

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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JUL 30 2004

Law Project For
Psychiatric Rights

ETTA BAVILLA,

Plaintiff,

v.

Case No. 3AN-04-5802CI

ALASKA DEPARTMENT OF
CORRECTIONS,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff has moved for reconsideration of this court's July 23, 2004, Order granting the State's motion to dismiss. As stated in that order, the State of Alaska is not a "person" under 42 U.S.C. § 1983, and thus plaintiff failed to state a claim upon which relief can be granted under that statute.

Plaintiff argues that the court overlooked or misconceived the material fact that this action is not one under 42 U.S.C. § 1983. Despite plaintiff's characterization of this action as one for declaratory and injunctive relief under the United States and Alaska Constitutions, plaintiff's action must still be dismissed. Plaintiff has simply sued the wrong defendant.

The Alaska Constitution provides that, "[t]he legislature shall establish procedures for suits against the State." Article II, Section 21. The legislature, in AS 09.50.250,

strictly limits suits against the state to claims in "contract, quasi-contract, or tort." Neither the legislature nor the Alaska Supreme Court has otherwise allowed a direct cause of action to be brought against the State for a violation of the Alaska Constitution.

The Alaska Supreme Court has stated:

the rule is well established that an action to enjoin a state officer from enforcing a statute or regulation which is alleged to be unconstitutional is not action against the state for the purpose of sovereign immunity, nor is an officer acting unconstitutionally acting 'by authority of the state.'

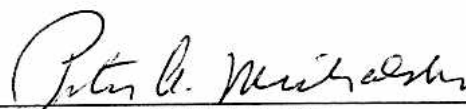
Etheredge v. Bradley, 480 P.2d 414, 416 (Alaska 1971) (emphasis added; citations omitted). A plaintiff cannot simply sue the State to accomplish the same end.

Plaintiff correctly cites language in *Vest v. Schafer*, 757 P.2d 588, 594 (Alaska 1988), in which the Alaska Supreme Court states, "[w]hen a court finds a statute unconstitutional, the traditional remedy is declaratory or injunctive relief." While this is undeniably true, such relief is only available to plaintiffs who sue defendants who are not immune from suit. Because plaintiff cannot bring a direct action against the State for a violation of the Alaska Constitution and because plaintiff cannot sue the State under 42 U.S.C. § 1983 because the State of Alaska is not a "person" under that statute, plaintiff's complaint must be dismissed because, "it appears beyond doubt

that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Guerrero v. Alaska Housing Finance Corporation*, 6 P.3d 250, 253-4 (Alaska 2000). Therefore, plaintiff's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 29th day of July, 2004.



PETER A. MICHALSKI
Superior Court Judge