

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, SOUTHERN DIVISION

Norman Lee Gunn v. Kipp Stearns

Gunn · No. 4:25-CV-04034-ECS · Decided June 4, 2026

SUMMARY

The United States District Court for the District of South Dakota denied Kipp Stearns’s motion to dismiss Norman Lee Gunn’s remaining due process claims. The claims concern alleged lack of notice before Gunn’s vehicle was impounded and the alleged retention of the vehicle for 111 days after criminal charges were dismissed. The court held that, at the motion-to-dismiss stage, it was required to accept Gunn’s allegations as true and ordered Stearns to answer.

CASE DETAILS

COURT	United States District Court for the District of South Dakota, Southern Division
WRITING FOR THE COURT	Eric C. Schulte
JURISDICTION	United States District Court for the District of South Dakota, Southern Division
DECIDED	June 4, 2026
DOCKET	4:25-CV-04034-ECS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss a pro se civil-rights complaint under Federal Rule of Civil Procedure 12(b)(6). The court denied the motion and ordered the defendant to answer the surviving claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, and determines whether the complaint contains sufficient factual matter to state a plausible claim for relief. Legal conclusions need not be accepted as true.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motions to dismiss
- procedural due process
- due process
- civil rights
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether Gunn's surviving Fourteenth Amendment due-process claims concerning the lack of notice and opportunity to challenge the impoundment and the allegedly prolonged retention of his vehicle stated a plausible claim under Rule 12(b)(6).
2. Whether the court could consider factual assertions in Stearns's motion that were not contained in the complaint.

HOLDINGS

1. The complaint plausibly stated Fourteenth Amendment due-process claims because Gunn alleged deprivation of a protected property interest without adequate notice or an opportunity to challenge the seizure and alleged Stearns's involvement in retaining the vehicle for 111 days.
2. The court could not rely on Stearns's assertion that Gunn was told to pay the towing bill and provide proof of registration because those facts were not contained in the complaint.

KEY QUOTATIONS

“To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” (Discussion)

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (Discussion)

FACTUAL BACKGROUND

Gunn alleged that Stearns stopped him twice for driving without license plates and, during the second stop, impounded his vehicle. Gunn alleged that his pistol was in the vehicle, that the vehicle was retained for 111 days after criminal charges were dismissed, and that he was not given adequate notice or an opportunity to challenge the seizure. Stearns asserted that Gunn was told to pay the towing bill and provide proof of registration, but those facts were not alleged in the complaint.

PROCEDURAL HISTORY

Gunn filed a pro se civil-rights action and was granted leave to proceed in forma pauperis. The court screened the complaint under 28 U.S.C. § 1915(e)(2)(B), dismissing several claims but allowing individual-capacity due-process claims for damages based on allegedly inadequate pre-deprivation notice and retention of Gunn's vehicle to proceed. Defendant Stearns moved to dismiss, and the court construed Gunn's untimely objection as a response and considered it because Stearns did not object to its untimeliness.

DISPOSITION

other

CASES CITED

- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Retro Television Network, Inc. v. Luken Commc'ns, LLC, 696 F.3d 766, 768-69 (8th Cir. 2012)
- E-Shops Corp. v. U.S. Bank Nat'l Ass'n, 678 F.3d 659, 662 (8th Cir. 2012)
- Allen v. City of Kinloch, 763 F.2d 335, 336 (8th Cir. 1985)

OPINION

UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION NORMAN LEE GUNN, 4:25-CV-04034-ECS □ Plaintiff, ORDER DENYING DEFENDANT'S vs. MOTION TO DISMISS KIPP STEARNS, Defendant. Plaintiff Norman Lee Gunn filed a pro se lawsuit alleging violations of his civil rights. Doc. 1. Gunn was granted leave to proceed in forma pauperis, and this Court screened his Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

Doc. 7. Gunn's due process claims against Defendant Kip Stearns in his individual capacity for money damages for pre-deprivation notice and retention of his property survived screening, and Gunn's other claims were dismissed. Id. Stearns, who is also acting pro se, moves to dismiss Gunn's claims against him. Doc. 17.

I. Factual Background as Alleged by Gunn On September 12, 2023, Turner County Deputy Sheriff Kipp Stearns! pulled Gunn over for driving without a license plate on his vehicle. Doc. 1 at 2. Once stopped, Gunn exited his vehicle to ascertain why he had been pulled over. Id. Gunn claims that Deputy Stearns then grabbed his arm, twisted it behind his back, and handcuffed him.

Id. Deputy Stearns ultimately issued Gunn a traffic citation for driving without a license plate. Id. About two weeks later, 1 At times throughout the Complaint, Gunn refers to Deputy Kearns. See generally Doc. 1. This Court liberally construes this as a misspelling of Stearns. Deputy Stearns pulled Gunn over a second time for failing to display a license plate on his vehicle.

Id. Again, Deputy Stearns issued Gunn a citation. Id. But this time, he also impounded Gunn's vehicle. Id. at 2-3. Gunn had left his pistol in the vehicle, which Gunn claims was "seized by another deputy without a warrant or any exception to" the warrant requirement. Doc. 6 at 1. Charges were brought against Gunn but ultimately were dropped. Id. at 2. Gunn states that the Sheriff's Department refused to return his vehicle, even after the prosecutor dismissed all the pending charges.

Doc. 1 at 3. Gunn claims that "Deputy Kearns continued to maintain custody and control of [his] vehicle for 111 days without probable cause." Id. Gunn claims that took a phone call from [the

prosecutor] to effectuate the release of [his] vehicle.” Id. Legal Standard Stearns does not specify under what Federal Rule of Civil Procedure he moves to dismiss. See Doc.

17. Because courts must liberally construe pro se filings, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), this Court liberally construes Stearns’ filing to be a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. ~ “To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing *Twombly*, 550 U.S. at 556). On a motion to dismiss under Rule 12(b)(6), “fclourts must accept a plaintiff’s factual allegations as true” and construe all reasonable inferences in the plaintiff’s favor “but need not accept a plaintiff’s legal conclusions.” *Retro Television Network, Inc. v. Luken Commc’ns, LLC*, 696 F.3d 766, 768-69 (8th Cir.

2012) (citing *Ashcroft*, 556 U.S. at 678; *E-Shops Corp. v. U.S. Bank Nat’l Ass’n*, 678 F.3d 659, 662 (8th Cir. 2012)). Discussion Stearns’ motion to dismiss states in full: Mr. Gunn In regards to your civil lawsuit you stated that you do not dispute that you were driving in the State of South Dakota without license plates. According to South Dakota law which you mention in your response says that two license plates are _ required.

During both of these traffic stops you presented your South Dakota driver’s license as well as proof of insurance. Having presented both these to myself you were aware of what you needed to drive in South Dakota. Unfortently, I can not tell you that you can be a natural person when you are a citizen of South Dakota. You violated South Dakota law and the probable cause of the traffic stop was not having license plates.

Your vehicle was towed and you were told you needed to pay the tow bill and bring proof of vehicle registration. Those were things that you needed to do not anyone else, I would move to dismiss these allegations. - Kipp Stearns Doc. 17 at 1 (spelling and grammar errors in original). Gunn filed an “objection,” which this Court construes as a response to Stearns’ motion to dismiss.

Doc. 18. Although the response □□□ untimely, the Court will consider it because Stearns has not objected to the untimely response. Gunn’s response cites to multiple cases to support his right to travel and ultimately argues that “if the state convert a right (liberty) into a privilege the citizen can ignore the license & fee & engage in the right liberty without impunity.” Id. at 1—2 (citation modified).

But this argument is irrelevant because Gunn’s claims for violation of his right to travel were dismissed on screening. Doc. 7 at 10-12. The only claims before the Court are Gunn’s claims that

he was not provided sufficient notice before his car was impounded and that it was a deprivation of due process rights because his car was kept for 111 days even though charges had been dismissed at some point during that period.

Id. at 14—15.. As this Court noted during screening, to show a violation of the Fourteenth Amendment right to due process, “Gunn must prove (1) the deprivation of a constitutionally protected liberty interest, and (2) the denial of adequate procedural protections.” Id. at 14; see *Allen v. City of Kinloch*, 763 F.2d 335, 336 (8th Cir. 1985) (stating that due process only requires the plaintiff to “have had, at a meaningful time and in a meaningful manner, an opportunity to challenge the seizure of his property”).

Stearns argues that Gunn’s “vehicle was towed and [Gunn was] told [he] needed to pay the tow bill and bring proof of vehicle registration.” Doc. 17 at 1. But this fact is not contained in the Complaint. Docs. 1, 6. Because this Court must take the allegations in a complaint as true when ruling on a motion to dismiss, this Court must view as true at this Stage Gunn’s allegations that he was not provided notice or an opportunity to object to the taking of his car and that Stearns was involved in the allegedly illegal retention of Gunn’s car.

IV. Conclusion Accordingly, it is ORDERED that Stearns’ Motion to Dismiss, Doc. 17, is denied. It is further ORDERED that Stearns shall answer the remaining claims in Gunn’s Complaint within 45 days of the date of this Order. See Fed. R. Civ. P. 12(a)(4)(A). Stearns’ answer should comply with Federal Rule of Civil Procedure 8(b). It is finally ORDERED that the Clerk of Court shall send both Stearns and Gunn a copy of Federal Rule of Civil Procedure 8 and a copy of the District of South Dakota’s Civil Local Rules.

DATED thisT th day of June, 2026. BY THE COURT: RIC C. SCHULTE UNITED STATES DISTRICT JUDGE