IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4278
Summary Calendar

BECKY H. ALEXANDER,

Plaintiff-Appellant,

v.

RICHARD IEYOUB,
Calcasieu Parish District Attorney's Office
through its Duly elected representative
District Attorney, ET AL.,

Defendants,

RICHARD IEYOUB, etc.,
DAVID KIMBLE, Assistant District Attorney and
LESTER ROBERTSON, Assistant District Attorney,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
91 CV 2208

July 2, 1993

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

This case comes to us on appeal from a district judge's order granting absolute immunity to two prosecutors in a forfeiture

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

action. We cannot uphold the finding of absolute immunity, and so must reverse and remand for determination of qualified immunity and other issues.

The genesis of this case was the impoundment of the plaintiff's car pursuant to drug charges filed in Calcasieu Parish, Louisiana, almost five years ago. Although the prosecutor voluntarily dismissed the drug charges a year later, the appellant never received her car back from the parish sheriff. According to her brief on appeal, the district attorney vowed to hold on to her car regardless whether there was sufficient proof that she was a drug trafficker. A year after the dismissal of the charges, plaintiff attempted to retrieve her car and finally filed a lawsuit in state court. On August 9, 1991, a month before plaintiff's case was set for trial, the assistant district attorney finally instituted formal forfeiture proceedings against the vehicle. On October 15, 1991, the plaintiff filed this 42 U.S.C. § 1983 action against the defendants alleging deprivation of her constitutional rights because of the confiscation and untimely attempt at forfeiture of her car.

The defendants filed a motion to dismiss on the ground of absolute immunity. The motion was granted by the court, and Ms. Alexander has appealed to this court. Whether a defendant possesses absolute immunity from suit is a question of law, thus, we review the district court's decision de novo. Walter v. Torres, 917 F.2d 1379, 1383 (5th Cir. 1990); Halferty v. Pulse Drug Co., 864 F.2d 1185, 1188 (5th Cir. 1989).

A defendant's immunity from suit depends on the function he performs, not on the position he holds. Farrish v. Mississippi State Parole Board, 836 F.2d 969, 974 (5th Cir. 1988). Mandating a "functional" approach to immunity even in regard to prosecutors, the Supreme Court has "generally been quite sparing in its recognition of claims to absolute official immunity." Forrester v. White, 484 U.S. 219, 224, 108 S. Ct. 538, 542, 98 L.Ed.2d 555 (1988).

In this case, the district court relied upon Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L.Ed.2d 128 (1976), which held that prosecutors are absolutely immune from suit for damages for civil rights violations committed during the prosecution of cases. The court also relied on a recent Third Circuit case, Schrob v. Catterson, 948 F.2d 1402 (3d Cir. 1991), for the proposition that Imbler applies to civil forfeiture proceedings as a species of prosecution. The court concluded that these appellees are entitled to absolute immunity.

The court's reading of Schrob is too broad. We do not disagree that under Imbler and Schrob, a prosecutor must possess absolute immunity when initiating and presenting the state's case in a civil forfeiture action, but Schrob also explicitly held that the retention and management of property obtained under the forfeiture statutes is an administrative duty which is covered by no more than qualified immunity. Schrob, 948 F.2d at 1419. See also, Coleman v. Turpen, 697 F.2d 1341, 1346 (10th Cir. 1982) (no absolute immunity for a prosecutor for the managing and post-trial

disposition of seized property not used as evidence). Schrob accordingly reversed and remanded for further consideration a plaintiff's claim that the prosecutor unreasonably bargained the terms on which he would release property seized initially for forfeiture.

Because this case was dismissed on the pleadings and because the scope of a prosecutor's qualified immunity in regard to civil forfeiture proceedings poses novel questions, we decline to fashion a general rule for qualified immunity at this time. We do agree with the basic proposition expressed in Schrob that some aspects of a prosecutor's participation in activities related to forfeiture, like his participation in a search pursuant to warrant, see Marrero v. City of Hialeah, 625 F.2d 499, 505-06 (5th Cir. 1980), may not be part and parcel of his prosecutorial duty and should gain no more than qualified immunity. For "administrative or investigatory functions that are not an integral part of the judicial process," only qualified immunity is available. Rykers v. Alford, 832 F.2d 895, 897 (5th Cir. 1987). We do not necessarily agree, however, with Schrob's apparent holding that the way in which a prosecutor bargains for release of forfeited property--any more than his negotiation of a plea bargain for criminal charges--is outside of the prosecutorial function.

What is clear is that under applicable law, whoever held Ms. Alexander's property was required to institute a forfeiture proceeding promptly. The necessity for filing a prompt civil forfeiture proceeding is enshrined in the Supreme Court and Fifth

Circuit law. United States v. $8,850, 461 U.S. 555, 103 S. Ct. 2005, 76 L.Ed.2d 143 (1983); United States v. $23,407.69, 715 F.2d 162 (5th Cir. 1983). That this duty existed does not mean that the prosecutors who breached it shed their absolute immunity because of the breach--if they were acting as prosecutors in doing so rather than as mere custodians or administrators.

The issue of immunity may become unnecessary to resolve this case, however, if appellant's claim falls under the ambit of Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L.Ed.2d 420 (1981) and Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L.Ed. 393 (1984). Parratt and Hudson hold that no constitutional claim may be asserted by a plaintiff who is deprived of her property by the aberrant act of state officials unless state law fails to afford an adequate post-deprivation remedy. Parratt, 451 U.S. at 543, 101 S. Ct. at 1917; Hudson, 468 U.S. at 533, 104 S. Ct. at 3204. This court has previously found that Louisiana law provides an adequate remedy for negligent deprivation of personal property. Marshall v. Norwood, 741 F.2d 761, 763 (5th Cir. 1984); Brewer v. Blackwell, 692 F.2d 387, 394 (5th Cir. 1982); McRae v. Hankins, 720 F.2d 863, 869 (5th Cir. 1983). Ms. Alexander in fact pursued a state court remedy long after her patience with official intransigence should have been exhausted. The existence of that remedy may well trump a claim of a constitutional violation, because it means that the state has not taken her property without procedural due process protections. Compare Matthias v. Bingley, 906 F.2d 1047 (5th Cir. 1990). Ms. Alexander does not deny the

adequacy of the remedy: she complains only that the prosecutors sought and obtained a continuance of her state court trial, a problem that we cannot address. While there appears to be a strong possibility that, even assuming only qualified immunity of the prosecutors, Ms. Alexander cannot state a § 1983 claim for procedural due process violation, we vacate and remand for further proceedings.

For the foregoing reasons, the judgment of the district court dismissing appellant's case is **VACATED** and **REMANDED**.