21CA0511 Lamar v CDOC 08-18-2022

COLORADO COURT OF APPEALS

Court of Appeals No. 21CA0511
El Paso County District Court No. 20CV293
Honorable Laura N. Findorff, Judge

Andrew Mark Lamar,

Plaintiff-Appellant,

v.

Dean Williams, Executive Director of the Colorado Department of Corrections,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE JOHNSON
Dunn and Bernard*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 18, 2022

Andrew Mark Lamar, Pro Se

Philip J. Weiser, Attorney General, Ann Stanton, Assistant Attorney General, Denver, Colorado, for Defendant-Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 Plaintiff, Andrew Mark Lamar (Lamar), an inmate in the Colorado Department of Corrections (DOC), appeals the district court's judgment dismissing his complaint against defendant, the executive director of the DOC (executive director), for failure to state a claim upon which relief can be granted. We affirm.

I. Background

¶ 2 Lamar filed a complaint for declaratory and injunctive relief against the executive director, asserting two claims for relief. Lamar's first claim alleged that the DOC inmate work program violated article II, § 26 of the Colorado Constitution, which prohibits involuntary servitude. Specifically, he alleged that, based on a 2018 amendment (Amendment A), the Colorado voters removed an exception from that constitutional provision that allowed involuntary servitude as punishment for inmates convicted of a crime. His second claim was less clear and did not appear to have any requested relief tied to it.

¶ 3 The executive director sought dismissal under C.R.C.P. 12(b)(5), asserting that the inmate work program did not amount to involuntary servitude because

- the program was administered to help rehabilitate offenders, provide them with work skills, and instill a work ethic;
- although eligible inmates were generally expected to work, they were not physically compelled to do so;
- inmates were compensated for work performed; and
- although inmates could lose privileges (to which they were not entitled), they were not punished or threatened with legal sanctions for refusing to work.

Alternatively, the executive director sought dismissal because Lamar failed to exhaust his administrative remedies.

¶ 4 After full briefing, the district court dismissed Lamar's complaint, concluding that the DOC inmate work program did not violate Colorado's constitutional prohibition against involuntary servitude. In reaching that conclusion, the court found that Lamar did not (1) "plausibly plead that he is to work by force or threatened physical or legal coercion"; or (2) cite to any legal authority to support his contention that the amount of pay or loss of privileges can constitute involuntary servitude. The court also concluded that Lamar failed to exhaust his administrative remedies.

¶ 5 Lamar then filed a motion for post-judgment relief and a motion for leave to file an amended complaint. The court denied both motions.

II. Analysis

¶ 6 Lamar contends that his complaint stated a claim for relief because the DOC's inmate work program constitutes involuntary servitude given that the DOC garnishes 90% of his pay and an inmate's refusal to work can result in sanctions.[1] We disagree.

A. Standard of Review

¶ 7 We review de novo a district court's judgment dismissing a complaint under C.R.C.P. 12(b)(5). *See Hess v. Hobart*, 2020 COA 139M2, ¶ 11. In our review, we apply the same standards as the district court. *See Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088

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[1] Lamar does not challenge the court's determination that he failed to exhaust his administrative remedies in his opening brief and appears to concede that the second claim in his complaint did not assert any requested relief, as he was "waxing the eloquent." In his appellate reply brief, he abandons his contentions that the district court failed to liberally construe his complaint or abused its discretion when it denied his request to file an amended complaint. As a result, we will not address these issues. *See Armed Forces Bank, N.A. v. Hicks*, 2014 COA 74, ¶ 38 (the defendants abandoned certain arguments made in the district court because the arguments were not pursued on appeal).

(Colo. 2011). In so doing, we may only consider "the facts alleged in the complaint, documents attached as exhibits or referenced in the complaint, and matters of which the court may take judicial notice, such as public records." *Pena v. Am. Fam. Mut. Ins. Co.*, 2018 COA 56, ¶ 14.

¶ 8 We treat the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *See id.* at ¶ 15. Although motions to dismiss are viewed with disfavor, *see Denver Post*, 255 P.3d at 1088, "[a] complaint may be dismissed if the substantive law does not support the claims asserted" or "if the plaintiff's factual allegations do not, as a matter of law, support a claim for relief." *Pena*, ¶ 13. "[A] plaintiff must state a claim for relief that is plausible (not speculative) on its face." *Hess*, ¶ 11; *see also Warne v. Hall*, 2016 CO 50, ¶ 24.

¶ 9 The fact that a pro se plaintiff "may not fully comprehend [his] legal obligations does not relieve [him] of the responsibility of complying with them, or of the consequences if [he] fails to do so." *Pullen v. Walker*, 228 P.3d 158, 161 (Colo. App. 2008). And, even liberal constructions of pro se complaints preclude courts from supplying additional facts or constructing legal theories for the

plaintiff that would assume facts that have not been pleaded in the complaint. *See Peterson v. Shanks*, 149 F.3d 1140, 1143 (10th Cir. 1998).

B. Amendment A

¶ 10 Before 2018, the language of the Colorado Constitution closely followed the Thirteenth Amendment to the United States Constitution by providing, "There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted." Colo. Const. art. II, § 26 (amended 2018).

¶ 11 When Amendment A passed, however, it removed from the Colorado constitution the exception to the prohibition of slavery or involuntary servitude when it was used as punishment for a crime for which a person had been convicted. *See* Legis. Council, Colo. Gen. Assembly, Rsch. Pub. No. 702-2, 2018 State Ballot Information Booklet, at 39.

¶ 12 The interpretation of a constitutional provision is a question of law that we review de novo. *See In re Colo. Indep. Congressional Redistricting Comm'n*, 2021 CO 73, ¶ 30. When construing a constitutional amendment, courts should give "effect to the intent of

the electorate adopting the amendment." *In re Interrogatory on House Joint Resol. 20-1006*, 2020 CO 23, ¶ 30 To do that, we look to the language of the text and accord words their plain and ordinary meaning. *See id.* To ascertain the voters' intent, courts may also consider "the explanatory publication of the Legislative Council of the Colorado General Assembly, otherwise known as the Blue Book." *Grossman v. Dean*, 80 P.3d 952, 962 (Colo. App. 2003); *see also Colo. Indep. Congressional Redistricting Comm'n*, ¶ 30. "While not binding, the Blue Book provides important insight into the electorate's understanding of the amendment when it was passed and also shows the public's intentions in adopting the amendment." *Grossman*, 80 P.3d at 962.

¶ 13 The Blue Book explained that "[t]he state should not have the power to compel individuals to labor against their will." Legis. Council, Colo. Gen. Assembly, Rsch. Pub. No. 702-2, 2018 State Ballot Information Booklet, at 40. Yet, it also recognized that the DOC inmate work program was valuable because it "assists in such individuals' rehabilitations, teaches practical and interpersonal skills that may be useful upon their reintegration with society, and contributes to healthier and safer penal environments." *Id.* For

that reason, the Blue Book stated that the purpose of Amendment A was "not to withdraw legitimate opportunities to work for individuals who have been convicted of a crime, but instead to merely prohibit compulsory labor from such individuals." *Id.*

¶ 14 These statements demonstrate that the voters did not intend to abolish the DOC inmate work program by virtue of passing Amendment A. Instead, they show that the voters intended to prohibit the imposition of involuntary servitude upon individuals who had been convicted of a crime. Thus, Lamar's complaint did not state a claim for relief merely by alleging that the passage of Amendment A prohibited the DOC inmate work program.

C. Involuntary Servitude

¶ 15 We agree with the district court that, based on the allegations asserted by Lamar, the DOC inmate work program does not amount to involuntary servitude, and thus his complaint failed to state a claim upon which relief could be granted.

¶ 16 Involuntary servitude occurs when an individual is forced to work for another person by "the use or threat of physical restraint or physical injury" or "the use or threat of coercion through law or

the legal process." *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

¶ 17 Lamar alleged that the DOC inmate work program constitutes involuntary servitude because (1) inmates were required to work; (2) a refusal to work may result in the denial of specified privileges; (3) when he refused to work, the DOC threatened to use restrictive privileges to compel him to work; and (4) he objected to working in food service for three to four days a week with hourly shifts ranging from eight to thirteen hours based on the low pay, the fact that they were deducting 90% from his pay toward paying off "a virtually insurmountable debt" of "tens of thousands," and the fact that he was left with eighty cents after the deductions.

¶ 18 Even treating these allegations as true and construing them in the light most favorable to Lamar, however, none of them show that the DOC forced him to work through the use or threat of physical restraint or physical injury or the use or threat of coercion through law or the legal process. Lamar does not cite to any authority — and we have found none — that an inmate's loss of privileges or low pay constitutes involuntary servitude. To the contrary, inmates confined in state correctional facilities are not entitled to any

privileges that the DOC might make available. *See* § 17-20-114.5(1), C.R.S. 2021.

¶ 19 Further, Lamar did not allege that the hours or work conditions were "so ruthless" and "thus so devoid of therapeutic purpose" that it would amount to involuntary servitude. *See In re Estate of Buzzelle*, 176 Colo. 554, 558, 491 P.2d 1369, 1371 (1971). Indeed, Lamar alleged that he objected to working in food service three to four days a week with shifts ranging from eight to thirteen hours, not because of the hours or working conditions, but based on the low pay.

¶ 20 In addition to the allegations in the complaint, Lamar now contends on appeal that refusing to work could result in sanctions, including restrictive privileges, arrest, handcuffing, restrictive housing, delayed parole hearings, and loss of earned time and good time. But Lamar did not make those allegations in the complaint. Because we may only consider the facts alleged in the complaint, we will not consider these new allegations in determining the propriety of the district court's dismissal. *See Pena*, ¶ 14; *see also Brown v. Am. Standard Ins. Co. of Wis.*, 2019 COA 11, ¶ 21 (in civil cases,

issues not raised in the district court will generally not be addressed for the first time on appeal).

¶ 21 Under these circumstances, we conclude that the district court properly dismissed Lamar's complaint under C.R.C.P. 12(b)(5).

III. Conclusion

¶ 22 The judgment is affirmed.

JUDGE DUNN and JUDGE BERNARD concur.