United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 8, 2021
Lyle W. Cayce
Clerk

No. 20-30467
Summary Calendar

SEAN ROBINSON,

Plaintiff—Appellant,

versus

SHAUN FERGUSON, *Superintendent of the New Orleans Police Department*; LAWRENCE JONES, *Sergeant New Orleans Police Department*; REUBEN HENRY, *Detective New Orleans Police Department*; LAMAR DAVIS, *Colonel Superintendent of the Louisiana State Police*; ORLYNTHIA MILLER, *Detective New Orleans Police Department*,

Defendants—Appellees,

JEFF LANDRY, *in his official capacity as* LOUISIANA ATTORNEY GENERAL,

Intervenor—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-4733

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:*

Sean Robinson, a convicted sex offender, appeals the district court's grant of summary judgment in favor of Superintendent Michael Harrison, Sergeant Lawrence Jones, Detective Reuben Henry, and Detective Orlynthia Miller of the New Orleans Police Department, as well as Colonel Kevin Reeves, Superintendent for the Louisiana State Police.[1] *See Robinson v. Harrison*, No. CV 18-4733, 2020 WL 3892814, at *1 (E.D. La. July 10, 2020). The district court rejected Robinson's claims that § 15:542.1.4(A)(1)–(2) of the Louisiana Registration of Sex Offenders, Sexually Violent Predators, and Child Predators statute violates the Fourteenth and Fourth Amendments of the U.S. Constitution because it essentially punishes him, as an indigent individual, for his inability to pay for the required notification to the community of his residence.[2] *See Robinson*, 2020 WL 3892814, at *2–3, 5, 10–11; *see also* LA. STAT. ANN. § 15:542.1.4(A)(1)–(2). After reviewing the record, we conclude that the district court failed to determine whether the case became moot after it was filed. We therefore VACATE the district court's decision and REMAND to make such a determination. [3]

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

[1] The Louisiana Attorney General filed a Motion to Intervene to defend the challenged statute against Robinson's constitutional challenge, which was granted by the district court. On appeal, the Louisiana Attorney General filed a consolidated brief with the Louisiana State Police.

[2] Though the district court cited § 15:542.1.2(A)(1)–(2) of the statute as the relevant provision being challenged, *see Robinson*, 2020 WL 3892814, at *5, it appears that Robinson is actually challenging a different portion of the statute, § 15:542.1.4(A)(1)–(2).

[3] Earlier in this case, a motions panel considered the State's motion to dismiss for mootness and alternative motion to remand. Without explanation, the motions panel carried the former motion with the case but denied the latter. We are not bound by that panel's decision. *Trevino v. Davis*, 861 F.3d 545, 548 n.1 (5th Cir. 2017) (acknowledging that "a merits panel is not bound by a motions panel"). We deny without prejudice the motion to dismiss given that we have inadequate information to determine mootness.

We review the mootness issue de novo. *See Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 421 (5th Cir. 2014). As the district court acknowledged, the parties dispute whether Robinson's claims are moot due to his inability to pay as an indigent individual. *See Robinson*, 2020 WL 3892814, at *10. This dispute is not a trivial one. Mootness is jurisdictional;[4] it determines whether a federal court has subject matter jurisdiction under Article III, Section 2 of the Constitution to hear a case. *See, e.g.*, *Escobedo v. Estelle*, 655 F.2d 613, 614 (5th Cir. Unit A Sept. 1981) (per curiam). Indeed, mootness's jurisdictional character means that a federal court has "an independent obligation" to consider the issue before addressing the merits of the case. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Here, the district court concluded there was "a genuine dispute of material fact as to whether [Robinson] [wa]s able to pay for his community notifications," and it was thus "preempted from rendering summary judgment on whether his claim ha[d] been mooted by his alleged change in financial circumstances." *Robinson*, 2020 WL 3892814, at *10. This was an erroneous conclusion. The district court was "free to weigh the evidence and resolve factual disputes in order to satisfy itself that it ha[d] the power to hear the case." *Smith v. Reg'l Transit Auth.*, 756 F.3d 340, 347 (5th Cir. 2014). That is a key distinction between motions under Federal Rule 12(b)(1) and 12(b)(6) (or Rule 56). *Id.* Without such a determination, the district court was not empowered to rule on the merits of Robinson's case, which it

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Accordingly, as the merits panel of this case, we are remanding for consideration of that issue.

[4] Relevant here, "[a] case becomes moot—and therefore no longer a Case or Controversy for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up).

proceeded to do.[5] *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 21 (1994) (acknowledging that "no statute could authorize a federal court to decide the merits of a legal question not posed in an Article III case or controversy"). Because it is unclear whether Robinson is indigent—and therefore lacks the ability to pay the community notification cost—we remand to the district court to make such a finding.[6]

Accordingly, we VACATE the district court's decision and REMAND with instructions to determine the mootness issue as it relates to Robinson's alleged indigency. *See, e.g.*, *United States v. Winterroth*, 759 F. App'x 299, 300 (5th Cir. 2019) (per curiam) (vacating the district court's order because it lacked jurisdiction).

[5] To the extent it could be argued that the indigency issue is intertwined with the subject matter jurisdiction issue, we conclude that these issues are extricable. *See In re S. Recycling, L.L.C.*, 982 F.3d 374, 378, 381–82 (5th Cir. 2020) (affirming the district court's dismissal for lack of subject matter jurisdiction and concluding that the jurisdictional issue was "readily extricable from the primary merits issues," noting that the status of a structure as a "vessel" was an "antecedent inquiry").

[6] We observe that many of Robinson's claims rely heavily on the Supreme Court's decision in *Bearden v. Georgia*, 461 U.S. 660 (1983). We express no view on whether *Bearden* applies to the facts of this case.