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Stidham v. Idaho Indus. Com'n Appellant's Reply Brief Dckt. 42555

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**IN THE SUPREME COURT OF THE
STATE OF IDAHO**

**FOR THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GAGE STIDHAM,)
)
Appellant/Claimant)
)
-vs-)
)
IDAHO DEPARTMENT OF LABOR;)
IDAHO INDUSTRIAL COMMISSION;)
Director of the Idaho Dept. of labor;)
Director of the Idaho Industrial Commis-)
sion; Unknown John and Jane Does,)
1-thru-10,)
)
Respondent.)
_____)

Supreme Court NO. 42555-2014
Appellant Reply Brief
Injunction with #2014-13570, #3127-2014,
#2184-2013, Lien Docket #T-710982

Appellant Reply Brief

Appeal from the Fourth Judicial District, Ada County, Idaho

Honorable Mike Wetherell

Petitioner

Gage Stidham, Pro Se, 1697 N Golfview Way, Meridian Idaho, 83646

Respondent

Industrial Commission, Po Box 83720, Boise Idaho, 83720-0041

Department of Labor, 317 West Main Street, Boise Idaho, 83735

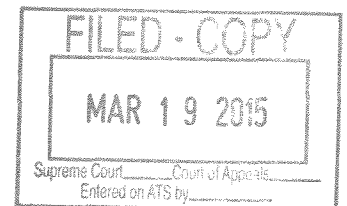


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ARGUMENT OF THE CASE IN REPLY

NATURE OF THE CASE

Gage Stidham appeals from the District Court order not granting Declaratory and Injunctive Relief including judgement given by way of not allowing the appellant due process from the wrong doing by the Department of Labor and Industrial Commission and/or its employees.

STATEMENT OF THE FACTS AND COURSE PROCEEDINGS

Mr. Stidham was awarded an extension of unemployment benefits January 2014 {A}(case 3127-2014). The day after the allowance Idaho Department of Labor assumed that the claimant was "self-employed" after the claimant and his father asked the court at the previous {A} hearing if the claimant could receive an extension of benefits since the claimant had been reimbursed or was paid \$50 per week to help his father out for driving to cancer surgeries and every day help during the claimants time not being employed. The father stated that the claimant was just helping family during the time of "not" being employed and because of the claimant's lack of financial funds and employment. The father was reimbursing the claimant for his efforts and expenses. Department of Labor decided that the claimant was self-employed "which he was not" and stated that the claimant did not report employment weekly earnings "which they were not" and ordered that all of the previous unemployment benefits be paid back along with a \$5000.00 fine by way of a telephone call.

Since, the claimant has attempted to appeal the decision. {B}Case #2184-2013 was filed as "Legal Due Process" called a "Reconsideration" (note the case was given the wrong year -

2013- instead of -2014- {how can case B be before A as noted in judicial investigation}) with the Industrial Commission and/or its employees. Appellant was "not" awarded the reconsideration for false and inaccurate excuses caused by the Industrial commission and staff. The Claimant then filed a complaint with the Idaho Judicial Council. Mr. Stidham also filed an Injunction with the higher District court [this is when respondent assistant attorney general injected res judicata and this is the first time the case for declaratory relief & injunction had been heard] because the Department of Labor had commenced collection procedures before "due process" at this time (Lien Docket T-710982 and {A} case number 3127-2014) against the Claimant before he was given the proper "Due Process" and had "not" been granted his rights. Mr. Stidham filed this Appeal for the following reasons, he was not allowed an appeal hearing {reconsideration} with the Industrial commission number one, this is the process before one can appeal to the Supreme Court. The reconsideration was filed timely and properly number two. Appellant was not given the Injunction and Declaratory relief ({C} case 14-13570) by the Fourth Judicial District because deriving from the improper interpretation and consideration which the claimant feels is abuse discrimination and injustice with case law.

In the facts, documents and procedures' Mr. Stidham has conformed to all the legal procedures'. Step by step and has been denied his right to exercise his rights. The disregard of his "reconsideration" that was legally and timely submitted was engrossing by the parties of the Industrial commission s and/or its employees signing of the invalid document listed in this appeal.

ISSUES

Stidham states that on appeal repeated:

1. Claimant raises important Due Process claims and has been wrong fully abused by the Department of Labor, Industrial Commission and/or its employees and feels that the District Court had jurisdiction to allow Mr. Stidham his proper process.
2. Mr. Stidham did not need to file a "Tort" claim for he did "not" wish to sue the state, but rather have the legal issues "reconsidered" and properly rectified.
3. Issues have been raised of malicious conduct against Mr. Stidham from the facts of the cases and procedures listed.
4. This is "not" (res judicata), nor accrue to a tort claim.
5. {Respondent} has attempted to create there version of the facts and truth for benefit of the state.
6. Mr. Stidham has not had fair review and thorough consideration of the facts not excluding moral certainty.
7. Statute of limitation should not be tolled and that the genuine issue of material fact summary should be reversed.
8. Judicial council has not entertained in "detail" the miss use of power and dating of documents mentioned in this matter by the respondents and/or cases involved.

CASES

According to **Idaho Rules of Civil Procedure Rule 8(a) (1). General Rules of Pleading - Claims for Relief.** The Rule mandates the following:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) if the court be of limited jurisdiction, a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

Plaintiff's Complaint covers each of the above requirements. Defendants are alleging that Plaintiff has failed to comply with the Tort Claims Act regarding the Notice of Tort standards under Idaho Statutes. This, of course, is not the case.

An example of why Plaintiff has not violated the Tort claims act, let's say that Plaintiff's leg was being forcefully removed without consent. Plaintiff does not have to wait for the leg to be removed before Plaintiff can seek judicial review to stop the surgery.

In **Felder v. Casey**, 108 S.Ct. 2302 (1988), at 2303, the Court:

Held: Because the [State] notice of claim statutes conflicts in both its purpose and effects with [42 USC] § 1983's remedial objectives, and because its enforcement in state-court actions will frequently and

predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court, it is pre-empted pursuant to the Supremacy Clause when the § 1983 action is brought in a state court.

Plaintiff's Complaint clearly identifies the Jurisdiction of the Court on page-2, paragraph number-3, as follows:

JURISDICTION

Pursuant to Idaho Code §§ 6-901 et seq.; 1-705; 72-1361; 44-701 et seq; 10-1201 et seq; 7-1501 et seq (Small Lawsuit Resolution Act); 6-901 et seq; 6-801 et seq; 5-501 et seq; **42 USC § 1983.** (Emphasis Added)

The Defendants in this case cannot attempt to argue the Idaho Tort Claims Act's mandates when such an argument would deprive Plaintiff of his speedy access to the Court and the relief mandated under the Federal 42 USC § 1983 standards. To do so will again violate the Supremacy Clause identified in *Felder*, supra, as clearly forbidden. The Defendants are attempting to avoid their responsibility and cover-up their unconstitutional and unlawful acts as identified in the Verified Complaint.

R.C.P.-12(b) (6) Standards:

A motion to dismiss pursuant to Rule 12(b) (6) of the Rules of Civil Procedure tests the legal sufficiency of the claims asserted in the complaint. R. Civ. P. 12(b) (6); **Navarro v. Block**, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual allegations pled in the complaint as true, and must construe them and draw all reasonable inferences from them in favor of the nonmoving party. **Cahill v. Liberty Mutual Ins. Co.**, 80 F.3d 336, 337-38 (9th Cir.1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations, rather, it must plead "enough facts to state a claim to relief that is plausible on its face." **Bell Atl. Corp. v. Twombly**, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). However, "a plaintiff's obligation to provide the 'grounds' of his 'entitle [ment] to relief' requires more than

labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citation omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citation omitted). In spite of the deference the court is bound to pay to the plaintiff's allegations, it is not proper for the court to assume that "the [plaintiff] can prove facts that [he or she] has not alleged or that defendants have violated the . . . laws in ways that have not been alleged." **Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters**, 459 U.S. 519, 526, 103 S. Ct. 897, 74 L. Ed. 2d 723, (1983). Also, the court need not accept "legal conclusions" as true. **Ashcroft v. Iqbal**, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). *Id.* at 1950.

However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 1949 (citing **Twombly**, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing **Twombly**, 550 U.S. at 557).

In this case, Plaintiff has identified the full measure of the Defendants' unconstitutional and unlawful conduct. It should be noted that a Verified Complaint can be used as an affidavit in opposition to motions for summary dismissal. See **Schroeder v. McDonald**, 55 F3d 454 (9th Cir. 1995).

Plaintiff has had his rights trampled upon by the Defendants during the entire farce of a review of his earnings and unemployment benefits during the previous year of receiving these benefits. After discovery on this matter the evidence will prove that Plaintiff is truly a victim of the Defendants.

None of Plaintiff's claims have been heard by any court of adequate jurisdiction as the Defendants have tampered with the factual history and circumstances of Plaintiff's review and have engaged in a cover up of these facts.

History law of the Slaughter-House Cases, (1873) including the 13th and 14th amendments guarantee federal protection of individual rights of all citizens of the United States against discrimination by their own state governments. Appellant intends to include the entire case. Total case documentation is over the limit for initial reply brief. Copies will be given when requested or time necessary.

CONCLUSION

THEREFORE, reinforcement from material fact on record, future declaration, and documents complimenting based upon the above law and the Procedures of Due Process allow the Injunction and Declaratory Relief along with the minimum of allowing Mr. Stidham his right to argue and defend himself against wrongful, inaccurate manipulated and malicious findings not excluding dismissal of Industrial Commissions–Department of Labor and/or their employees abuse judgment for improper procedure and abuse.

Respectfully submitted this ____ day of March, 2015.

GAGE STIDHAM-Claimant, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of March, 2015, I caused to be mailed a true and correct copy of this Brief via the U.S. mail system to:

TRACEY ROLFSON
DEPUTY ATTORNEY GENERAL
CONTRACTS & ADMINISTRATION
LAW DIVISION
317 W. MAIN STREET
BOISE, IDAHO 83735
TELEPHONE: (208) 332-3570 ext. 3432
ISB No. 4050

DEPARTMENT OF LABOR
315 WEST MAIN STREET
BOISE, IDAHO 83735

INDUSTRIAL COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0041

GAGE STIDHAM