer*, 231 Neb. 572, 437 N.W.2d 463 (1989)
- *Fetherkile v. Fetherkile*, 299 Neb. 76, 907 N.W.2d 275 (2018)
- *Swift v. Dairyland Ins. Co.*, 250 Neb. 31, 547 N.W.2d 147 (1996)
- *Schieffer v. Catholic Archdiocese of Omaha*, 244 Neb. 715, 508 N.W.2d 907 (1993)
- *Robinette v. Jones*, 476 F.3d 585 (8th Cir. 2007)
- *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997)
- *Heist v. Nebraska Dept. of Corr. Servs.*, 312 Neb. 480, 979 N.W.2d 772 (2022)
- *Logan v. Department of Corr. Servs.*, 254 Neb. 646, 578 N.W.2d 44 (1998)
- *Richardson v. Clarke*, 2 Neb. App. 575, 512 N.W.2d 653 (1994)
- *TFF, Inc. v. SID No. 59*, 280 Neb. 767, 790 N.W.2d 427 (2010)
- *Chaney v. Evnen*, 307 Neb. 512, 949 N.W.2d 761 (2020)
- *Hargesheimer v. Gale*, 294 Neb. 123, 881 N.W.2d 589 (2016)