APPENDIX TABLE OF CONTENTS

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 15, 2020
Lyle W. Cayce
Clerk

No. 19-60596

LEONARD THURMAN,

Plaintiff—Appellant,

versus

MEDICAL TRANSPORTATION MANAGEMENT, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:18-CV-282

Before CLEMENT, HO, and DUNCAN, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

Leonard Thurman is a Medicaid recipient. He asked Medical Transportation Management, Inc. ("MTM") to drive him to a doctor's appointment. But according to the company, Thurman failed to provide MTM with the information needed to confirm his request. In response, Thurman sued under 42 U.S.C. § 1983, among other claims. He alleged that MTM's failure to pick him up violated his purported right to non-emergency medical transportation under various federal regulatory and statutory Medicaid provisions. The district court dismissed Thurman's claims, and rightly so.

Whether a § 1983 claim may be brought to enforce an administrative regulation is an open question in this circuit. But the overwhelming majority of circuits that have decided the issue have held that such claims may not be brought—consistent with the principle that federal rights are created by Congress, not agencies of the Executive Branch, as the Supreme Court has affirmed on various occasions. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001); *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). We agree and therefore join those circuits on this question. We also hold that none of the statutory provisions invoked by Thurman clearly and unambiguously create a right to non-emergency medical transportation, as established precedents require for a claim under § 1983. Accordingly, we affirm.

I.

MTM provides non-emergency medical transportation to Medicaid recipients. Thurman alleges that he requested a pickup for a doctor's appointment to treat complications stemming from a tooth extraction performed two weeks earlier. But MTM did not pick him up. So Thurman filed an internal grievance with MTM. In response, MTM explained that the trip was never confirmed because Thurman did "not provide all trip information" during the scheduling call, placed the MTM representative on hold, and did not return to the line.

Initially proceeding pro se, Thurman sued MTM.[1] He brought, among others, a claim under 42 U.S.C. § 1983. MTM moved to dismiss all claims under Federal Rule of Civil Procedure 12(b)(6). In response, Thurman conceded all claims other than his § 1983 claim. So the single issue

[1] After filing suit, Thurman was represented by two attorneys who filed a brief in response to MTM's motion to dismiss. Both attorneys moved to withdraw before the court decided the motion. The court allowed the withdrawals.

for decision was whether MTM deprived Thurman of a federal right cognizable under § 1983.

Section 1983 only applies to "state actors." But MTM did not dispute Thurman's assertion that it is a "state entity" that is jointly funded by the state and federal governments. So the district court assumed that MTM was acting under color of state law. The district court nevertheless held that there is no federal right to non-emergency medical transportation enforceable in a § 1983 action, and therefore granted MTM's motion to dismiss.

Again proceeding pro se, Thurman appealed and attempted to file a brief with this court multiple times. We initially dismissed Thurman's appeal for want of prosecution. However, on further review, this court reopened the appeal and appointed pro bono counsel. We specifically ordered that the parties file supplemental briefs "addressing whether an administrative regulation may establish a federal right enforceable under 42 U.S.C. § 1983."

II.

We review a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) de novo. *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006). When a court reviews a motion to dismiss for failure to state a claim under Rule 12(b)(6), it accepts "all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999). As the Supreme Court has held, however, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). And a complaint may be dismissed if it clearly lacks merit—for example, where there is "an absence of law to support a claim of the sort made." *Associated Builders, Inc. v. Ala. Power Co.*, 505 F.2d 97, 99 (5th Cir. 1974) (quotations

omitted) (quoting *De Loach v. Crowley's, Inc.*, 128 F.2d 378, 380 (5th Cir. 1942)).

III.

"Section 1983 liability results when a 'person' acting 'under color of' state law, deprives another of rights 'secured by the Constitution' or federal law." *Doe v. United States*, 831 F.3d 309, 314 (5th Cir. 2016) (quoting 42 U.S.C. § 1983). So simply stating a violation of federal law is not enough. *See, e.g.*, *Cuvillier v. Taylor*, 503 F.3d 397, 402 (5th Cir. 2007). Under the plain text of § 1983, a plaintiff may bring an action only for a violation of a "right" afforded to that person under federal law. *See, e.g.*, *Gonzaga*, 536 U.S. at 283. Moreover, federal law "must provide 'an unambiguously conferred right' with an 'unmistakable focus on the benefitted class.'" *Legacy Cmty. Health Servs., Inc. v. Smith*, 881 F.3d 358, 371 (5th Cir. 2018) (emphasis omitted) (quoting *Gonzaga*, 536 U.S. at 283–84).

A.

The first question Thurman raises in this appeal is whether the Medicaid transportation regulation, 42 C.F.R. § 431.53, creates an individual federal right that can be enforced through a § 1983 action. To answer that question, we must decide whether *any* agency regulation can ever independently create individual rights enforceable through § 1983.

We have not answered this question before. *See Texas RioGrande Legal Aid, Inc. v. Range*, 594 F. App'x 813, 815 n.4 (5th Cir. 2014) ("Although there is no dispute that federal statutes may create private rights that are enforceable under § 1983, there is an interesting and difficult question that has divided courts as to whether agency regulations may do the same.") (collecting cases); *Gracia v. Brownsville Hous.*, 105 F.3d 1053, 1057 (5th Cir. 1997) ("[I]t is not clear that regulations can be considered 'laws' for purposes of creating a right actionable under section 1983.") (citing *Wright v. Roanoke*

Redev. & Hous. Auth., 479 U.S. 418, 437–39 (1987) (O'Connor, J., dissenting)).

Nor has the Supreme Court. But the Supreme Court has provided important guidance that, like other circuits, we find dispositive of this question.

In *Sandoval*, the Court held that regulations cannot create causes of action enforceable in federal court. 532 U.S. at 293. "Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not." *Id.* at 291. "Agencies may play the sorcerer's apprentice but not the sorcerer himself." *Id.*

The following year, the Court held that statutory violations may be enforced under § 1983—but *only* if it is clear that Congress actually intended to create an individually enforceable right. *See Gonzaga*, 536 U.S. at 283. The Court explained that "whether a statutory violation may be enforced through § 1983 is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute." *Id.* (cleaned up). "But the inquiries overlap in one meaningful respect—in either case we must first determine whether Congress *intended to create a federal right.*" *Id.* For "it is *rights*, not the broader or vaguer 'benefits' or 'interests,' that may be enforced under the authority of that section." *Id.* Moreover, *Gonzaga* imposes a rigorous standard to ensure that entities are on notice that they could be held liable under § 1983 for violations of the asserted right. "[No]thing short of an unambiguously conferred right" is sufficient "to support a cause of action brought under § 1983." *Id.*

It follows from *Sandoval* and *Gonzaga* that agency regulations cannot independently confer federal rights enforceable under § 1983 for one simple reason: Those cases make clear that it is Congress, and not an agency of the

Executive Branch, that creates federal rights. *See, e.g.*, *Sandoval*, 532 U.S. at 291 ("Language in a regulation . . . may not create a right that Congress has not."); *Gonzaga*, 536 U.S. at 283 ("[No]thing short of an unambiguously conferred right [will] support a cause of action brought under § 1983. . . . [W]e must first determine whether Congress *intended to create a federal right*.").

The Third, Fourth, Sixth, Ninth, and Eleventh Circuits have all reached the same conclusion. *See S. Camden Citizens in Action v. New Jersey Dep't of Envtl. Prot.*, 274 F.3d 771, 788 (3rd Cir. 2001); *Smith v. Kirk*, 821 F.2d 980, 984 (4th Cir. 1987); *Caswell v. City of Detroit Hous. Comm'n*, 418 F.3d 615, 618, 620 (6th Cir. 2005); *Save Our Valley v. Sound Transit*, 335 F.3d 932, 939 (9th Cir. 2003); *Harris v. James*, 127 F.3d 993, 1008 (11th Cir. 1997). Those circuits agree that "the Supreme Court's § 1983 jurisprudence is founded on the principle that Congress creates rights by statute." *Save Our Valley*, 335 F.3d at 936 (citing *S. Camden Citizens in Action*, 274 F.3d at 790; *Harris*, 127 F.3d at 1008–09). For it is "Congress, rather than the executive, [that] is the lawmaker in our democracy." *Save Our Valley*, 335 F.3d at 939.[2]

Thurman asks us to ignore those circuit precedents, and instead follow an earlier decision of the Sixth Circuit, which held that agency

---

[2] The D.C. Circuit has reached the opposite conclusion. But it did so under narrow circumstances not presented here. In that case, Congress "explicitly directed" the Department of Housing and Urban Development to issue certain regulations to ensure compliance with federal statutes. *Samuels v. District of Columbia*, 770 F.2d 184, 199 (D.C. Cir. 1985). As the court concluded, "*[a]t least where Congress directs regulatory action*, we believe that the substantive federal regulations issued under Congress' mandate constitute 'laws' within the meaning of section 1983." *Id.* (emphasis added). Far from a broad pronouncement that regulations can independently confer federal rights, then, *Samuels* at most stands for the proposition that regulations can confer rights when *Congress explicitly directs regulatory action*. *Id.* at 201. And in any event, *Samuels* was issued before the Supreme Court's decisions in *Sandoval* and *Gonzaga*.

regulations can create individual federal rights. In *Boatman v. Hammons*, 164 F.3d 286 (6th Cir. 1998), the court held that, "because federal regulations have the force of law, they must be characterized as 'law' under § 1983." *Id.* at 289. But there is a missing step in that logic. Even if a regulation has the force of law, it is a separate question whether that law is an enforceable right under § 1983. And we know from *Gonzaga* that the answer is no—not unless Congress has created such an enforceable right by statute. 536 U.S. at 285. So *Boatman* does not answer the question at issue here. What's more, the Sixth Circuit has expressly disavowed the authority on which *Boatman* relied, *Loschiavo v. City of Dearborn*, 33 F.3d 548 (6th Cir. 1994). *See Johnson v. City of Detroit*, 446 F.3d 614, 629 (6th Cir. 2009) (stating that after *Gonzaga* and *Sandoval*, "the rule expressed in *Loschiavo*, that a federal regulation alone may create a right enforceable through § 1983, is no longer viable"); *see also Caswell*, 418 F.3d at 618, 620.

Accordingly, we join the Third, Fourth, Sixth, Ninth, and Eleventh Circuits and hold that Thurman cannot sue MTM under § 1983 based solely on the non-emergency medical transportation regulation.

B.

Alternatively, Thurman asks us to construe three statutory provisions in conjunction with the Medicaid non-emergency medical transportation regulation to establish a federal right enforceable under § 1983. Specifically, he relies on 42 U.S.C. § 1396a(a)(8), (19), and (70), which read as follows:

> A state plan for medical assistance must—
>
> > (8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals; . . .

> (19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients; . . .
>
> (70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation . . . .

None of these provisions even come close to establishing the "unambiguously conferred right" necessary "to support a cause of action brought under § 1983." *Gonzaga*, 536 U.S. at 283. *See also Blessing v. Freestone*, 520 U.S. 329, 340–41 (1997) ("[T]he plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence," and that "the statute must unambiguously impose a binding obligation on the States.") (citation omitted).

Among the statutory provisions cited by Thurman, only paragraph 70 even refers to transportation. But far from establishing an individual *right* to non-emergency medical transportation, it expressly gives states the *option* to establish a transportation brokerage program.

Paragraphs 8 and 19 do not mention transportation at all. And there is no basis for reading a transportation right into those paragraphs. At most, those provisions establish only a right to receive certain health care services from the Medicaid program. *See, e.g.*, *Romano v. Greenstein*, 721 F.3d 373, 379 (5th Cir. 2013) (holding that paragraph 8 creates a right to "medical assistance" with "reasonable promptness"). Moreover, the Eleventh

Circuit has held that paragraph 19 "imposes only a generalized duty on the States—in other words, the provision is insufficiently specific to confer any particular right upon the plaintiffs." *Harris*, 127 F.3d at 1010.

Accordingly, we agree with the Eleventh Circuit that paragraphs 8, 19, and 70, whether on their own or in combination with 42 C.F.R. § 431.53, cannot "support a conclusion that Congress has unambiguously conferred upon Medicaid recipients a federal right to transportation enforceable under § 1983." *Id.* at 1012.

* * *

For the foregoing reasons, we affirm.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LEONARD THURMAN — PLAINTIFF

V. — CIVIL ACTION NO. 3:18-CV-282-DPJ-FKB

MISSISSIPPI TRANSPORTATION MANAGEMENT — DEFENDANT

ORDER

Leonard Thurman filed this suit when Medical Transportation Management, Inc. ("MTM") (erroneously referred to in the Complaint as Mississippi Transportation Management) failed to pick him up for a doctor's appointment. MTM moved to dismiss all claims pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons explained, the motion to dismiss [11] is granted.

I. Facts and Procedural History

MTM provides non-emergency medical transportation for Medicaid recipients. Thurman says he requested a pickup for a doctor's appointment to treat complications stemming from a tooth extraction performed two weeks earlier. Compl. [1] at 5–6. But MTM never showed up. *Id.* at 5. Thurman filed a grievance and was told the trip in question was never confirmed because he did "not provide all trip information" during the scheduling call, placed the MTM representative on hold, and did not come back to the line. Letter [1-1] at 9. As relief, he seeks $1 million. Compl. [1] at 6.

Thurman, initially proceeding *pro se*, sued MTM and invoked 42 U.S.C. § 1983; *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); and the Americans with Disabilities Act ("ADA"). *Id.* at 4; Civil Cover Sheet [1-2]. MTM moved to dismiss all claims, and in response Thurman conceded his ADA and *Bivens* claims. Pl.'s Resp.

[29] at 1, 3. The parties now focus on a single issue under § 1983—whether MTM deprived Thurman of a cognizable federal right. Def.'s Mem. [12] at 5–6. The motion is fully briefed, and the Court has jurisdiction.[1]

II. Standard

In considering a motion under Rule 12(b)(6), the "court accepts 'all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.'" *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004) (quoting *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999) (per curiam)). But "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To overcome a Rule 12(b)(6) motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555 (citations and footnote omitted).

III. Analysis

"Section 1983 liability results when a 'person' acting 'under color of' state law, deprives another of rights 'secured by the Constitution' or federal law." *Doe v. United States*, 831 F.3d

[1] Thurman initially filed a *pro se* response [18] but later obtained counsel, who filed a response [29] on his behalf.

309, 314 (5th Cir. 2016) (quoting 42 U.S.C. § 1983). Here, the parties dispute whether MTM deprived Thurman of a federal right.[2]

A "[v]iolation of a federal *law* is insufficient for redress through section 1983; a plaintiff must assert [a] violation of a federal *right*." *Cuvillier v. Taylor*, 503 F.3d 397, 402–03 (5th Cir. 2007) (emphasis in original). Three factors determine whether a statutory provision gives rise to a federal right. *Id.* (citing *Blessing v. Freestone*, 520 U.S. 329 (1997)). "First, Congress must have intended that the provision in question benefit the plaintiff." *Blessing*, 520 U.S. at 340. "Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence." *Id.* at 340–41. And "[t]hird, the statute must unambiguously impose a binding obligation on the States." *Id.* at 341.

Thurman argues that the state of Mississippi is required to afford non-emergency medical transportation to its Medicaid recipients pursuant to 42 C.F.R. § 431.53, which provides:

> A State plan must—
>
> (a) Specify that the Medicaid agency will ensure necessary transportation for beneficiaries to and from providers; and
>
> (b) Describe the methods that the agency will use to meet this requirement.

42 C.F.R. § 431.53 (2012). He applies the three-factor test, reasoning that as a Medicaid recipient, he is entitled to state-provided transportation. Pl.'s Resp. [29] at 2–3 (citing § 431.53). And finally, he insists MTM had an obligation to deliver this transportation. *Id.* at 3.

[2] Thurman states MTM is a "state entity" that is jointly funded by the state and federal governments. Pl.'s Resp. [29] at 1. MTM focuses its Reply on the absence of an enforceable federal right, so the Court assumes for purposes of this motion that MTM was acting under color of state law. *See* Def.'s Reply [31] at 2–3.

But § 431.53 is a federal regulation, not a federal statute. For that reason, the Eleventh Circuit Court of Appeals has held that it is not enforceable in a § 1983 action. *See Harris v. James*, 127 F.3d 993 (11th Cir. 1997); *see* Def.'s Mem. [12] at 6; Def.'s Reply [31] at 2. In *Harris*, the plaintiffs filed suit under § 1983 claiming that Alabama's Medicaid plan was "not in compliance with a federal regulation requiring State Medicaid plans to ensure necessary transportation for recipients to and from providers." 127 F.3d at 995. The district court granted summary judgment for the plaintiffs, and the defendants appealed. *Id.* at 996. Conceding that the state violated § 431.53, the defendants nevertheless argued that Medicaid recipients do not have a federal right to transportation that can be enforced through § 1983. *Id.* The Eleventh Circuit agreed, concluding that "the transportation regulation does not define the content of any specific right conferred upon the plaintiffs by Congress. In our view, the nexus between the regulation and Congressional intent to create federal rights is simply too tenuous to create an enforceable right to transportation." *Id.* at 1009–10.

Although MTM relied on *Harris* in its initial brief, Thurman ignored it in his response, basing his argument entirely on *Doe 1–13 ex rel. Doe, Sr. 1–13 v. Chiles*, 136 F.3d 709, 711 (11th Cir. 1998). *See* Pl.'s Mem. [29] at 2–3. But that Eleventh Circuit case addressed whether an actual Medicaid Act provision, 42 U.S.C. § 1396a(a)(8), created a federal right under § 1983. *Id.* Significantly, the *Doe* court distinguished *Harris*, noting that *Harris* considered whether § 431.53—again, a federal regulation rather than a federal statute—created a federal right to transportation. 136 F.3d at 714. The *Doe* court explained,

> Preliminarily, we note that this court's recent decision in *Harris v. James* did not address the issue at bar. In *Harris*, the court decided the "narrow issue" of "whether Medicaid recipients have a federal right to transportation which may be enforced in an action under § 1983." 127 F.3d at 996. The right to transportation that the *Harris* plaintiffs sought to enforce appeared "explicitly not in the Medicaid Act, but in a federal regulation," 42 C.F.R. § 431.53. 127 F.3d at 1005.

Id. In short, Thurman's only supporting authority does not bolster his case.

While the parties limited their arguments to these two Eleventh Circuit cases, federal courts are divided as to whether a federal regulation can create a federal right. *Compare S. Camden Citizens in Action v. N.J. Dep't of Envtl. Prot.*, 274 F.3d 771, 788 (3d Cir. 2001) (holding that "the EPA's disparate impact regulations cannot create a federal right enforceable through section 1983" (citing *Harris*, 127 F.3d at 1008)), *and Kissimmee River Valley Sportsman Ass'n v. City of Lakeland*, 250 F.3d 1324 (11th Cir. 2001) (affirming dismissal of § 1983 action based on federal regulation), *with Boatman v. Hammons*, 164 F.3d 286, 289 (6th Cir. 1998) ("We are aware of the Eleventh Circuit's recent decision in *Harris v. James,* 127 F.3d 993 (11th Cir. 1997), which held that the state-ensured transportation regulation (42 C.F.R. § 431.53) does not define the content of any specific 'statutory' right conferred upon Medicaid recipients by Congress, and thus, is not enforceable in a § 1983 action. This Circuit has held to the contrary that because federal regulations have the force of law, they must be characterized as 'law' under § 1983.").

The Fifth Circuit has recognized this division but has not decided the question. *Tex. RioGrande Legal Aid, Inc. v. Range*, 594 F. App'x 813, 816 n.4 (5th Cir. 2014) ("Although there is no dispute that federal statutes may create private rights that are enforceable under § 1983, there is an interesting and difficult question that has divided courts as to whether agency regulations may do the same." (citing *Harris*, 127 F.3d 993)).

Absent an opinion from the Fifth Circuit taking a side in this circuit split, this Court finds *Harris* compelling under the present circumstances. "[T]o confer a private right that is enforceable under § 1983, the federal law upon which the plaintiff relies must 'unambiguously confer' the right claimed." *Id.* at 816 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)).

The Medicaid Act does not address transportation, and as the Eleventh Circuit concluded, "the transportation regulation does not define the content of any specific right conferred upon the plaintiffs by Congress." *Harris*, 127 F.3d at 1009–10. MTM's motion to dismiss is granted.

IV. Conclusion

The Court has considered all arguments raised by the parties; those not addressed would not have changed the outcome. For the reasons stated, Defendant's motion to dismiss [11] is granted. A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

In addition, Attorney Carlos Moore filed a motion to withdraw as counsel of record [34], explaining that he does not have a contract of employment with Thurman. Mot. [34] at 1. Moore was associated by Thurman's prior counsel (Trinetta Fisher) as local counsel and to sponsor her *Pro Hac Vice* admission. *Id.* Both Moore and Fisher indicated in their respective motions to withdraw [33, 34] that Thurman has been unresponsive to their efforts to assist him with his case. And since the filing of the motion to withdraw [34], Thurman, acting *pro se*, filed documents to support his case. *See* Medical Records [35] (Sealed) (filed May 28, 2019). Moore's motion to withdraw [34] is granted; the Court presumes, based on the docket activity, that Thurman wishes to represent himself. If he prefers to obtain new counsel or needs additional time to pursue any post-judgment relief, he should file a motion explaining any request.

SO ORDERED AND ADJUDGED this the 18th day of June, 2019.

s/ *Daniel P. Jordan III*
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
~~SOUTHERN DISTRICT OF MISSISSIPPI~~
NORTHERN DIVISION

LEONARD THURMAN — PLAINTIFF

V. — CIVIL ACTION NO. 3:18-CV-282-DPJ-FKB

MISSISSIPPI TRANSPORTATION MANAGEMENT — DEFENDANT

JUDGMENT

For the reasons stated in the Order entered this date, Defendant's motion to dismiss [11] is granted. This action is dismissed.

SO ORDERED AND ADJUDGED this the 18th day of June, 2019.

s/ *Daniel P. Jordan III*
CHIEF UNITED STATES DISTRICT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 19-60596

LEONARD THURMAN,

Plaintiff—Appellant,

versus

MEDICAL TRANSPORTATION MANAGEMENT, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:18-CV-282

ON PETITION FOR REHEARING EN BANC

(Opinion December 15, 2020, 5 CIR., _____, _____ F.3D _____)

Before CLEMENT, HO, and DUNCAN, *Circuit Judges*.

PER CURIAM:

(√) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.