

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Clulow v. Oklahoma

700 F.2d 1291 (10th Cir. 1983) · Decided February 22, 1983

SUMMARY

The Tenth Circuit affirmed dismissal of Clulow’s claims challenging several involuntary mental-health commitments and his suspension from practicing law in Oklahoma. The court held that claims concerning the commitments were barred by Oklahoma’s two-year limitations period and rejected continuing-tort and concealment theories. It also upheld dismissal of the attorney-discipline claims based on jurisdictional limitations, failure to state a meritorious claim, and immunity of bar officials from damages liability.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Holloway
JURISDICTION	Federal
DECIDED	February 22, 1983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal of all counts of an amended civil-rights complaint under 42 U.S.C. §§ 1983 and 1985 seeking damages, declaratory relief, and mandamus relief.
STANDARD OF REVIEW	De novo review of dismissal for lack of subject-matter jurisdiction and failure to state a claim; the court accepted well-pleaded factual allegations for purposes of reviewing the motion to dismiss.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Ernest E. Clulow, Jr. v. State of Oklahoma, Kenneth Spears, Dave Faulkner, Oklahoma Bar Association and its present and former officers, Dr. Joe E. Tyler, Larry Derryberry, Finis Smith

TOPICS

- section 1983
- due process
- statute of limitations
- appellate jurisdiction
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the lower federal courts had subject-matter jurisdiction to review Clulow's suspension and reinstatement proceedings after review by the Oklahoma Supreme Court.
2. Whether the Oklahoma Bar Association and its officials were immune from damages claims arising from their investigation, presentation, and administration of attorney-discipline matters.
3. Whether Oklahoma's two-year statute of limitations governed the § 1983 and § 1985 claims based on the alleged involuntary commitments and related events.
4. Whether alleged withholding of records, continuing-tort theories, or the equitable nature of requested relief avoided or tolled the limitations bar.
5. Whether the conspiracy claim was adequately pleaded and timely as to the alleged conspirators.

HOLDINGS

1. The lower federal courts lacked jurisdiction to review Clulow's suspension and reinstatement proceedings because the Oklahoma Supreme Court had considered and rejected his petitions for reinstatement; review was available only in the United States Supreme Court by writ of certiorari.
2. Although a facial challenge to general rules governing attorney discipline could fall within federal jurisdiction, Clulow failed to state a meritorious claim that the Oklahoma Supreme Court unlawfully delegated its disciplinary authority to the Oklahoma Bar Association.
3. The ex post facto prohibition did not require that attorneys seeking reinstatement be subject only to the conditions in effect when they were suspended.
4. The Oklahoma Bar Association and its officials were absolutely immune from damages claims based on their functions of investigating, preparing, presenting, and prosecuting attorney-discipline matters.
5. Oklahoma's two-year limitations period for injury to the rights of another, 12 Okla. Stat. § 95(3) (1981), governed and barred Clulow's § 1983 claims concerning the 1960, 1961, 1966, and 1972 events.
6. The alleged commitments and related proceedings were discrete events, not a continuing tort, and the alleged withholding of records did not toll or postpone accrual because Clulow knew or should have known of the existence of his claims when the events occurred.
7. The statute of limitations also barred Clulow's claims for declaratory or other equitable relief because the asserted civil-rights rights could have been enforced through an action at law for damages.
8. Count Six failed because the allegations did not plead facts showing an agreement or concerted action among the defendants, and the claim was otherwise barred by immunity as to the Bar Association defendants and by the two-year limitations period as to the remaining defendants.

KEY QUOTATIONS

“It is well established that the lower federal courts do not have jurisdiction to review the decisions of a state's highest court in matters relating to discipline or admission to practice of individual attorneys, such review

being available only in the United States Supreme Court on writ of certiorari.” (1297)

“Thus even if we were to consider Oklahoma's newer reinstatement provisions to be penal, the fact that their primary aim is the protection of the public from those incapable of practicing the profession rather than the punishment of incapacitated attorneys would require us to uphold the Oklahoma rules.” (1298)

“In any event neither any single alleged practice nor all of them together are sufficient to unite, into one continuing tort, events that were clearly discrete and separated by as much as twelve years.” (1300)

“It is apparent from the record that plaintiff knew, or reasonably should have known, of the existence of his causes of action at the time of the occurrences, or when he regained his competency thereafter.” (1302)

FACTUAL BACKGROUND

Clulow alleged that involuntary commitments to mental institutions in 1960, 1961, 1966, and 1972 violated due process and equal protection. He also challenged his 1962 suspension from practicing law by the Oklahoma Bar Association, alleging inadequate process, improper delegation of disciplinary authority, and application of more stringent reinstatement rules. He alleged that state officials, medical personnel, sheriffs, and Oklahoma Bar Association officials participated in a conspiracy extending from 1960 through 1978.

PROCEDURAL HISTORY

The district court dismissed Counts One through Four as barred by Oklahoma's two-year statute of limitations, dismissed Count Five for lack of federal jurisdiction and, alternatively, failure to state a meritorious claim and immunity, and dismissed Count Six for conclusory conspiracy allegations and limitations or immunity defenses. After an earlier jurisdictional remand concerning unresolved attorneys' fees, the district court denied the fee motion, and Clulow filed a new notice of appeal. The Tenth Circuit affirmed the judgment in its entirety.

DISPOSITION

affirmed

CASES CITED

- Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976), cert. denied, 431 U.S. 916 (1977)
- Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962)
- Younger v. Colorado, 625 F.2d 372 (10th Cir. 1980)
- Mayes v. Honn, 542 F.2d 822 (10th Cir. 1976)
- Galvan v. Press, 347 U.S. 522 (1954)
- Hawker v. New York, 170 U.S. 189 (1898)
- Dent v. West Virginia, 129 U.S. 114 (1889)
- Beazell v. Ohio, 269 U.S. 167 (1925)
- United States v. Nasser, 476 F.2d 1111 (7th Cir. 1973)
- In re Summers, 325 U.S. 561 (1945)

- Butz v. Economou, 438 U.S. 478 (1978)
- G.M. Leasing Corp. v. United States, 560 F.2d 1011 (10th Cir. 1977), cert. denied, 435 U.S. 923 (1978)
- Allred v. Svarczkopf, 573 F.2d 1146 (10th Cir. 1978)
- McGhee v. Draper, 564 F.2d 902 (10th Cir. 1977)
- Imbler v. Pachtman, 424 U.S. 409 (1976)
- Simons v. Bellinger, 643 F.2d 774 (D.C. Cir. 1980)
- Kissell v. Breskow, 579 F.2d 425 (7th Cir. 1978)
- Ginger v. Wayne County Circuit Court, 372 F.2d 621 (6th Cir. 1967), cert. denied, 387 U.S. 935 (1967)
- Clark v. Washington, 366 F.2d 678 (9th Cir. 1966), cert. denied, 375 U.S. 986 (1964)
- O'Sullivan v. Felix, 233 U.S. 318 (1914)
- Childers v. Independent School District No. 1, 676 F.2d 1338 (10th Cir. 1982)
- Shah v. Halliburton Co., 627 F.2d 1055 (10th Cir. 1980)
- Spiegel v. School District No. 1, 600 F.2d 264 (10th Cir. 1979)
- Hansbury v. Regents of University, 596 F.2d 944 (10th Cir. 1979)
- Burgess v. Bryant, 505 F. Supp. 19 (W.D. Okla. 1980)
- Seibert v. McCracken, 387 F. Supp. 275 (E.D. Okla. 1974)
- Big Four Foundry Co. v. Hagers, 197 Okla. 409, 172 P.2d 322 (Okla. 1946)
- Western Natural Gas Co. v. Cities Service Gas Co., 507 P.2d 1236 (Okla. 1972)
- Board of Regents v. Tomanio, 446 U.S. 478 (1980)
- Johnson v. Railway Express Agency, 421 U.S. 454 (1975)
- Morris v. Wise, 293 P.2d 547 (Okla. 1955)
- United Fidelity Life Insurance Co. v. Law Firm, 624 F.2d 145 (10th Cir. 1980)
- Olansen v. Texaco, Inc., 587 P.2d 976 (Okla. 1978)
- Cope v. Anderson, 331 U.S. 461 (1947)
- Williams v. Walsh, 558 F.2d 667 (2d Cir. 1977)
- Madison v. Wood, 410 F.2d 564 (6th Cir. 1969)
- Swan v. Board of Higher Education, 319 F.2d 56 (2d Cir. 1963)
- Nemkov v. O'Hare Chicago Corp., 592 F.2d 351 (7th Cir. 1979)
- Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981)
- Taylor v. Nichols, 558 F.2d 561 (10th Cir. 1977)
- Slotnick v. Staviskey, 560 F.2d 31 (1st Cir. 1977), cert. denied, 434 U.S. 1077 (1978)
- Fisher v. Shamburg, 624 F.2d 156 (10th Cir. 1980)
- Crosswhite v. Brown, 424 F.2d 495 (10th Cir. 1970)