

Roger Williams University Law Review

Volume 26
Issue 3 *Vol. 26: No. 3 (Summer 2021)*

Article 9

Summer 2021

Gallop v. Adult Correctional Institutions, 218 A.3d 543 (R.I. 2019)

Thomas M. Wall

Candidate for Juris Doctor, Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/rwu_LR



Part of the [Civil Procedure Commons](#)

Recommended Citation

Wall, Thomas M. (2021) "Gallop v. Adult Correctional Institutions, 218 A.3d 543 (R.I. 2019)," *Roger Williams University Law Review*: Vol. 26 : Iss. 3 , Article 9.

Available at: https://docs.rwu.edu/rwu_LR/vol26/iss3/9

This Survey of Rhode Island Law is brought to you for free and open access by the School of Law at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized editor of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Civil Procedure. *Gallop v. Adult Correctional Institutions*, 218 A.3d 543 (R.I. 2019). Where a plaintiff serving a life sentence files suit over an attack that occurred while the Plaintiff was in pretrial detention, and where that complaint was dismissed by the trial court under the state’s civil death statute, the state’s “raise-or-waive” rule controls the issue. Here, the “raise-or-waive” rule means that Plaintiff has waived the argument that the trial justice erred in failing to address his contention that the state’s civil death statute is unconstitutional.

FACTS AND TRAVEL

On May 12, 2010, a jury convicted Dana Gallop (Plaintiff) of first-degree murder, felony assault, using a firearm when committing a crime of violence, carrying a pistol without license, and possession of arms by a person convicted of a crime of violence who is a fugitive from justice, and declared him a habitual offender.¹ The trial justice sentenced him to two mandatory consecutive life sentences, in addition to a twenty-year sentence to be served consecutively with the second life sentence, and two ten-year sentences to run concurrently with the first life sentence.² Plaintiff appealed and the Rhode Island Supreme Court affirmed.³

The present case came before the Rhode Island Supreme Court on October 2, 2019, and sprung from an incident that allegedly took place on April 26, 2010.⁴ The Plaintiff alleged that he was attacked by a fellow inmate, Rosado, while detained by Adult Correctional Institutions (ACI) and while awaiting trial on multiple counts related to a fatal shooting in Providence.⁵ Plaintiff alleged that as a result of the attack he suffered lacerations and permanent facial

-
1. *Gallop v. Adult Correctional Institutions*, 218 A.3d 543, 545 (R.I. 2019).
 2. *Id.*
 3. *Id.* (citing *State v. Gallop*, 89 A.3d 795, 806 (R.I. 2014)).
 4. *Id.*
 5. *Id.*

scarring.⁶ Plaintiff alleged that the attack was made possible because Rosado reported his intent to attack Plaintiff to a correctional officer; that the officer spread the word of the planned attack among “various ‘John Doe’ defendants” beforehand; and finally that the officer “abandoned his post for eighteen minutes . . . to afford Rosado the opportunity to carry out the assault.”⁷

On November 10, 2010, Plaintiff filed a civil complaint naming various defendants, including the State of Rhode Island and ACI, and alleging negligence for failing to properly protect him, in addition to several other tort claims.⁸ On April 11, 2013, Plaintiff filed an amended complaint that added two named defendants.⁹ Significantly, Plaintiff’s amended complaint did not add any state or federal constitutional claims.¹⁰

The day before the trial was to start, the trial justice *sua sponte*¹¹ raised the issue of Rhode Island’s civil death statute based on Plaintiff’s consecutive life-imprisonment sentences.¹² Defendants moved to dismiss the case under section 13-6-1 on the theory that the Plaintiff was civilly dead.¹³ The Plaintiff objected and motioned for leave to file a second amended complaint, this time adding a claim alleging violations of various constitutional provisions but containing essentially the same tort allegations as before.¹⁴ The trial justice granted the defendants’ motion to dismiss based on section 13-6-1 and did not address the Plaintiff’s

6. *Id.*

7. *Id.*

8. *Id.* “As part of that initial complaint, plaintiff also alleged several additional common law tort claims, including intentional infliction of emotional distress, conspiracy and joint enterprise resulting in assault and battery, implied breach of warranty, failure to maintain ‘protective responsibilities[,]’ and a violation of plaintiff’s civil rights.” *Id.*

9. *Id.*

10. *Id.* at 546.

11. *Black’s Law Dictionary* defines “*sua sponte*” as “[w]ithout prompting or suggestion; on its own motion.” *Sua sponte*, BLACK’S LAW DICTIONARY (5th Pocket ed. 2016).

12. *Gallop*, 218 A.3d at 546; see also 13 R.I. GEN. LAWS § 13-6-1 (civil death mandates that persons serving life sentences “shall be deemed to be dead in all respects, as if his or her natural death had taken place at the time of the conviction” and prohibits them from asserting civil actions).

13. *Id.*

14. *Id.*

motion for leave to file a second amended complaint.¹⁵ The plaintiff appealed to the Rhode Island Supreme Court.¹⁶

The court held that the Plaintiff's civil rights were "extinguished by operation of law once his criminal conviction was affirmed" and, because there was no constitutional challenge to section 13-6-1, Plaintiff's argument was confined to the federal civil rights actions.¹⁷ Because the trial justice had dismissed the case without addressing the Plaintiff's second amended complaint, the court vacated the judgment and remanded it with directions to hear and decide the Plaintiff's motion.¹⁸

On remand, Plaintiff presented the arguments in reverse, arguing first that section 13-6-1 is unconstitutional and thus that his federal civil rights claims should go forward.¹⁹ Plaintiff then argued in the alternative that even if the federal civil rights claims were disallowed, the tort claims should proceed because section 13-6-1 is unconstitutional.²⁰ Finally, Plaintiff motioned for leave to file a second amended complaint, arguing that there would be no extreme prejudice to defendants if the motion were allowed.²¹ Defendants responded by pointing out that Plaintiff's federal and constitutional claims were first raised in the proposed second amended complaint and thus were not properly before the court and, moreover, that Plaintiff had already had six years to raise these constitutional claims and had failed to do so.²² The trial justice ultimately denied Plaintiff's motion to amend because the delay caused by filing the second amended complaint would result in extreme prejudice to the defendants.²³ Plaintiff again appealed.

15. *Id.*

16. *Id.*; *see also* Gallop v. Adult Correctional Institutions, 182 A.3d 1137, 1141 (R.I. 2018) (holding that "the [civil death] statute unambiguously declares that a person such as plaintiff, who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights").

17. *Gallop*, 213 A.3d at 546.

18. *Id.* at 547.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

ANALYSIS AND HOLDING

Upon review, the court affords great deference to the trial justice's ruling on a motion to amend.²⁴ In this case the court noted that it will not disturb a trial justice's decision to grant or deny a motion to amend unless the hearing justice committed an abuse of discretion.²⁵ Under this standard of review, the court first addressed whether the trial justice properly denied the Plaintiff's motion to amend. The court noted that after a pleading has been amended once, "leave to amend a pleading lies within the sound discretion of the trial justice" and need not be granted "when doing so would unduly prejudice the non-moving party."²⁶ Factors indicating undue prejudice if a party were allowed to amend include "undue delay in seeking to amend the complaint without any reasonable explanation . . . or when the amendment would require a significant amount of new discovery."²⁷ Abuse of discretion "occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them."²⁸

The court reviewed the record and found that the trial justice "properly weighed all factors without allocating weight to any improper factor" and that there was "more-than-adequate grounds" to support the decision.²⁹ The court noted the trial justice's conclusion that "plaintiff's undue delay . . . would create substantial prejudice to defendants" because of the additional discovery required as well as the complexity of the statutory claims.³⁰ The court found that the trial justice did not abuse her discretion³¹ and agreed with the trial justice's denial of the motion "based upon the proximity to the trial, additional significant discovery, and other

24. *Id.* at 548 (quoting *Catucci v. Pacheco*, 866 A.2d 509, 513 (R.I. 2005)).

25. *Id.* (quoting *Barrette v. Yakavonis*, 966 A.2d 1231, 1236 (R.I. 2009)).

26. *Id.* (quoting *Weybosset Hill Investments, L.L.C. v. Rossi*, 857 A.2d 231, 236 (R.I. 2004)).

27. *Id.* (quoting *Faerber v. Cavanaugh*, 568 A.2d 326, 330 (R.I. 2009)).

28. *Id.* at 549 (quoting *Hogan v. McAndrew*, 131 A.3d 717, 722 (R.I. 2016)).

29. *Id.*

30. *Id.*

31. *Id.*

pleadings needed in lateness of filing the motion”³² noting that the record established “ample grounds supporting the trial justice’s decision.”³³

Having found no abuse of discretion on the part of the trial justice,³⁴ the court moved on to the issue of the constitutionality of section 13-6-1 and found that the issue was barred by the state’s “raise-or-waive” rule.³⁵ The “raise-or-waive” rule, whereby a party “cannot raise an objection or advance a new theory on appeal if it was not raised before the trial court,”³⁶ is “staunchly adhered to” by the court.³⁷ As part of its analysis, the court considered an exception that “arises when basic constitutional rights are involved”³⁸ and would apply if “the alleged error [was] more than harmless” and “implicate[d] an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial.”³⁹ The court concluded that because this case did not involve a novel rule of law that could not reasonably have been known to counsel at the time of trial, this case did not fall under the exception, and therefore, Plaintiff’s opportunity to discuss the constitutionality of section 13-6-1 had passed.⁴⁰

COMMENTARY

The facts of this case neatly illustrate a complication created by the civil death statute in Rhode Island, namely: if an inmate serving a life sentence is considered civilly dead, what redress does that inmate have when he or she is injured while serving out the life sentence under the state’s care?

32. *Id.*

33. *Id.* Noting that the trial justice observed that “the case would really have to start [over] from square one,” the court agreed that plaintiff’s undue delay in bringing his new claims would create substantial prejudice for defendants, and that no reasonable explanation for the delay was ever provided by plaintiff.” *Id.*

34. *Id.*

35. *Id.* at 550.

36. *Id.* (quoting *Cusick v. Cusick*, 210 A.3d 1199, 1203 (R.I. 2019)).

37. *Id.* (quoting *Cusick*, 210 A.3d at 1204).

38. *Id.*

39. *Id.* (quoting *In re Miguel A.*, 990 A.2d 1223, 1226 (R.I. 2010)).

40. *Id.*

On the one hand, such an inmate is clearly alive. The aggregate amount of money it costs the state to take care of the inmate—to clothe, house, feed, and care for the inmate when ill—attest to the fact that the inmate is alive. So long as he remains in the facility, the inmate is also dependent upon the state—he is unable to clothe, house, or feed himself. Moreover, the inmate is not stationary or in a fixed position: an inmate quite likely moves around the facility and encounters other inmates and staff during his day-to-day affairs. On the other hand, the civil death statute means that the inmate is dead “as if his or her natural death had taken place at the time of the conviction.”⁴¹ Under such circumstances it seems inevitable that at some point an accident or fight may occur or perhaps negligence on the part of a prison guard, janitor, or some employee on the food service staff.

This situation is untenable: the civil death statute leaves the inmate in an impossible position, both “dead” but also very much alive and still capable of being physically injured. Because the statute “imposes a complete bar on life-prisoners’ right to access courts” it is potentially violative of the Access to Courts Clause of the Rhode Island Constitution.⁴² The statute places the court in the awkward position of having to consider how a dead person can suffer injury at the hands of the state in whose charge he has been entrusted. In this case, the court seemed caught between a rock and a hard place as it explains how a plaintiff who is “civilly dead” is also owed “at the very least” a reasoned decision on the motion for leave to file an amended complaint.⁴³

The court pointed out that that the civil death statute has been “on the books” since it was enacted in 1909⁴⁴ and “reiterated” the principle that “repeal is the province of the Legislature.”⁴⁵ In the end, however, the court held that the plaintiff could only argue his constitutional claims if they had been allowed in on a second amended complaint, but they were not. The court’s conclusion that the “raise-or-waive” rule controls here seems correct and, further,

41. See 13 R.I. GEN. LAWS § 13-6-1.

42. See James Michael Kovach, Comment, *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, 411 (2019).

43. *Gallop*, 213 A.3d at 549.

44. *Id.* at 550.

45. *Id.* at 546.

is in keeping with the nature of the rule, which is a “fundamental” rule in Rhode Island that is “staunchly adhered to” by the court.⁴⁶

CONCLUSION

The Rhode Island Supreme Court held that where a plaintiff who is serving a life sentence brings suit because he was attacked by another inmate during pretrial detention, and the lower court already dismissed the claim under the state’s civil death statute, the plaintiff has waived the argument that the state’s civil death statute is unconstitutional under the “raise-or-waive” rule.

Thomas M. Wall

46. *See id.* at 550 (quoting *Cusick v. Cusick*, 210 A.3d 1199, 1203 (R.I. 2019)).