IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
September 17, 2019
Lyle W. Cayce
Clerk

No. 18-40673
Summary Calendar

CALVIN RAY CASH,

Plaintiff-Appellant

v.

JOHN RUPERT; PAMELA PACE,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:17-CV-49

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:*

Calvin Ray Cash, Texas prisoner # 1784450, was assessed a $100 annual health care services fee following a sick call visit. He filed a grievance challenging this fee, which defendant Pamela Pace denied because Cash's allergies were not considered a "chronic" condition that would be exempt from the fee. Cash filed a 42 U.S.C. § 1983 complaint against Pace and Warden John Rupert.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court granted Pace's motion to dismiss reasoning that Cash had not alleged Pace was personally involved in the assessment of the fee, a prisoner has no protected liberty interest in having a grievance resolved to his satisfaction, and Pace was entitled to qualified immunity. Rupert's motion for summary judgment was granted, and the complaint against him was dismissed based on conclusions that Rupert was immune from a claim for damages in his official capacity, that he was not liable under a theory of respondeat superior, that Cash had not shown a constitutional violation, and that even if Rupert had been involved in the assessment of the fee, he would be entitled to qualified immunity because his actions would not have been unreasonable. On appeal, Cash fails to brief, and thus abandons, any challenge to several of the district court's conclusions, including that neither defendant was personally involved in the assessment of the fee, that Cash does not have a basis for a civil rights complaint for the denial of his grievance, and that, to the extent that Rupert was sued in his official capacity, such a claim was barred by the Eleventh Amendment. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Instead, Cash argues that the defendants should be liable for the actions of their subordinates or for their alleged failure to adequately train their subordinates. Supervisory officials generally are not liable for the actions of subordinates on a theory respondeat superior or vicarious liability. *See Cozzo v. Tangipahoa Par. Council-President Gov't*, 279 F.3d 273, 286 (5th Cir. 2002); *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir. 1987). "A supervisory official may be held liable . . . only if (1) he affirmatively participates in the acts that cause the constitutional deprivation, or (2) he implements unconstitutional policies that causally result in the constitutional injury." *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011) (internal quotation marks and citation omitted). Cash's arguments fail to meet this standard because the fee is required by state

law and he has not alleged, much less pointed to any evidence, that it results from any policy implemented by these defendants. *See also Morris v. Livingston*, 739 F.3d 740, 746-52 (5th Cir. 2014) (rejecting various constitutional challenges to health care services fee).

The district court also concluded that Cash had not overcome qualified immunity. To determine whether qualified immunity applies, this court engages in a two-part inquiry, "asking: first, whether '[t]aken in the light most favorable to the party asserting the injury, . . . the facts alleged show the officer's conduct violated a constitutional right'; and second, 'whether the right was clearly established.'" *Trammell v. Fruge*, 868 F.3d 332, 339 (5th Cir. 2017) (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). Cash has not alleged that either Pace or Rupert had a role in violating any of his constitutional rights.

Cash's brief also appears to raise a claim of deliberate indifference to his medical needs. However, because he did not raise such a claim in the district court, we decline to consider it. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). In addition, such a claim likely would be meritless. A prisoner must establish that prison officials "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001) (internal quotation marks and citation omitted). Cash does not allege that he did not receive treatment or medications for his allergies; he argues he should not have been assessed a fee for the care he received.

Finally, Cash moves this court to allow him to append certain records as exhibits to his brief. He seeks to include four documents, but they are already in the record on appeal.

AFFIRMED; MOTION DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
September 17, 2019

Lyle W. Cayce
Clerk

No. 18-40673
Summary Calendar

D.C. Docket No. 6:17-CV-49

CALVIN RAY CASH,

Plaintiff - Appellant

v.

JOHN RUPERT; PAMELA PACE,

Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Texas

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CALVIN RAY CASH, #1784450	§	
VS.	§	CIVIL ACTION NO. 6:17cv49
JOHN RUPERT, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Calvin Ray Cash, an inmate confined at the Coffield Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis,* filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that Warden Rupert's motion for summary judgment should be granted and that the lawsuit should be dismissed. Mr. Cash has filed objections.

The lawsuit concerns a co-payment for medication. Mr. Cash contends the co-payment was incorrectly assessed under prison rules because the underlying condition was a chronic condition. Warden Rupert, the only defendant remaining in the lawsuit, argues that he is entitled to summary judgment based on sovereign immunity, lack of personal involvement, Mr. Cash's failure to show a constitutional violation, qualified immunity, and failure to exhaust. Judge Mitchell found that Warden Rupert is entitled to summary judgment on all but his last argument.

In his objections, Mr. Cash argues that the defendants are not entitled to sovereign immunity for actions performed in their official capacities. It is initially noted that the issue

before the court concerns whether Warden Rupert is entitled to summary judgment, as opposed to the other defendants. Nonetheless, the Eleventh Amendment provides that the State of Texas, as well as its agencies, are immune from liability. *Kentucky v. Graham*, 473 U.S. 159, 167 (1985). The Eleventh Amendment bars claims against a State brought pursuant to 42 U.S.C. § 1983. *Aguilar v. Texas Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998). In *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989), the Supreme Court held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." The Supreme Court upheld the dismissal of the Michigan Department of State Police and its Director sued in his official capacity. *Id.* The Fifth Circuit has accordingly "held that the Eleventh Amendment bars recovering § 1983 money damages from TDCJ officers in their official capacity." *Oliver v. Scott*, 276 F.3d 736, 742 (5th Cir. 2002). Warden Rupert is entitled to summary judgment to the extent that Mr. Cash has sued him in his official capacity for monetary damages.

Mr. Cash also argues in his objections that Warden Rupert should be liable as the Head Warden of the Coffield Unit, which makes him legally responsible for the operation of the unit. The United States Supreme Court has held, however, that the doctrine of *respondeat superior* does not apply in § 1983 actions. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978). Moreover, the term supervisory liability in the context of a § 1983 lawsuit is a "misnomer" since "[e]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). A supervisor may be held liable only if one of the following exists: (1) his personal involvement in the constitutional deprivation, or (2) sufficient causal connection between the supervisor's wrongful conduct and the constitutional

violations. *Thompkins v. Belt*, 828 F.2d 298, 303-304 (5th Cir. 1987). Mr. Cash has not satisfied either criteria.

Mr. Cash next addresses the defense of qualified immunity. He appropriately discusses the standard articulated by the Supreme Court in *Pearson v. Callahan*, 555 U.S. 223 (2009). He did not, however, apply the standard to the facts of this case. Nonetheless, the first prong is whether "the challenged conduct, viewed in the light most favorable to the plaintiff, would actually amount to a violation of [constitutional or] federal law." *Wernecke v. Garcia*, 591 F.3d 386, 392 (5th Cir. 2009) (citation omitted). The second is "whether the defendant's actions violated clearly established statutory or constitutional rights of which a reasonable person would have known." *Flores v. City of Palacios*, 381 F.3d 391, 395 (5th Cir. 2004) (citations omitted).

In the present case, Mr. Cash has not shown that Warden Rupert violated his constitutional rights. He has not satisfied the first prong in the qualified immunity analysis. Furthermore, with respect to the second prong, Mr. Cash has not shown that Warden Rupert's actions were objectively unreasonable even if he had charged Mr. Cash a co-payment. State law provides for co-payments for health care. Tex. Gov't Code § 501.063. The Fifth Circuit has found that the prison system may take funds from an inmate's trust fund account for medical care. *Morris v. Livingston*, 739 F.3d 740, 748 (5th Cir. 2014). The prison system was authorized to charge Mr. Cash a co-payment, and Warden Rupert's actions would not have been unreasonable if he had been involved in the matter. Mr. Cash claims that the prison system did not follow the rule for charging co-payments, but a violation of prison regulations, without more, does not state a

constitutional violation. *See Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986). Warden Rupert is entitled to summary judgment based on qualified immunity.

Mr. Cash finally discusses the issue of exhaustion of administrative remedies. He argues that he exhausted his administrative remedies. Judge Mitchell reached the same conclusion in the Report and Recommendation. Warden Rupert did not object to the finding, and the issue is not before the court.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Cash to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Cash's objections are without merit. Therefore, the court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED Warden Rupert's motion for summary judgment (Dkt. #66) is **GRANTED** and the case is **DISMISSED** with prejudice. All motions not previously ruled on are **DENIED**.

So Ordered and Signed
Jun 27, 2018

Ron Clark, United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CALVIN RAY CASH, #1784450	§	
VS.	§	CIVIL ACTION NO. 6:17cv49
JOHN RUPERT, ET AL.	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Calvin Ray Cash, an inmate confined at the Coffield Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Warden John Rupert and Practice Manager Pamela Pace. The complaint was referred for findings of fact, conclusions of law and recommendations for the disposition of the lawsuit.

The present Report and Recommendation concerns Defendant Pace's motion to dismiss (Dkt. #15). Plaintiff has filed a response (Dkt. #18).

Plaintiff's Factual Allegations

The original complaint was filed on January 25, 2017. In May 2016, Plaintiff submitted a request for a refill of a medication that he had been taking for one and one-half years. A co-payment was deducted from his inmate trust fund account. Plaintiff states that he wrote requests to both defendants complaining about the withdrawal of the medical co-payment from his trust fund account. He then submitted a Step 1 grievance. Warden Rupert forwarded the grievance to Pace for a answer, and she denied his request for reimbursement. Plaintiff contends that the co-payment was incorrectly

assessed because the underlying condition was for a chronic condition, which does not initiate the co-payment. More specifically, AD-06.08 provides that inmates shall not be charged for chronic care or a follow-up examination. Plaintiff is seeking compensatory and punitive damages.

Defendant Pace's Motion to Dismiss

Defendant Pace filed a motion to dismiss (Dkt. #15) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on April 17, 2017. She asserts that the claims against her should be dismissed because they fail to overcome her entitlement to qualified immunity. She further claims that Plaintiff's conclusory allegations fail to state an actionable claim against her. Pace's arguments will be fully examined in the Discussion and Analysis section of this Report and Recommendation.

Plaintiff's Response

Plaintiff filed a response (Dkt. #18) on April 28, 2017. He asserts that the charge was illegal and a violation of AD-06.08. He again states that co-payments are not charged for chronic care visits. He asserts that both defendants violated the policy found in AD-06.08.

Standard of Review

Rule 12(b)(6) allows dismissal if a plaintiff fails "to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). The Supreme Court clarified the standards that apply in a motion to dismiss for failure to state a claim in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The Supreme Court stated that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* at 555. The Supreme Court held that "we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. *Id.* at 570. A complaint may be dismissed if a plaintiff fails to "nudge [his] claims across the line from conceivable to plausible." *Id.* The

distinction between merely being possible and plausible was reiterated by the Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Supreme Court applied *Twombly* in a prisoner civil rights lawsuit in *Erickson v. Pardus*, 551 U.S. 89 (2007). In *Erickson*, the district court had granted the defendants' motion to dismiss based on qualified immunity because the plaintiff purportedly had not alleged facts sufficient to state a claim upon which relief may be granted. In reversing the decision, the Supreme Court reiterated that a plaintiff is not required to plead specific facts; instead, he need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Id.* at 93 (quoting *Twombly,* 550 U.S. at 555). In ruling on a "motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." *Id.* at 94 (citations omitted). In *Erickson*, the Supreme Court criticized the appellate court's departure from the liberal pleading standards set forth in Rule 8(a)(2), particularly since the prisoner was proceeding *pro se* and *pro se* pleadings are to be liberally construed. *Id.* The Supreme Court found that the plaintiff had sufficiently plead a deliberate indifference to serious medical needs claim by stating that he had Hepatitis C and that the doctor endangered his life by withholding his prescribed medication shortly after the commencement of the treatment program. *Id.*

Discussion and Analysis

Pace correctly observes that State law provides for co-payments for health care. Tex. Gov't Code § 501.063. Pursuant to the statute, "[a]n inmate confined in a facility operated by or under contract with the department . . . who initiates a visit to a health care provider shall pay a health care services fee to the department in the amount of $100." Tex. Gov't Code § 501.063(a)(1). The "department" for purposes of the statute is the Texas Department of Criminal Justice ("TDCJ"). *See* Tex. Gov't Code § 491.001(a)(3). The statute also prohibits TDCJ from denying an inmate access to medical care as a result of his inability or failure to pay the co-payment. Tex. Gov't Code § 501.063(c).

The Fifth Circuit has found that the prison system may take funds from an inmate's trust fund account for medical care. *Morris v. Livingston*, 739 F.3d 740, 748 (5th Cir. 2014). The Court specifically rejected due process challenges to the statute. *Id.* at 750-51.

Pace argues that the facts alleged do not support a meritorious claim against her. Personal involvement is an essential element of a civil rights cause of action. *Thompson v. Steele*, 709 F.2d 381, 382 (5th Cir. 1983). Plaintiff does not contend that she was the person who actually assessed the fee against him. Instead, she is being sued because she denied his Step 1 grievance. Congress requires inmates to exhaust their "administrative remedies as are available . . ." 42 U.S.C. § 1997e(a). A prison system is not required to establish grievance procedures, and inmates do not have a basis for a lawsuit because a prison system has not established grievance procedures or fails to adhere to it. 42 U.S.C. § 1997e(b). The Fifth Circuit has made it clear that inmates do not have a basis for a meritorious civil rights lawsuit just because they are unhappy with grievance procedures:

> Geiger does not have a federally protected liberty interest in having these grievances resolved to his satisfaction. As he relies on a legally nonexistent interest, any alleged due process violation arising from the alleged failure to investigate his grievances is indisputably meritless.

Geiger v. Jowers, 404 F.3d 371, 374 (5th Cir. 2005). The Fifth Circuit has regularly rejected complaints about prison grievance systems. *See, e.g., Jackson v. Dunn*, 610 F. App'x 397, 398 (5th Cir. 2015); *Burgess v. Reddix*, 609 F. App'x 211, 212 (5th Cir. 2015); *Sanchez v. Calfee*, 558 F. App'x 428, 430 (5th Cir. 2014). Plaintiff does not have a basis for a civil rights lawsuit against Pace just because she denied his Step 1 grievance.

Pace further correctly observes that Plaintiff has not alleged facts demonstrating that TDCJ fails to provide the necessary due process protections regarding the assessment of the co-payment. The Fifth Circuit upheld a Rule 12(b)(6) dismissal of a due process claim by an inmate because he was

unable to show that the State's post-deprivation remedy regarding co-payments was inadequate in any way. *Morris*, 739 F.3d at 750. Overall, Plaintiff has not alleged facts showing a basis for a potentially meritorious civil rights lawsuit against Pace.

Pace also raises the defense of qualified immunity. The defense of qualified immunity protects government officials performing discretionary functions from "liability for civil damages insofar as their conduct does not violate clearly established rights which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Lytle v. Bexar County, Tex.*, 560 F.3d 404, 409 (5th Cir. 2009). "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). "When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (internal quotation marks omitted). "When a defendant invokes qualified immunity, the burden is on the plaintiff to demonstrate the inapplicability of the defense." *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002).

To demonstrate the inapplicability of the qualified immunity defense, the plaintiff must satisfy a two-prong test. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). The first prong is whether "the challenged conduct, viewed in the light most favorable to the plaintiff, would actually amount to a violation of [constitutional or] federal law." *Wernecke v. Garcia*, 591 F.3d 386, 392 (5th Cir. 2009) (citation omitted). The second is "whether the defendant's actions violated clearly established statutory or constitutional rights of which a reasonable person would have known." *Flores v. City of Palacios*, 381 F.3d 391, 395 (5th Cir. 2004) (citations omitted). A court may consider the two-pronged inquiry in any order. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

In the present case, Plaintiff has not shown that Pace engaged in actions which amounted to a violation of constitutional or federal law. He has not satisfied the first prong in the qualified

immunity analysis. Pace is entitled to have the claims against her dismissed based on qualified immunity for that reason alone. He likewise failed to show or even address the second prong in the qualified immunity analysis. He has not alleged facts overcoming Pace's entitlement to qualified immunity. Pace correctly argues that she is entitled to have the claims against her dismissed based on the defense of qualified immunity.

Recommendation

It is therefore recommended that Defendant Pamela Pace's motion to dismiss (Dkt. #15) be granted and the claims against her be dismissed with prejudice.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 3rd day of May, 2017.

K. Nicole Mitchell

K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

Received 08/14/2018

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CALVIN RAY CASH, #1784450	§	
VS.	§	CIVIL ACTION NO. 6:17cv49 APPEAL NO. 18-40673
JOHN RUPERT, ET AL.	§	

ORDER REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL

The Court has considered Appellant's application for leave to proceed *in forma pauperis* on appeal, the certified trust fund account statement or institutional equivalent, and all consents and other documents required by the agency having custody of Appellant to withdraw funds from the account.

It is accordingly **ORDERED** that:

The motion for leave to appeal *in forma pauperis* (Dkt. ##77, 80) pursuant to 28 U.S.C. § 1915 is **GRANTED**.

Calvin Ray Cash, #1784450, is assessed an initial partial filing fee of $6.66. The agency having custody of Appellant shall collect this amount from the trust fund account or institutional equivalent, when funds are available, and forward it to the clerk of the district court.

Thereafter, Appellant shall pay $498.34, the balance of the filing fees, in periodic installments. Appellant is required to make payments of 20% of the preceding month's income credited to Appellant's prison account until Appellant has paid the total filing fee of $505.00. The agency having custody of Appellant shall collect this amount from the trust fund account or institutional equivalent, when funds are available and when permitted by 28 U.S.C. § 1915(b)(2), and forward it to the district court clerk.

The clerk shall mail a copy of this order to the inmate accounting office or other person(s) or entity with responsibility for collecting and remitting to the district court interim filing

payments on behalf of prisoners, as designated by the facility in which Appellant is currently or subsequently confined.

So ORDERED and SIGNED this 10th day of August, 2018.

K. Nicole Mitchell

K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 08, 2019

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 18-40673 Calvin Cash v. John Rupert, et al
USDC No. 6:17-CV-49

The court has denied the motion to extend time to file rehearing in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Casey A. Sullivan, Deputy Clerk
504-310-7642

Mr. Calvin Ray Cash
Ms. Courtney Brooke Corbello
Ms. Shanna Elizabeth Molinare
Mr. David O'Toole

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

Oct. 23, 2017 at 9:24 AM

CALVIN RAY CASH, #1784450 §

VS. § CIVIL ACTION NO. 6:17cv49

JOHN RUPERT, ET AL. §

ORDER

Before the Court is Plaintiff's motion for appointment of counsel (Dkt. #45). "There is no automatic right to the appointment of counsel in a section 1983 case. Furthermore, a district court is not required to appoint counsel in the absence of 'exceptional circumstances' which are dependent on the type and complexity of the case and the abilities of the individual pursuing that case." *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). The request for appointment of counsel does not allege sufficient facts from which this Court can determine that appointment of counsel is necessary. Furthermore, the Court has reviewed the complaint and is of the opinion the case is not unduly complicated requiring the appointment of counsel. *See Robbins v. Maggio*, 750 F.2d 405 (5th Cir. 1985); *Ulmer v. Chancellor*, 691 F.2d 209, 212-13 (5th Cir. 1982). It is accordingly

ORDERED that Plaintiff's motion for appointment of counsel (Dkt. #45) is **DENIED**, subject to later appointment if it is determined that counsel is necessary.

So ORDERED and SIGNED this 23rd day of October, 2017.

K. Nicole Mitchell

K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CALVIN RAY CASH, #1784450	§	
VS.	§	CIVIL ACTION NO. 6:17cv49
JOHN RUPERT, ET AL.	§	

ORDER

Before the Court is Plaintiff's motion for appointment of counsel (Dkt. #22). "There is no automatic right to the appointment of counsel in a section 1983 case. Furthermore, a district court is not required to appoint counsel in the absence of 'exceptional circumstances' which are dependent on the type and complexity of the case and the abilities of the individual pursuing that case." *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). The request for appointment of counsel does not allege sufficient facts from which this Court can determine that appointment of counsel is necessary. Furthermore, the Court has reviewed the complaint and is of the opinion the case is not unduly complicated requiring the appointment of counsel. *See Robbins v. Maggio*, 750 F.2d 405 (5th Cir. 1985); *Ulmer v. Chancellor*, 691 F.2d 209, 212-13 (5th Cir. 1982). It is accordingly

ORDERED that Plaintiff's motion for appointment of counsel (Dkt. #22) is **DENIED**, subject to later appointment if it is determined that counsel is necessary.

So ORDERED and SIGNED this 19th day of June, 2017.

K. Nicole Mitchell

K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE