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NO. 91262-9

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID HYYTINEN,

Appellant,

v.

CITY OF BREMERTON, et al. ,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In an unpublished decision, the Court of Appeals held that the seizure of a stolen car from petitioner David Hyytinen by respondent State of Washington, Washington State Patrol, “did not violate the federal due process clause,” even though the Patrol failed to give Hyytinen a written notice of the seizure required by a statute. Slip. Op. 20. The Court of Appeals did not even address the dispositive fact that Hyytinen’s federal due process claim failed because he did not name an individual defendant who could be subject to liability under 42 U.S.C. § 1983.

Rather, the court cited long-standing United States Supreme Court authority and held that actual notice of a seizure—which Hyytinen received in person—is constitutionally sufficient notice of a publicly available remedial procedure. *Id.* at 19; *see City of West Covina v. Perkins*, 525 U.S. 234, 241, 119 S. Ct. 678, 142 L. Ed. 2d 636 (1999). The court also held that Hyytinen did not allege negligence or State law due process claims and that there was no error in the trial court denying his untimely motion to amend his Complaint to add those claims.

This Court should deny Hyytinen’s Petition, because these fact-bound rulings do not present any issues warranting review.

II. THE ISSUES FOR REVIEW

The Petition does not fairly state the issues presented, because it ignores the Court of Appeals decision and the numerous flaws in Hyytinen's claims against the Patrol. If review were granted, the Court would actually be required to decide the following issues:

1. Where Hyytinen received actual notice that the Patrol was seizing a stolen car in his possession, but where the Patrol did not provide him written notice of the seizure as required by a statute, did that seizure violate the federal due process clause under the unique facts of this case?

2. 42 U.S.C. § 1983 provides the exclusive method for seeking damages based on alleged violations of federal due process rights. Where Hyytinen did not name an individual defendant who can be sued under § 1983, was it error to dismiss his federal due process claim?

3. Did the Court of Appeals properly affirm the trial court's denial of Hyytinen's late attempt to raise new state law negligence and due process claims, where his Complaint did not allege facts establishing negligence or a private right of action under the state constitution?

III. COUNTERSTATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a Court of Appeals decision affirming two orders granting summary judgment to the Patrol and remanding for further

proceedings against respondent City of Bremerton (the City). Following a routine Vehicle Identification Number (VIN) inspection on July 5, 2011, the Patrol seized a Cadillac Escalade that Hyytinen had purchased from the City. CP at 402-05, 407, 415-29. The Patrol personally informed Hyytinen that day that the Escalade was a stolen vehicle and that it would not be returned to him. *Id.* It is undisputed that neither Hyytinen nor his attorneys requested a hearing to establish his right to possess the stolen Escalade. CP at 416; *see* RCW 46.12.735 (“any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle . . . seized pursuant to this section”). Hyytinen brought suit.

B. Facts

1. Notice to Hyytinen of the Escalade’s Seizure

The Bremerton Police Department seized a Cadillac Escalade during drug enforcement activity. CP at 387, 436-64, 713-14, 726-27; *see* RCW 69.50.505 (seizure and forfeiture of property used in violation of Uniform Controlled Substances Act; no property right in seized property). Hyytinen later purchased the Escalade from the City at an auction. CP at 106-13, 387, 730. Prior to selling the Escalade, the City failed to recognize that the vehicle had been stolen. CP at 387.

On July 5, 2011, Hyytinen brought the Escalade to the Patrol’s VIN program for inspection. CP at 403-04, 420-26. The VIN program is a part

of the Criminal Investigation Division (CID). CP at 415-17. When a VIN officer cannot determine the vehicle's VIN or believes a vehicle was stolen, the VIN Identification Specialists contact CID detectives. CP at 415-17.

During the July 5 inspection, VIN Identification Specialist, Lance Fry, contacted CID detective, Ian Morhous, regarding the Escalade's VIN. CP at 402-05, 407, 415-17, 420-26. Morhous confirmed that the Escalade had been stolen from a dealership located in Ontario, Canada. CP at 416. He personally informed Hyytinen that day that the stolen Escalade would not be returned to him. CP at 403-05, 407, 415-17, 420-26. Specialist Fry also informed Hyytinen that the Escalade was being seized. CP at 426.

Three weeks later, on July 27, 2011, Morhous received a letter from Hyytinen's current attorneys. CP at 416, 421, 466-67. Though the attorneys stated that they represented Hyytinen regarding the Patrol's seizure of the stolen Escalade, neither they nor Hyytinen ever requested a hearing to establish his ownership of or right to possess that vehicle. CP at 416.

2. Notice to Hyytinen of the Escalade's Return

On August 5, 2011, nine days after Hyytinen's attorneys appeared, Morhous informed Hyytinen that the insurance company for the dealership from which the Escalade had been stolen wanted it returned to recoup money paid for the vehicle. CP at 416, 422. Two weeks later, on August 17, 2011,

Hyytinen informed Morhous that he did not need anything from the Escalade before it was returned. CP at 416, 422.

C. Procedural History

Hyytinen sued the City of Bremerton and later added the Patrol as a defendant by a Third Amended Complaint. CP at 1-9; 386-91; *Cf.* CP at 877-82. He alleged the Patrol violated his due process rights in the July 5, 2011 seizure of the Escalade. CP at 390 (¶¶ 3.24, 3.25), 884-88, 900-02, 903-05. He did not allege a claim under 42 U.S.C. § 1983, nor did he allege a claim of negligence or facts establishing negligence. CP at 386-91.

The Patrol moved for summary judgment to dismiss the due process claim, which the trial court granted. CP at 374-467, 788-90, 852-54. When the Patrol sought entry of judgment on the dismissal, Hyytinen claimed he had also sued the Patrol for negligence. CP at 791-854. The Patrol then brought a second Motion for Summary Judgment to dismiss the purported negligence claim, which the trial court also granted. CP at 855-921, 1063-69. Hyytinen then moved to amend his complaint again to add a negligence claim and a due process claim under the Washington State Constitution. CP at 922-30. The trial court denied that motion. CP 984-85.

Hyytinen appealed and on December 30, 2014, the appellate court issued an unpublished decision affirming the trial court in all respects. *See e.g. David Hyytinen v. City of Bremerton, et al.*, No. 45117-4-II.

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. Standard on Review

A Petition for Review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Rules of Appellate Procedure, RAP 13.4. Hyytinen does not present an issue of conflict between appellate courts, a significant question of law, or a matter of substantial public interest that must be resolved by this court.

B. Argument

1. The Ruling that the Patrol's Actual Notice Met Minimum Due Process Requirements is Sound

Hyytinen personally received actual notice of who seized the stolen Escalade and why it was seized on the day the seizure occurred. Within three weeks of that seizure, his attorneys demonstrated that they, too, had actual notice of who seized the stolen Escalade and why it was seized. Hyytinen argues that the Patrol violated his constitutional due process rights because it did not provide him with written notice of the seizure and his statutory procedural rights under RCW 46.12.725. However, as a matter of

law, actual notice of a seizure is constitutionally sufficient notice of a remedial procedure that is publicly available. *Perkins*, 525 U.S. at 241; *McKinney v. Chidley*, 87 F. App'x 615, 617 (9th Cir. 2003). The existence of the procedure precludes a due process claim. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985). Hyytinen failed to state a federal constitutional claim. He cites no cases to suggest that this ruling conflicts with other appellate court rulings or any reason for review.

2. The Court Should Decline to Review Hyytinen's Federal Due Process Claim Because He Failed to Sue a Defendant Who is Subject to a Section 1983 Claim

Hyytinen failed to allege a claim under 42 U.S.C. § 1983, which is the method for bringing federal constitutional claims. The State of Washington and its agencies, such as the Patrol, are not "persons" under § 1983. *Will v. Michigan State Police*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989); *Shaw v. California Department of Alcoholic Beverage Control*, 788 F.2d 600, 604-05 (9th Cir. 1986). Thus, there is no reason for this Court to hear Hyytinen's federal due process claim again.

3. Hyytinen's Failure to Plead State Law Claims Does Not Present an Issue Worthy of this Court's Review

Hyytinen failed as a matter of law to state a claim under the Washington State Constitution. CP at 386-91. Washington courts do not

recognize a private right of action for alleged violations of the Washington State Constitution. *Reid v. Pierce County*, 136 Wn.2d 195, 961 P.2d 333 (1998); *Blinka v. Washington State Bar Assoc., et al.*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001) (citing *Systems Amusement, Inc. v. State*, 7 Wn. App. 516, 517, 500 P.2d 1253 (1972)).

Hyytinen never actually pleaded a negligence theory. CP at 386-91, 390, 884-88, 900-05. He simply recast as negligence his constitutional claim for violation of due process to force further proceedings, which then rejected his claim. But even if Hyytinen had alleged a negligence theory, he failed to state facts establishing negligence.

As a matter of law, an alleged wrongful seizure of property is a conversion, which is an intentional tort. *Western Bond & Mortg. Co. v. Chester*, 145 Wash. 81, 259 P. 13 (1927) (seizure is a conversion); *King v. Rice*, 146 Wn. App. 662, 191 P.3d 946 (2008) (conversion is an intentional tort). Moreover, the Patrol does not owe Hyytinen a duty to refrain from seizing stolen vehicles. To the contrary, the legislature has expressly directed the Patrol to make such seizures. *See* RCW 46.12.725.

And even if the Patrol owed Hyytinen a legal duty for the purposes of establishing a negligence claim, Hyytinen did not state facts to establish that a breach of such a duty proximately caused him damages. Hyytinen claims that he did not receive written notice of his statutory right to a

hearing, but that notice did not proximately cause him any damage, because he never had a lawful right or title to the stolen Escalade. See R.C.W. 62A.2-403; 3A Lary Lawrence, *Lawrence's Anderson on the Uniform Commercial Code* § 2-403:122, at 711-12 (rev. 3d ed. 2002); CP at 416; see also *Kutner Buick, Inc. v. Strelecki*, 267 A.2d 549, (N.J. Sup. Ct. 1970) (*bona fide* purchaser of personal property taken wrongfully, as by trespass or theft, does not acquire a title good against the true owner). This may be why his attorneys did not pursue a hearing.

Finally, there is no reason for this Court to review the trial court's ruling denying Hyytinen's untimely attempt to amend his Complaint to add negligence and state constitutional due process claims. Nothing suggests that the trial court abused its discretion in making this ruling or that the Court of Appeals erred in affirming that ruling. The Petition should be denied.

V. ATTORNEY FEES ON APPEAL

The Patrol requests attorney fees and costs, pursuant to RAP 18.1.

VI. CONCLUSION

Hyttinen fails to demonstrate that review is proper. He has not satisfied any of the criteria for review set forth in RAP 13.4 (b). Based on the foregoing arguments and authorities, the Patrol respectfully requests that this court deny the Petition for Review and award fees on appeal.

RESPECTFULLY SUBMITTED this 2nd day of March 2015.

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 2nd day of March, 2015, at Seattle, Washington.



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