NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-6063

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 07, 2019
DEBORAH S. HUNT, Clerk

BOAZ PLEASANT-BEY,

Plaintiff-Appellant,

v.

SHELBY COUNTY; COMMANDER ROY RODGERS; CHAPLIN J. HAWKINS; CHIEF JAMES E. COLEMAN; CHIEF ROBERT L. MOORE; CHIEF ROD BOWERS; CHARLINE MCGHEE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

ORDER

Before: BATCHELDER, STRANCH, and LARSEN, Circuit Judges.

Boaz Pleasant-Bey, a pro se Tennessee prisoner, appeals a district court's judgment dismissing his civil rights suit filed pursuant to 42 U.S.C. § 1983; the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et seq.*; the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, *et seq.*; and the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, *et seq.* For the reasons explained below, we affirm the district court's judgment in part, reverse in part, and remand for further proceedings.

I. Facts and Procedural History

Seeking monetary and equitable relief, Pleasant-Bey filed suit in 2011 against the Shelby County (Tennessee) Jail, the County Sheriff, a former sheriff, and numerous jail officials. Pleasant-Bey, a Muslim then housed on the fourth floor of the Jail, asserted that the defendants violated his civil rights by: (1) not hiring an imam to conduct weekly Jumu'ah services, while

providing chaplains for Christian services; (2) forbidding inmates from leading religious services and being elected as imam; (3) classifying Islam as a "gang" and allowing only nine inmates from the fourth floor to attend prayer gatherings that lasted a mere five to ten minutes; (4) requiring the Gang Intelligence Unit ("GIU") to be present at Muslim prayer gatherings, but not at Christian services; (5) not providing a feast at the end of Ramadan; (6) failing to respond to mail regarding the issue of the feast; (7) providing inadequate portions at the two daily meals served during the month of Ramadan; (8) failing to have spiritual counseling available; and (9) conspiring to retaliate against him for using the grievance process. Pleasant-Bey moved to amend his complaint to add a claim that (10) the defendants had violated his right of access to the courts by refusing to copy grievances to allow him to prove exhaustion.

The district court granted Pleasant-Bey's motion to amend, construed his claims against the Jail as claims against the County, and entered a partial dismissal order. *See* 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). Reasoning that supervisors could not be held liable for subordinates' actions under § 1983 pursuant to a theory of respondeat superior, the court dismissed the current and former sheriffs. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Claims 6, 9, and 10 were dismissed for failure to state a claim. *See id.* at 678. Last, the district court held that Pleasant-Bey's transfer to a different facility rendered moot his claims for injunctive relief. *See Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996).

The remaining defendants moved for summary judgment, prompting Pleasant-Bey to file a hybrid response and motion for judgment on the pleadings. He also filed a second motion to amend his complaint. The district court denied Pleasant-Bey's motion to amend. It granted the defendants' motion on the grounds that the claims were time-barred as to events occurring before February 15, 2010, and that the timely parts of the claims were not exhausted. *See* 42 U.S.C. § 1997e(a); *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005) (discussing the one-year limitations period applicable to § 1983 civil rights claims filed in Tennessee).

On appeal, we upheld the dismissal of the time-barred parts of the claims and the claims against the sheriffs. *Pleasant-Bey v. Luttrell*, No. 12-6223 (6th Cir. Oct. 17, 2013) (order).

However, we vacated the district court's judgment in part upon finding that there were genuine factual disputes regarding exhaustion, and because the district court had not considered the merits of Pleasant-Bey's claims under RLUIPA, RFRA, and CRIPA. *Id.*, slip op. at 4. We also vacated the denial of the second motion to amend. *Id.*, slip op. at 5.

On remand, the defendants moved again for summary judgment, reiterating their exhaustion argument and contending, as they had in their initial motion to dismiss, that they were entitled to qualified immunity. Pleasant-Bey filed a response, a summary-judgment motion, and three motions to amend his complaint.

The district court denied the three new motions to amend because the discovery and motion deadlines had expired and some claims were time-barred, but held that Pleasant-Bey had exhausted his administrative remedies. Then, without addressing the defendants' qualified-immunity argument, the court granted summary judgment in favor of the defendants, concluding for three reasons that Pleasant-Bey was not entitled to relief under statutes other than § 1983. First, CRIPA did not provide for a private cause of action. *See* 42 U.S.C. § 1997a(c) (requiring that complaint be signed by Attorney General); *Rudd v. Polsner*, No. 99-4466, 2000 WL 1206516, at *1 (6th Cir. Aug. 18, 2000) (affirming dismissal of action because prisoner had no private right of action under CRIPA). Second, a RFRA claim could not be brought against non-federal defendants. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 & n.1 (2006). And, finally, RLUIPA provided for only injunctive relief, which had been previously denied. *See Haight v. Thompson*, 763 F.3d 554, 568–70 (6th Cir. 2014).

The district court next determined that Pleasant-Bey was not entitled to relief under § 1983. The court declined to consider alleged violations of the Establishment Clause that Pleasant-Bey raised for the first time in his summary-judgment motion. The court then concluded that Pleasant-Bey could not prevail on his claim under the Free Exercise Clause because: security concerns justified limitations on religious services; he failed to produce evidence of an inadequate diet during Ramadan; it was within the defendants' discretion not to provide a feast after Ramadan due to a lack of funds; and the defendants had tried to hire an imam and ultimately did in 2012. Finally,

the court held that the defendants did not violate Pleasant-Bey's rights under the Equal Protection Clause by not providing a feast after Ramadan because the decision was rationally related to the Jail's legitimate governmental interest in allocating its funds to support its penological mission.

In his timely appeal, Pleasant-Bey reasserts his claims, as enumerated above, that the defendants violated his civil rights by: (1) not hiring an imam to conduct weekly Jumu'ah services but providing chaplains for Christian services; (2) forbidding inmates from leading religious services or being elected as imam; (3) classifying Islam as a "gang" and allowing only nine inmates from the Jail's fourth floor to attend prayer gatherings that lasted a mere five to ten minutes; (4) requiring the GIU to be present at Muslim prayer gatherings but not at Christian services; (5) refusing to provide a feast at the end of Ramadan; and (7) providing inadequate portions at the two daily meals served during the month of Ramadan. He relies on RLUIPA, the Free Exercise Clause, the Establishment Clause, and the Equal Protection Clause.

II. Analysis

As an initial matter, we note that Pleasant-Bey does not reassert Claims 6, 8, 9, or 10 in his appeal or argue that he is entitled to relief under RFRA or CRIPA. He also does not assert that the district court erred by denying his second or subsequent motions to amend. Issues raised in the district court but not on appeal are considered abandoned and are not reviewable. *Turner v. City of Taylor*, 412 F.3d 629, 639 (6th Cir. 2005). Thus, we will not consider these claims. Likewise, we decline to review Pleasant-Bey's new claim asserting a violation of the Establishment Clause. The claim was not raised in his amended complaint, and no exceptional circumstances exist that merit its consideration. *See Dealer Comput. Servs., Inc. v. Dub Herring Ford*, 623 F.3d 348, 357 (6th Cir. 2010).

We also note that Pleasant-Bey arguably brought Claims 1, 4, and 5 pursuant to both the Free Exercise and Equal Protection Clauses, but the district court analyzed Claims 1 and 4 solely under the Free Exercise Clause. To the extent that Pleasant-Bey intended to bring Claims 1 and 4 under the Equal Protection Clause as well, we deem them to be implicitly denied and conclude that we have appellate jurisdiction over them. *See United States v. Dubrule*, 822 F.3d 866, 884–

85 (6th Cir. 2016) (citing *Ford Motor Co. v. Transp. Indem. Co.*, 795 F.2d 538, 542–43 (6th Cir. 1986)).

We review a grant of summary judgment de novo. *Peeples v. City of Detroit*, 891 F.3d 622, 630 (6th Cir. 2018). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). And we "must view the facts and any inferences reasonably drawn from them in the light most favorable to the party against whom judgment was entered." *Kalamazoo Acquisitions, L.L.C. v. Westfield Ins. Co.*, 395 F.3d 338, 342 (6th Cir. 2005). We note that Pleasant-Bey filed his complaint subject to penalty of perjury. A verified complaint such as this may serve as an opposing affidavit and response to a motion for summary judgment. *See* 28 U.S.C. § 1746; *King v. Harwood*, 852 F.3d 568, 578 (6th Cir. 2017).

A. RLUIPA Claim

Upon review, we conclude that the district court properly determined that Pleasant-Bey was not entitled to relief under RLUIPA. The Act simply does not permit claims for monetary damages. *Sossamon v. Texas*, 563 U.S. 277, 288 (2011); *Haight*, 763 F.3d at 567–70. And Pleasant-Bey's request for injunctive relief became moot once he was transferred from the Jail. *See Colvin v. Caruso*, 605 F.3d 282, 289 (6th Cir. 2010).

B. § 1983 Claims

We next consider the § 1983 claims. Generally, "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (alteration in original) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Specifically, the *Turner* test has four factors:

> First, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it. If not, the regulation is unconstitutional, and the other factors do not matter. Unlike the first factor, the remaining factors are considerations that must be balanced together: (2) whether there are alternative means of exercising the right that remain open to prison inmates; (3) the impact that accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources

> generally; and (4) whether there are ready alternatives available that fully accommodate the prisoner's rights at de minimis cost to valid penological interests.

Colvin, 605 F.3d at 293 (quoting *Spies v. Voinovich*, 173 F.3d 398, 403 (6th Cir. 1999)).

Pleasant-Bey presses five claims of constitutional violation in this appeal.

1. Failure to Hire Imam

Pleasant-Bey claims the defendants violated his rights under the Free Exercise and Equal Protection Clauses by failing to hire an imam to conduct the weekly Jumu'ah services required by his faith. The defendants provided a volunteer imam, who conducted only three Friday services on the fourth floor during all of 2010. These services lasted approximately fifteen minutes and did not meet the Islamic requirements for a Jumu'ah service. Christian chaplains provided weekly services for Christian prisoners.

The defendants explained that there was no policy not to hire an imam and that their failure to hire an imam was not due to a discriminatory purpose. In his affidavit, Chief Jailer Robert Moore stated that the Jail endeavored to provide religious leaders for as many religions as possible and that the volunteer imam conducted services as his schedule allowed. Attempts to recruit additional volunteer imams had been unsuccessful, and the Jail was still seeking to hire an imam at the time of the defendants' first summary-judgment motion. Ultimately, in 2012, the Jail was able to do so. Pleasant-Bey did not present any evidence showing that the earlier inability to hire an imam was deliberate and he conceded that the limited services provided by the volunteer imam were due to the imam's schedule. In sum, even viewing the evidence in Pleasant-Bey's favor, the defendant's failure to hire an imam did not violate his constitutional rights.

2. Prohibition of Prisoner-Led Religious Groups

Pleasant-Bey also contends that Jail policy violated his Free Exercise rights by prohibiting prisoners from conducting religious services, which deprived him of his religious "right" to elect a qualified prisoner to be the imam and deprived him personally of the opportunity to be elected imam. Defendant Moore averred in his affidavit that Jail policy prohibits any and all prisoners from having a position of religious leadership or authority over other prisoners or religious services so as to maintain all prisoners on an equal basis for security purposes.

The prohibition on prisoner-led religious "groups necessarily exists to avoid the risks that would rise from unsupervised inmate activity and the creation of an alternate, inmate-led power structure in the prison, and, thus, clearly has a valid, rational connection to [the Jail's] interest in maintaining prison security." *Spies*, 173 F.3d at 405–06; *id.* at 406 (explaining that prison security is "central to all other corrections goals") (quoting *Thornburgh v. Abbott*, 490 U.S. 401, 415 (1989)). This court upheld the same policy as constitutionally valid in *Spies*, *see id.* at 405–06; Pleasant-Bey has offered no reason for distinguishing that binding precedent here. Consequently, the policy did not violate the Free Exercise Clause.

3. Restrictions on Islamic Services

Pleasant-Bey claims the defendants violated his rights to Free Exercise and Equal Protection by imposing restrictions on Islamic services that they did not impose on Christian services. Specifically, Pleasant-Bey alleged that the prison classified Islam as a gang, such that only three inmates from each of the three pods on the fourth floor could attend a Friday prayer gathering offered in lieu of a Jumu'ah service, but at Christian worship services on the fourth floor, twenty to thirty inmates were regularly allowed to attend. Pleasant-Bey further alleged that prison officials limited Islamic services to between five and ten minutes (which did not meet the requirements of Jumu'ah), whereas Christian services lasted over an hour. Pleasant-Bey also alleged that the GIU was present at the Friday prayer gatherings but not at Christian services, even though there were gang members at both. And he presented affidavits from fellow inmates corroborating his allegations.

Defendant Moore averred in his affidavit that all fourth-floor religious services generally could last about one hour and be attended by twenty inmates but that participation could be limited pursuant to Jail policy for security purposes. He further explained that the fourth floor housed inmates who were the highest security risks, had a history of assaultive behavior, or both. He denied that Muslim inmates were considered to be gang members, although some had been identified as such. He also acknowledged that the GIU provided security at Jumu'ah services but stated that it did not intervene in the absence of an institutional violation.

Moore's affidavit addressed restriction on fourth-floor worship services in general. It does not explain the alleged disparate treatment of Islam, namely, the more onerous restrictions allegedly placed on Islamic but not Christian services. And the district court overlooked the salience of the alleged discriminatory treatment of Islam, focusing instead on the reasonableness of worship restrictions generally. Viewing the evidence in the light most favorable to Pleasant-Bey, material fact disputes preclude summary judgment on these claims. If these allegations are proven to be true—and absent adequate justification for the restrictions and the alleged *difference in treatment*—such disfavored treatment would likely violate both Free Exercise and Equal Protection. *See Colvin*, 605 F.3d at 293.

4. Id Ul Fitr Meal

Pleasant-Bey claims the defendants violated his rights to Free Exercise and Equal Protection by refusing to provide a feast, known as Id Ul Fitr,[1] to celebrate the completion of Ramadan but provided a Christmas holiday meal for all inmates. Defendant Moore averred that the Jail did "not have the funds to provide a Ramadan feast, which lasts for three (3) days."

Pleasant-Bey averred that only one meal was necessary for Id Ul Fitr and that the traditional foods were turkey, lamb, chicken, rice, dates, and vegetables. The Jail provided a Christmas dinner to all inmates, which included "turkey, dressing, sweet potatoes, cranberry sauce, sweet potato pie (or other special des[s]ert) and juice." Pleasant-Bey also alleged that some Christian prisoners had the opportunity to participate in a three-day revival with food for Christian inmates only and that the defendants required every pod and each internal wall to be decorated with Christmas decorations. The defendants did not reply to these contentions.

Absent a legitimate penological justification, the lack of an opportunity to participate in Id Ul Fitr could violate a Muslim prisoner's Free Exercise rights. *Id.* Moreover, Pleasant-Bey disputes Defendant Moore's assertion that there were no funds. Some prisons do provide the feast,

---

[1] Id Ul Fitr is sometimes referred to as Eid ul Fitr or Eid al Fitr. *See, e.g.*, *Totten v. Caldwell*, No. 11-12485, 2012 WL 3965045, at *4 (E.D. Mich. July 31, 2012) (unpublished report and recommendation); *Ford v. McGinnis*, 230 F. Supp. 2d 338, 341 (S.D.N.Y. 2002), *rev'd*, 352 F.3d 582, 597 (2d Cir. 2003).

Ford, 352 F.3d at 596, and Moore himself stated "special diets will be approved if possible" for inmates with religious dietary restrictions. Viewing the record in the light most favorable to Pleasant-Bey, genuine issues of material fact exist as to whether the defendants had a legitimate penological justification for not offering an Id Ul Fitr meal and whether they acted with discriminatory intent by treating Muslims differently from Christians.

5. Nutritionally Adequate Ramadan Meals

Finally, Pleasant-Bey claims the two meals a day provided during the month of Ramadan were insufficient because they were half of the size of normal meals, he lost ten pounds during Ramadan, and the small portions made it difficult to maintain his fast and caused abnormal stomach aches. Moore averred that "[a] nutritionist approves all inmate meals."

A prisoner has a right under the Free Exercise Clause to a nutritious diet during Ramadan. *Welch v. Spaulding*, 627 F. App'x 479, 483 (6th Cir. 2015); *see Colvin*, 605 F.3d at 290. "[T]he question of whether a prison official has knowingly provided a nutritionally inadequate diet is a fact-specific inquiry that requires consideration of, inter alia, daily caloric content, duration of the diet, and the nutritional needs of the prisoner." *Welch*, 627 F. App'x at 483.

Here, the defendants did not allege that the meals Pleasant-Bey received during Ramadan were nutritionally adequate; they allege only that "all inmate meals" were "approve[d]" by a nutritionist. The nutritionist was not identified, nor were the standards for approval defined. Viewing the facts in the light most favorable to Pleasant-Bey, a genuine issue of material fact exists as to whether he received a nutritionally adequate diet during Ramadan.

* * *

The above analysis requires that we reverse the district court's disposition of Pleasant-Bey's claims regarding the allegedly disparate worship restrictions, the denial of the Id Ul Fitr meal, and the adequacy of Pleasant-Bey's meals during Ramadan. But that does not necessarily mean that those claims will go to trial. In their initial motion to dismiss and again in their supplemental summary-judgment motion, the defendants claimed that they were entitled to qualified immunity. The qualified-immunity defense requires us to look to whether the officials'

acts violated statutory or constitutional rights that were clearly established at that time, such that a reasonable official would have understood that he was violating those rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Because the district court granted summary judgment to the defendants on other grounds and, therefore, did not address qualified immunity in its ruling, the defendants did not brief the issue on appeal. We decline to decide the defendants' entitlement to qualified immunity in the first instance on appeal. But the defendants may take up the issue on remand.

Accordingly, we **AFFIRM** the district court's judgment in part, we **REVERSE** the judgment in part, and we **REMAND** the action for further proceedings consistent with this order.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk