

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Blumberg v. Gates

154 F. App'x 573 (9th Cir. 2005) · Decided November 2, 2005

SUMMARY

The Ninth Circuit affirmed summary judgment for the defendants on Paul Blumberg’s 42 U.S.C. § 1983 false-arrest claim, holding that he failed to identify evidence creating a genuine issue of material fact. The court also affirmed dismissal of his RICO claims because he conceded that the factual allegations underlying those claims were false.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Per curiam; Ezra; Kozinski; Rawlinson
JURISDICTION	Federal
DECIDED	November 2, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the district court's grant of summary judgment to defendants on a 42 U.S.C. § 1983 false-arrest claim and dismissal of RICO claims for lack of standing.
STANDARD OF REVIEW	De novo review applies to the grant of summary judgment and to dismissal of a RICO claim for failure to establish standing based on injury to business or property.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum disposition
PARTIES	Paul Blumberg v. Gates, Defendants-Appellees

TOPICS

- section 1983
- civil rights
- summary judgment
- standing
- civil procedure

PRACTICE AREAS

- Civil rights
- Civil procedure
- RICO

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on Blumberg's § 1983 false-arrest claim.

2. Whether the district court properly dismissed Blumberg's RICO claims for lack of standing.
3. Whether the dismissal of the RICO claims could be affirmed on the alternative ground that Blumberg conceded the falsity of the allegations underlying those claims.

HOLDINGS

1. Summary judgment was proper because defendants met their initial burden of showing that no genuine issue of material fact existed, and Blumberg failed to come forward with specific material facts requiring a trial.
2. The dismissal of Blumberg's RICO claims was affirmed because he conceded that the factual allegations on which those claims were based were false.

KEY QUOTATIONS

"Because there is simply no evidence in the record to support Appellant's novel new spin on his section 1983 claim, Appellant failed to raise any genuine issue of material fact." (154 F. App'x at 575)

FACTUAL BACKGROUND

Defendants supported their motion for summary judgment with declarations from two investigating sheriff's deputies stating that the Los Angeles Police Department was not involved in the investigation, along with evidence purportedly supporting probable cause. Blumberg offered a new theory of his § 1983 false-arrest claim but identified no record evidence creating a genuine issue of material fact. He also alleged that lost wages during incarceration constituted a compensable RICO injury, but conceded that the factual allegations underlying his RICO claims were false.

PROCEDURAL HISTORY

The district court granted defendants summary judgment on Blumberg's § 1983 false-arrest claim and dismissed his RICO claims for lack of standing. Blumberg appealed, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004)
- *Chaset v. Fleer/Skybox Int'l*, 300 F.3d 1083, 1085 (9th Cir. 2002)
- *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)
- *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159 (1970)
- *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987)
- *Oscar v. Univ. Students CO-Op. Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992) (en banc)

OPINION

PER CURIAM.

MEMORANDUM *** Plaintiff-Appellant Paul Blumberg appeals the district court's grant of summary judgment to Defendants-Appellees on his section 1983 false arrest claim and the dismissal of his RICO claims for lack of standing.

We affirm. We review de novo a district court's grant of summary judgment. See *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir.2004). A district court's order dismissing a RICO claim for failure to meet the standing requirement of showing injury to business or property, as set forth in 18 U.S.C. § 1964(c), is also reviewed de novo. See *Chaset v. Fleeer/Skybox Int'l*, 300 F.3d 1083, 1085 (9th Cir.2002).

As the parties moving for summary judgment, Appellees had the initial burden of demonstrating that no genuine issue of material fact existed. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)). They did so by providing the declarations of the two investigating sheriffs deputies, who stated that the LAPD was not involved in the investigation, and by bringing forth credible evidence upon which they claim to have based their finding of probable cause.

Once Appellees made this showing, Appellant bore the burden of coming forward with specific material facts to refute Appellees' evidence and demonstrate the need for trial. See Fed.R.Civ.P. 56(e). Appellant could not stand on his pleadings or simply assert that he would be able to discredit the movant's evidence at trial. See *id.*; *T.W. Elec. Serv., Inc. v. Pac.*

Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.1987). Because there is simply no evidence in the record to support Appellant's novel new spin on his section 1983 claim, *575Appellant failed to raise any genuine issue of material fact. Appellant also asserts that the district court erred in dismissing his RICO claims for lack of standing, arguing that his allegation of lost wages while incarcerated constituted a compensable injury to business or property as required by the statute.

We will not address this argument, however, because Appellant has conceded that the factual allegations upon which his RICO claims are premised are false. The district court's decision may be affirmed on any ground supported by the record. See *Oscar v. Univ. Students CO-Op. Ass'n*, 965 F.2d 783, 785 (9th Cir.1992) (en banc).

Therefore, we affirm the district court's dismissal of Appellant's RICO claims. AFFIRMED. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.