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Zab v. R.I. Dep't of Corrs., 269 A.3d 741 (R.I. 2022).

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Constitutional Law, Civil Rights. *Zab v. R.I. Dep't of Corrs.*, 269 A.3d 741 (R.I. 2022). Rhode Island's civil death statute is unconstitutional. The statute prevented prisoners with life sentences from initiating civil actions. Because article 1, section 5 of the Rhode Island Constitution creates an express right to seek a remedy in court, the statute unconstitutionally deprives life prisoners of that right. The defendants' stated interest in deterrence was not sufficiently compelling to withstand the Court's strict scrutiny analysis.

FACTS AND TRAVEL

The plaintiffs are Cody-Allen Zab (Zab) and Jose R. Rivera (Rivera), both inmates that are serving life sentences at the Adult Correctional Institutions (ACI).¹ The defendants include the Rhode Island Department of Corrections (RIDOC), Director Patricia Coyne-Fague (RIDOC Director), and Global Tel*Link Corporation (Global).² The plaintiffs alleged that they suffered injuries due to the defendants' negligence.

Zab alleged that he suffered a severe burn that led to permanent disfigurement after making contact with a hot water pipe adjacent to the inmates' telephones.³ He filed a federal claim in the Superior Court under 42 U.S.C § 1983, claiming that the "defendants knew about the hazard but failed to mitigate the danger."⁴ Rivera filed a state law negligence claim against RIDOC in the Superior Court, alleging that he suffered a slip and fall resulting in a broken ankle after a RIDOC employee ordered him to walk across an icy surface.⁵

Zab and the defendants filed cross-motions for summary judgment, and the defendant RIDOC filed a motion for judgment on the

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1. *Zab v. R.I. Dep't of Corrs.*, 269 A.3d 741, 744 (R.I. 2022).
 2. *Id.* at 743.
 3. *Id.* at 744.
 4. *Id.*
 5. *Id.*

pleadings in Rivera's action.⁶ The Superior Court consolidated the plaintiffs' arguments for the motions for summary judgment.⁷ The hearing justice issued a judgment in favor of the defendants in both matters, finding that Rhode Island's civil death statute barred the plaintiffs' negligence claims and that Zab's § 1983 federal claim failed to identify a specific person as required by the statute.⁸ The plaintiffs filed timely notices of appeal to the Rhode Island Supreme Court.

On appeal, Zab claimed that Rhode Island's civil death statute violated the Supremacy Clause of the United States Constitution because it divested Rhode Island courts of jurisdiction to hear his § 1983 claim, and both the plaintiffs claimed that Rhode Island's civil death statute was unconstitutional under the Rhode Island Constitution because it "violate[d] their right to access the courts and seek a remedy"⁹

ANALYSIS AND HOLDING

First, Zab argued that Rhode Island's civil death statute violated the Supremacy Clause of the United States Constitution¹⁰ because it prevented him from bringing a federal cause of action under § 1983 in state court.¹¹ Following the Court's precedent, the Court noted that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983."¹² Accordingly, the hearing justice at the Superior Court found that Zab's § 1983 claim failed on the merits because he filed it against the DOC and the DOC Director, who are not "persons" under § 1983.¹³ Because Zab's claim was dismissed on the merits, rather than the court's lack of jurisdiction, the Court affirmed.¹⁴

Next, addressing both the plaintiffs' claims that the civil death statute was unconstitutional, the Court considered the statute's plain meaning and unambiguous language. The Court found that,

6. *Id.*

7. *Id.*

8. *Id.* at 744–45.

9. *Id.* at 745.

10. *Id.*

11. *Id.* at 746

12. *Id.* (citing *Pontbriand v. Sundlun*, 699 A.2d 856, 868 (R.I. 1997)).

13. *Id.*

14. *Id.*

under the statute, a person serving a life sentence is civilly dead and, thus, cannot initiate civil actions.¹⁵ Article 1, section 5 of the Rhode Island Constitution—the access to courts clause—states:

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain rights and justice freely, and without purchase, completely and without denial; promptly and without delay' conformably and to the laws.¹⁶

As a threshold matter, the Court considered whether the plaintiffs' arguments were inapposite, because article 1, section 5 is not a self-executing provision and does not, on its own, give rise to a private cause of action.¹⁷ The Court reasoned that because the plaintiffs' common law negligence claims were separate from their constitutional claim, they were not barred simply because article 1, section 5 is not self-executing.¹⁸ Accordingly, the Court proceeded to assess the constitutionality of the statute.

A. *The Civil Death Statute is Unconstitutional*

The Court held that the civil death statute is unconstitutional under article 1, section 5 of the Rhode Island Constitution because it deprives the plaintiffs of their express right to seek a remedy for their injuries in court.¹⁹

The Court began its constitutionality analysis with a background of article 1 of Rhode Island's Constitution, asserting that article 1 "established, maintained and preserved' certain 'essential and unquestionable rights' that 'shall be of paramount obligation in all legislative, judicial and executive proceedings.'"²⁰ Further, the Court observed that "[t]he right of access to the courts is a fundamental right guaranteed by the state constitution."²¹ Despite the defendants' argument that the civil death statute was limited to

15. *Id.* (citing *Gallop v. Adult Corr. Insts.*, 182 A.3d 1137, 1141 (R.I. 2018)).

16. *Id.* (quoting R.I. CONST. art. 1, § 5).

17. *Id.*

18. *Id.* at 747–48.

19. *Id.*

20. *Id.* at 748.

21. *Id.* (citing *Palazzo v. Alves*, 944 A.2d 144, 150 (R.I. 2008)).

negligence claims for damages, the Court held that the limitations were much broader because the statute “prevented life prisoners “from bringing *any* civil actions in state courts.”²² The Court found that the defendants’ interpretation would bring about the complete bar on life prisoners’ access to the courts—a deprivation of a constitutional right guaranteed by article 1, section 5.²³ The Court thus concluded that the civil death statute implicated the plaintiffs’ rights under article 1, section 5.²⁴

Because the Court found that the statute implicated the plaintiffs’ “expressly enumerated constitutional right,”²⁵ the Court applied strict scrutiny analysis to the defendants’ stated purpose.²⁶ Under strict scrutiny, the burden shifted to the defendants to demonstrate that the legislation was justified by a compelling government interest and was narrowly tailored to serve that interest.²⁷ The defendants advanced the government’s interest in punishment and deterrence for “some of the state’s worst criminals.”²⁸

However, the Court found that this proffered interest was not sufficiently compelling to infringe upon the plaintiffs’ constitutionally protected access to the courts.²⁹ The Court further explained that, even assuming, *arguendo*, that the defendants’ interest was sufficiently compelling, the statute was not narrowly tailored because it implicated the rights of every individual serving life in prison without making a distinction according to parole status.³⁰ Based on its analysis, the Court held that the entirety of the statute was unconstitutional because it “completely deprive[d] individuals of an expressly enumerated constitutional right.”³¹

22. *Id.*

23. *Id.* at 749.

24. *Id.*

25. *Id.* (quoting *Cherenzia v. Lynch*, 847 A.2d 818, 823 (R.I. 2004) (quoting *Kennedy v. State*, 654 A.2d 708, 712 (R.I. 1995)).

26. *Id.*

27. *Id.* (quoting *Brown v. Entm’t Merch. Ass’n*, 564 U.S. 786, 799 (2011)).

28. *Id.*

29. *Id.* (“[I]t is our opinion that this particular additional punishment is not a compelling reason to override the right of access to the courts that is textually guaranteed by the Rhode Island Constitution.”).

30. *Id.* at 749.

31. *Id.* at 750 (citing *United States v. Butler*, 297 U.S. 1, 63 (1936)).

B. *Justice Goldberg's Dissenting Opinion*

In dissent, Justice Goldberg asserted that the issue was for the legislative branch to resolve.³² Further, she noted that the Court had never held that the civil death statute barred life prisoners from asserting *all* claims.³³ Instead, Goldberg said, the only issue before the Court now was “whether the civil death statute barred [the] plaintiffs from bringing the instant *negligence* claims”³⁴, which was already answered in the negative by a previous case.³⁵ Justice Goldberg added that declaring the statute unconstitutional was an unnecessary “usurpation of the legislative power,” and that the General Assembly should have had the opportunity to address the constitutional issue.³⁶ She concluded by expressing concern that the Court’s holding would “open the floodgates to frivolous inmate claims that will interfere with the orderly operation of the ACI.”³⁷

COMMENTARY

The Court declared the civil death statute infringed upon a plaintiff’s right to bring a civil action, in conflict with article 1, section 5 of the Rhode Island Constitution. Further, the Court held that deterrence was not a sufficiently compelling governmental purpose to justify depriving an individual’s constitutional right under strict scrutiny analysis. Despite Justice Goldberg’s dissent, commenting that in her more than two decades of service on the Court, it had never declared a state statute unconstitutional,³⁸ the majority opinion reflects the Court’s willingness to do so when the law implicates express constitutional rights.

32. *Id.* at 750 (Goldberg, J. dissenting).

33. *Id.*

34. *Id.*

35. *Id.* at 751 (citing *Gallop v. Adult Corr. Insts.*, 182 A.3d at 1141).

36. *Id.* at 752.

37. *Id.*

38. *Id.* at 752.

The law, which had been on the books since 1909, made Rhode Island one of only two remaining states to maintain a civil death statute.³⁹ Notwithstanding Justice Goldberg's concerns about the impact of this decision, it is important to note that the judicial system already has numerous safeguards against frivolous claims, such as the doctrine of qualified immunity and civil procedure's standards for pleadings. It is unlikely that the civil death statute, on its own, prevented frivolous claims that other measures could not effectively screen out. Further, avoiding frivolous claims is unlikely to be a sufficiently compelling government interest that justifies the deprivation of a constitutional right.⁴⁰ Even if that were the case, because the statute barred even legitimate claims by life prisoners, it was not narrowly tailored to meet that goal.⁴¹ Because the law only targeted life prisoners—who make up a small portion of the incarcerated population in Rhode Island—⁴² it is not clear that the number of claims will increase so as to hinder the operation of the judicial system or the prisons, as Justice Goldberg suggests.⁴³ Indeed, there is a reason that the civil death statute made Rhode Island an outlier in the United States: “the concept of civil death has been condemned by virtually every court and commentator to study it [since the 1940s].”⁴⁴

39. See *Lombardi v. Mckee*, 529 F.Supp.3d 1, 5 (D.R.I. 2021) (noting that only Rhode Island, New York, and the Virgin Islands still have a civil death statute).

40. James Michael Kovach, *Life and Civil Death in the Ocean State: Resurrecting Life-Prisoners' Right to Access Courts in Rhode Island*, 24 *ROGER WILLIAMS U. L. REV.* 400, 412 (2019) (noting that several courts have found that preventing frivolous claims is not a compelling government interest and because “Rhode Island’s civil death statute ‘restricts and impedes the filing of many more types of inmate petitions than’ merely frivolous or malicious claims,” it is not narrowly tailored. (quoting *Mitchell v. Moore*, 786 So. 2d 521, 528 (Fla. 2001)).

41. *Id.*

42. Rhode Island’s total life prisoner population is 247 prisoners or just 13% of the total prison population of Rhode Island. *THE SENTENCING PROJECT, NO END IN SIGHT: AMERICA’S ENDURING RELIANCE ON LIFE SENTENCES* (2021).

43. *Zab*, 269 A.3d at 752 (Goldberg, J. dissenting).

44. See Kovach, *supra* note 38 at 421 (quoting *Thompson v. Bond*, 421 F. Supp. 878, 885 (W.D. Mo. 1976)).

CONCLUSION

Rhode Island's civil death statute was unconstitutional under article 1, section 5 of the Rhode Island Constitution because it infringed upon life prisoners' express right of access to the courts. The government's general interest in deterrence was not sufficiently compelling to justify the infringement. Further, assuming deterrence was a sufficiently compelling interest, Rhode Island's civil death statute was not narrowly tailored to accomplish its goal.

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