IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN ALAN MAGRITZ,

Plaintiff,

v. Case No. 12CV806 EGS

OZAUKEE COUNTY, et al.,

Defendants.

REPLY MEMORANDUM OF DEFENDANTS GEROL, WILLIAMS, AND GONRING IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF THE CASE

Plaintiff Steven Alan Magritz commenced this civil action on May 15, 2012. The case originates in 2001 in the seizure of property owned by Magritz and located in Ozaukee County. Magritz alleges that Ozaukee County officials breached their fiduciary duty by taking his property for public use, without just compensation, in violation of the federal and state constitutions.

Margitz alleges that in October 2003, defendant Sandy Williams (then the Ozaukee County District Attorney) refused to prosecute the Ozaukee County Corporation Counsel (Dennis Kenealy) for his criminal acts related to the seizure of the property owned by Magritz (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶¶ 41, 49).

Magritz alleges that on November 5, 2007, defendant Gonring (acting as a judge) denied his motion to vacate the judgment entered in the foreclosure action in 2001, and did not take any action against Kenealy (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶¶ 42-46).

Magritz alleges that in July 2011, defendant Gerol (acting as the district attorney) refused to prosecute Kenealy (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶ 47).

Magritz alleges that in August 2011, defendant Williams (acting as a judge) failed to recuse herself in a John Doe proceeding initiated by Magritz, and issued a decision and order refusing to issue a criminal complaint against Kenealy (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶¶ 48-51).

Magritz alleges that in September 2011, Gerol (acting as the district attorney) filed a criminal complaint against Magritz in state court, maliciously and in retaliation against Magritz as a victim and a witness of a crime (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶¶ 63-67, 71).

Magritz alleges that in December 2011, at the request of defendant Gerol, defendant Williams (acting as a judge) issued an arrest warrant for Magritz, in retaliation against Magritz as a victim and a witness of a crime (Complaint, ¶ 87; Affidavit in Support of Complaint, ¶¶ 68-70).

Defendants Gerol, Williams, and Gonring have filed a motion for judgment dismissing this action against them on the grounds of improper venue, statute of limitations, Eleventh Amendment immunity, prosecutorial immunity, and judicial

immunity. Magritz has filed an opposition memorandum, denominated as a motion to strike the defendants' motion. Defendants Gerol, Williams, and Gonring respectfully submit this memorandum in reply.[1]

ARGUMENT

I. VENUE IN THIS COURT IS IMPROPER.

Venue is improper in this district, under 28 U.S.C. § 1391(a)-(b), because none of the defendants resides in the district, because the events giving rise to this action did not occur in this district, because the property that is part of the subject of this action is not situated in this district, and because the defendants are subject to personal jurisdiction in the Eastern District of Wisconsin. Accordingly, this case must be transferred to the Eastern District of Wisconsin or, because the action cannot successfully be maintained against defendants Gerol, Williams and Gonring in any district, for the reasons to be discussed in this brief, the action against them should be dismissed. Magritz makes no contrary argument in his opposition memorandum.

[1] Magritz characterizes Attorney General J.B. Van Hollen and Assistant Attorney General David Rice as "interlopers" because they did not comply with Local Rule LCvR 83.2(c) and for making false representations to the court which evidence dishonesty, bad faith, and unclean hands. Local Rule LCvR 83.2(c), however, does not apply to attorneys employed by a state. *See* Local Rule LCvR 83.2(e). In addition, as will be explained in this memorandum, neither Attorney General Van Hollen nor Assistant Attorney General Rice made any false representations to the court.

II. THIS ACTION IS BARRED BY WISCONSIN STATUTE § 893.53 FOR ANY ACTS COMMITTED BY DEFENDANTS GEROL, WILLIAMS, OR GONRING PRIOR TO MAY 15, 2006.

The applicable statute of limitations in Wisconsin for federal civil rights claims is the six-year statute of limitations contained in Wis. Stat. § 893.53. *See Reget v. City of La Crosse*, 595 F.3d 691, 694 (7th Cir. 2010); *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989). Since this action was filed on May 15, 2012, the statute of limitations bars this action as to any acts committed prior to May 15, 2006. This includes the refusal of defendant Williams in October 2003 (as the Ozaukee County District Attorney) to prosecute Ozaukee County Corporation Counsel Kenealy for his criminal acts related to the seizure of the property owned by Magritz.

Magritz's only argument in his opposition memorandum is that it is "disingenuous, frivolous, ludicrous, contemptible, and a further breach of fiduciary duty" by the defendants to attempt to apply a statute of limitations to a constitutional claim. Such argument is contradicted by the cases cited by the defendants.

III. THIS ACTION AGAINST DEFENDANTS GEROL, WILLIAMS, AND GONRING IN THEIR OFFICIAL CAPACITY IS BARRED BY THE ELEVENTH AMENDMENT.

The Eleventh Amendment to the United States Constitution denies federal courts the authority to entertain suits brought by private parties against a state without the state's consent. *See Quern v. Jordan*, 440 U.S. 332, 337 (1979); *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Eleventh Amendment immunity also extends to state officials when they are sued for damages in their official capacity. *See Graham,*

473 U.S. at 169. State judges are state officials. *See* Wis. Stat. § 753.07(1). District attorneys are state employees. *See* Wis. Stat. §§ 230.08(2)(a) and 978.12(1)(a). Consequently, this action against Gerol, Williams, and Gonring in their official capacity is barred by the Eleventh Amendment.

Magritz argues in his opposition memorandum that he sues the defendants in their individual capacity rather than in their official capacity. Insofar as Magritz does not sue the defendants in their official capacity, the suit against them in their official capacity may not be barred by Eleventh Amendment immunity.

IV. THIS ACTION AGAINST DEFENDANTS GEROL AND WILLIAMS, WHEN ACTING AS THE OZAUKEE COUNTY DISTRICT ATTORNEY, IS BARRED BY ABSOLUTE PROSECUTORIAL IMMUNITY.

Prosecutors are absolutely immune from civil suits for prosecutorial acts that are intimately associated with the judicial phase of the criminal process. *See Imbler v. Pachtman*, 424 U.S. 409, 422-428 (1976). In this case, Magritz alleges that District Attorneys Williams and Gerol refused to prosecute Kenealy criminally and that District Attorney Gerol filed a criminal complaint against Magritz. Such acts plainly are prosecutorial acts. Accordingly, this action against District Attorneys Gerol and Williams is barred by absolute prosecutorial immunity.

Magritz's only argument in his opposition memorandum is that it is "dishonest and a breach of fiduciary duty" by the defendants to claim absolute prosecutorial immunity. Such argument fails to rebut the argument of the defendants that this action against District Attorneys Gerol and Williams is barred by absolute prosecutorial immunity.

V. THIS ACTION AGAINST DEFENDANTS WILLIAMS AND GONRING, WHEN ACTING AS STATE CIRCUIT COURT JUDGES, IS BARRED BY ABSOLUTE JUDICIAL IMMUNITY.

Judges are absolutely immune from civil suits for their judicial acts. *See Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978). Judicial immunity is immunity from suit, not just immunity from the assessment of damages. *See Mireles v. Waco*, 502 U.S. 9, 11 (1991).

In this case, Magritz alleges that defendant Williams (acting as a judge) failed to recuse herself and refused to issue a criminal complaint against Kenealy in a John Doe proceeding initiated by Magritz, and issued an arrest warrant against Magritz.[2] In addition, Magritz alleges that defendant Gonring (acting as a judge) denied his motion to vacate a judgment. Such acts plainly are judicial acts. Accordingly, this action against Judges Williams and Gonring is barred by absolute judicial immunity.

Margitz argues in his opposition brief that he is not suing defendant Gonring for denying his motion to vacate the judgment, but instead is suing defendant Gonring for perjuring his oath of office and for commission of a felony by denying the motion. Such argument is not responsive to the defendants' argument that this

[2] Magritz claims that counsel for the defendants (the "interlopers") falsely stated that he had initiated a "John Doe" proceeding when in fact he filed a "verified motion for a determination of probable cause for a determination if probable cause exists to arrest Kenealy for criminal acts." Magritz's own affidavit, however, establishes that the motion was treated as a "John Doe" proceeding and was assigned a "John Doe" case number: 2011JD0001 (Magritz Affidavit, ¶ 48). Magritz also claims that the "interlopers" falsely stated that Defendant Williams "issued a decision and order refusing to issue a criminal complaint against Kenealy." Magritz's own affidavit, however, establishes that Williams "issued a 'Decision and Order' stating: 'the court has determined that it is not necessary to convene a hearing to determine whether a crime has been committed.'" (Magritz Affidavit, ¶ 51).

action against Judges Williams and Gonring is barred by absolute judicial immunity. Moreover, insofar as Magritz is alleging that defendant Gonring committed crimes, this court lacks subject matter jurisdiction.

CONCLUSION

Defendants Gerol, Williams, and Gonring respectfully request that the court enter judgment granting their motion and dismissing this action against them.

Dated this 25th day of July, 2012.

s/ David C. Rice
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