IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

NPIMNEE V. JEFFREYS

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HOPE NPIMNEE, APPELLANT,
V.
ROB JEFFREYS, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES, AND THE NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, APPELLEES.

Filed November 24, 2026. No. A-25-994.

Appeal from the District Court for Lincoln County: PATRICK M. HENG, Judge. Affirmed.

Hope Npimnee, pro se.

Michael T. Hilgers, Attorney General, and Cody S. Barnett for appellees.

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

RIEDMANN, Chief Judge.

INTRODUCTION

Hope Npimnee appeals from the Lincoln County District Court's order that granted the motion to dismiss filed by the Nebraska Department of Correctional Services (NDCS) and Rob Jeffreys (collectively the defendants). It also denied Npimnee's motion for a preliminary injunction. Although based in part on different reasons, we affirm the district court's order.

BACKGROUND

Npimnee filed a complaint against NDCS and Jeffreys in his official capacity as NDCS director and in his individual capacity, alleging that NDCS mail policies deprived him of access to the courts. Specifically, he challenged the denial of access to electronic filing. He requested $5,000,000 in damages.

The defendants filed a motion to dismiss under Neb. Ct. R. Pldg. § 6-1112(b)(1) (Rule 12(b)(1)) and § 6-1112(b)(6) (Rule 12(b)(6)), asserting that the district court lacked jurisdiction

against NDCS and Jeffreys in his official capacity because of sovereign immunity, that Npimnee failed to state a claim upon which relief can be granted, and that Jeffreys was entitled to qualified immunity in his individual capacity.

Npimnee subsequently sought a preliminary injunction, requesting that the district court direct NDCS to provide him with access to electronic filing. In opposition to the motion to dismiss and in support of his preliminary injunction, Npimnee argued that NDCS changed its outgoing mail policy to remit personal and legal inmate mail only twice a week, thus further impeding his access to the courts.

At the hearing on the defendants' motion to dismiss and Npimnee's motion for a preliminary injunction, the defendants maintained that Npimnee could not demonstrate a constitutional violation because he could not assert a legally protectable interest or right. And even if he could, his claims would be barred by sovereign immunity and qualified immunity.

The district court dismissed Npimnee's claim pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. It reasoned that, even accepting the allegations of the complaint as true and drawing all reasonable inferences in his favor, Npimnee could not show that his constitutional right to access the court was impeded because he was able to bring his current and previous complaints to the court. The district court denied Npimnee's motion for a preliminary injunction.

Npimnee now appeals from the district court's order.

ASSIGNMENTS OF ERROR

Npimnee assigns, restated and renumbered, that the district court erred by (1) dismissing his action with prejudice because he showed a constitutional violation; (2) failing to recognize sovereign and qualified immunity do not bar monetary damages, and (3) denying his motion for a preliminary injunction.

STANDARD OF REVIEW

We review a district court's order granting a motion to dismiss de novo, accepting all allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party. *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

We independently review questions of law decided by a lower court. *Id.* A jurisdictional question which does not involve a factual dispute presents a question of law. *Webb v. Nebraska Dept. of Health & Human Servs.*, 301 Neb. 810, 920 N.W.2d 268 (2018). The determination of constitutional requirements presents a question of law. *Davis, supra*.

ANALYSIS

Npimnee summarizes his argument on appeal as a denial of his right to access the courts because NDCS does not provide inmates access to electronic filing. In support of an inmate's general right to access the courts, he relies upon 42 U.S.C. § 1983 federal case law; therefore, we interpret his claim as a § 1983 claim that the defendants deprived him access to the courts by refusing to implement electronic filing capabilities.

The defendants counter that sovereign immunity bars Npimnee's claims against NDCS and Jeffreys in his official capacity, qualified immunity shields Jeffreys in his individual capacity, and

that Npimnee has not been deprived of his constitutional right to access the courts. We agree with the defendants.

Sovereign Immunity.

NDCS and Jeffreys sought dismissal of Npimnee's complaint under both Rule 12(b)(1) and Rule 12(b)(6). When a trial court is presented with a motion to dismiss that raises both Rule 12(b)(1) and Rule 12(b)(6), the court should consider Rule 12(b)(1) first and then consider Rule 12(b)(6) only if it determines that it has subject matter jurisdiction. See *Larsen v. Sarpy Cty. Sch. Dist. No. 77-0027*, 319 Neb. 823, 25 N.W.3d 185 (2025). Here, the district court analyzed Npimnee's complaint under Rule 12(b)(6) without first analyzing Rule 12(b)(1). Although this was erroneous, we nevertheless agree with the result reached by the district court. See *Edwards v. Estate of Clark*, 313 Neb. 94, 982 N.W.2d 788 (2022) (appellate court may affirm trial court's ruling that reaches correct result, albeit based on different reasoning).

The defendants argued that NDCS and Jeffreys in his official capacity were immune from suit under sovereign immunity. A suit against a state agency is a suit against the State, and as such, state agencies can assert the State's sovereign immunity against suit. *Schaeffer v. Frakes*, 313 Neb. 337, 984 N.W.2d 290 (2023). Suits against state officials in their official capacities are also suits against the State if they seek to compel an affirmative act that would require the official to expend public funds. See *id*. Thus, we examine whether sovereign immunity applies to Npimnee's claim.

Under Neb. Const. art. V, § 22, the State may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought. See also *Clark v. Sargent Irr. Dist.*, 311 Neb. 123, 971 N.W.2d 298 (2022). This constitutional provision is not self-executing, and no suit may be maintained against the State or its political subdivisions unless the Legislature, by law, has so provided. See *id.*

The enactment of § 1983 did not abrogate the State's 11th Amendment immunity, which bars such suits unless the State has waived its immunity or unless Congress has exercised its undoubted power under § 5 of the 14th Amendment to override that immunity. *Cappel v. State*, 298 Neb. 445, 905 N.W.2d 38 (2017). Here, Nebraska has not waived its sovereign immunity with regard to § 1983 suits brought against it and Congress has not exercised its power to override that immunity. *Cappel v. State, supra.* Section 1983 claims apply equally to state officials who are sued in their official capacity. See *Cappel v. State, supra.*

Accordingly, NDCS and Jeffreys in his official capacity were cloaked in sovereign immunity. Therefore, the district court should have granted the defendants' motion to dismiss as to these two defendants on the basis of Rule 12(b)(1). And because the district court lacked jurisdiction over these claims, we lack jurisdiction as well. See *County of Lancaster v. State*, 247 Neb. 723, 529 N.W.2d 791 (1995) (when trial court lacks power, that is, subject matter jurisdiction, to adjudicate merits of claim, issue, or question, appellate court also lacks power to determine merits of claim, issue, or question presented to trial court).

Npimnee assigns that the district court erred in failing to recognize that sovereign immunity is inapplicable to a claim for monetary damages. But our Supreme Court has held that "sovereign immunity bars *all* suits against the State, 'regardless of the relief sought.'" *Anthony K. v. State*, 289 Neb. 523, 538, 855 N.W.2d 802, 813 (2014) (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)). We therefore reject this assigned error.

42 U.S.C. § 1983 Claim.

Having determined that sovereign immunity shields NDCS and Jeffreys in his official capacity from Npimnee's § 1983 claims, we turn to the allegations of Npimnee's § 1983 claim against Jeffreys in his individual capacity. Because qualified immunity is not a jurisdictional issue, we proceed to address the State's motion to dismiss under Rule 12(b)(6).

Npimnee assigns that the district court erred by dismissing his action with prejudice because he demonstrated a constitutional violation. He argues that by denying him access to electronic filing, Jeffreys has violated his constitutional right to access the courts. Jeffreys counters that he is entitled to qualified immunity because Npimnee has not identified a plausible claim for a violation of his constitutional rights. We agree that Jeffreys was entitled to qualified immunity; therefore, granting the State's motion to dismiss under Rule 12(b)(6) was proper. See *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

Section 1983 provides a civil remedy for deprivations of federally protected rights, statutory or constitutional, caused by persons acting under color of state law. *Brock v. Dunning*, 288 Neb. 909, 854 N.W.2d 275 (2014). In a § 1983 action:

> [T]he initial inquiry must focus on whether the two essential elements to a § 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.

Id. at 920, 854 N.W.2d at 287. When acting under color of state law, liability exists if the action was taken within the scope of the defendant's official authority. See *Davis, supra*. Here, it seems clear that Jeffreys was acting within the scope of his official authority because as the director of NDCS, he oversees NDCS' policies. The second element of Npimnee's § 1983 claim, however, presents a more novel question.

Npimnee provides no authority to support his position that access to electronic filing is a constitutionally protected right. The defendants, however, cite to *Sieverding v. Department of Justice*, 847 F. Supp. 2d 75 (D.D.C. 2012) for the principle that electronic filing access is not a due process right but rather is granted at the discretion of the court. We need not address this issue, though, because the question before us is whether, under the facts pled, Jeffreys, in his personal capacity, is entitled to qualified immunity on Npimnee's claim for money damages. In our de novo review, we determine that he is.

Qualified immunity shields state officials from money damages unless a plaintiff alleges facts that would, if proved, show (1) the official violated a federally guaranteed right and (2) the constitutional or statutory right was clearly established at the time of the challenged conduct. *Davis*, *supra*. A court can address the two components of the qualified immunity analysis in either order. *Id*.

To show a clearly established right, "'existing precedent must have placed the statutory or constitutional question beyond debate.'" See *Davis v. State*, 297 Neb. 955, 995, 902 N.W.2d 165, 195 (2017), quoting *Taylor v. Barkes*, 575 U.S. 822, 135 S. Ct. 2042, 192 L. Ed. 2d 78 (2015). Additionally, both the Supreme Court and federal circuit courts have stated that a federal right can be established by a robust consensus of cases of persuasive authority. *Davis, supra*.

Given the absence of any controlling authority that Npimnee has a constitutional right to electronic filing, there is no constitutional or statutory right that was clearly established at the time of the challenged conduct. Consequently, Jeffreys, in his individual capacity, was entitled to qualified immunity and the defendants' motion to dismiss under 12(b)(6) was properly granted. See *Davis, supra* (noting "the paucity of persuasive case law" regarding State's deliberate indifference to parolee's claim of mistaken revocation, department officials did not violate clearly established right, thus entitling them to order granting Rule 12(b)(6) motion to dismiss).

Preliminary Injunction.

Subsequent to the defendants' filing of their motion to dismiss, Npimnee filed a motion for a preliminary injunction directing defendants to provide him access to electronic filing, although he requested only monetary damages in his complaint. What Npimnee refers to as preliminary injunctive relief is, under Nebraska law, temporary injunctive relief. Compare *Pennfield Oil Co. v. Winstrom*, 272 Neb. 219, 720 N.W.2d 886 (2006) with 43A C.J.S. *Injunctions* § 11. See, also, *Koenig v. Southeast Community College*, 231 Neb. 923, 438 N.W.2d 791 (1989) (using terms interchangeably).

Temporary injunctions are governed by Neb. Rev. Stat. § 25-1063 (Reissue 2016), which states:

> When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act, subject to the limitations of sections 25-1062 to 25-1080.

Npimnee filed a motion for a preliminary injunction. The office of a motion is not to initiate new litigation, but to bring before the court for ruling some material but incidental matter arising in the progress of the case in which the motion is filed. *State v. McNerny*, 239 Neb. 887, 479 N.W.2d 454 (1992). Jurisdiction over a motion is therefore dependent upon the court's having jurisdiction over the case in which the motion is filed. *Id*.

Here, the case in which the motion was filed alleged a § 1983 claim for which Npimnee sought only monetary damages. Once the district court properly dismissed the complaint, there was no case pending over which the district court had jurisdiction. Therefore, denial of Npimnee's motion for a preliminary injunction was properly entered.

CONCLUSION

The district court did not err in dismissing Npimnee's complaint with prejudice or in denying his motion for a preliminary injunction. Although in part for different reasons, we affirm the district court's order.

AFFIRMED.