

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-20691
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 27, 2018

Lyle W. Cayce
Clerk

RICARDO ENRIQUEZ SANCHEZ,

Plaintiff-Appellant

v.

LORIE DAVIS; SENIOR WARDEN JONES; STAFF OFFICER PITTMAN,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-2688

United States District Court
Southern District of Texas
FILED

SEP 18 2018

David J. Bradley, Clerk of Court

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Proceeding pro se, Ricardo Enriquez Sanchez, Texas prisoner # 1745089, appeals the dismissal of his 42 U.S.C. § 1983 complaint pursuant to 28 U.S.C. § 1915A(b)(1) and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. We review both rulings *de novo*. *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009); *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005). “Factual allegations must be enough to raise a right

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff may avoid dismissal if he “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It follows that “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting FED. R. CIV. P. 8(a)(2)).

Enriquez Sanchez’s complaint arises from an accident that occurred while he was working in the textile factory at the Huntsville Unit. He maintains that Staff Officer James Pittman, the supervisor of the factory, was deliberately indifferent because he ordered Enriquez Sanchez to work despite complaints of heel pain, refused to let Enriquez Sanchez visit the infirmary, advised Enriquez Sanchez that he would be charged with a disciplinary infraction if he refused to work, and failed to provide Enriquez Sanchez with proper safety equipment and training. Enriquez Sanchez concedes, however, that he had visited the infirmary on the morning of the accident and that he had not been given a medical pass excusing him from work. He therefore is unable to show that Pittman evinced deliberate indifference to his serious medical needs. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Reeves v. Collins*, 27 F.3d 174, 176-77 (5th Cir. 1994). To the extent that Enriquez Sanchez alleged a claim of an unsafe work environment in the district court, his conclusory allegations were insufficient to establish that he was entitled to relief. *See Iqbal*, 556 U.S. at 679.

In addition, Enriquez Sanchez seeks to hold Pittman liable for deficiencies in his medical care after the accident, for limitations on his ability to visit the law library or to engage in recreation at other units, and for the loss

of his personal and legal property during his many prison transfers. However, he has not shown that Pittman was personally responsible for any of these acts, and he thus may not be held liable under Section 1983. *See James v. Texas Collin Cnty.*, 535 F.3d 365, 373 (5th Cir. 2008). Similarly, Lorie Davis, the director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and Warden Jones may not be held liable for the actions of their subordinates that led to Enriquez Sanchez's alleged constitutional violations. *See Cozzo v. Tangipahoa Parish Council-President Gov't*, 279 F.3d 273, 286 (5th Cir. 2002).

Enriquez Sanchez further maintains that he is entitled to relief under the Americans with Disabilities Act (ADA), based on his assertions that after he suffered a broken leg and hand in the textile factory accident, he was impeded from attending medical appointments. In his reply brief, he argues that, under the ADA, he should not have been required to work in the textile factory in light of his ongoing heel pain, asthma, and migraines. As the district court found, Enriquez Sanchez has failed to establish that he had "a qualifying disability" or that he had been "denied the benefits of services, programs, or activities for which the [prison system] is responsible." *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011); *see also Burch v. Coca-Cola Co.*, 119 F.3d 305, 316 (5th Cir. 1997).

For the first time on appeal, Enriquez Sanchez contends that he is suffering from discrimination because he is a Mexican national housed in the Texas prison system. We decline to consider this new theory of relief. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). In addition, Enriquez Sanchez's claims for injunctive relief have been rendered moot by his transfer out of the Huntsville Unit. *See Cooper v. Sheriff, Lubbock Cnty., Tex.*, 929 F.2d 1078, 1084 (5th Cir. 1991).

Enriquez Sanchez has not shown that he is entitled to relief. *See, e.g.,* *Gonzalez*, 577 F.3d at 603; *Geiger*, 404 F.3d at 373. Accordingly, the judgment of the district court is AFFIRMED. Enriquez Sanchez's motion for appointment of counsel is DENIED. *See Ulmer v. Chancellor*, 691 F.2d 209, 212–13 (5th Cir. 1982).

ENTERED

September 14, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ENRIQUEZ SANCHEZ,

§

Plaintiff,

§

VS.

§

LORIE DAVIS, *et al.*,

§

Defendants.

§

CIVIL ACTION NO. 4:16-CV-2688

MEMORANDUM AND ORDER

Plaintiff Ricardo Enriquez Sanchez is an inmate in the Texas Department of Criminal Justice (“TDCJ”). He filed a complaint under 42 U.S.C. § 1983 and the Americans With Disabilities Act (“ADA”) alleging violations of his civil rights.

Sanchez’s complaint named three defendants: Lorie Davis, the Director of the TDCJ’s Correctional Institutions Division; Senior Warden Jones of the TDCJ’s Huntsville Unit; and Corrections Officer Pittman of the Huntsville Unit. On January 9, 2017, this Court *sua sponte* dismissed Sanchez’s claims against Davis and Jones under 28 U.S.C. § 1915A for failure to state a claim upon which relief can be granted. *See* Dkt. No. 21.

On February 17, 2017, Pittman filed a motion to dismiss the complaint under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure. The Court concludes that Pittman’s motion should be granted, and the case dismissed with prejudice.

I. Background

Sanchez alleges that he was suffering from pain in his foot and heel from a condition that predated his admission to TDCJ. TDCJ medical staff provided him with some custom footwear, a steroid injection, and pain medication for his condition.

While at the Huntsville Unit, Sanchez was assigned to work in the textile factory. Defendant Pittman was his supervisor.

Sanchez alleges that he told Pittman of pain in his foot and heel, but that Pittman ordered him to climb a ladder to perform some tasks. Sanchez fell from the ladder, causing injuries.

II. Analysis

A. Standard of Review

In reviewing a motion to dismiss under rule 12(b)(6), the complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true. *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir.1986). The standard of review under rule 12(b)(6) has been summarized as follows: "The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357, at 601 (1969).

B. Deliberate Indifference

To rise to the level of a constitutional violation, prison officials must exhibit deliberate indifference to the prisoner's serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "Deliberate indifference" is more than mere negligence, *Gamble*, 429 U.S. at 104-06, but "something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer*, 511 U.S. at 835. Rather, deliberate indifference requires that the defendant be subjectively aware of a substantial risk of serious harm to the inmate and recklessly disregard that risk. *Id.* at 829, 836.

Sanchez alleges that Pittman is a Corrections Officer; he does not allege that Pittman is a medical professional. While Sanchez alleges that he told Pittman that his foot hurt, Pittman

notes that Sanchez does not allege that he was ever medically unassigned from working in the textile factory, or from any other prison job. In fact, Sanchez specifically states that he requested a medical pass to excuse him from his job, but that medical staff denied the request. Complaint at 8.

In the absence of any medical conclusion that Sanchez was unfit to climb a ladder, Sanchez fails to plead facts showing that Pittman was subjectively aware that directing Sanchez to do so carried a substantial risk of causing serious harm. At most, Sanchez alleges that Pittman was negligent in telling him to climb the ladder after Sanchez complained of foot pain. This is insufficient to plead an Eighth Amendment claim.

C. Americans With Disabilities Act

The ADA provides, in pertinent part, that

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C.A. § 12132. Sanchez does not allege that he is disabled within the meaning of the ADA, nor does he allege that he was “excluded from participation in or . . . denied the benefits of the services, programs, or activities of a public entity,” or that he was discriminated against. He therefore fails to allege any violation of the ADA.

III. Conclusion

For the foregoing reasons, Pittman’s motion to dismiss is granted.

IV. Order

Defendant James Pittman's motion to dismiss (Dkt. No. 39) is GRANTED. The complaint is dismissed with prejudice. All other pending motions are denied as moot.

SIGNED on this 14th day of September, 2017.



Kenneth M. Hoyt
United States District Judge