

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1217

FLOYD P. DONLEY, SR.

VERSUS

CHARLES REID

DATE OF JUDGMENT:

DEC 22 2010

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 2009-0004169, DIVISION F, PARISH OF TANGIPAHOA
STATE OF LOUISIANA

HONORABLE ELIZABETH P. WOLFE, JUDGE

* * * * *

Floyd. P. Donley, Sr.
Amite, Louisiana

Plaintiff-Appellant
Pro Se

Charles Reid
Amite, Louisiana

Defendant/Appellee
Charles Reid

* * * * *

BEFORE: KUHN, PETTIGREW, AND KLINE, JJ.¹

Disposition: AFFIRMED.

¹ The Honorable William F. Kline, Jr. is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

KUHN, J.

This is an action for damages, wherein the appellant, Floyd P. Donley, Sr., seeks to recover amounts that he expended in successfully appealing a battery conviction imposed by the Amite City Court. Donley's petition asserts that his constitutional rights have been violated by appellee, Charles Reid, the Amite City magistrate, causing him to incur legal expenses. In response, Reid filed a peremptory exception raising the objections of no cause or right of action, asserting that Louisiana Revised Statute 33:441(C)(2) affords him judicial immunity for all official acts as a presiding officer of a mayor's court. The trial court sustained Reid's peremptory exception raising the objection of no cause of action and dismissed Donley's suit. For the following reasons, we affirm.

I. PROCEDURAL AND FACTUAL BACKGROUND

In September 2008, Donley was involved in an incident on the premises of Dirt Cheap, during which one of the store's employees called the Amite City police to assist in evicting an alleged trespasser, Donley. An Amite City Police officer, Officer Ordineaux, responded to the call. The store manager did not press trespassing charges, but Officer Ordineaux initiated a complaint against Donley for battery of the store manager. In December 2008, Donley appeared in the Amite City court, and Reid, acting in his capacity as magistrate of the court, found him guilty of battery. The appellant appealed this decision to the Twenty-First Judicial District, where the charges were dismissed in September 2009.

In December 2009, Donley filed a civil action in the Twenty-First Judicial District Court, seeking to recover the expenses he incurred in appealing the Amite City Court judgment. In his petition, Donley alleged that his due process rights

were violated because Reid failed to: (1) inform him of the exact nature of the charges brought against him; (2) arraign him before trial; (3) terminate the trial when it became clear that the charges were not based on a valid city ordinance; and (4) halt the trial when it became clear that he was hearing impaired and unable to properly handle his own defense. The petition further alleged that the magistrate was biased because he considered perjured testimony. Donley also claimed that Reid had no legal authority to act as magistrate or city attorney because the clerk of court “could not produce recent documents to support [Reid’s] authority.” Donley further averred that Reid deprived Donley “of the right to act as his own attorney in the [a]ppeal system” by not informing him “of the time for filing a request for a trial [*de novo*]” and of his right to a fair trial “by failing to assure that all of Donley’s requested documents needed [for his *pro se* defense] were forthcoming.”

On March 23, 2010, the trial court signed a judgment that sustained Reid’s peremptory exception raising the objection of no cause of action and dismissed Donley’s suit. Donley has appealed, urging that the trial court erred in sustaining the exception.

II. ANALYSIS

A reviewing court reviews an exception of no cause of action *de novo* because the exception of no cause of action raises a question of law and the trial court’s decision is based solely on the sufficiency of the petition. ***Louisiana State Bar Ass’n v. Carr and Associates, Inc.***, 08-2114, p. 11 (La. App. 1st Cir. 05/08/09), 15 So.3d 158, 167, ***writ denied***, 09-1627 (La. 10/30/09), 21 So.3d 292. The well-pleaded facts in the petition are accepted as true in order to determine whether the law affords a remedy on the facts alleged in the petition. ***Id.*** The pertinent question

is whether, in the light most favorable to the plaintiff and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. *Id.*

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. La. C.C.P. Art. 934. If the grounds of the objection raised through the exception cannot be so removed, the action shall be dismissed. *Id.* However, the right to amend is qualified by the restriction that the grounds of the objections are curable. *Prudential Ins. Co. of America v. CC&F Baton Rouge Development Co.*, 93-2074, p. 13 (La. App. 1st Cir. 10/07/94), 647 So.2d 1131, 1139. When the grounds of the objection cannot be removed by amendment, the action shall be dismissed. Amendment is not permitted when it would constitute a vain and useless act. *American Intern. Gaming Ass'n, Inc. v. Louisiana Riverboat Gaming Com'n*, 00-2864, p. 17 (La. App. 1st Cir. 09/11/02), 838 So.2d 5, 18.

Donley's petition seeks to recover damages from Reid based on his actions as a city court magistrate. A magistrate is an attorney designated by the mayor as the presiding officer over a city court. La. R.S. 33:441. Louisiana extends judicial immunity to city court magistrates as set forth in La. R.S. 33:441, which states as follows, in pertinent part:

A.(1) ... [T]here shall be a mayor's court in the municipality, with jurisdiction over all violations of municipal ordinances. The mayor may try all breaches of the ordinances and impose fines or imprisonment, or both, provided for the infraction thereof...

...

B.(1) Notwithstanding any other provision of law to the contrary, the board of aldermen in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as

court magistrate and who shall serve at the pleasure of the mayor and may from time to time be designated by the mayor to serve in his stead as the presiding official over the mayor's court. Whenever a magistrate is so designated by the mayor to preside over the mayor's court, he shall exercise the powers and authority of the mayor over said court. ...

(2) Notwithstanding any other provision of law to the contrary, the board of aldermen in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as prosecutor and who shall serve at the pleasure of the mayor....

...

C.(2) The presiding officer of a mayor's court shall be entitled to judicial immunity for his official acts as presiding officer in the same capacity as a judge in this state.

Judicial immunity is not statutorily defined, but is jurisprudentially recognized in both federal and state courts. The United States Supreme Court has recognized a long history of judicial immunity and its importance in protecting judges from vexatious actions prosecuted by disgruntled litigants. ***Major v. Painter***, 06-0470, p. 5 (La. App. 5th Cir. 10/31/06), 945 So.2d 100, 103. A judge is entitled to *absolute immunity* where he performs judicial acts, and he is immune from suit for damages resulting from any act performed in the judicial role regardless of his status in the judicial hierarchy. ***Id.*** Louisiana jurisprudence on judicial immunity mirrors the federal doctrine and does not allow a judge to be cast for damages if he has acted within his judicial capacity or jurisdiction, and even if he has acted outside of his judicial capacity or jurisdiction, he will remain protected unless his actions were based on malice or corruption. ***Id.***

Our courts have considered four factors in determining whether judges have acted in their judicial capacity and are afforded absolute judicial immunity. These four factors are: (1) whether the precise act complained of is a normal judicial

function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. *Haley v. Leary*, 09-1626, p. 2 (La. App. 4th Cir. 08/04/10), ___ So.3d ___.

While Donley asserts that Reid's conduct deprived him of his constitutional rights, the allegations of the petition pertain to Reid's actions in his capacity as a magistrate while performing normal judicial functions. The alleged acts occurred in the courtroom and pertained to the controversy pending before Reid's court. Thus, because Reid was acting in his judicial capacity as magistrate in the Amite City Court, Reid was protected by the judicial immunity set forth in La. R.S. 33:441(C)(2). Therefore, Reid is entitled to absolute judicial immunity, unless the allegations of the petition otherwise assert that he acted both outside of his capacity or jurisdiction and with malice or corruption.

We note that the petition alleges that Reid did not have capacity to act as magistrate because the clerk of court could not produce documents to support Reid's authority as magistrate. A magistrate's authority does not rest on the clerk of court's ability to produce records; it derives from the mayor's request and the board of aldermen's appointment pursuant to La. R.S. 33:441(B)(1). Donley plead no facts alleging that Reid was not duly appointed by the board of aldermen of Amite City; therefore, the petition does not allege that Reid did not act in a judicial capacity.

Further, the petition alleges that the original battery charges were outside of the jurisdiction of the Amite City Court because battery is not a violation of an

Amite City ordinance, but rather “an illdefined (sic) (if any) state law.” Amite City Ordinance §11-2011 defines the crime of battery as “the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.” Therefore, the charge of battery asserted against Donley was within the jurisdiction of the Amite City Court over which the magistrate had authority to preside.

Moreover, even if we were to conclude that the petition’s allegations were sufficient to establish that Reid acted outside of his capacity or jurisdiction, the petition does not assert facts, when accepted as true, which constitute malice or corruption.

Accordingly, based on our *de novo* review of the petition, in a light most favorable to the petitioner, we conclude that Reid is protected by the judicial immunity set forth in La. R.S. 33:441(C)(2), and the petition fails to state a valid cause of action. Because it is apparent that Donley cannot remove the grounds of the objection by amendment of his petition, we conclude that a remand for that purpose would be futile.

III. CONCLUSION

Based on the allegations of the petition, we conclude that Reid acted in his official capacity as magistrate and is entitled to the judicial immunity afforded to the presiding officer of a mayor’s court by La. R.S. 33:441(C)(2). Accordingly, we affirm the trial court's judgment that sustained Reid’s peremptory exception raising

the objection of no cause of action and dismissed Donley's claims. Appeal costs are assessed against plaintiff-appellant, Floyd P. Donley, Sr.²

AFFIRMED.

² Although Donley filed this lawsuit *in forma pauperis*, since he was an unsuccessful litigant, appeals costs may be assessed against him. *Johnson v. State Dept. of Social Services*, 05-1597, p. 11 n.10 (La. App. 1st Cir. 06/09/06), 943 So.2d 374, 381 n.10, *writ denied*, 06-2866, (La. 02/02/07), 948 So.2d 1085; see also La. C.C.P. arts. 5186 and 5188.