United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 25-60216

CLIFTON JACKSON; HELEN NOEL; WILLIAM NOEL,

Plaintiffs—Appellants,

versus

CITY OF JACKSON, MISSISSIPPI,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:22-CV-666

Before RICHMAN, HIGGINSON, and OLDHAM, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:[*]

Clifton Jackson ("Reverend Jackson"), Helen Noel, and William Noel (the "Noels") (collectively "Appellants") sued the city of Jackson, Mississippi (the "City"), both individually and on behalf of a putative class of consumers of the City's water utility, asserting claims related to the City's ongoing municipal water system failures, including a procedural due process violation under 42 U.S.C. § 1983 and a state law breach of contract claim.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

The City moved to dismiss Appellants' claims, both for lack of standing and for failure to state a claim, under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Appellants then filed a motion for leave to amend their complaint.

The district court dismissed the complaint, finding that Appellants lacked standing and that Appellants failed to state a claim upon which relief may be granted. The district court noted Appellants' proposed amended complaint and addressed the proposed amendments in its order dismissing the complaint; accordingly, the district court denied leave to amend the complaint as futile. For the reasons that follow, we VACATE the judgment as to lack of standing but AFFIRM the district court's determination that Appellants failed to state a claim upon which relief can be granted and the holding that amendment of the complaint would be futile.

I.

Appellants are customers of the City's water utility system. The City has a well-documented record of pervasive systemic failures concerning its water infrastructure, including dilapidated water treatment facilities, recurrent boil-water notices, erratic billing practices, and accusations of substandard water quality adversely affecting residents' daily lives. In 2013, the City contracted with Siemens Industry, Inc. for a $90 million dollar project to upgrade its water infrastructure, including installing new water meters and a new billing system. Due to the failure of the project, a group of citizens sued Siemens Industry in 2019, alleging, among other things, the faulty installation of approximately 60,000 water meters, which caused "many account holders to receive inexplicably high bills that [did] not reflect their actual water usage" and others to "receive no bill at all for significant periods of time, only to eventually receive an unusually high bill based on months of purported water usage." *Poindexter Park After Sch. Club v. Siemens*

Indus., Inc., No. 19-474, 2020 WL 13526629, at *1 (S.D. Miss. June 2, 2020). The parties settled the suit, but the service interruptions, billing inconsistencies, and infrastructure problems persisted.

On November 9, 2020, Appellants here filed a lawsuit against the City almost identical to the complaint now before us, alleging the water quality remained inadequate and the City's available administrative remedies were insufficient. After the City raised a defense of exhaustion, Appellants voluntarily dismissed their claims so they could pursue the City's administrative resolution process for customer water bill disputes. Appellants attempted to engage in the administrative process. When Plaintiffs filed the current suit on November 15, 2022, they had not been able to obtain an administrative hearing with the City.

The City continued to have issues with its water service, prompting the United States to file suit against the City on November 29, 2022, asserting claims under the Safe Drinking Water Act (the "SDWA") (the "SDWA suit"). The court in the SDWA suit entered an interim stipulated order (the "Stipulated Order") that stayed the case and placed the City's water system under federal receivership, appointing an Interim Third-Party Manager (the "ITPM") to oversee the rehabilitation of the City's water system. The ITPM created an entity named JXN Water, Inc. ("JXN") to perform the court-ordered duties. The ITPM also formed the People's Relief Campaign, a federally backed program targeted at billing error correction on amounts due before December 1, 2022.

Thereafter, Appellants did receive a hearing. As a result, Reverend Jackson entered the City's bill forgiveness program, and the Noels received relief funds in the amount of $1,159.49.

The City moved to dismiss Appellants' claims under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). In response, Appellants filed a motion

to amend their complaint along with a proposed amended complaint. In its order and reasons dismissing the complaint, the district court outlined the changes in Appellants' proposed amended complaint and considered whether it would remedy the deficiencies in the complaint. Finding dismissal was warranted, even considering the proposed amended complaint, the district court denied the motion to amend as futile. The district court declined to exercise supplemental jurisdiction over the remaining state court breach of contract claim, and it determined that since Appellants had not suffered a constitutional injury, the class claims also failed.

Appellants raise five issues on appeal, arguing the district court erred by (1) dismissing for lack of standing; (2) holding that Appellants had failed to state a claim under 42 U.S.C. § 1983 ; (3) denying the motion to amend; (4) declining to exercise supplemental jurisdiction over the breach of contract claims; and (5) dismissing the proposed class.

II.

We review dismissals under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) de novo. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). "Where the district court's denial of leave to amend was based solely on futility, this court applies a de novo standard of review identical, in practice, to the standard used for reviewing a dismissal under Rule 12(b)(6).) *Pena v. City of Rio Grande City*, 879 F.3d 613, 618 (5th Cir. 2018) (internal quotations omitted). "Under that standard, we must evaluate the sufficiency of the proposed complaint and decide which, if any, of [the] claims survive the pleadings." *Id.* We review determinations of whether to exercise pendant jurisdiction for abuse of discretion. *Enochs v. Lampasas Cnty.*, 641 F.3d 155, 161 (5th Cir. 2011). "Jurisdictional questions are questions of law, and thus reviewable *de novo* by this Court." *James v. City of Dallas,* 254 F.3d 551, 562 (5th Cir. 2001) (quotation omitted). "If the litigant fails to establish standing,

he or she may not seek relief on behalf of himself or herself or any other member of the class." *Id.* at 563 (citing *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)).

A.

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016). To establish Article III standing, a plaintiff must show (1) an "injury in fact" that is (a) "concrete and particularized" and (b) "actual or imminent, not 'conjectural' or 'hypothetical'"; (2) the injury must be "fairly traceable" to the defendant's challenged action and "not the result of the independent action of some third party not before the court"; and (3) it must be likely that the injury will be redressable by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (quotation omitted); see also *Massachusetts v. E.P.A.*, 549 U.S. 497, 517 (2007). The burden of establishing these elements falls upon the party asserting subject matter jurisdiction. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). A Rule 12(b)(1) motion to dismiss for lack of standing challenges the court's subject matter jurisdiction. When filed in conjunction with other Rule 12 motions, the court should evaluate jurisdiction before addressing the merits inquiry. *Id.* Proceeding in that order "prevents a court without jurisdiction from prematurely dismissing a case with prejudice." *Id.*

Appellants argue that the district court erred in concluding they lack standing. Appellants assert an economic injury because they were required to purchase bottled water to use as a result of the City's failure to provide water, and they seek damages for that injury. They contend that the district court erred when it dismissed their tangible losses as mere "subjective

inconveniences." They further argue that the injury is redressable in three ways: a favorable judgment awarding compensatory damages would make them whole "for the money they paid for unusable water and the money they spent on replacement water," a declaratory judgment would "establish their rights and the City's duties going forward," and an injunction would "compel the City to provide adequate procedural remedies" in the future.

Appellants further argue that they have a right to dispute charges for non-conforming service, even without a termination, relying on *Mississippi Power Co. v. Cochran*, 147 So. 473, 475 (1933). Appellants also assert that that their "injury is not just the loss of service" but also the charges they received "for a service not properly rendered."

B.

The district court was mistaken that Appellants failed to allege an injury sufficient to confer standing.

First, the district court relied on *Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015), where we found that the state of Mississippi had not shown standing. In *Crane*, Mississippi challenged the Deferred Action for Childhood Arrivals program ("DACA"), alleging a fiscal injury based on a 2006 study that showed that illegal immigrants cost the state more than $25 million per year. *Id.* at 252. We affirmed the district court's finding that the injury was too speculative to confer standing because Mississippi had not demonstrated that it would incur costs *because* of the DACA program. *Id.*

In contrast, here, Appellants' proposed amended complaint alleges they incurred a pocketbook injury when they paid for safe, potable water but did not receive it, and therefore were required to incur mitigation costs by

spending "their own money to purchase bottled water for drinking, cooking, and basic hygiene for years."[1]

These mitigation costs are "fairly traceable" to the City's mismanagement of its water infrastructure that Appellants allege led to dirty, smelly, brown, metal-infected water in their homes.

As to redressability, Appellants argue that the district court incorrectly relied on *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), where any civil penalties were payable to the Treasury, not the plaintiffs. We agree. In *Steel Co.*, which analyzed standing under a citizen-suit provision of the Emergency Planning and Community Right-To-Know Act of 1986, the Supreme Court noted that the civil penalties authorized by the statute were payable to the United States Treasury, not the plaintiffs. *Id.* at 106. Accordingly, the Supreme Court held the plaintiffs lacked standing under the redressability prong of the standing analysis, finding that the civil penalties "might be viewed as a sort of compensation or redress to respondent if they were payable to respondent. But they are not." *Id.* Here, however, Appellants' proposed amended complaint asks for relief in the form of damages and costs. Because Appellants seek damages from the City to compensate them for the money they spent to purchase clean water, having also paid the City for water that was unusable, the proposed amended complaint satisfies the redressability requirement.

III.

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[1] The district court's standing analysis correctly considered the allegations in the proposed amended complaint regarding Appellants' purchase of bottled water. *See Pena*, 879 F.3d at 616 (finding error where district court disregarded proposed amended complaint).

Having determined that Appellants have standing, we now turn to the district court's dismissal of the complaint under Rule 12(b)(6).

In reviewing a ruling on a Rule 12(b)(6) motion, we consider only "the facts stated in the complaint and the documents either attached to or incorporated in the complaint." *Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015) (citation omitted). Dismissal is proper where a plaintiff fails to "plead sufficient facts to state a claim to relief that is plausible on its face." *Id.* (citation omitted). Facial plausibility means the pleaded "factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

To succeed on a procedural due process claim brought under 42 U.S.C. § 1983, Appellants must allege: (1) deprivation of a protected life, liberty, or property interest (2) by a person acting under color of state law (3) without constitutionally adequate process. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). "[T]he existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law." *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) (quotation omitted). "Accordingly, we usually treat, as dispositive, the existence—or absence—of a property interest under state law." *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 322 (5th Cir. 2022).

Relying on both *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1978), and *Tucker v. Hinds County*, 558 So. 2d 869 (Miss. 1990), Appellants seem to argue they have protected property interest not just in the continuation of their utility service, but to the service itself. They state: "The district court wrongly cabined this right to only apply in cases of actual termination. But the right is not merely to avoid a shut-off; it is a right to the service itself. Providing contaminated, unusable water is a constructive

deprivation of that service." Appellants seem to assert that they have a protected property interest in the money they pay for the water service. They argue that the City "deprived them of this property by charging them for contaminated, non-potable water while providing a constitutionally inadequate process that explicitly refused to hear the basis of their dispute."

The district found that Appellants' case was unlike *Tucker* because in that case, the utility service had been discontinued. *See Tucker*, 558 So. 2d at 873–74 (finding a property interest in the continuance of electrical power as "almost a necessity for safety and comfort in modern-day life"); *see also Memphis Light*, 436 U.S. at 11 (finding that municipal utility customers possess a constitutionally protected property interest in continued water service). Both *Memphis Light* and *Tucker* hold that where a bona fide dispute concerns the correctness of a bill, a public utility may not *discontinue* service without providing due process. *Memphis Light*, 436 U.S. at 11–12; *Tucker*, 558 So.2d at 873. Unlike these cases, Appellants' service, even if inadequate, was never discontinued.

Although Appellants here state they do not assert a protected property interest in "water quality," the district court interpreted Appellants' claimed protected property interest as having to do with water quality. Therefore, the district court did not specifically address Appellants' argument that the property deprivation of which they complain is instead the deprivation of the money that they paid for the water service. Regardless, the district court went on to assess whether the City provided constitutionally adequate process to Appellants, assuming they had shown a property right related to their water service.

The district court found that Appellants had not pleaded the ineffectiveness of remedy, i.e., that the City's administrative process was deficient. The district court also considered the proposed amended

complaint and found that it too failed to allege that the administrative process offered by the City was deficient, noting that Appellants had received notice of and participated in administrative hearings regarding the billing disputes.

We agree. In their reply brief, Appellants confirm that the procedural due process claim arises from "the billing dispute that the City's administrative process refused to hear." Yet, as noted above, Reverend Jackson entered the City's bill forgiveness program, and the Noels received relief funds in the amount of $1,159.49. Thus, with respect to Appellants' asserted protected property interest in the funds they paid for the water, they fail on the element of constitutionally inadequate process: after they filed their complaint, they proceeded through the administrative process, where they were afforded due process for their billing errors.

The assertion of inadequate process appears in paragraph seventeen of the Appellants' amended complaint, which alleges that during a hearing "the administrative judge informed all parties that the hearing would *only* address the accuracy of their bill and not defective water meters . . ., low pressure, boil water notices, water outages, or contaminations in the water" (emphasis added). Appellants provided neither dates nor context for this hearing, and they do not name the administrative judge who handled the proceeding. Appellants do not state that they objected or appealed from the alleged statement that the hearing was for billing only. Furthermore, Appellants have not pleaded, for example, that the administrative judge obstructed their ability to place water service calls or to submit plumbing test results, or photographs of water quality contamination. In short, Appellants fail to identify a process deprivation distinct from focus on—and prevailing in—a billing dispute only. *See Alvin v. Suzuki*, 227 F.3d 107, 116–19 (3d Cir. 2000).

IV.

Next, Appellants argue that the district court erroneously denied their motion for leave to amend their complaint. As the district court explained, Appellants' proposed amended complaint does not assert any allegations sufficient to show a protected property interest or inadequate process. Thus, we find no error in the district court's denial of leave to amend as futile.

Further, the section of the proposed amended complaint asserting claims under Section 1983 only asserts claims relating to the billing; nothing in the three paragraphs of the proposed amended complaint relating to the Section 1983 claim concerns relief that is not available either through the existing administrative process, or the SWDA suit instituted by the United States. We find no error in the district court's dismissal of Appellants' complaint.

V.

Finally, because we find that Appellants have failed to state a claim under Section 1983, Appellants' only federal claim, we affirm the district court's decision to decline the exercise of supplemental jurisdiction over the state law breach of contract claim and to dismiss the proposed class claims.

VI.

For the reasons above, we VACATE the dismissal under Federal Rule of Civil Procedure 12(b)(1), and we AFFIRM the judgment of the district court in dismissing the complaint under Federal Rule of Civil Procedure 12(b)(6).