

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Freddie McKnight (“McKnight”) filed a complaint in Elkhart Superior Court against Curtis Hill Jr. (“Hill”), the County Prosecutor, and William Wargo, Sr. (“Wargo”), an investigator for the Prosecutor’s Office, for statements they made to the press concerning McKnight’s identification of individuals involved in the Elkhart County drug trade. Specifically, McKnight claimed that Hill and Wargo acted negligently, and that, under 42 U.S.C. section 1983, he was subjected to cruel and unusual punishment, and denial of due process and equal protection of the law.

Hill filed a motion to dismiss McKnight’s complaint, and after filing an answer, Wargo requested a judgment on the pleadings. The trial court granted both motions and McKnight appeals. McKnight raises several issues, but we address only two dispositive issues:

- I. Whether Hill and Wargo are entitled to absolute immunity for McKnight’s negligence claim; and,
- II. Whether McKnight’s federal constitutional claims are barred by the doctrine of res judicata.

We affirm.

Facts and Procedural History

On June 15, 2006, McKnight was arrested for multiple drug-related offenses. The next day, Elkhart County Prosecutor Curtis Hill Jr. and the office’s chief investigator, William Wargo, Sr., held a press conference at which they made statements revealing that

McKnight had identified other persons of interest in an Elkhart County drug investigation.

On April 5, 2007, McKnight, who was incarcerated in the Indiana State Prison, was attacked by other inmates who allegedly accused him of being a “snitch.” Thereafter, McKnight filed a notice of tort claim. He also filed a 42 U.S.C. section 1983 complaint against Hill and Wargo in the Federal District Court for the Northern District of Indiana. His federal complaint was dismissed on November 13, 2008, in an order which provides in pertinent part:

McKnight asks the Court to award him monetary damages because the defendants wrongfully published and disseminated allegedly false information about him. He also asks the Courts to enjoin them “from making any additional slanderous & libelous comments, statements or press releases.” However, libel and defamation are not actionable under 42 U.S.C. § 1983. [Citations omitted.] Here, because neither libel nor slander libel is actionable in a 1983 case, the Court must dismiss these claims.

Appellant’s App. p. 48.

Approximately one year later, McKnight filed a 42 U.S.C. section 1983 complaint in Elkhart Superior Court against Hill and Wargo alleging cruel and unusual punishment, and denial of due process and equal protection of the law. McKnight also alleged that Hill and Wargo acted negligently and made a claim under the Indiana Tort Claims Act.

Hill moved to dismiss McKnight’s complaint for failure to state a claim upon which relief can be granted. Wargo filed an Answer and Affirmative Defenses to McKnight’s complaint, and later filed a motion for judgment on the pleadings.

The trial court granted both Wargo’s and Hill’s motions on May 14, 2010. The court concluded that Hill and Wargo were entitled to absolute immunity for the

statements they made to the media. Appellant's App. pp. 120-21. McKnight now appeals. Additional facts will be provided as necessary.

Discussion and Decision

The trial court granted Hill's motion to dismiss and Wargo's motion for judgment on the pleadings after concluding that they were entitled to absolute immunity. McKnight argues Hill's and Wargo's allegedly negligent acts were "clearly outside the scope of employment" and that they are not entitled to immunity for his claims pursuant to the Indiana Tort Claims Act and 42 U.S.C. section 1983. Appellant's Br. at 4. In response, Hill and Wargo maintain their immunity defense, but also argue that McKnight's section 1983 claims are barred by the doctrine of res judicata.

A motion to dismiss for failure to state a claim tests the legal sufficiency of the claims, not the facts supporting it; therefore, our review of a trial court's grant of a motion to dismiss is de novo. Droscha v. Shepherd, 931 N.E.2d 882, 887 (Ind. Ct. App. 2010). When reviewing a motion to dismiss, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. Id. A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief. Id. All allegations must be accepted as true, and it is the appellate court's duty to determine whether the underlying complaint states "any set of allegations upon which the court below could have granted relief." Stoffel v. Daniels, 908 N.E.2d 1260, 1266 (Ind. Ct. App. 2009) (quoting Watson v. Auto Advisors, Inc., 822 N.E.2d 1017, 1023 (Ind. Ct. App. 2005), trans. denied). Our review

of the trial court's grant of Wargo's motion for judgment on the pleadings is also de novo. Murray v. City of Lawrenceburg, 925 N.E.2d 728, 731 (Ind. 2010).

I. Common Law Immunity and the Indiana Tort Claims Act

First, we address McKnight's argument that Hill and Wargo do not enjoy immunity for their allegedly negligent acts. The purpose of immunity is to ensure that public employees can exercise their independent judgment necessary to carry out their duties without threat of harassment by litigation or threats of litigation over decisions made within the scope of their employment. Bushong v. Williamson, 790 N.E.2d 467, 472 (Ind. 2003). We implicitly assume that in the absence of immunity for individual government employees, ordinary principles of personal liability would apply.

Our supreme court has specifically considered whether prosecutors are protected by the doctrine of immunity for statements made to the press:

Both the Attorney General of Indiana and the local prosecuting attorneys in this State exercise certain sovereign powers We therefore conclude that since it is a prosecutor's duty to inform the public as to his investigative, administrative and prosecutorial activities, the prosecutor must be afforded an absolute immunity in carrying out these duties.

. . . [W]e also note that the duty to inform the public can be characterized as a discretionary function and thus would fall within the absolute immunity granted under the Indiana Tort Claims Act. This decision will insure that the prosecutor will be able to exercise the independent judgment necessary to effectuate his duties to investigate and prosecute criminals and to apprise the public of his activities

[W]here, as here, the [prosecutor's] acts are reasonable within the general scope of authority granted to prosecuting attorneys, no liability will attach.

Foster v. Percy, 270 Ind. 533, 537–38, 387 N.E.2d 446, 449 (1979) (internal citation omitted).

“The qualified immunity doctrine has been largely displaced by the Indiana Tort Claims Act [] immunity for discretionary acts[.]” Cantrell v. Morris, 849 N.E.2d 488, 494 (Ind. 2006). The Indiana Tort Claims Act (“the ITCA”) governs lawsuits against political subdivisions and their employees. See Ind. Code § 34-13-3-1 et seq.

It immunizes both the governmental entity and its officers acting “within the scope of” their employment from liability in a number of areas. I.C. § 34-13-3-3. Notably Indiana Code section 34-13-3-3(7) confers immunity for “[t]he performance of a discretionary function.” This provision governs claims subject to the ITCA, and operates similarly, but not identically, to the common law qualified immunity doctrine applicable to section 1983 claims. The immunity for discretionary acts insulates only those “significant policy and political decisions which cannot be assessed by customary tort standards.” “Discretionary acts,” for purposes of the ITCA, does not mean “mere judgment or discernment,” but rather “refers to the exercise of political power which is held accountable only to the Constitution or the political process.”

Cantrell v. Morris, 849 N.E.2d 488, 495 (Ind. 2006) (citations omitted).

Prosecutor Hill was acting within the general scope of his prosecutorial authority when he made his statements concerning McKnight’s role in the Elkhart County drug trade to the press. Because Hill has a duty to inform the public about cases pending in his office and serves as the State’s advocate concerning criminal investigations, he enjoys common law absolute immunity from liability. See Foster, 270 Ind. at 536-37, 387 N.E.2d at 448-49.

Also, under the ITCA, Hill was performing a discretionary prosecutorial function when he made his statements to the press; therefore, he enjoys absolute immunity from liability to McKnight. See id. at 450 (“While we base our decision primarily on the common law immunity traditionally accorded to prosecuting attorneys, we also note that the duty to inform the public can be characterized as a discretionary function and thus

would fall within the absolute immunity granted under the Indiana Tort Claims Act.”); see also Am. Dry Cleaning & Laundry v. State, 725 N.E.2d 96, 99 (Ind. Ct. App. 2000) (concluding that the State’s Attorney General was entitled to common law immunity and immunity under the ITCA for statements made to the press about a pending case); Sims v. Barnes, 689 N.E.2d 734, 736-37 (Ind. Ct. App. 1997) (holding that a prosecutor was entitled to absolute immunity for statements made to the press under both common law principles and the ITCA), trans. denied.

Finally, because Wargo is an investigator and employee of prosecutor’s office, absolute immunity for the statements he made to the press extends to him. See Clifford v. Marion Cnty. Prosecuting Attorney, 654 N.E.2d 805, 810 (Ind. Ct. App. 1995).

II. Immunity under 42 U.S.C. Section 1983

But McKnight also argues that Hill and Wargo are not entitled to immunity for their statements to the press under his section 1983 claim. Section 1983 provides a civil remedy against a person who, under color of state law, subjects a United States citizen to the deprivation of any rights, privileges, or immunities secured by the federal Constitution or federal laws. Long v. Durnil, 697 N.E.2d 100, 105 (Ind. Ct. App. 1998), trans. denied. “Section 1983, on its face admits no defense of official immunity. It subjects to liability ‘[e]very person’ who acting under the color of state law, commits the prohibited acts.” Buckley v. Fitzsimmons, 509 U.S. 259, 268 (1993). In order to recover damages under section 1983, a plaintiff must show that (1) he held a constitutionally protected right, (2) he was deprived of this right, (3) the defendant acted with reckless indifference to cause this deprivation, and (4) the defendant acted under color of state

law. Id. Section 1983 was designed to prevent the states from violating the Constitution and certain federal statutes and to compensate injured plaintiffs for deprivations of those federal rights. Culver–Union Twp. Ambulance Serv. v. Steindler, 629 N.E.2d 1231, 1233 (Ind. 1994).

The United States Supreme Court has held that, under section 1983, a prosecutor is not entitled to absolute immunity for statements made to the media. Buckley, 509 U.S. at 277 (concluding “[s]tatements to the press may be an integral part of a prosecutor’s job . . . and they may serve a vital public function. But in these respects a prosecutor is in no different position than other executive officials who deal with the press, and, as noted above, . . . qualified immunity is the norm for them” (citations omitted)). Prior to the Buckley decision, several circuit courts of appeals had also held that under section 1983 prosecutors are only entitled to qualified immunity for statements made to the press.¹ Id. at 278 n.9.

In his complaint, filed in Elkhart Superior Court, McKnight requested “damages and injunctive relief under 42 U.S.C. [§] 1983” and alleged “cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments” and “denial of due process and equal protection of the law in violation of the Fourteenth Amendment.” Appellant’s App. p. 14. Specifically, McKnight claims that these constitutional rights were violated when Hill and Wargo held a press conference and stated that McKnight had identified several persons of interest in the Elkhart County drug trade. McKnight was

¹ The qualified immunity defense shields government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Earles v. Perkins, 788 N.E.2d 1260, 1266 (Ind. Ct. App. 2003) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

later attacked in prison because he was a “snitch.” McKnight alleged that the attack was the “direct result” of Hill’s and Wargo’s statements to the press, and that they made the statements with the intent to incite other prisoners to injure and humiliate him. Id. at 18, 20.

Under section 1983, Hill and Wargo are only entitled to qualified immunity for the statements they made to the press. See Buckley, 509 U.S. at 277. But even if we assume that Hill’s and Wargo’s conduct violated McKnight’s constitutional rights, we conclude that his section 1983 claims are barred by the doctrine of res judicata.

The doctrine of res judicata prevents the repetitious litigation of that which is essentially the same dispute. Wagle v. Henry, 679 N.E.2d 1002, 1005 (Ind. Ct. App. 1997). The doctrine has two distinct branches: claim preclusion and issue preclusion. Id.

Claim preclusion bars the relitigation of a claim after a final judgment has been rendered, when the subsequent action involves the same claim between the same parties or their privies. When claim preclusion applies, all matters that were *or might have been* litigated are deemed conclusively decided by the judgment in the prior action. Four requirements must be satisfied for a claim to be precluded under that doctrine: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, *or could have been*, determined in the prior action; and (4) the controversy adjudicated in the former action must have been between parties to the present suit or their privies.

Pinnacle Media, L.L.C. v. Metropolitan Dev. Comm’n of Marion Cnty., 868 N.E.2d 894, 899 (Ind. Ct. App. 2007), trans. denied (citations omitted and emphasis added).

Before McKnight filed his complaint in state court, he filed a section 1983 complaint against Hill and Wargo in federal district court. Appellant’s App. pp. 40-49. In that complaint, McKnight claimed that Hill and Wargo’s statements were “slanderous

and libelous.” Appellant’s App. p. 48. The district court dismissed McKnight’s complaint because “neither libel nor slander libel is actionable in a 1983 case[.]” Id.

The federal district court is a court of competent jurisdiction, and the dismissal for failure to state a claim upon which relief can be granted is a judgment rendered on the merits. McKnight named Hill and Wargo as defendants in his federal section 1983 complaint. We cannot conceive of any reason why McKnight could not have raised his federal constitutional claims, which he now seeks to raise in the Elkhart Superior Court, in his federal section 1983 complaint. The facts on which McKnight bases his claim were known to him when he filed his federal complaint. See Appellant’s App. pp. 40-49. For these reasons, McKnight’s section 1983 claims are barred by the doctrine of res judicata.

Conclusion

The trial court properly granted Hill’s motion to dismiss and Wargo’s motion for judgment on the pleadings. Hill and Wargo are entitled to absolute immunity for the statements they made to the press pursuant to common law principles and the Indiana Tort Claims Act. McKnight’s section 1983 claims are barred by the doctrine of res judicata as they could have been raised and litigated in the prior, dismissed federal section 1983 litigation.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.