UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APP. (G)

No: 19-1732

Charles Edward Jones, Sr.

Plaintiff - Appellant

v.

Josephine T. Griffin, Circuit Clerk, Chicot County; Lena Ruals, Deputy Circuit Clerk, Chicot County

Defendants - Appellees

Steven Porch, Circuit Judge, Chicot County; David John Sachar, Executive Director, Judicial Discipline and Disability Commission; Herbert T. Wright, Circuit Judge, Pulaski County; Doe, Chief Justice, Arkansas Supreme Court

Defendants

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00192-BRW)

JUDGMENT

Appellant has not responded to the court's order entered May 14, 2019. It is hereby ordered that this appeal is dismissed for failure to prosecute. See Eighth Circuit Rule 3C. The full $505.00 appellate filing and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court.

Mandate shall issue forthwith.

June 13, 2019

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

App. (E)(F) P. 1-5

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CHARLES EDWARD JONES, SR. **PLAINTIFF**
ADC # 144544

VS. **5:18-CV-00192-BRW**

JOSEPHINE T. GRIFFIN, *et al.* **DEFENDANT**

ORDER

Pending is Plaintiff Charles Edward Jones, Sr.'s Motion for Summary Judgment (Doc. No. 66). Defendants Josephine T. Griffin and Lean Rauls (collectively, "Defendants") have responded.[1] Also pending is Defendants' Motion for Summary Judgement. (Doc. No. 67). Plaintiff has responded and Defendants have replied.[2] For the reasons set out below, Defendants' Motion (Doc. No. 67) is GRANTED and Plaintiff's Motion (Doc. No. 66) is DENIED. The Motion to Strike (Doc. No. 72) is DENIED as MOOT.

I. BACKGROUND

Plaintiff filed a petition for *habeas corpus* in the Circuit Court of Chicot County, Arkansas, on May 30, 2017; the case is still pending before Judge Steven Porch.[3] At the time Plaintiff filed this § 1983 action, he had received no judicial response to his petition or any other filing he made in his *habeas* case.[4]

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[1] Doc. No. 67.

[2] Doc. Nos. 70 & 71, respectively.

[3] Doc. No. 1.

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[4] *Id.*; *Jones v. Kelley*, 09CV-17-55, Circuit Court of Chicot County, Arkansas. Information regarding this case is available at https://caseinfo.arcourts.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=09CV-17-55&begin_date=&end_date=

After first dismissing all claims, I granted in part Plaintiff's Motion for Reconsideration and allowed his access to the courts claims against Chicot County Circuit Court Clerk Josephine T. Griffin and Deputy Clerk Lena Rauls to proceed.[5] Plaintiff alleged Defendants did not provide him a certified copy of his May 30, 3017 *habeas* petition despite numerous requests. He maintained that without the certified copy, he could not proceed with a petition for a writ of mandamus at the Arkansas Supreme Court.[6] Defendants dispute his assertions.[7]

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds.[3] The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

> The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.[4]

The Court of Appeals for the Eighth Circuit has cautioned that summary judgment is an extreme remedy that should be granted only when the movant has established a right to the judgment beyond controversy.[5] Nevertheless, summary judgment promotes judicial economy by preventing trial when no genuine issue of fact remains.[6] A court must view the facts in the light

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[5] Doc. No. 17.

[6] Plaintiff seeks an order directing the presiding judge to rule on his pending *habeas* petition.

[7] Doc. Nos. 67-69.

[3] *Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56.

[4] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

[5] *Inland Oil & Transport Co. v. United States*, 600 F.2d 725, 727 (8th Cir. 1979).

[6] *Id.* at 728.

most favorable to the party opposing the motion.[7] The Eighth Circuit has also set out the burden of the parties in connection with a summary judgment motion:

> [T]he burden on the party moving for summary judgment is only to demonstrate, *i.e.*,"[to point] out to the District Court," that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.[8]

Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment.[9]

III. DISCUSSION

Defendants maintain summary judgment should be entered in their favor on three grounds: (1) they did not violate Plaintiff's right to access the courts; (2) they are entitled to qualified immunity; and (3) negligence cannot support a § 1983 claim.

Qualified immunity is available where a government official's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[8] Whether a government official is entitled to qualified immunity is decided under a two-prong test: (1) whether the facts alleged make out violation of a constitutional right; and (2) whether, at the time of the alleged misconduct, the constitutional right violated was clearly

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[7]*Id.* at 727-28.

[8]*Counts v. MK-Ferguson Co.*, 862 F.2d 1338, 1339 (8th Cir. 1988) (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-74 (8th Cir. 1988) (citations omitted)).

[9]*Anderson*, 477 U.S. at 248.

[8] *Sisney v. Reisch*, 674 F.3d 839, 844 (internal citation omitted).

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established.[9] Issues concerning qualified immunity are appropriately resolved on summary judgment. But "[i]if there is a genuine dispute concerning predicate facts material to the qualified immunity issue, there can be no summary judgment."[10]

Plaintiff's communications with Defendants generally asked for "certified file marked" copies.[11] In response to Plaintiff's requests, Defendant Lena Rauls sent him file-marked copies because that is what she thought he wanted.[12] Correspondence in the record supports Ms. Rauls's explanation for her actions. In the numerous letters to Plaintiff, she repeatedly assured him that the court would provide him and Judge Porch file-marked copies of Plaintiff's documents.[13] Considering this, Plaintiff's access to the courts claim cannot succeed because I find there was no constitutional violation. Plaintiff has presented no evidence that Defendants' actions in not providing him certified copies were intentional. Based on the correspondence attached to Defendants' Motion for Summary Judgment, Defendants' actions appear to be negligent. "[N]egligent conduct by state actors does not implicate any aspect of the due process clause."[14] Moreover, a writ of mandamus is "in fact appellate although in form original."[15]

MORE THAN TWO (2) YEARS OF ASKING FOR CERTIFIED FILED MARK COPY IS MORE THAN MERE NEGLIGENT CONDUCT

[9] *Id.*

[10] *Nelson v. Correctional Medical Services*, 583 F.3d 522, 528 (8th Cir. 2009) (internal citation omitted).

[11] *See, for example*, Doc. No. 68-1 at 8.

[12] *Id.* at 6.

[13] *Id.* at 23, 25, 30, 36, 37, 42, 49, 52.

[14] *Myers v. Morris*, 810 F.2d 1437, 1468-69 (8th Cir. 1987) (citing *Daniels v. Williams*, 474 U.S. 327 (1986)).

[15] *Dillard v. Keith*, 986 S.W. 2d 100, 101 (Ark. 1999).

Under Arkansas law, the appellant bears the responsibility for perfecting an appeal.[16] Further, it appears that Plaintiff failed to pursue the state remedies available to him to obtain the certified copies he sought.[17] Lastly, even if there was a constitutional violation, Defendants would be entitled to qualified immunity because, under the facts of this case, no right violated was clearly established. Accordingly, summary judgment will be entered in favor of Defendants.

CONCLUSION

1. Defendants' Motion for Summary Judgment (Doc. Nos. 67) GRANTED and this case is DISMISSED with prejudice.

2. Plaintiff's Motion for Summary Judgment (Doc. No. 66) is DENIED.

3. Plaintiff's Motion to Strike (Doc. No. 72) is DENIED.

4. I certify under 28 U.S.C. § 1915(a)(3)that an *in forma pauperis* appeal from this Order and accompanying Judgment will not be taken in good faith.

IT IS SO ORDERED this 18th day of March, 2019.

Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

[16] *Maness v. Dist. Court, Logan County-Northern Div.*, 495 F.3d 943, 945 (8th Cir. 2007) (citing *Sullivan v. Arkansas*, 784 S.W.2d 155, 156 (Ark. 1990)).

[17] *See id.*

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Additional material from this filing is available in the Clerk's Office.