

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted November 28, 2023*

Decided November 30, 2023

*Before*MICHAEL Y. SCUDDER, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-1647

JOHN ALLEN,
*Plaintiff-Appellant,**v.*ALEKSANDRA DIMITRIJEVIC and
OSCAR MARTINEZ, JR.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Indiana, Hammond Division.

No. 2:22-CV-58-TLS-JEM

Theresa L. Springmann,
*Judge.***ORDER**

Through a business, John Allen owned storefront property in Gary, Indiana, until the Gary Housing Authority obtained the property using eminent domain and demolished it to make way for a development. After a winding journey through the Indiana courts, Allen received just compensation. Allen sued in federal court to

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

challenge the processes used to evict his businesses and take over the property. He sought damages from Aleksandra Dimitrijevic, a state court judge, and Oscar Martinez Jr., the Sheriff of Lake County, Indiana, for alleged violations of his constitutional rights. *See* 42 U.S.C. § 1983. The district court granted the defendants' motions to dismiss. Because the defendants are immune from suit, we affirm.

In reviewing a dismissal on the pleadings, we accept the well-pleaded facts in the complaint as true, with reasonable inferences drawn in Allen's favor, and as needed, we take judicial notice of court records from the Indiana proceedings that gave rise to this case. *Ennenga v. Starns*, 677 F.3d 766, 773-74 (7th Cir. 2012); *see* FED R. EVID. 201.

In September 2019, the Gary Housing Authority used an administrative procedure to take property owned by one of Allen's companies, 624 Broadway, LLC ("Broadway"), and rented by another, Nations, LLC ("Nations"). Allen had developed a restaurant, Nations, at the site. Broadway and Nations sued in Indiana Superior Court to challenge the constitutionality of the taking. Despite the pending litigation, the Housing Authority gave notice that it was taking possession of the property. Purporting to act on behalf of his businesses, Allen (who is not an attorney) then filed an emergency possessory order in small-claims court to prevent the eviction.

A few months later, Broadway and Nations, now represented by counsel, requested that the small-claims court transfer the case to Superior Court or dismiss it for lack of subject-matter jurisdiction. Indiana small-claims courts have jurisdiction over civil actions involving property valued at less than \$6,000 (unless the parties waive the limit) and emergency possessory actions between landlords and tenants. IND. CODE § 33-29-2-4 (2020). Broadway maintained that the case was not an action for monetary relief—both parties sought possession of the property—or a landlord-tenant dispute—the Housing Authority did not have a lease with either Broadway or Nations.

But Judge Dimitrijevic declined to relinquish jurisdiction, reasoning that Broadway and Nations could not assert that the small-claims court lacked jurisdiction over a claim they had initiated. The judge then found that the Housing Authority was the legal owner of the property and ordered Allen's businesses to vacate the premises. When they failed to do so, the judge issued an order of possession. Martinez, the county sheriff, personally carried out the eviction order days later.

The Indiana Court of Appeals reversed, determining that the small-claims court lacked subject matter jurisdiction because the disputed property was worth more than the jurisdictional limit, and emergency possessory orders require a landlord-tenant

relationship. *624 Broadway, LLC v. Gary Hous. Auth.*, No. 20A-SC-1021, 2021 WL 1096939, at *3 (Ind. Ct. App. Mar. 23, 2021). It ordered that all remaining issues be resolved in the pending Superior Court case. Those proceedings ended with the Housing Authority retaining possession and Broadway receiving a hearing to set the amount of just compensation. *See 624 Broadway, LLC v. Gary Hou. Auth.*, 193 N.E.3d 381, 387 (Ind. 2022).

Allen, pro se, then sued Judge Dimitrijevic and Sheriff Martinez in federal court for issuing and carrying out the eviction order, which he alleges violated his constitutional right of due process. *See* 42 U.S.C. § 1983. He sought compensatory and punitive damages. Dimitrijevic and Martinez each moved to dismiss for lack of jurisdiction and failure to state a claim. The district court dismissed the complaint because, among other reasons, absolute judicial immunity shielded the judge, while sovereign immunity protected the sheriff. Allen appeals, and we review the dismissal for failure to state a claim de novo. *Kowalski v. Boliker*, 893 F.3d 987, 994 (7th Cir. 2018).

Allen first argues that Judge Dimitrijevic was not immune from suit because she acted without jurisdiction, but immunity applies notwithstanding the judge's error. Judges are immune from suit for judicial acts taken in their capacity as judges, even in "excess of [their] authority," unless they act "in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978). Allen does not dispute that Judge Dimitrijevic's actions were taken in her capacity as a judge. Instead, he argues that because the Indiana Court of Appeals ruled that the small-claims court lacked subject matter jurisdiction, Judge Dimitrijevic is estopped from asserting she had jurisdiction, and the district court was bound to find that she acted "in the clear absence of all jurisdiction."

Allen defines "jurisdiction" too narrowly, however. Determining jurisdiction is one of the "the most difficult and embarrassing questions" judges must make, so "jurisdiction must be construed broadly" for the purposes of immunity. *Id.* at 356 (quoting *Bradley v. Fisher*, 80 U.S. 335, 352 (1871)). Judge Dimitrijevic erred in her jurisdictional determination, but judges are not deprived of immunity when they act "in error." *Stump*, 435 U.S. at 356; *Mireles v. Waco*, 502 U.S. 9, 13 (1991) (acting "in excess of his authority" not acting "in the absence of jurisdiction."). The judge's incorrect decision about her adjudicative power does not erase her judicial immunity.

Allen also disputes the district court's determination that he sued Sheriff Martinez in his official capacity and that Martinez therefore enjoyed sovereign immunity as an agent of the State. The district court did not explain why it concluded that Allen sued Martinez only in his official capacity. Allen's complaint does not specify

this, so we look to the relief sought, *Hill v. Shelander*, 924 F.2d 1370, 1372–74 (7th Cir. 1991), and the context of the harm alleged, *Budd v. Motley*, 711 F.3d 840, 843 (7th Cir. 2013). Here, Allen seeks only damages, which could point toward a personal-capacity suit. See *Miller v. Smith*, 220 F.3d 491, 494 (7th Cir. 2000). But the district court likely looked to the fact that Allen listed Martinez’s official title in the caption of the complaint and did not allege that Martinez exceeded the scope of the court order he executed.

We agree with the district court that, in carrying out the eviction, Martinez acted as an agent of the state court. County sheriffs have dual roles; they act as county officials when performing their local law enforcement functions but as state officials when they execute orders of state courts. *Scott v. O’Grady*, 975 F.2d 366, 371 (7th Cir. 1992). Here, Indiana law compelled Martinez to carry out the eviction order, IND. CODE. § 36-2-13-5(a)(4) & (5), which was issued by a state judge. Therefore, Martinez acted on behalf of the state court system. See *McCurdy v. Sheriff of Madison County*, 128 F.3d 1144, 1145–46 (7th Cir. 1997). We have previously determined that the Eleventh Amendment confers sovereign immunity on a sheriff in these circumstances. *Id.* And at a minimum, Martinez has a statutory defense: the “state (including state officers sued in an official capacity) is not a ‘person’” for the purpose of § 1983. *Mercado v. Dart*, 604 F.3d 360, 361–62 (7th Cir. 2010) (citing *Will v. Michigan Dep’t. of State Police*, 491 U.S. 58, 65 (1989)).

Even if we took Allen at his word that he sued Martinez in his personal capacity, Allen’s path to stating a claim is no easier. Martinez’s only involvement was to carry out a judicial order to “immediately seize the real property and remove [Broadway and Nations] and [its] personal property from it...then immediately turn over possession of the real property to the Gary Housing Authority.” Therefore, he was “at all times acting pursuant to an official court order to enforce a validly entered judgment,” which warrants quasi-judicial immunity. *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238–39 (7th Cir. 1986); see also *Zoretic v. Darge*, 832 F.3d 639, 643–44 (7th Cir. 2016) (quasi-judicial immunity is proper when individual carries out non-discretionary function “at the explicit direction of a judicial officer.”). If the sheriff had, for instance, effectuated the eviction by using excessive force or unduly destroying personal property, he could be personally liable. But just as the judge is insulated for issuing an erroneous eviction order, the sheriff is protected when carrying out that official order.

Allen nevertheless insists that Martinez cannot be immune under any theory because he knowingly violated the state’s Executive Order 20-06, which banned “eviction or foreclosure actions or proceedings involving residential real estate or property” during the COVID-19 state of emergency. Indiana Executive Department,

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Temporary Prohibition on Evictions and Foreclosures, No. 20-06 (March 19, 2020), https://www.in.gov/gov/files/EO_20-06.pdf. This argument is meritless because the property was commercial and not subject to the moratorium.

AFFIRMED