

SUPREME COURT OF NEBRASKA

Michael E. v. State

286 Neb. 532 (2013) · No. No. S-12-812 · Decided September 6, 2013

SUMMARY

Michael E. brought a civil rights action under 42 U.S.C. § 1983 alleging that Nebraska officials failed to notify him of juvenile proceedings involving his biological daughter, violating familial-integrity, due-process, and equal-protection rights. The Nebraska Supreme Court held that sovereign immunity barred claims for monetary damages against the State, its agency, and officials in their official capacities, while qualified immunity protected the officials sued individually. The court further held that due process requires notice and an opportunity to be heard for a known, financially supportive adjudicated or biological father, but affirmed dismissal of the requested injunctive relief.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Heavican, C.J.; Wright, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	September 6, 2013
DOCKET	No. S-12-812
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from dismissal of a civil rights action under 42 U.S.C. § 1983 involving alleged failure to notify an adjudicated, noncustodial biological father of juvenile abuse, neglect, or dependency proceedings. The district court dismissed claims on sovereign-immunity and qualified-immunity grounds, determined that Neb. Rev. Stat. §§ 43-263 and 43-265 were facially and as-applied unconstitutional, denied summary judgment and injunctive relief, and dismissed the action.
STANDARD OF REVIEW	De novo review of dismissal based on federal or state immunity, drawing all reasonable inferences for the nonmoving party.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Michael E., individually and as guardian and next friend on behalf of his minor child, Avalyn J. v. State of Nebraska, Nebraska Department

TOPICS

procedural due process

parental rights

paternity

child custody

sovereign immunity

PRACTICE AREAS

family law

constitutional law

civil rights

juvenile law

immunity

QUESTIONS PRESENTED

1. Whether sovereign immunity barred Michael's claims for monetary damages against the State, the Department, and Department employees sued in their official capacities.
2. Whether sovereign immunity barred claims for prospective declaratory or injunctive relief against state officials.
3. Whether due process required the State to provide notice and an opportunity to be heard to a known adjudicated or biological father who regularly and substantially supported his child in a juvenile abuse, neglect, or dependency proceeding.
4. Whether Neb. Rev. Stat. §§ 43-263 and 43-265 were facially unconstitutional or unconstitutional as applied to Michael.
5. Whether Department employees were entitled to qualified immunity from individual-capacity damages claims.
6. Whether Michael was entitled to injunctive relief against future application of the notification statutes.

HOLDINGS

1. Sovereign immunity barred Michael's claims for monetary damages against the State, the Department, and Department employees sued in their official capacities.
2. Sovereign immunity did not bar claims against state officials for prospective declaratory or injunctive relief, except to the extent the requested action would require expenditure of public funds.
3. In a juvenile proceeding alleging abuse, neglect, or dependency, due process requires the State to provide notice and an opportunity to be heard to a known adjudicated or biological father who provides substantial and regular financial support for his child.
4. Sections 43-263 and 43-265 were not facially unconstitutional, but they could not constitutionally be applied to avoid notifying a known adjudicated or biological father who had provided regular and substantial financial support of abuse, neglect, or dependency proceedings involving his child.
5. The Department employees were entitled to qualified immunity from individual-capacity civil damages because Michael's right to notice was not clearly established when the employees failed to notify him.
6. Michael was not entitled to injunctive relief because he was no longer a noncustodial biological father and therefore faced no reasonable probability of future injury from the challenged statutory application.

KEY QUOTATIONS

“So we conclude that in a juvenile proceeding alleging abuse, neglect, or dependency, due process requires the State to provide notice and an opportunity to be heard to a child’s known adjudicated or biological father who is providing substantial and regular financial support for his child.” (546)

“But we disagree with the district court that §§ 43-263 and 43-265 are facially unconstitutional.” (547)

“Affirmed in part, and in part reversed.” (550)

FACTUAL BACKGROUND

Avalyn was born out of wedlock in September 2002, and Michael was adjudicated her biological father in a paternity and child-support proceeding. After the State took emergency protective custody of Avalyn and a juvenile petition was filed following her mother's suicide attempts, the State did not notify Michael before the adjudication or disposition proceedings, despite allegations that the Department knew or should have known his identity and address through child-support records. Michael learned of the proceedings approximately six months after disposition, intervened, and later obtained shared custody of Avalyn. At the time of the alleged nonnotification, his alleged parental involvement consisted principally of regular child-support payments, with disputed evidence concerning whether he had developed a broader parental relationship.

PROCEDURAL HISTORY

Michael brought a § 1983 action against the State, the Department, and six Department employees in their official and individual capacities. The district court held that sovereign immunity barred damages claims against the State, the Department, and officials in their official capacities; held that the employees had qualified immunity from individual-capacity damages claims; found §§ 43-263 and 43-265 facially and as-applied unconstitutional; and denied injunctive relief. The Nebraska Supreme Court affirmed in part and reversed in part, rejecting the facial constitutional ruling, recognizing an as-applied due-process limitation, and affirming the immunity and injunctive-relief rulings.

DISPOSITION

other

CASES CITED

- Findlay v. Lendermon, No. 12-3881, 2013 WL 2992392 (7th Cir. June 14, 2013)
- McKinney v. Okoye, 282 Neb. 880, 806 N.W.2d 571 (2011)
- Cole v. Isherwood, 271 Neb. 684, 716 N.W.2d 36 (2006)
- Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010)
- Frew v. Hawkins, 540 U.S. 431, 124 S. Ct. 899, 157 L. Ed. 2d 855 (2004)
- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983)
- Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)

- In re Adoption of Corbin J., 278 Neb. 1057, 775 N.W.2d 404 (2009)
- Quilloin v. Walcott, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978)
- Bock v. Dalbey, 283 Neb. 994, 815 N.W.2d 530 (2012)

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