

STATE OF MICHIGAN
COURT OF APPEALS

WILLIE SAVAGE,

Plaintiff-Appellant,

V

STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

October 7, 2003

No. 241786

Court of Claims

LC No. 02-000019-MZ

Before: Fitzgerald, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff, Willie Savage, acting *in pro per*, appeals the trial court's grant of summary disposition to defendant, State of Michigan. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 22, 2002, Savage filed his complaint in the Court of Claims and asserted allegations of false arrest, assault and battery, false imprisonment, gross negligence, discrimination, conspiracy, fraud and extortion. All of plaintiff's claims against the State of Michigan concern rulings made by Cass Circuit Court Judge Michael Dodge or Cass County Friend of the Court Referee Donald Moroz in an annulment action between Savage and Maria Ferraren.

Here, the State of Michigan filed a motion for summary disposition pursuant to MCR 2.116(C)(4), (7), and (8), and argued that plaintiff's tort claims are barred by governmental immunity, collateral estoppel, *res judicata*, or the statute of limitations and that plaintiff's 42 USC §1983 discrimination claim is barred because a state is not a person for purposes of the statute. The trial court agreed with the State of Michigan and granted summary disposition and dismissed this case in a written order entered on May 9, 2002.

Savage argues that the Court of Claims erred by failing to rule "that the State was wrong for not correcting and overturning" Judge Dodge's rulings in the annulment action. To the extent Savage asked the lower court and now asks this Court to review the rulings made in his divorce case, the Court of Claims correctly declined to do so, as do we. Savage has conceded that he appealed the disputed rulings to both the Michigan Court of Appeals and the Michigan Supreme Court. Clearly, the rulings in that case became final when this Court denied Savage's delayed application for leave to appeal for lack of merit and the Supreme Court denied his application for leave to appeal. See generally, *Gebhardt v O'Rourke*, 444 Mich 535, 538; 510 NW2d 900

(1994); *Thompson v Ford Motor Co*, 139 Mich App 177, 179; 362 NW2d 240 (1985). Further, were Savage entitled to some proper form of post-appeal relief or modification in his divorce case, jurisdiction would have reverted with the Cass Circuit Court, not the Court of Claims. See generally, *Luscombe v Shedd's Food Products Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995); *People v George*, 399 Mich 638, 640; 250 NW2d 491 (1977); MCL 600.6419. Finally, clearly, the State of Michigan is not a proper party to Savage's attempt to again "appeal" a divorce judgment between Savage and Ferraren. See generally, *Pruitt v Pruitt*, 90 Mich App 230, 233-234; 282 NW2d 785 (1979).

Savage raises no arguments on appeal with regard to his tort claims against the State of Michigan and he has, therefore, abandoned those issues. However, we note for the sake of completeness that the claims set forth in Savage's complaint are clearly barred by the government tort liability act. MCL 691.1407. In Michigan, "to plead a cause of action against the state or its agencies, the plaintiff must plead and prove facts in avoidance of immunity." *Mack v City of Detroit*, 467 Mich 186, 199; 649 NW2d 47 (2002). "A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function." *Id.* at 204. Savage's allegations all concern actions by governmental employees engaged in the exercise of a governmental function and plaintiff has failed to plead facts to establish a recognized, statutory exception. Further, it is well-settled that "[a] governmental agency can be held vicariously liable only when its officer, employee, or agent, acting during the course of employment and within the scope of authority, commits a tort while engaged in an activity which is nongovernmental or proprietary, or which falls within a statutory exception." *Scameheorn v Bucks*, 167 Mich App 302, 310; 421 NW2d 918 (1988), quoting *Ross v Consumers Power Co*, 420 Mich 567, 625; 363 NW2d 641 (1985). Savage made no such allegation and, therefore, the trial court properly dismissed those claims. MCR 2.116(C)(7), (8).

Finally, Savage's 42 USC § 1983 claim was correctly dismissed because "neither a state nor its officials acting in their official capacities are "persons" under § 1983, and thus cannot be sued under § 1983." *Thomas v McGinnis*, 239 Mich App 636, 643 n 6; 609 NW2d 222 (2000), citing *Will v Michigan Dep't of State Police*, 491 US 58, 109 S Ct 2304, 105 L Ed 2d 45 (1989), affirming *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987).¹ Because it was not a proper party, the State of Michigan was entitled to judgment as a matter of law. MCR 2.116(C)(8).

¹ Savage has abandoned any claim with regard to a ruling he disputes in an unspecified federal court case. It is well-settled that "[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims" *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Here, not only has Savage failed to even minimally set forth information regarding that case and its dismissal, it is within the jurisdiction of the United States Court of Appeals to address plaintiff's federal district court appeal, not ours. 28 USC 1291; MCL 600.308.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard Allen Griffin
/s/ Henry William Saad