

May 30 2013 11:11 AM

Hon. Kathryn J. Nelson, Dept. 13
May 31, 2013, 9:01 AM
NO: 12-2-09594-4

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

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

Plaintiff,

-vs-

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.

NO. 12-2-09594-4

REPLY IN SUPPORT OF MOTION FOR
ENTRY OF FINAL JUDGMENT

This Court granted summary judgment dismissal of Plaintiffs' false arrest claim, finding that Defendants had probable cause to arrest the Plaintiffs. Despite this finding, Plaintiffs urge that their Constitutional Violation claim survives based solely upon their continued assertion that their detention was wrongfully prolonged. Because collateral estoppel precludes re-litigation of this issue, Plaintiffs argument fails, as a matter of law. There remains no causes of action upon which to proceed; entry of final judgment is warranted.

1 **I. Discussion**

2 A. All Claims have been Disposed of

3 All of the plaintiffs’ causes of action have been dispositively ruled upon by Orders of this
4 Court. The claims for damages have been dismissed with prejudice, and the authority of the
5 deputies to detain the plaintiffs (the basis of both the claimed constitutional violation as well as
6 claimed false arrest) has been ruled an undisputed fact. Nothing further remains of this action for
7 litigation. Accordingly, entry of final judgment is appropriate.
8

9
10 In moving for entry of final judgment Defendants identified each of the Plaintiffs’ original
11 three causes of action, and identified where in the record each claim had been addressed and/or
12 effectively dismissed. In responding, Plaintiffs assert that their cause of action for a “constitutional
13 violation” and their requested remedy of declaratory judgment have not been the direct subject of a
14 prior ruling, and that therefore they survive as a cause of action and remedy yet to be ruled upon.
15 This assertion is defeated, however, by the unavoidable impact of the rulings this Court has made.
16 An argument that the detention was wrongfully prolonged can only be made by ignoring this
17 Court’s finding that *there was probable cause to arrest* the plaintiffs.
18

19
20 The principle of collateral estoppel, of course, precludes us from traveling such a blinded
21 pathway. The rulings of this Court have important and binding legal effect. The parties are barred
22 from relitigation of issues of ultimate fact that have been determined by a final judgment.¹ Because
23 this Court granted summary judgment dismissal with prejudice of Plaintiffs’ false arrest claim,
24 based upon a finding that probable cause existed for the plaintiffs’ arrest, the parties can no longer
25

26 _____
27 ¹ *State v. Vasquez*, 148 Wn.2d 303, 308, 59 P.3d 648 (2002).
28

1 litigate this issue.² Yet, in arguing that their cause of action for a constitutional violation survives
2 and asserting that the detention of the plaintiffs was wrongfully prolonged, that is exactly what the
3 plaintiffs attempt to achieve; that is: re-litigation of the Deputies' authority to detain.
4

5 Plaintiffs' constitutional claim asserts that through an alleged wrongful detention, the
6 Defendants caused "loss of liberty" and an "invasion of [Plaintiffs'] individual privacy rights in
7 violation of Article I, Section 7 of the Washington State Constitution."³ Yet this very premise has
8 already been ruled upon. "'The gist of an action for false arrest...is the unlawful violation of a
9 person's right of personal liberty or the restraint of that person without legal authority.'"⁴ Thus,
10 through both stated causes of action (alleged constitutional violation and false arrest) the plaintiffs
11 allege the same violation of the same right. Yet simply identifying the same alleged violation by
12 two different names does not entitle Plaintiffs to repeated opportunities to litigate the same issue;
13 that is, the authority of the deputies to detain them.
14

15
16 Even so, were this court to consider Plaintiffs' arguments regarding the alleged
17 constitutional violation, such assertions must fail. Curiously, Plaintiffs argue that probable cause to
18 arrest for a crime "does not immunize Defendants from claims of constitutional violations that
19 *arise after the stop...*"⁵ Yet, per their complaint, the alleged constitutional violation is the
20

21
22 ² For similar reasons, Plaintiffs' assertion that this matter should be converted to a CR 56 Motion for Summary
23 Judgment should fail. Defendants have not incorporated "other pleadings" into their Motion for Entry of Final
24 Judgment. Rather, Defendants seek only consideration of the Plaintiffs' Complaint in light of the rulings made to date
25 by this court; particularly this Court's finding that there was no disputed fact regarding the existence of probable cause
26 to arrest the Plaintiffs. This fact cannot be challenged and cannot be re-litigated. Consideration by the court of
evidence is immaterial and does not convert a motion for judgment on the pleadings (CR 12(c)) into a summary
judgment proceeding (CR 56) when there could not exist a state of facts which the plaintiff could prove to entitle
himself to relief under his claim. *Loger v. Washington Timber Products, Inc*, 8 Wash.App. 921, 509 P.2d 1009
(1973). The court, in this circumstance, merely rules as a matter of law on the motion to dismiss. *Id.*

27 ³ Complaint for Damages and Declaratory Relief, p. 6, lines 8-16.

28 ⁴ *McKinney v. City of Tukwila*, 103 Wn.App. 391, 407, 13 P.3d 631 (2000), quoting, *Bender v. City of Seattle*,
99.Wn.2d 582, 591, 664 P.2d 492 (1983).

⁵ Plaintiff's Opposition to Defendants' Motion for Entry of Final Judgment (hereinafter "Plaintiff's Opposition"), at p.
11, lines 10-12.

1 detention. How then can a constitutional violation be discerned from a detention that is justified by
2 probable cause for arrest? The argument becomes nonsensical.

3
4 In support of the contention that they are entitled to a new and independent ruling of this
5 court regarding the constitutionality of their detention, Plaintiffs cite to a litany of cases that
6 address the impropriety of expanding the scope of a *Terry* stop⁶ and the impropriety of detaining
7 passengers by seeking ID, absent an articulable suspicion of criminal activity. The cases, however,
8 have no relevance to a detention that is justified by probable cause to arrest.

9
10 We do not have passengers who were questioned absent an articulable suspicion of criminal
11 activity. What we have is both an articulable suspicion, and probable cause to arrest. As this court
12 has already ruled, detention justified by probable cause is not wrongful.

13
14 For logical reasons, Plaintiffs can cite no case that stand for the proposition that questioning
15 an individual for whom the officer has probable cause to arrest unlawfully lengthens the length of
16 their detention. When there is probable cause to arrest, asking questions of the suspect cannot
17 unlawfully prolong the detention, because the detention itself is lawful.

18 B. No Justiciable Controversy Warranting Declaratory Judgment

19
20 Plaintiffs have sought declaratory judgment only as a remedy to the alleged constitutional
21 violation. As per the discussion above, because there was probable cause for the plaintiffs' arrest,
22 there was no constitutional violation, and accordingly no remedy is warranted.

23
24 ⁶ See, Plaintiff's Opposition at p. 11-12, citing *State v. Henry*, 80 Wn.App. 544, 910 P.2d 1290(1995) (*Terry* stop);
25 *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065, 1069 (1984) (*Terry* stop); *State v. Acrey*, 148 Wn.2d 738, 64 P.3d
26 594, 598-99 (2003) (*Terry* stop); *State v. Smith*, 115 Wn.2d 775, 785, 801 P.2d 975 (1990 (*Terry* stop); *State v.*
27 *Rankin*, 151 Wn.2d 698, 92 P.3d 202(2004) (prolonged detention by questioning of passengers absent an articulable
28 suspicion of criminal activity); *State v. Allen*, 138 Wn.App. 463, 157 P3d 893 (2007) (prolonged detention by
questioning of passengers absent articulable suspicion of criminal activity).

1 However, on independent grounds, the plaintiffs’ request for declaratory relief must also
2 fail as there must be a justiciable controversy before the court may assume jurisdiction to hear a
3 case as a declaratory judgment action.⁷ Because no such controversy exists, Plaintiffs’ request
4 amounts to an invitation for this court to issue a prohibited advisory opinion.⁸
5

6 As was identified in Defendants’ Motion for Entry of Final Judgment, a justiciable
7 controversy requires that there be:
8

- 9 1) an actual, present and existing dispute,
- 10 2) between parties having genuine and opposing interests,
- 11 3) which involves interests that must be direct and substantial, ***rather than potential, theoretical, abstract or academic,*** and
- 12 4) a judicial determination of which will be final and conclusive.⁹

13 In responding, Plaintiffs have failed to establish that each of these four prongs has been met.

14 Indeed, in claiming that there are genuine and opposing interests “between the parties” which are
15 not simply “potential,” Plaintiffs assert simply that ‘Defendants have stopped other people’, and
16 ‘they may continue to stop other people’; thus (they urge) “the interests in this matter are direct and
17 substantial.”¹⁰

18 However, that the defendants “might stop other people” does not articulate an actual and
19 existing dispute *between the parties* (that is, the plaintiffs and defendants). Neither does it describe
20 a “direct” as opposed to “potential or theoretical” interest. Indeed, Plaintiffs’ argument sets forth
21

22 ⁷ *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994).

23 ⁸ *Superior Asphalt and Concrete Co., Inc. v Washington Dept. of Labor and Industries*, 121 Wn. App. 601, 89 P.3d
24 316 (2004) (Highway construction contractor’s declaratory judgment action against Dept. of Labor and Industries,
25 challenging constitutionality of safety regulation governing flagger safety on highway worksites, failed to satisfy
26 standing and justiciability requirements of Uniform Declaratory Judgments Act, where contractor had received citation
27 for violation of regulation, but citation was ultimately vacated, so that any judicial decision would be prohibited
28 advisory opinion.)

⁹ *Walker*, 124 Wn.2d at 411.

¹⁰ Plaintiffs’ Opposition at p. 15, lines 4-11.

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 Additionally, Plaintiffs' response fails to address how any judicial determination in this
5 regard could be final and conclusive, given that the judgment requested would bear upon only one
6 of at least six law enforcement agencies who have jurisdiction within the boundaries of Kitsap
7 County.

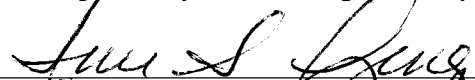
8
9 As all four elements of the test cannot be met, there is no justiciable controversy. The
10 declaratory judgment sought is a request for an advisory opinion; an action the court is prohibited
11 from taking.

12 II. Conclusion

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

18 RESPECTFULLY SUBMITTED this 30th day of May, 2013.

19
20 RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

21 

22 IONE S. GEORGE, WSBA No. 18236

23 Chief Deputy Prosecuting Attorney

24 NEIL R. WACHTER, WSBA No. 23278

25 Senior Deputy Prosecuting Attorney

26 Attorneys for Defendants Kitsap County, Justin

27 T. Childs and Scott C. Jensen
28

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:

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SIGNED in Port Orchard, Washington this 30th day of May 2013.

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

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

-vs-

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

Defendants.

NO. 12-2-09594-4

[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR ENTRY OF
FINAL JUDGMENT

THIS MATTER having come on regularly for hearing before the undersigned Judge of the
above-entitled Court upon Defendants' Motion for Entry of Final Judgment pursuant to CR 54, CR 57,
CR 58, RCW 7.24 and/or CR 12(c) the Court having reviewed the files and records herein, having
heard the arguments of counsel and being fully advised in the premises; now, therefore, it is hereby,
ORDERED that Defendants' Motion for Entry of Final Judgment is hereby GRANTED and any/all
remaining claims or requests for relief are DISMISSED WITH PREJUDICE.

///

1 DONE IN OPEN COURT this ____ day of _____, 2013.

2
3 _____
4 HON. KATHRYN J. NELSON

5 PRESENTED BY:

6 _____
7 IONE S. GEORGE, WSBA No. 18236
8 Chief Deputy Prosecuting Attorney
9 NEIL R. WACHTER, WSBA No. 23278
10 Senior Deputy Prosecuting Attorney
11 Attorneys for Defendants Kitsap County,
12 Scott Jensen and Justin Childs.

13
14 APPROVED AS TO FORM:

15 _____
16 Maren R. Norton, WSBA No. 35435
17 Karin D. Jones, WSBA No. 42406
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