

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 19-6498**

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**JAMES RAY CLARK,****Plaintiff - Appellant,****v.****UNC HOSPITALS; UNKNOWN DOCTOR, UNC Hospitals****Defendants - Appellees.**

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**Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:18-ct-03207-FL)**

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**Submitted: September 12, 2019****Decided: September 25, 2019**

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**Before KEENAN, QUATTLEBAUM, and RUSHING, Circuit Judges.**

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**Affirmed by unpublished per curiam opinion.**

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**James Ray Clark, Appellant Pro Se.**

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**Unpublished opinions are not binding precedent in this circuit.**

PER CURIAM:

James Ray Clark appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Clark v. UNC Hosps.*, No. 5:18-cv-03207-FL (E.D.N.C. Apr. 5, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

JAMES RAY CLARK,  
Plaintiff,  
v.

**Judgment in a Civil Case**

UNC HOSPITALS and  
UNKNOWN DOCTOR,  
Defendants.

Case Number: 5:18-CT-3207-FL

**Decision by Court.**

This action came before the Honorable Louise W. Flanagan, United States District Judge, for frivolity review pursuant to 28 U.S.C. § 1915.

**IT IS ORDERED AND ADJUDGED**, in accordance with the court's order entered this date, that this action is hereby dismissed.

This Judgment Filed and Entered on April 5, 2019, with service on

James Ray Clark 0077262 (via U.S. Mail)  
Pender Correctional Institution  
P.O. Box 1058  
Burgaw, NC 28425

April 5, 2019

PETER A. MOORE, JR., CLERK  
/s/ M. Castania

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By M. Castania, Deputy Clerk

APP- A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:18-CT-3207-FL

JAMES RAY CLARK, )  
                          )  
Plaintiff,            )  
                          )  
v.                     )                            ORDER  
                          )  
UNC HOSPITALS and UNKNOWN )  
DOCTOR,                )  
                          )  
Defendants.            )

Plaintiff, a state inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. The matter is before the court for frivolity review pursuant to 28 U.S.C. § 1915 and on plaintiff's motion for summary judgment (DE 10).

28 U.S.C. § 1915 provides that courts shall review complaints filed by prisoners and dismiss such complaints if they are "frivolous" or fail to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(I)-(ii). A complaint may be found frivolous because of either legal or factual deficiencies. First, a complaint is frivolous where "it lacks an arguable basis . . . in law." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are based on an "indisputably meritless legal theory" and include "claims of infringement of a legal interest which clearly does not exist." Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quoting Neitzke, 490 U.S. at 327). Under this standard, complaints may be dismissed for failure to state a claim cognizable in law, although frivolity is a more lenient standard than that for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Neitzke, 490 U.S. at 328. Second, a complaint may be frivolous where it "lacks

an arguable basis . . . in fact.” Id. at 325. Section 1915 permits federal courts “to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” See Denton v. Hernandez, 504 U.S. 25, 32 (1992) (citing Neitzke, 490 U.S. at 327).

To state a claim on which relief may be granted, the complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In evaluating whether a claim is stated, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff,” but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted). In other words, the plausibility standard requires a plaintiff to articulate facts that, when accepted as true, plausibly demonstrate that plaintiff is entitled to relief. Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (quotations omitted).

Here, plaintiff contends defendants provided him unwanted medical treatment on or about January 15, 2018. (Compl. (DE 1) 5-7). This claim sounds in negligence, and is not sufficient to state an Eighth Amendment violation. See Pabon v. Wright, 459 F.3d 241, 250 (2nd Cir. 2006) (“[I]nadvertent failures to impart medical information cannot form the basis of a constitutional violation.”); McLean v. Casino, No. 5:13-CT-3065-FL, 2014 WL 4384037, at \*4 (E.D.N.C. Sept. 3, 2014); see also Hutchinson v. Razdan, No. 11-20159-Civ-COHN, 2013 WL 811882, at \*7 (S. D. Fla. Jan. 29, 2013) (“A claim regarding lack of informed consent without more is one of medical negligence, not deliberate indifference and . . . negligent conduct . . . does not rise to the level of a

constitutional violation.”). Plaintiff’s summary judgment motion could also be liberally construed as amending his complaint to include a medical malpractice claim. (See Mot. (DE 10) 2). However, any claim that defendants’ treatment was negligently ineffective is without merit, because mere negligence or malpractice in diagnosis or treatment also does not state a constitutional claim. Estelle v. Gamble, 429 U.S. 97, 105-106 (1976); Johnson v. Quinones, 145 F.3d 164, 168 (4th Cir. 1998). Thus, plaintiff fails to allege a viable constitutional claim, and further amendment would not cure the defects in his complaint.

Plaintiff’s complaint can also be liberally construed to allege state-law negligence or intentional tort claims. Because the court will dismiss all claims over which it has original jurisdiction, the court declines to exercise supplemental jurisdiction over any state law claim. 28 U.S.C. § 1337(c)(3); Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995); see also Loughlin v. Vance Cty. Dep’t of Soc. Servs., No. 5:14-CV-219-FL, 2015 WL 11117120, at \*7 (E.D.N.C. Mar. 31, 2015) (“The doctrine of supplemental jurisdiction gives federal courts discretion to dismiss state law claims when the federal basis for an action drops away”).

Finally, plaintiff’s motion for summary judgment is premature and, in light of the court’s frivolity determination, moot. Accordingly, the court denies the motion.

Based on the foregoing, the court DISMISSES plaintiff’s federal claims as frivolous, and DISMISSES plaintiff’s potential state law claims without prejudice. The court also DENIES plaintiff’s motion for summary judgment (DE 10). The clerk is DIRECTED to close this case.

SO ORDERED, this 5th day of April, 2019.

  
LOUISE W. FLANAGAN  
United States District Judge

FILED: November 15, 2019

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-6498  
(5:18-cv-03207-FL)

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JAMES RAY CLARK

Plaintiff - Appellant

v.

UNC HOSPITALS; UNKNOWN DOCTOR, UNC Hospitals

Defendants - Appellees

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O R D E R

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The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Keenan, Judge Quattlebaum, and  
Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

APP-B