Rel: August 19, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210125

Angel Avendano and Sandy Knowles

v.

Victoria Shaw

Appeal from Dale Circuit Court
(CV-20-900110)

MITCHELL, Justice.

This case stems from the serial fraud of Brandy Murrah, the former owner of a drug-screening laboratory who is now in prison for falsifying

test results. The plaintiffs, Angel Avendano and Sandy Knowles, claim to be victims of Murrah's fraud and allege that social worker Victoria Shaw conspired with Murrah to falsify the results of their drug tests. Shaw moved to dismiss the claims against her, and the Dale Circuit Court granted that motion. Avendano and Knowles now appeal. Because we conclude that Avendano and Knowles's complaint states some viable claims against Shaw, we affirm in part, reverse in part, and remand.

Facts and Procedural History[1]

Angel Avendano is the father of two children who, during the time frame relevant to this case, had been placed in foster care. Though the children's foster parents were their primary caregivers, Avendano retained visitation rights and would regularly host the children at his home. Avendano's employer, Sandy Knowles, was close with Avendano and would help care for the children while they were staying with him.

During the children's time in foster care, one of the foster parents came to believe that the children's biological mother (Avendano's ex-wife)

[1]For purposes of this appeal, we view the record in the light most favorable to Avendano and Knowles, and we resolve factual disputes and ambiguities in their favor to the greatest reasonable extent. See Nelson v. Megginson, 165 So. 3d 567, 571 (Ala. 2014).

had been using illegal drugs around the children. The foster parent decided to give the children an at-home drug test, which allegedly turned up positive. The Dale County Department of Human Resources ("DHR") -- the agency charged with providing child-protective services and overseeing the county's foster-care system -- soon launched an investigation. As part of that investigation, DHR social worker Victoria Shaw (who all parties agree is an employee of the State of Alabama for purposes of this appeal) went to Avendano's house, accompanied by Brandy Murrah, and asked Avendano and Knowles to submit to drug tests administered by Murrah. Believing that the tests were legitimate, Avendano and Knowles agreed.

Murrah administered the tests and then reported that both Avendano and Knowles were positive for "amphetamines or methamphetamines." Avendano and Knowles insisted that the test results must be wrong. To prove it, they procured their own drug tests from an independent laboratory, which showed that they were drug-free. Avendano and Knowles presented the negative test results to Shaw, but to no avail -- Shaw relied on Murrah's test results to restrict Avendano's and Knowles's ability to see the children.

According to Avendano and Knowles, their loss of contact with the children caused them to experience severe anguish and emotional distress. They further allege that the false accusations of illegal drug use and unfit parenting or caretaking impugned their reputations within their community and crippled Knowles's business.

It eventually came to light that Murrah was a serial fraudster who had, on multiple occasions, falsified the results of tests submitted to her lab. In 2020, Murrah confessed her crimes and was sentenced to several years in prison. Shortly after Murrah's conviction, Avendano and Knowles brought this lawsuit against Shaw and several unknown and fictitiously named defendants, seeking damages as well as injunctive relief. They claim that their drug tests were among the many tests that Murrah had falsified, and they further claim that Shaw knew about and willfully participated in Murrah's illegal conduct.

Although portions of their complaint are inartfully drafted,[2] it appears that Avendano and Knowles have pleaded four claims against

[2]Avendano and Knowles filed both an initial complaint and an amended complaint. The amended complaint is the operative complaint for purposes of this appeal, and we refer to it as "the complaint" throughout this opinion.

Shaw in her individual capacity: outrage, fraud, conspiracy to commit the tort of outrage, and conspiracy to commit fraud.[3] Avendano and Knowles have also pleaded an official-capacity claim against Shaw, in which they seek to compel Shaw to take various steps to remove any mention of their drug tests from State records.

Shaw moved to dismiss all claims against her, and, following a hearing, the trial court granted that motion in an unexplained order. Avendano and Knowles filed a motion to alter, amend, or vacate the judgment, which the trial court denied. This appeal followed.

Standard of Review

In reviewing the trial court's grant of a motion to dismiss, we review legal questions de novo but resolve factual disputes and ambiguities in favor of the plaintiffs to the greatest reasonable extent. Nelson v. Megginson, 165 So. 3d 567, 571 (Ala. 2014). If the plaintiffs could plausibly prove any set of circumstances that would entitle them to relief, we must reverse the judgment of dismissal. Id.

[3]The complaint also lists three individual-capacity "counts" (Counts I, V, and VI) that are not actually claims but rather arguments related to the claims mentioned above. In their briefing before this Court, Avendano and Knowles acknowledge that those "counts" are not claims, so we do not analyze them further.

Analysis

A. Subject-Matter Jurisdiction

Before turning to the merits of Avendano and Knowles's complaint, we must ensure that this Court and the trial court have subject-matter jurisdiction. Shaw says that we lack jurisdiction for two independent reasons: she argues first that Knowles lacks standing to bring suit and, second, that she is entitled to State immunity under § 14 of the Alabama Constitution, see Ala. Const. 1901 (Off. Recomp.), Art. I, § 14 ("[T]he State of Alabama shall never be made a defendant in any court of law or equity."). We disagree on both counts.

First, this Court has held for nearly a decade that jurisdictional "standing" analysis has no place in private-law claims, such as the individual-capacity claims at issue here. Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 44 (Ala. 2013). Even if standing analysis were applicable to the official-capacity claim (a question the parties do not address and on which we express no view), Avendano and Knowles's allegations would satisfy the traditional requirements for establishing standing to sue: (1) actual injury, (2) causation, and (3) redressability. See Ex parte HealthSouth Corp., 974 So. 2d 288, 293 (Ala. 2007). Here,

Knowles and Avendano each alleged (1) actual injuries (including financial harms and emotional distress), (2) caused by Shaw (who allegedly participated in and ratified Murrah's fraud), which are (3) redressable by a favorable judicial decision (namely, an injunction). Nothing more is required to establish standing to sue in the jurisdictional sense. Id.

Second, Shaw is not entitled to State immunity. State immunity prohibits suits against the State itself, but it does not bar claims against State officers (even in their official capacity) unless those claims seek to impair a contract or property right of the State or to recover money from the State. See Ex parte Moulton, 116 So. 3d 1119, 1132 (Ala. 2013). Avendano and Knowles's official-capacity claim against Shaw seeks to have the trial court compel Shaw to correct certain official records, but it does not demand damages from the State or otherwise attack a State contractual or property right.[4] That claim is therefore " 'not considered

[4]The complaint does contain a generalized demand for attorney fees and costs. While such an award is sometimes appropriate against an individual defendant sued in his or her personal capacity, we have held that such a demand cannot be enforced against the State or its agencies consistent with § 14, even if the underlying claim is permitted. Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1211-12 (Ala. 2006).

to be [an] action[] " 'against the State' for § 14 purposes." ' " Id. (citations omitted).

The same logic governs our analysis of the individual-capacity claims against Shaw. Those claims (unlike the official-capacity, injunctive-relief claim) do seek damages, but they seek damages from Shaw's personal accounts, not from the State treasury. As we recently explained in Ex parte Pinkard, [Ms. 1200658, May 27, 2022] ___ So. 3d ___ (Ala. 2022), "State immunity does not bar claims that name and seek relief only from individual officers in their personal capacity," id. at ____, as Avendano and Knowles's individual-capacity claims against Shaw do. In her briefs before the trial court and on appeal, Shaw relied on our decision Barnhart v. Ingalls, 275 So. 3d 1112 (Ala. 2018), to argue that State-immunity foreclosed the individual-capacity claims against her, but our intervening decision in Pinkard expressly overruled the portion of Barnhart on which Shaw relied. See Ex parte Pinkard, ___ So. 3d at ____ (repudiating Barnhart and its progeny). State immunity is no obstacle to the claims against Shaw.

Satisfied that we have jurisdiction, we now turn to the merits.

B. The Official-Capacity Claim

Count IV of the complaint, which contains the official-capacity claim against Shaw, characterizes that claim as a claim for "injunctive relief." Shaw argued to the trial court, and continues to argue on appeal, that dismissal of that claim is justified because injunctive relief is a remedy rather than an "independent cause of action." Shaw further argues that Avendano and Knowles have not identified any cause of action that would authorize the injunctive relief demanded in Count IV (namely, an order requiring Shaw to correct State records). Avendano and Knowles do not address this argument in either their opening brief or their reply brief and, thus, have failed to meet their burden of demonstrating that the trial court erred. Mottershaw v. Ledbetter, 148 So. 3d 45, 54 (Ala. 2013). We therefore affirm the trial court's dismissal of the official-capacity claim against Shaw.

C. The Individual-Capacity Claims

1. State-Agent Immunity Does Not Justify Dismissal

Shaw argues that even if she is not entitled to the jurisdictional protection of State immunity with respect to the individual-capacity claims against her, she is nonetheless entitled to the more limited,

nonjurisdictional affirmative defense of State-agent immunity, which protects State employees from personal liability for certain actions undertaken in the performance of their official duties. See § 36-1-12, Ala. Code 1975; Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion); Ex parte Butts, 775 So. 2d 173, 177-78 (Ala. 2000) (adopting Cranman's State-agent-immunity restatement in a majority opinion). There is an exception to State-agent immunity, however, for actions or conduct undertaken "willfully, maliciously, fraudulently, in bad faith, beyond [the agent's] authority, or under a mistaken interpretation of the law." § 36-1-12(d)(2); Cranman, 792 So. 2d at 405.

In support of her State-agent-immunity defense, Shaw insists that the bad-faith and other exceptions cannot apply to her because she knew nothing about Murrah's misconduct. She further argues that Avendano and Knowles's contrary allegations are too "conclusory" to give rise to a plausible inference that she conspired with Murrah or otherwise acted in bad faith. Shaw's argument on this point seems to assume that Avendano and Knowles, as plaintiffs, bear the burden of anticipating and pleading around her State-agent-immunity defense, but we have held that the opposite is true:

> "[I]n pleading a claim against a State agent, a plaintiff's initial burden is merely to state a cause of action against the defendant. The plaintiff need not anticipate a State-agent-immunity defense by pleading with particularity a Cranman exception. Therefore, unless the inapplicability of all the Cranman exceptions is clear from the face of the complaint, a motion to dismiss based on State-agent immunity must be denied."

Odom v. Helms, 314 So. 3d 220, 229 n.3 (Ala. 2020).

Under Odom, a Rule 12(b)(6), Ala. R. Civ. P., dismissal premised on State-agent immunity would be proper only if it were obvious from the face of the complaint that Shaw did not act willfully, maliciously, fraudulently, in bad faith, beyond her authority, or under a mistaken interpretation of the law. That standard is difficult to meet, see Ex parte Alabama Dep't of Mental Health & Mental Retardation, 837 So. 2d 808, 813-14 (Ala. 2002), and is not satisfied here.

Here, the complaint alleges that Shaw worked closely with Murrah, personally directed Murrah in the performance of her job duties, was physically present while Murrah performed the drug tests on Avendano and Knowles, and ignored independent lab results showing that Murrah's tests were inaccurate. Nothing about these allegations affirmatively rules out the possibility that Shaw acted maliciously, fraudulently, in bad faith, beyond her authority, or under a mistaken

interpretation of the law. Thus, State-agent immunity cannot be an appropriate basis for dismissal.

2. Section 26-14-9 Immunity Does Not Justify Dismissal

Shaw also points to a third possible basis for immunity: § 26-14-9, Ala. Code 1975, which shields from liability persons who participate in "the making of a good faith report" in child-abuse removals, investigations, or judicial proceedings. Even if the drug-test report at issue here qualifies as a report related to child-abuse proceedings (a conclusion that Avendano and Knowles dispute and about which we express no opinion), we have just explained that the complaint leaves room for the possibility that Shaw's actions related to that report were not undertaken in "good faith." Accordingly, § 26-14-9 immunity is not an appropriate basis for dismissal.

3. Shaw's Remaining Arguments In Support of Dismissal Fail

Shaw next presents several additional theories for dismissal that, she says, vindicate the trial court's judgment. For the reasons given below, none of those alternate theories is viable.

To begin, Shaw asserts that Avendano and Knowles "failed to state a claim of outrage under Alabama law as previously set forth by this

Court," but she does not explain -- and we do not see -- why that it so. Although it is true that the "tort of outrage is an extremely limited cause of action," Potts v. Hayes, 771 So. 2d 462, 465 (Ala. 2000), we have held that an outrage claim can proceed past the motion-to-dismiss stage if the complaint alleges conduct " 'so extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized society.' " Wilson v. University of Alabama Health Servs. Found., P.C., 266 So. 3d 674, 677 (Ala. 2017) (quoting Green Tree Acceptance, Inc. v. Standridge, 565 So. 2d 38, 44 (Ala. 1990)); see also American Rd. Serv. Co. v. Inmon, 394 So. 2d 361, 364-65 (Ala. 1980) (noting that the tort of outrage "does not recognize recovery for 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities' " (quoting 1 Restatement (Second) of Torts § 46 cmt. d (Am. L. Inst. 1965)). A plaintiff can satisfy this rigorous standard by plausibly alleging that the defendant's conduct (1) was intentional or reckless; (2) was extreme and outrageous; and (3) caused severe emotional distress that a reasonable person could not be expected to endure. American Rd. Serv. Co., 394 So. 2d at 364-65.

In our view, Avendano and Knowles's allegations clear this high hurdle, because the complaint alleges that Shaw: (1) "intentional[ly] and malicious[ly]" colluded with Murrah (2) to fabricate positive drug-test results and to use those fabricated results to falsely smear Avendano and Knowles as drug addicts unfit to be around children, and that (3) this conduct caused severe and unbearable emotional distress by stripping Avendano and Knowles of their parental and caretaking rights, respectively, and by clouding their reputations within their community. The same allegations also support a claim of conspiracy to commit the tort of outrage, because Avendano and Knowles contend that Shaw conspired with Murrah to perpetrate this unlawful scheme. See Eidson v. Olin Corp., 527 So. 2d 1283, 1285 (Ala. 1988) ("Civil conspiracy is a combination of two or more persons to accomplish an unlawful end (by civil law standards) or to accomplish a lawful end by unlawful means.").

Shaw next argues that the complaint fails to state a claim of fraud. Fraud requires (1) a false representation (2) of a material fact (3) relied upon by the plaintiff (4) who was damaged as a proximate result of the misrepresentation. See § 6-5-101, Ala. Code 1975; Standard Furniture Mfg. Co. v. Reed, 572 So. 2d 389, 391 (Ala. 1990). Shaw contends that

the complaint fails to satisfy the first of those elements because, she says, it does not allege that "false representations were made by Shaw to [Avendano and Knowles]." Again, we disagree. The complaint alleges that "Shaw represented … that the [drug] tests were legitimate tests that would be properly processed to determine the results" and that this representation was "false." The complaint further alleges that Avendano and Knowles relied on Shaw's false representation to their detriment. Those allegations, taken together, satisfy all the elements of a fraud claim. Avendano and Knowles have also stated a viable claim of conspiracy to commit fraud by alleging that Shaw "willful[ly], intentional[ly], and malicious[ly]" colluded with Murrah to perpetrate the fraudulent scheme. See Eidson, 527 So. 2d at 1285.

Finally, Shaw argues that the outrage, fraud, and conspiracy claims against her must fail because, she says, Avendano's and Knowles's injuries were caused solely by the criminal conduct of a third party, Murrah, who acted without Shaw's knowledge or approval. Again, this assertion flatly contradicts the complaint, which alleges that Shaw was Murrah's coconspirator. A defendant's bare assertion of innocence cannot

justify dismissal when that assertion conflicts with the plaintiffs' well-pleaded factual allegations.

Conclusion

The judgment of the trial court is affirmed with respect to the official-capacity claim against Shaw and is reversed with respect to the individual-capacity claims against her. The case is remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Parker, C.J., concurs.

Shaw, Bryan, and Mendheim, JJ., concur in the result.