

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

SAMUEL RAMIREZ-RANGEL, LETICIA
GONZALES-SANTIAGO, and JOSE SOLIS-
LEON,

Plaintiff,

NO. 12-2-09594-4

-vs-

REPLY IN SUPPORT OF MOTION FOR
ENTRY OF FINAL JUDGMENT
(SUMMARY JUDGMENT)

KITSAP COUNTY, JUSTIN T. CHILDS, in his
official capacity as a Kitsap County Sheriff's
Deputy, and SCOTT C. JENSEN, in his official
capacity as a Kitsap County Sheriff's Deputy,

Defendants.

I. Brief Reply

When probable causes exists for the arrest of a subject, his or her detention is lawful.¹ Per Article I, Section 7 of the Washington State Constitution, a detention undertaken with the "authority of law" (e.g. a lawful detention) is constitutional."² Hence, a detention supported by the existence of probable cause is both lawful and constitutional.

¹ *State v. Johnson*, 29 Wn.App. 307, 628 P.2d 479 (1981).

² *State v. Bonds*, 299 P.3d 663, 668 (2013); *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007).

1 Because this Court has ruled that probable cause existed for the arrest of the plaintiffs, it
2 necessarily follows that their detention was lawful and constitutional. Accordingly, Plaintiffs'
3 claimed violation of Washington Constitution Article I, Section 7, must fail, as must their request
4 for a remedy for the same.

5
6 Independently, Plaintiffs' requested declaratory relief must also be denied because there
7 exists no justiciable controversy, and the remedy sought amounts to a prohibited advisory opinion.
8

9 10 II. Discussion

11 In addition to the following discussion of authorities, Defendants hereby adopt and
12 incorporate by reference all pleadings previously filed in support of Defendant's Motion for Entry
13 of Final Judgment, and reassert the discussion set forth therein.
14

15 Summary judgment in favor of the defendant is proper if the plaintiff fails to make a prima
16 facie case concerning an essential element of his claim or claims.³ A defendant moving for
17 summary judgment has the initial burden of showing the absence of an issue of material fact, *or*
18 that the plaintiff lacks *competent* evidence to support an essential element of the plaintiff's case.⁴
19 This burden can be met simply by "challenging the sufficiency of the plaintiff's evidence as to any
20 such material issue."⁵
21

22 Once such a challenge has been made, the burden shifts to the plaintiff to set forth specific
23 facts rebutting the moving party's contentions and disclosing the existence of a material issue of
24

25 ³ *Seybold v. Neu*, 105 Wn.App. 666, 676, 19 P.3d 1068 (2001), *citing Young Pharmaceuticals, Inc.*, 112 Wn.2d 216,
26 225, 770 P.2d 182 (1989).

27 ⁴ *Id.*

28 ⁵ *Las v. Yellow Front Stores, Inc.*, 66 Wn. App. 196, 198, 831 P.2d 744 (1992)(*citing Young*, 112 Wn.2d at 226).

1 fact.⁶ The plaintiff “may not rely on speculation, argumentative assertions that unresolved factual
2 issues remain, or having its affidavits accepted at face value.”⁷

3 An affidavit *does not* raise a genuine issue of fact unless it sets forth facts evidentiary in
4 nature, i.e. information as to what took place, an act, an incident, a reality as distinguished from
5 supposition or opinion . . . Likewise, ultimate facts, conclusions of fact, conclusory statements of
6 fact or legal conclusions are insufficient to raise a question of fact.⁸

7
8 In the present case, there remains no dispute of material fact, and final judgment in favor of
9 the defendants on any/all remaining claims is warranted.
10

11
12 A. Motion to Strike

13 As a preliminary matter, Defendants hereby move to strike from consideration Plaintiffs’
14 “cross-motion for summary judgment.”
15

16 At the May 28, 2013 hearing on Defendant’s scheduled motion for entry of final judgment,
17 this Court determined that the defendants’ motion was more appropriately heard as a motion for
18 summary judgment, pursuant to CR 56, and re-noted the matter as such. A hearing date for the
19 now-converted motion was reset for June 28, 2013.⁹ In response, Plaintiffs’ counsel advised the
20 Court of the intent to file their own motion for summary judgment, and requested an expedited
21 briefing schedule so the plaintiffs’ motion could be heard at the same time as the defendants’
22 motion.¹⁰ The defendants objected to an expedited schedule and/or to any further delay in the
23
24

25 _____
⁶ *Heath v. Uraga*, 106 Wn.App. 506, 513, 24 P.3d 413 (2001), *rev. denied*, 145 Wn.2d 1016 (2002).

26 ⁷ *Id.*

27 ⁸ *Snohomish County v. Rugg*, 115 Wn.App. 218, 224, 61 P.3d 1184 (2002).

28 ⁹ Declaration of Ione S. George.

¹⁰ *Id.*

1 hearing of the defendants' motion.¹¹ The Plaintiffs' oral motion for expedited briefing was denied,
2 and the court instructed plaintiffs' counsel that they would need to follow the court rules regarding
3 noting and briefing for whatever motion they intended to make.¹²
4

5 Three days later (June 3, 2013), Plaintiffs' counsel contacted defense counsel via email and
6 sought Defendants' agreement to an expedited schedule for briefing on the Plaintiff's "cross-
7 motion" for summary judgment.¹³ Defense counsel again relayed their lack of consent and
8 reminded Plaintiffs that the court had already ruled in this regard.¹⁴
9

10 Regardless of this Court's directive and Defendants' repeated objections, Plaintiffs none-
11 the-less incorporated a cross-motion for summary judgment in their responsive pleading, and have
12 requested this court's review of that motion and the argument in support thereof as it considers the
13 present motion. In so incorporating this new motion into their response to the defendants' motion,
14 plaintiffs have disregarded the directive of this court, and have placed defendants at a distinct
15 disadvantage. The plaintiffs have solicited this court's untimely review of their motion and
16 argument without providing Defendants the time they would have been entitled by rule to
17 respond.¹⁵
18

19 Accordingly, Defendants request that the Plaintiffs' 'cross-motion' be stricken from the
20 pleadings submitted for consideration in the present motion, and Defendants will not submit a
21 formal response to the same at this time. (Defendants would note, that while they are not offering a
22 response specific to Plaintiffs' cross-motion, the motion offers no new issues that have not already
23 been extensively briefed by the parties.)
24
25

26 ¹¹ Id.

27 ¹² Id.

28 ¹³ Id.

¹⁴ Id.

1 B. A Detention Supported by Probable Cause is Constitutional

2 The plaintiffs’ constitutional claim asserts that through an allegedly prolonged detention,
3 the Defendants caused “loss of liberty” and an “invasion of [Plaintiffs’] individual privacy rights in
4 violation of Article I, Section 7 of the Washington State Constitution. Under the auspice of this
5 claim, Plaintiffs assert that the defendants improperly broadened and/or prolonged the scope of an
6 investigatory stop of the plaintiffs by requesting identification from the passengers and ultimately
7 asking questions regarding residency when no identification could be produced.
8
9

10 However, Plaintiffs’ dogged insistence that the detention was wrongfully prolonged is made
11 in blind disregard of the law of this case. Finding the facts to be undisputed, this Court ruled that
12 there was probable cause for the arrest of the plaintiffs. Because the existence of probable cause
13 renders the plaintiffs’ detention lawful, the detention was also, therefore, constitutional.
14

15 Detentions are constitutional under Article I, Section 7, of the State Constitution if they are
16 undertaken with authority of law.¹⁶ “The lawfulness of an arrest stands on the determination of
17 whether probable cause supports the arrest.”¹⁷ The existence of probable cause for a subject’s arrest
18 renders his or her detention lawful.¹⁸ Thus, when probable cause exists for a subjects’ arrest, that
19 subject’s detention is both lawful and constitutional.
20

21 In ruling on earlier motions in this cause, this Court found that there was probable cause for the
22 plaintiffs’ arrest.¹⁹ The existence of probable cause for the Plaintiffs’ arrest is the law of this case.²⁰
23

24 ¹⁵ The cross-motion is not noted for hearing until August 2, 2013, rendering Defendant’s response due July 22, 201.

25 ¹⁶ *State v. Bonds*, 299 P.3d 663, 668 (2013); *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007); *see also*, *State*
v. Pettit, 160 Wn. App, 716, 719-720, 251 P.3d 896 (2011).

26 ¹⁷ *State v. Moore*, 161 Wash.2d at 885, citing *State v. Potter*, 156 Wash.2d 835, 840, 132 P.3d 1089 (2006).

27 ¹⁸ *State v. Johnson*, 29 Wn.App. 307, 628 P. 2d 479 (1981) (interpreting the lawfulness of an arrest to determine
28 defendant had lawful right to resist arrest).

¹⁹ Accordingly, upon finding the existence of probable cause (an absolute defense to a claim of false arrest), the
Plaintiffs’ claim for False Arrest against the defendants was dismissed.

1 The parties are now barred from relitigation of issues of ultimate fact that have previously been
2 determined.²¹

3 [C]ollateral estoppel prevents a relitigation of a particular issue in a
4 later proceeding involving the same parties, even though the later
5 proceeding involves a different claim or cause of action.
6 Collateral estoppel is often referred to as a rule of issue preclusion.

7 The purpose of the rule is to encourage respect for judicial
8 determinations by ensuring finality, and to conserve judicial
9 resources by discouraging the same parties from re-litigating the
10 same issues time and again.^[22]

11 The existence of probable cause for the plaintiffs' arrest has been litigated, and a ruling has been
12 entered. This court found that probable cause existed for the Plaintiff's arrest.²³ The parties are
13 barred from re-litigating this issue.

14 There remains no dispute of material fact. This court's prior ruling mandates a conclusion
15 that the detention was constitutional. Accordingly, summary judgment dismissal of Plaintiffs'
16 remaining claim is warranted.

17 C. No Justiciable Controversy Warranting Declaratory Judgment

18 Plaintiffs seek declaratory judgment as a remedy for the claimed constitutional violation.²⁴

19 As discussed above, because the plaintiffs' detention was lawful, there was constitutional violation.

20 Thus, Plaintiffs are entitled to no remedy. However, even if it were possible to conclude that a

21 ²⁰ Plaintiffs did not challenge or offer any disputed fact as to the existence of probable cause for Plaintiffs' arrest for
22 the crimes of Commercial Fishing without a License in the First or Second Degree (RCW 77.15.200(1) and (3)), or
23 Violating Commercial Fishing Area or Time in the Second Degree (RCW 77.15.550(1) and (3)).

24 ²¹ *State v. Vasquez*, 148 Wn.2d 303, 308, 59 P.3d 648 (2002).

25 ²² 14A WAPRAC § 35:32 (footnotes omitted).

26 ²³ The existence of probable cause for arrest was the basis of this court's dismissal of the plaintiff's claim for false
27 arrest.
28

1 constitutional violation had been committed (in diametric opposition of prior ruling of this court),
2 the plaintiffs' request for declaratory relief also must fail on independent grounds as there is no
3 justiciable controversy.²⁵
4

5 Before the court may assume jurisdiction to hear a case as a declaratory judgment action,
6 there must be a justiciable controversy.²⁶ Because no such controversy exists here, Plaintiffs'
7 request amounts to an invitation for this court to issue a prohibited advisory opinion.²⁷
8

9 To defeat summary judgment, the plaintiffs must set forth specific facts rebutting the
10 moving party's contentions and disclose the existence of a material issue of fact.²⁸ Plaintiff may
11 not rely on speculation, argumentative assertions, or on having their affidavits accepted at face
12 value.²⁹
13

14 To identify the existence of a justiciable controversy the plaintiffs must establish each of
15 the following four elements:

- 16 1) an actual, present and existing dispute,
- 17 2) between parties having genuine and opposing interests,
- 18 3) which involves interests that must be direct and substantial, ***rather than***
potential, theoretical, abstract or academic, and
- 19 4) a judicial determination of which will be final and conclusive.³⁰

20 ²⁴ By prior ruling of this court, any claim for damages for alleged Constitutional violations was dismissed. See, Order
21 Granting Motion for Dismissal Pursuant to CR12(c), entered August 12, 2012.

22 ²⁵ A complete discussion of the justiciability requirement is further set forth in Defendants' Motion for Entry of Final
23 Judgment and in Defendants' Reply in Support of Motion for Entry of Final Judgment.

24 ²⁶ *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994).

25 ²⁷ *Superior Asphalt and Concrete Co., Inc. v Washington Dept. of Labor and Industries*, 121 Wn. App. 601, 89 P.3d
26 316 (2004), rev. denied, 153 Wn.2d 1005, 103 P.3d 1248 (2005) (Highway construction contractor's declaratory
27 judgment action against Dept. of Labor and Industries, challenging constitutionality of safety regulation governing
28 flagger safety on highway worksites, failed to satisfy standing and justiciability requirements of Uniform Declaratory
29 Judgments Act, where contractor had received citation for violation of regulation, but citation was ultimately vacated,
30 so that any judicial decision would be prohibited advisory opinion.)

²⁸ *Heath v. Uruga*, 106 Wn.App. 506, 513, 24 P.3d 413 (2001), rev. denied, 145 Wn.2d 1016 (2002).

²⁹ *Id.*

³⁰ *Walker*, 124 Wn.2d at 411.

1 If the plaintiffs fail to establish any one of these elements, their request for declaratory judgment
2 must fail because “[i]n the absence of all four of these elements, the court steps into the area of
3 advisory opinion.”³¹ As declared by our State’s Supreme Court, “this court will [not] readily
4 ignore justiciability requirements. We choose instead to adhere to the long standing rule that this
5 court is not authorized under the declaratory judgments act to render advisory opinions or
6 pronouncements upon abstract or speculative questions.”³² “All four of the justiciability factors
7 ‘must coalesce’ to ensure that the court does not ‘step [] into the prohibited area of advisory
8 opinions.”³³

11 Though given two opportunities to respond, Plaintiffs have yet to establish that each of the
12 four prongs of this definition have been met. (A more complete discussion of the justiciability
13 elements is set forth in Defendants’ Motion for Entry of Final Judgment and in Defendants’ Reply
14 in Support of Motion for Entry of Final Judgment, and will not be reiterated herein.)

16 Indeed, other than asserting that each prong has been met, Plaintiffs offer no facts of an
17 evidentiary nature, but instead simply offer argumentative conclusions which are unsupported by
18 the record. For instance, to support their contention that the parties have “genuine and opposing
19 interest,” (prong no. 2) Plaintiffs brashly create a conflict scenario that simply does not exist:³⁴

21 Plaintiffs seek declaratory relief confirming that it is unconstitutional
22 for Defendants, without appropriate authorization from the federal
23 government, to prolong a detention to enforce federal civil

24 ³¹ 15 WAPRAC §42:4, citing *Walker v. Munro*, supra (citizens’ action challenging initiative measure was dismissed
25 because the initiative measure had not yet taken effect; the court is not authorized under the declaratory judgments act
26 to render advisory opinions or pronouncements upon abstract or speculative questions.)

27 ³² *Walker v. Munro*, 124 Wn.2d at 418, citing, *Washington Beauty College, Inc. v. Huse*, 195 Wn. 160, 164, 80 P.2d
28 403 (1938); *Kitsap Cy., v. Bremerton*, 46 Wn.2d 362, 370, 281 P.2d 841 (1955); *DeGrief v. Seattle*, 50 Wn.2d 1, 14,
297 P.2d 940 (1956); *Brehm v. Retail Food & Drug Clerks Union 1105*, 4 Wn.2d 98, 101, 102 P.2d 685 (1940).

30 ³³ *Washington Education Association v. Washington State Public Disclosure Commission*, 150 Wn.2d 612, 623, 80
31 P.3d 608 (2003).

32 ³⁴ Plaintiffs’ Opposition to Defendants’ CR 56 Motion for Entry of Final Judgment and Plaintiffs’ Cross-Motion for
33 Summary Judgment at p. 12, lines 4-10.

1 immigration law. On the contrary, *Defendants argue that law*
2 *enforcement officers may prolong a detention indefinitely to*
3 *question individuals suspected of federal civil immigration*
4 *violations and to deliver individuals into federal immigration*
5 *custody, even without appropriate judicial or statutory authority.*
(emphasis added).

6 Plaintiffs' characterization of the Defendants' position is not supported by any recitation to
7 the record, nor could it be, as no such argument has ever been made, nor has any such position been
8 taken by Defendants. Plaintiffs have simply crafted opposing statements and asserted that they are
9 supported by the opposing party in an effort to convince the court that there are genuine and
10 opposing interests.

12 Further, in consideration of element "3" of the test (direct and substantial interests as
13 opposed to those which are potential, theoretical abstract or academic), it is of significance to note
14 that Plaintiffs do not seek a declaratory remedy regarding what they contend *happened*, but instead
15 seek declaratory judgment regarding an unknown, hypothetical situation that may arise in the
16 future. Indeed the remedy sought is a declaratory judgment as to what laws the defendants are
17 authorized to enforce in the future, what questions they may ask of unidentified suspect whom they
18 have yet to contact (for unidentified reasons), and when they may or may not detain such
19 unidentified individuals. Indeed, as Plaintiffs previously offered: 'Defendants have stopped other
20 people', and 'they may continue to stop other people'; thus (they urge) "the interests in this matter
21 are direct and substantial."³⁵

22 That the defendants "might stop other people" is not an articulation of an actual and
23 existing dispute *between the parties* (e.g., the plaintiffs and defendants). Neither does it describe a
24 "direct" as opposed to "potential or theoretical" interest. Indeed, Plaintiffs' argument sets forth
25
26
27
28

1 specifically what a declaratory judgment is *not* to address; that is, a dispute between other people
2 on a future date which may or may not ever arise.

3
4 In short, Plaintiffs have not and cannot establish the existence of a justiciable controversy.
5 Though they contend the existence of ‘genuine and opposing’ interests of the parties regarding their
6 future rights, they fail to substantiate any such contention with evidentiary support or recitation to
7 the record. While they allege interests that are direct and substantial, rather than potential,
8 theoretical, abstract or academic, they seek a legal opinion from this court regarding unknown
9 scenarios that may or may not happen, and which involve unidentified participants; clearly
10 speculative situations. Finally, they seek a decision that is neither final or conclusive as it pertains
11 to only a fraction of the law enforcement team that protects the citizens of Kitsap County.
12

13 As all four elements of the test cannot be met, there is no justiciable controversy. The
14 declaratory judgment sought is simply a request for an advisory opinion; an action the court is
15 prohibited from taking.
16

17
18 D. Public Interest not Sufficient to Support Examination of not otherwise Justiciable Issue

19 Plaintiffs urge that ‘even if there is no justiciable controversy, the court should nevertheless
20 exercise its discretion and deliver an advisory opinion. Yet, while they invite the court to make this
21 leap, they offer no overwhelming interest of the public which would (or should) overcome the
22 requirement of a justiciable controversy. Indeed, our state’s Supreme Court has directed that such
23
24

25 ³⁵ Plaintiffs’ Opposition at p. 15, lines 4-11.
26
27
28

1 exercise of discretion and the delivery of an advisory opinion should occur only “on those rare
2 occasions where the interest of the public in the resolution of an issue is overwhelming”.³⁶

3
4 Other than referencing their own situation, Plaintiffs have identified no overwhelming
5 public interest, or indeed *anyone* else’s interests, that warrant disregard of the justiciability
6 requirement. Additionally, as the declaratory judgment sought would pertain to a minority of the
7 law enforcement officers in Kitsap County, “[t]he benefit of an authoritative determination for
8 future guidance is therefore minimal at this time.”³⁷

9
10 Because there are no issues of broad overriding import,³⁸ no overwhelming public
11 interest,³⁹ and no showing that further guidance by the court would benefit a substantial portion of
12 the public,⁴⁰ such exercise of discretion at this time is not called for.

13 14 15 **II. Conclusion**

16 Because all claims in this cause have been effectively terminated and any remaining remedy
17 requested fails as a matter of law, Defendants respectfully request that their Motion for Entry of
18 Final Judgment in this cause be granted, and all remaining claims be summarily dismissed with
19 prejudice, thereby terminating all further proceedings in this cause.
20

21
22
23 ³⁶ *In re Matter of Deming*, 108 Wn.2d 82, 122-23, 736 P.2d 639, 744 P.2d 340, opinion amended by 744 P.2d 340
24 (1987) (quoting *Citizens Coun. Against Crim. v. Bjork*, 84 Wn.2d 891, 895, 529 P.2d 1072 (1975)). See also,
25 *Snohomish County v. Anderson*, 124 Wn.2d 834, 881 P.2d 240 (1994) (The presence of an issue of broad overriding
26 import may persuade a court to exercise its discretion in favor of reaching an issue which is not justiciable. However,
the existence of a statute implicating the public interest is not sufficient to support the examination of an issue which is
not otherwise justiciable. Rather, in deciding whether to review such an issue, the courts examine not only the subject
matter of the challenged statute, but the *extent to which public interest would be enhanced by reviewing the case.*)
(emphasis in the original).

27 ³⁷ *Snohomish County v. Anderson*, 124 Wn.2d at 840-841.

28 ³⁸ *Id.*, citing *DiNino v. State*, 102 Wn.2d 327, 331, 684 P.2d 1297 (1984).

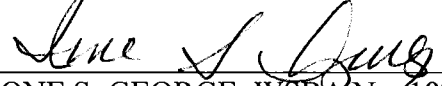
³⁹ *In re Matter of Deming*, *supra*; *In re Elliott*, 74 Wash.2d 600, 616, 446 P.2d 347 (1968).

⁴⁰ *In re Elliott*, *supra*.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 26th day of June, 2013.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



IONE S. GEORGE, WSBA No. 18236
Chief Deputy Prosecuting Attorney
NEIL R. WACHTER, WSBA No. 23278
Senior Deputy Prosecuting Attorney
Attorneys for Defendants Kitsap County, Justin
T. Childs and Scott C. Jensen

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Sarah A. Dunne [X] Via U.S. Mail
Nancy Talner [] Via Fax:
LaRond Baker [X] Via Email:
ACLU of Washington Foundation [] Via Hand Delivery
901 5th Avenue, Ste. 630
Seattle, WA 98164-2008
(206) 624-2184
dunne@aclu-wa.org
tainer@aclu-wa.org
lbaker@aclu-wa.org

Maren R. Norton [X] Via U.S. Mail
Karin D. Jones [] Via Fax:
Skylee Robinson [X] Via Email:
STOEL RIVES, LLP [] Via Hand Delivery
600 University Ave., Ste. 3600
Seattle, WA 98101
mmorton@stoel.com
kdjones@stoel.com
sjrobinson@stoel.com

Matt Adams [X] Via U.S. Mail
NORTHWEST IMMIGRANT RIGHTS [] Via Fax:
PROJECT [X] Via Email:
615 Second Ave., Ste. 400 [] Via Hand Delivery
Seattle, WA 98104
matt@nwirp.org

SIGNED in Port Orchard, Washington this 26th day of June 2013.

Batrice Fredsti
Batrice Fredsti
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard WA 98366
Phone: 360-337-4992