

NOT RECOMMENDED FOR PUBLICATION

No. 21-3838

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 7, 2022

Sept. 1, 2001
DEBORAH S. HUNT, Clerk

ORDER

Before: BOGGS, KETHLEDGE, and DAVIS, Circuit Judges.

Earl Anderson, an Ohio prisoner proceeding pro se, appeals a district court order dismissing his civil rights complaint filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

Anderson filed a c.

Anderson filed a complaint against Aramark Correctional Services, LLC. He alleged that Aramark violated his First Amendment right to practice his religion during the month of Ramadan in 2020. Anderson asserted that he is a practicing Muslim and a vegetarian. He asserted that, during the first week of Ramadan, Aramark served non-vegetarian meals to all Muslim inmates without first conducting a survey to determine if any Muslims were vegetarians. Anderson refused the meals because they were not vegetarian and informed Aramark that he is a vegetarian, but Aramark did not accommodate his meal preference for eight days. During the next two weeks of Ramadan, Aramark served meals to Muslims before sunset, which is prohibited by Anderson's faith. During the fourth week of Ramadan, Aramark served "skimpy vegetarian dishes," vegetarian chili containing ground turkey or chicken "masqueraded as soy,"

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and peanut butter and jelly too often in place of better and hot vegetarian meal options. Anderson sought declaratory, injunctive, and monetary relief.

Aramark filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss Anderson's complaint for failure to state a claim for relief. Anderson moved for an extension of time, until August 3, 2021, to respond to Aramark's motion. The district court granted Anderson's motion and informed him that if he failed to file a response by August 3, 2021, his complaint would be dismissed with prejudice. Anderson did not file a response to Aramark's motion to dismiss. Instead, he filed a motion for leave to file a supplemental complaint to allege additional violations of his constitutional rights during the month of Ramadan in 2021. The district court struck Anderson's motion as nonresponsive to the court's prior order requiring a response to Aramark's motion to dismiss and dismissed his complaint with prejudice.

On appeal, Anderson argues that the district court erroneously struck his motion for leave to file a supplemental complaint and failed to acknowledge alleged constitutional violations that occurred during Ramadan in 2020 and 2021. He also asks this court to consider "whether caselaw is clearly in sync or in conflict with [Aramark's] adopted food service policy."

Initially, we note that Anderson does not challenge the district court's dismissal of his complaint. His appellate brief does not address the district court's reason for dismissal: his failure to respond to Aramark's motion to dismiss by August 3, 2021. Instead, Anderson's appellate brief addresses the district court's striking of his motion for leave to file a supplemental complaint and the merits of the claims asserted in his complaint and supplemental complaint, which the district court did not address. "[G]enerally, an appellant's failure to raise an argument in his appellate brief forfeits that issue on appeal." *United States v. White*, 920 F.3d 1109, 114 (6th Cir. 2019); *see also Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007). We will not "identify and address the arguments that [Anderson] could have made but did not." *See Geboy*, 489 F.3d at 767.

Anderson challenges the district court's striking of his motion for leave to supplement his complaint. He contends that his motion to supplement should not have been stricken because it corrected the misidentification of Aramark in his complaint and asserted new constitutional claims that occurred during the 2021 Ramadan. He argues that supplementing his complaint was

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a better option than responding to Aramark's motion to dismiss. But because Anderson's motion to supplement was neither a response to Aramark's motion to dismiss nor a response to the district court's order requiring a response to Aramark's motion, the district court did not err in striking it. *See Fed. R. Civ. P. 15(d).* After the district court dismissed Anderson's complaint, there was no complaint to supplement.

Anderson also argues the merits of the claims asserted in his complaint and supplemental complaint. But those claims were not addressed by the district court. Unless exceptional circumstances are present, we will not address issues that were not decided by the district court. *Maldonado v. Nat'l Acme Co.*, 73 F.3d 642, 648 (6th Cir. 1996). No exceptional circumstances are present in this case. *See id.*

For these reasons, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 21-3838

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 6, 2023

DEBORAH S. HUNT, Clerk

EARL ANDERSON,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 ARAMARK CORRECTIONAL SERVICES, LLC,)
 originally named as Aramark Corporation,)
)
 Defendant-Appellee.)
)

ORDER

Before: BOGGS, KETHLEDGE, and DAVIS, Circuit Judges.

Earl Anderson, an Ohio prisoner proceeding pro se, petitions the court to rehear its September 7, 2022, order that affirmed a district court order dismissing his civil rights complaint filed under 42 U.S.C. § 1983.

Anderson's petition does not show that the court overlooked or misapprehended any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2). The petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

State of Ohio
County of Scioto

VERIFICATION

Unsworn Declarations under Penalty of Perjury

Pursuant to Title 28 U.S.C.S. § 1746 (2) that the foregoing statements in my Petition for Writ of Certiorari herein from page 1 through 8 are true & correct to the best of my knowledge, belief, and understanding. Executed on 4-29-2023 & served upon the Solicitor General of the United States & served upon attorneys representing Aramark Corp. Services, LLC which are Dickie, McCamey, and Chilcote, as promulgated by Title 28 U.S.C.S. § 2403(a), both parties have been served 1st Class mail & properly addressed as listed herein below:

Signature: Errol Anderson, pro se

317-265

SOCF

P.O. BOX 45699

Luccasville, Ohio. 45699

Date: 4-29-2023

1st Party mailed to:

Kristin Lynn Wedell
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Room 5614
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WASHINGTON, D.C. 20543-0001**

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WASHINGTON, DC

May 5, 202

Earl Anderson
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Earl Anderson

Case No.3:21cv531

Plaintiff

v.

ORDER

Aramark Correctional Services, LLC

Defendant

Pending is defendant's (Doc. 7) Motion to Dismiss. On 7/20/2021, I ordered Plaintiff to respond to that motion by August 3, 2021; I further notified that failure to comply with that order will result in dismissal with prejudice.

On August 2, 2021, instead of complying with that order, plaintiff filed, a Motion for leave to file a Supplemental Complaint (Doc. 11). That pleading does not comply with my order dated 7/20/2021.

It is hereby

ORDERED THAT:

1. Plaintiff's leave to amend/supplement complaint is stricken as nonresponsive to my prior order.

2. Plaintiff's original complaint be and the same hereby is dismissed with prejudice and an appeal from this order could not be taken in good faith and shall not be allowed without prepayment of applicable filing fee.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge/

