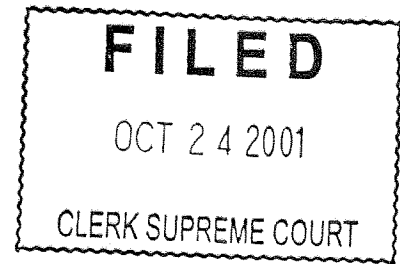


IN THE COURT OF APPEALS OF IOWA

No. 1-533 / 00-1408
Filed October 24, 2001



MERLE RICHARD SCHMIDT, Personally and also on Behalf of **RIVER VALLEY FAMILY TRUST**,
Appellant,

vs.

IOWA COUNTY, WILLIAM J. KEEGAN, and **KENNETH R. MARTENS**, Each
Personally and Each as Officers of Iowa County,
Appellees.

Appeal from the Iowa District Court for Iowa County, Patrick R. Grady,
Judge.

Plaintiff appeals following the dismissal on summary judgment of his
action against Iowa County, a county sheriff's deputy, and a former county
attorney. **AFFIRMED.**

Merle Richard Schmidt, Victor, pro se.

William G. Nicholson of White & Johnson, Cedar Rapids, for appellees.

Considered en banc.

PER CURIAM.

Richard Schmidt appeals the summary judgment dismissal of his claims against Iowa County, Deputy Sheriff William Keegan, and former county prosecutor Kenneth Martens. We affirm.¹

Background Facts and Proceedings. In 1996 the Northern Border Pipeline Company (Pipeline) requested permission of the River Valley Family Trust (Trust) to conduct a survey on land claimed by the Trust. The consent form provided by the Company was signed by a trustee, but the following words were also added on behalf of the Trust:

Northern Border Pipeline Company agrees that any forthcoming payments will be made to River Valley Family Trust in gold or silver coin minted by the United States within the last ten (10) years, such coin being lawful money within the several states pursuant to Article I, Section 10 of the Constitution of the United States.

There is no evidence the Pipeline ever agreed to payment in gold or silver coin.

The Pipeline sought a construction and use easement across the land and offered over \$7,000 in compensation, but the Trust demanded specie, or payment in gold or silver coin. The Pipeline refused, and began condemnation proceedings, which resulted in a \$2500 compensation award. Although the Trust was notified a check in that amount had been deposited with the Sheriff, the check was never claimed. When work began on the easement, Schmidt, a trustee, arrived and informed the Pipeline workers that they were trespassing because the Trust had not been paid. Deputy Sheriff William Keegan was then called to the scene and directed Schmidt to allow the workers onto the land.

¹ We reach our decision after consideration of all supplemental filings made by the parties.

When Schmidt refused and moved towards a Pipeline worker, he was arrested by Keegan. Kenneth Martens initiated a prosecution on behalf of the State. Schmidt was convicted of Interference with Official Acts and fined \$750. That conviction was affirmed on appeal. *State v. Schmidt*, 1-001/99-174 (February 28, 2001).

Schmidt filed suit claiming a cause of action under 42 U.S.C. § 1983. He contended that his arrest and prosecution wrongfully deprived him of liberty and damaged his character and reputation. He sought to hold Iowa County liable for such actions under the theory of respondeat superior and further contended that by accepting the check the County had violated the United States Constitution by making legal tender something other than gold or silver coin. The defendants moved for summary judgment, and Schmidt failed to provide any statement of disputed facts in response to the motion. The district court granted the Pipeline's summary judgment request and dismissed Schmidt's claims. Schmidt now appeals.

Scope of Review. Summary judgment rulings are reviewed for correction of errors at law. Iowa R. App. P. 4. Where no genuine issue of material fact exists, the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). All facts are viewed in the light most favorable to the party opposing the motion for summary judgment. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 917 (Iowa 1997). However, a party resisting a summary judgment may not simply rely upon the pleadings, but must "set forth specific facts showing that there is a

genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered." Iowa R. Civ. P. 237(e).

Legal Tender. Any claim arising out of how the compensation for the easement was handled necessarily hinges on Schmidt's contention the trust had a right to be paid in gold or silver coin. He relies on a portion of the United States Constitution which provides that "[n]o State shall . . . coin money [or] make any Thing but gold and silver Coin a Tender in Payment of Debts" U.S. Const. art. I, § 10, cl. 1. This section does not, however, bar the use of currency other than gold or silver coin. Rather, as the district court correctly noted, it merely prohibits a state, such as Iowa, from declaring anything other than gold or silver coin to be legal currency. *The Legal Tender Case*, 110 U.S. 421, 446, 4 S.Ct. 122, 129, 28 L.Ed. 204 (1884).

Nothing in Article I limits Congress' power to determine what is acceptable legal tender for any and all debts. *U.S. v. Rifen*, 577 F.2d 1111, 1113 (8th Cir. 1978). Congress was specifically granted the power to coin money, U.S. Const. art. 1, § 8, and it has approved several forms of legal tender, including the one offered by the Pipeline. See 31 U.S.C. § 5103 (1994) ("United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues."). Accordingly, the Trust had no constitutional right to demand a specie payment.

While parties can contract for payment in a form other than notes, paper currency, or bank drafts, Schmidt has not established that the Pipeline agreed to

payment in gold or silver. The survey form does not constitute a binding contract for such payment, and no evidence was presented that an agreement for a specie payment existed. See *Magnusson Agency v. Public Entity Nat. Company-Midwest*, 560 N.W.2d 20, 26 (Iowa 1997) ("A binding contract also requires acceptance of the offer."). Since Schmidt cannot establish a right to payment in specie at law or under contract, any claim arising out of or related to such payment must fail, and the district court grant of summary judgment was correct as to those claims.

Arrest and Prosecution by Keegen and Martens. While portions of Schmidt's briefs indicate that he is not appealing the district court's dismissal of his claims against Keegan and Martens, other sections contradict that assertion. We therefore address the propriety of the dismissal of those claims. Schmidt contends his arrest violated his constitutional rights and caused damage to both his character and reputation. He also alleges violations by Martens in declining to impanel a grand jury and in pursuing his prosecution, as well as in failing to prosecute the Pipeline for trespass and destruction of property.

Under 42 U.S.C. § 1983, a violation of constitutional or legal rights by a government agent or entity can give rise to a civil cause of action:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

42 U.S.C. § 1983 (1994). Such a claim cannot lie against Iowa County, however. Schmidt alleges no specific acts by the County or the existence of any county policy that violated his constitutional rights. See *Allen v. Anderson*, 490 N.W.2d 848, 855 (Iowa Ct. App. 1992) (holding that a governmental entity is liable under § 1983 only when the violation was caused by an official policy or custom of that entity). Nor can Iowa County be held liable for the actions of its employees under the theory of respondeat superior. *Jaeger v. Dubuque County*, 880 F. Supp. 640, 650 (N.D. Iowa 1995).

Schmidt also fails to state a viable claim against Martens, as he has provided no evidence Martens was involved in his arrest or committed any illegal act. See Iowa R. Civ. P. 237(e) (placing burden on person resisting the motion to provide facts showing a genuine issue for trial). No defects appear in Martens' prosecution of Schmidt, as all offenses are subject to prosecution via a trial information or complaint. Iowa R. Crim. P. 5, 35. Moreover, Martens enjoys absolute immunity from claims arising from acts "intimately associated with the judicial phase of the criminal process." *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430, 96 S. Ct. 984, 995, 47 L. Ed. 2d 128 (1976)).

In regard to Keegan, it is undisputed that at the time of the arrest he was acting in his official capacity as a peace officer, charged with enforcing the laws of this state. Iowa Code § 801.4(11) (1999). It is equally undisputed that the easement was lawfully obtained, and we have found that legal payment was tendered, giving the Pipeline a right of possession of the condemned land. See

Iowa Code § 6B.25 (1999). Schmidt was without authority to deny the Pipeline workers access, and it is established that he did unlawfully interfere with an official act when he refused to allow Pipeline workers onto the property in violation of Keegan's express order. *State v. Schmidt*, 1-001/99-174 (February 28, 2001). As Keegan acted lawfully in his arrest of Schmidt, no section 1983 claim is established. See Iowa Code § 804.7(1) (1999) (allowing a warrantless arrest if public offense is committed or attempted in an officer's presence); see also *Grant v. Farnsworth*, 869 F.2d 1149, 1151 (8th Cir. 1989) (finding a conviction "necessarily entails that the officers acted lawfully"). Although Schmidt contends his claims were not limited to section 1983 violations, nothing before district court demonstrated the existence of any state law claim.

AFFIRMED.