

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 4, 2023

Lyle W. Cayce
Clerk

No. 22-50579
Summary Calendar

REGINALD HARRIS,

Plaintiff—Appellant,

versus

FNU WATSON, *Hillsboro Police Officer*; VERNON BUSBY, *Hill County Sheriff Deputy*; OFFICER ROGERS,

Defendants—Appellees.

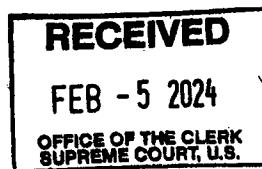
Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:21-CV-1216

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Reginald Harris, proceeding pro se, sued Officer Watson, Deputy Busby, and Officer Rogers (collectively “Defendants”), asserting they violated the Constitution and federal and state law when they arrested him in February 2021. The district court dismissed Harris’s constitutional and federal law claims under Federal Rule of Civil Procedure 12(b)(6) and

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*



subsequently declined to exercise supplemental jurisdiction over his remaining state law claims.

Harris appears to raise two main issues on appeal. Though his brief is difficult to parse, he seems to argue that the district court erred in dismissing his claims because (1) it failed to rule on his “Motion for Prohibitory Injunction and Immunity,” filed January 14, 2022, and (2) he sufficiently pleaded that Defendants committed a variety of state and federal law violations when they arrested and detained him.

Harris’s first argument is without merit. Even assuming the district court was required to rule on Harris’s request, “[t]he denial of a motion by the district court, although not formally expressed, may be *implied* by the entry of a final judgment or of an order inconsistent with the granting of the relief sought by the motion.” *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir. 1994). The district court’s order dismissing Harris’s case under Rule 12(b)(6) is inconsistent with his request for release and immunity from criminal trial on the grounds that he was “unlawful[ly] arrested.” Therefore, the district court “implicitly denied that request and thereby satisfied its duty, if any, to issue a ruling.” *Peña v. Lone Star Nat’l Bank, N.A.*, 807 F. App’x 353, 357 (5th Cir. 2020) (per curiam).¹

Harris has inadequately briefed, and thus abandoned, all other points of error. Even construed generously, his brief at most provides a few conclusory assertions that Defendants committed statutory and constitutional violations. He wholly fails, however, to explain *how* or *why* the district court erred in dismissing his claims. Under our precedents,

¹ Although *Peña* and other unpublished opinions cited herein are “not controlling precedent,” they “may be [cited as] persuasive authority.” *Ballard v. Burton*, 444 F.3d 391, 401 n.7 (5th Cir. 2006) (citing 5TH CIR. R. 47.5.4).

neglecting to address the basis for the district court’s dismissal amounts to a failure to appeal the underlying judgment. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dall. Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Holman v. Collier*, 830 F. App’x 738, 738-39 (5th Cir. 2020) (per curiam) (observing that “even pro se litigants must brief arguments in order to preserve them”).

Along the same lines, Harris’s brief is grossly non-compliant with the Federal Rules of Appellate Procedure. While his brief is replete with legal jargon and irrelevant jurisdictional statements, he fails to set forth any record cites, specific facts, or relevant authorities supporting his position. *See, e.g.*, FED. R. APP. P. 28(a)(6), (a)(8)(A). While we construe the briefs of pro se litigants liberally, they nonetheless “must abide by the Federal Rules of Appellate Procedure.” *United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994) (per curiam). Such fundamental failure to properly present and argue any points of error precludes us from engaging in meaningful review. *See, e.g.*, *Clark v. Waters*, 407 F. App’x 794, 796 (5th Cir. 2011) (per curiam) (affirming dismissal because appellant’s brief “[was] grossly non-compliant” with the Federal Rules of Appellate Procedure). Accordingly, we deem Harris’s arguments on appeal abandoned. *Id.*; *see also United States v. Beaumont*, 972 F.2d 553, 563 (5th Cir. 1992) (per curiam).

We therefore AFFIRM the district court’s dismissal of Harris’s claims.²

² Motion to appoint counsel is denied.

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

June 01, 2023

#2381326
Mr. Reginald Harris
CID Michael Prison
2664 FM 2054
Tennessee Colony, TX 75886-0000

No. 22-50579 Harris v. Watson
USDC No. 6:21-CV-1216

Dear Mr. Harris,

We will take no action on your motion for extension of time to file petition for rehearing. The time for filing a motion for extension of time to file a petition for rehearing under **FED. R. APP. P. 40** has expired.

Also, we are taking no action on the Motion for Appointment of Counsel because the case is closed.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Monica R. Washington, Deputy Clerk
504-310-7705

cc: Mr. Roy Lee Barrett

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**REGINALD HARRIS
(Hill County #30861)**

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V.

W-21-CA-1216-ADA

OFFICER WATSON, et al.

ORDER

Before the Court is Plaintiff's civil rights complaint and more definite statement (#12). Plaintiff is proceeding pro se and in forma pauperis. After reviewing Plaintiff's pleadings and his more definite statement, the Court finds that summary dismissal is not appropriate.

It is therefore **ORDERED** that **Officer Watson and Vernon Busby**¹ as defendants, are hereby required to file an answer to such complaint or otherwise plead as provided by Rule 12 of the Federal Rules of Civil Procedure within twenty-one (21) days after service of a copy of the complaint upon said defendant. At the time of filing answers, Defendants shall serve Plaintiff with a copy thereof in accordance with Rule 5(b) of the Federal Rules of Civil Procedure and shall file with the Clerk a certificate showing such service.

It is further **ORDERED** that in order that this may be done, summons shall be prepared by the Clerk and the issuance of service of process shall be commenced by

¹ Plaintiff also asserts claims against an unknown Hillsboro Police Officer. If Plaintiff wishes to pursue claims against the unnamed officer, he may seek information through discovery in order to learn his identity.

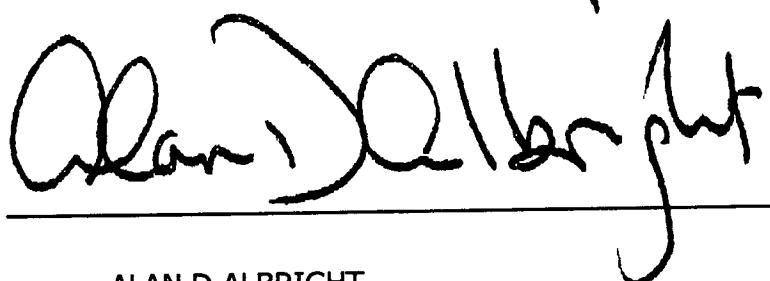
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the United States Marshal upon said named defendants under Rules 4 and 5 of the Federal Rules of Civil Procedure.

It is further **ORDERED** that, pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure, the United States Marshal shall serve a copy of the Plaintiff's Complaint, more definite statement, summons, and this Order upon each defendant.

SIGNED on December 16, 2021



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

(2)

22-50579.55

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

REGINALD HARRIS

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V.

W-21-CA-1216-ADA

OFFICER WATSON, et al.

ORDER

Before the Court are Plaintiff's Complaint (#3), Plaintiff's more definite statement (#12), Defendant Jon Rodgers' Motion to Dismiss (#21), Plaintiff's response (#29), and Defendant's reply (#30).¹ Plaintiff is proceeding pro se and in forma pauperis.

STATEMENT OF THE CASE

At the time Plaintiff filed his complaint pursuant to 42 U.S.C. § 1983, Plaintiff was confined in Hill County Jail. Plaintiff has since been convicted of aggravated assault of a public servant and transferred to the custody of the Texas Department of Criminal Justice – Correctional Institutions Division. Plaintiff appears to claim that he was subjected to an unlawful arrest in violation of his Fourth Amendment rights and that his property was taken without due process. Plaintiff sues Officer Watson, Deputy Vernon Busby, and Officer Rodgers. Plaintiff seeks compensatory damages.

After reviewing Plaintiff's complaint, Plaintiff was ordered to file a more definite statement specifying what acts Defendants did to violate his constitutional rights and to explain why his claims were not barred by law. Plaintiff elaborated on his allegations.

¹ Rodgers indicates that no other Defendants have been successfully served. However, as discussed below, Plaintiff's claims against the remaining Defendants are also dismissed for the same reasons.

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22-50579-133

Plaintiff alleges that he is a semi-truck driver. On February 7, 2021, he claims he was driving his 18-wheeler when he "had an incident." Plaintiff fails to explain the incident. Plaintiff asserts that someone else called the police because Plaintiff "needed assistance." Again, Plaintiff fails to explain why he needed assistance.

Plaintiff claims that Officer Watson, Hill County deputy, Vernon Busby, and Officer Rodgers arrived and detained him. He asserts they eventually "took me to jail for unlawful carry of a weapon." Plaintiff claims his truck was towed and his property was taken, including a 6-month-old puppy. After being taken to the jail, Plaintiff indicates that his "mental state was worse [than] before" and he was "in fear." Plaintiff was also notified that drugs had been found in his truck and he would be charged with possession of a controlled substance. During the next shift, when Plaintiff was let out of his cell, he "grabbed a table leg, damaged equipment, ran pas[t] Sgt, and bumped into a guard and assaulted him all out of fear." Plaintiff was subsequently charged and convicted of aggravated assault of a public servant. Plaintiff asserts that on October 8, 2021, the charge of unlawful carry of a weapon was dismissed.

Plaintiff claims he was unlawfully arrested. Plaintiff asserts that, because of this unlawful arrest, his "CMV Commercial Motor Vehicle" was left parked on the side of the highway and towed away. Plaintiff claims that Busby did not do any of his own investigation when he arrived on the scene, but instead accepted the instructions of Watson to arrest Plaintiff. Plaintiff also appears to claim that the Texas Department of Public Safety should have been contacted before towing the truck since it is a commercial vehicle. Plaintiff claims that the unlawful arrest and improper towing of the

truck prevented Plaintiff from seeking further employment as an independent contractor.

Plaintiff alleges that Officer Watson's father, the chief sheriff, improperly delegated powers to Watson. Plaintiff claims that Watson and Rodgers detained Plaintiff in Carl's Corner, Texas. Plaintiff claims that the officers were not in their jurisdiction. Plaintiff indicates that the police report stated that Plaintiff was exhibiting "erratic behavior." Plaintiff also states that, after handcuffing him the officers secured the area and "safely had the firearm which was in my laptop bag." Plaintiff states that Rodgers and Watson "are responsible for taking refuge in the zone between ignorance and actual knowledge and can be seen as trying to inhabit that zone."

Plaintiff makes conclusory claims that "my 4th Amendment rights were violated. 2nd, 8th, 14th Amendment rights and liberty were also violated. Pre-emption doctrine based on Supremacy Clause for interstate commerce were ignored and I was never Mirandized." Plaintiff also cites to various sections of the Texas Transportation Code and federal regulations regarding the operation of a commercial motor vehicle. His implication appears to be that these laws and regulations were violated by Defendants.

DISCUSSION AND ANALYSIS

A. Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) authorizes the dismissal of a case for failure to state a claim upon which relief can be granted. When evaluating a motion to dismiss under Rule 12(b)(6) the complaint must be liberally construed in favor of the plaintiff and all facts pleaded therein must be taken as true. *Leatherman v. Tarrant*

(3) ;

County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). Although Federal Rule of Civil Procedure 8 mandates only that a pleading contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” this standard demands more than unadorned accusations, “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “naked assertion[s]” devoid of “further factual enhancement.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555-57 (2007). Rather, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Id.* at 570.

The Supreme Court has made clear this plausibility standard is not simply a “probability requirement,” but imposes a standard higher than “a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The standard is properly guided by “[t]wo working principles.” *Id.* First, although “a court must accept as true all of the allegations contained in a complaint,” that “tenet is inapplicable to legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* at 678-79. Second, “[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

Thus, in considering a motion to dismiss, the court must initially identify pleadings that are no more than legal conclusions not entitled to the assumption of truth, then assume the veracity of well-pleaded factual allegations and determine

whether those allegations plausibly give rise to an entitlement to relief. If not, "the complaint has alleged-but it has not 'show[n]'-that the pleader is entitled to relief." *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). Despite this, courts remain obligated to construe a pro se complaint liberally. *See Erickson v. Pardus*, 551 U.S. 89 (2007) (reiterating long-standing rule that documents filed pro se are to be construed liberally).

Defendant Rodgers argued in his motion to dismiss that Plaintiff failed to allege any facts to show that Rodgers violated Plaintiff's Fourth and Fifth Amendment rights or various provisions of the Texas Transportation Code. Rodgers also asserted that Plaintiff's claims against Watson and the City of Hillsboro failed because Plaintiff failed to show any constitutional violation. Finally, Rodgers argued that Plaintiff could not make any claim for a state law violation.

Plaintiff's response is difficult to understand, much like his complaint and more definite statement. He asserts that he intended to bring "a civil RICO claim" against Defendants based on their alleged actions "stop[ping] a business from operating during a national crisis, prohibit[ing] an individual from further employment, contribut[ing] to debt collections, and other actions." Plaintiff claims that "Defendants' acts can be considered interstate racketeering." Plaintiff reiterated his claim that the officers lacked jurisdiction to detain him. He argued that, because the officers were out of their jurisdiction, they were not entitled to immunity and were instead in violation of "federal preemption laws." Plaintiff additionally made the conclusory argument that Defendants violated not only his Fourth Amendment rights, "but a plethora of other Amendments that can clearly be proven." Plaintiff also appeared to assert that Defendants had

violated his equal protection rights, though he did not specify how. Plaintiff also argued that because he had identified "statute, laws, amendments violated by Defendants" he was entitled to a trial.

Rodgers replied to Plaintiff's RICO argument and asserted that Plaintiff's response only further confirmed that Plaintiff had not pleaded a viable cause of action. Rodgers also notes that Plaintiff failed to provide any arguments, authorities, or analysis to refute Rodgers' argument that Plaintiff had no viable Fourth or Fifth Amendment claim.

B. City of Hillsboro Liability

To the extent Plaintiff brings claims against City of Hillsboro or Defendants in their official capacities those claims must be dismissed. A political subdivision cannot be held responsible for a deprivation of a constitutional right merely because it employs a tortfeasor; in other words a local government unit cannot be held responsible for civil rights violations under the theory of respondeat superior. *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992). The standard for holding a local government unit responsible under § 1983 requires that there be a custom or policy that caused the plaintiff to be subjected to the deprivation of a constitutional right. *Id. Collins v. City of Harker Heights, Tex.*, 916 F.2d 284, 286 (5th Cir. 1990). Thus, City of Hillsboro would violate an individual's rights only through implementation of a formally declared policy, such as direct orders or promulgations, or through informal acceptance of a course of action by its employees based upon custom or usage. *Bennett v. City of Slidell*, 728 F.2d 762, 768 (5th Cir. 1984). As discussed further below, Plaintiff fails to plead any facts supporting

an allegation that he was deprived of any constitutional right whatsoever, much less any custom or policy of City of Hillsboro that deprived him of a constitutional right. Accordingly, the claims against City of Hillsboro and Defendants in their official capacities are dismissed.

C. RICO Claim

Plaintiff makes assorted claims based on alleged "commercial crimes" and asserts a "civil RICO claim." As an initial matter, there is no private civil cause of action created by federal criminal statutes. *See Thompson v. Wells Fargo Bank, N.A.*, 2016 U.S. Dist. LEXIS 4462, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (collecting cases from courts holding that there is no private cause of action under federal criminal statutes). To the extent Plaintiff seeks to have criminal charges pursued against Defendants, Plaintiff does not have a constitutional right to have someone criminally prosecuted. *Oliver v. Collins*, 914 F.2d 56, 60 (5th Cir. 1990). Such a request is not a valid remedy for an alleged civil rights violation.

As for RICO, specifically, Plaintiff fails to allege any facts supporting such a claim. To violate the RICO Act, a person must (1) engage in criminal conduct such as racketeering or unlawful debt collection; (2) derive some pecuniary benefit from the criminal conduct; (3) which implicates interstate commerce. *Megatel Homes, LLC v. Moayedi*, No. 3:20-CV-00688-L, 2021 U.S. Dist. LEXIS 220824 (N.D. Tex. 2021). Plaintiff alleges no facts whatsoever that support any conclusion that Defendants engaged in any criminal conduct or derived any pecuniary benefit. Even the most liberal reading of

Plaintiff's pleadings only shows, at most, a claim that the towing of his truck implicated interstate commerce. That is insufficient to avoid dismissal of Plaintiff's RICO claim.

D. Fourth Amendment

To the extent Plaintiff argues that he was detained and then arrested in violation of the Fourth Amendment, his claim is dismissed. Even assuming all of the facts pleaded by Plaintiff as true and reading his claims as liberally as possible, there was no Fourth Amendment violation. As the Supreme Court has explained, police officers are justified in performing brief detentions and searches while performing "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

Plaintiff's pleadings indicate that someone else called 911 indicating concern about Plaintiff's safety. Plaintiff was located in Carl's Corner, Texas, a very small town in Hill County with no police force. Hill County deputies were not immediately available, consequently officers from the nearby city of Hillsboro were dispatched. Upon arriving at the scene, officers noted that Plaintiff was acting erratically and officers detained him for his own and their safety. Plaintiff indicates that a firearm was also on the scene. Under these circumstances, a brief detention of Plaintiff to assess the situation did not violate or even implicate the Fourth Amendment. *United States v. Toussaint*, 838 F.3d 503, 507 (5th Cir. 2016) (noting that the purpose of the "community caretaking function" is that police officers serve to ensure the safety of citizens).

Even to the extent that the detention was continued and ultimately became an arrest implicating the Fourth Amendment, Plaintiff has not alleged facts that could prove a Fourth Amendment claim. Plaintiff acknowledges that the officers viewed him acting erratically and that he had a weapon. Plaintiff alleges no facts whatsoever that show the arrest was without probable cause. *Travis v. City of Grand Prairie*, 654 Fed. Appx. 161, 164 (5th Cir. 2016) (explaining that a Plaintiff "cannot prevail on his claim for unlawful seizure or false arrest unless he alleges facts that, if true, show that the officers lacked probable cause to seized and/or arrest him"). Furthermore, despite being given an opportunity to provide additional factual pleadings in his more definite statement, Plaintiff fails to explain in any detail how each Defendant participated in the arrest, towing of the vehicle, or confiscation of Plaintiff's property. Plaintiff simply fails to allege any actions by any individual Defendant that would show a Fourth Amendment violation.

E. Fifth Amendment

Plaintiff also appears to complain that he was not *Mirandized* and that this violated his Fifth Amendment rights. "The procedural safeguards set forth in *Miranda* "protect an accused's Fifth Amendment privilege against self-incrimination during custodial interrogation." *Gachot v. Stadler*, 298 F.3d 414, 418 (5th Cir. 2002). Plaintiff has not alleged any facts to show that after he was placed under custodial arrest he was interrogated or that he made any incriminating statement, or that any individual Defendant participated in any such interrogation or received any incriminating

statement. Thus, Plaintiff has failed to allege facts to show that Defendants violated his Fifth Amendment rights.

F. Supplemental Jurisdiction

Plaintiff also asserts state law claims. Pursuant to 28 U.S.C. § 1337, a district court generally has supplemental jurisdiction over claims that are so related to claims in the action over which it has original jurisdiction that they form part of the same case or controversy. However, a district court may decline to exercise supplemental jurisdiction over a claim if the court has dismissed all claims over which it has original jurisdiction. Because Plaintiff's federal claims are dismissed the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims. In any event, the Court notes that the assorted Texas statutory provisions cited by Plaintiff do not create private causes of action.

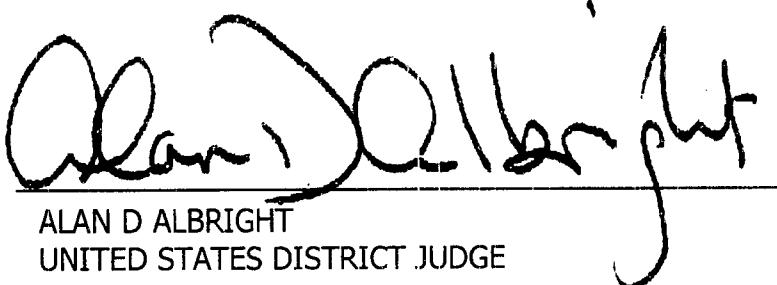
CONCLUSION

It is therefore **ORDERED** that Defendant Jon Rodgers' Motion to Dismiss (#21) is **GRANTED**.

It is further **ORDERED** that Plaintiff's claims against City of Hillsboro, Officer Watson, Vernon Busby, and Officer Rodgers are dismissed for failure to state a claim.

It is finally **ORDERED** that all other pending motions are **DISMISSED**.

SIGNED on June 6, 2022



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

REGINALD HARRIS

V.

OFFICER WATSON, et al.

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W-21-CA-1216-ADA

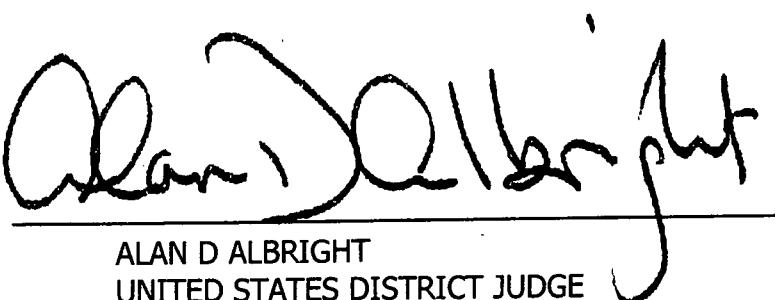
FINAL JUDGMENT

Before the Court is the above-entitled cause. Upon review of the entire case file and this Court's Order which granted Defendant's Motion to Dismiss, the Court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

It is hereby **ORDERED** that Plaintiff's claims against Defendants are **DISMISSED WITH PREJUDICE**.

IT IS FINALLY ORDERED that the above entitled cause of action is hereby **CLOSED**.

SIGNED on June 6, 2022



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

(11)

22-50579.149

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**REGINALD HARRIS
(Hill County #30861)**

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V.

W-21-CA-1216-ADA

OFFICER WATSON, et al.

§

ORDER DENYING MOTION FOR THE APPOINTMENT OF COUNSEL

Before the Court is Plaintiffs' Motion for Appointment of Counsel. After consideration of the motion, the Court is of the opinion that it should be denied.

In a complaint based upon 42 U.S.C. § 1983, "[a] civil rights complainant has no right to the automatic appointment of counsel," and "the trial court is not required to appoint counsel for an indigent plaintiff asserting a claim under 42 U.S.C. § 1983 . . . unless the case presents exceptional circumstances." *Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982). This case sets forth factors which a federal court may consider in determining, in its discretion, whether counsel should be appointed, including:

(1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.

Id. at 213 (citations omitted). The court "should also consider whether the appointment of counsel would be a service to the indigent plaintiff and, perhaps, the court and defendant as well, by sharpening the issues in the case, shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination." *Id.*

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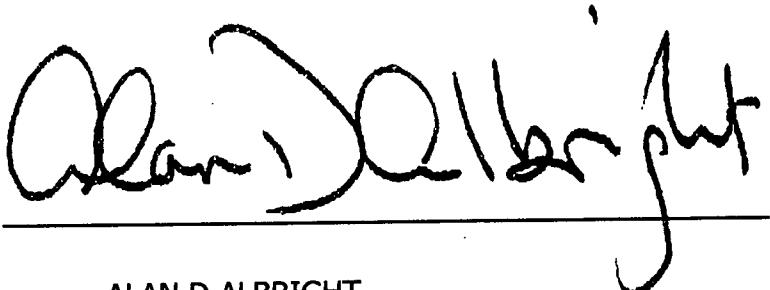
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Subsequent cases in the Fifth Circuit have followed the reasoning set forth in *Ulmer*. See *Vinson v. Heckmann*, 940 F.2d 114, 116 (5th Cir. 1991); *Cooper v. Sheriff, Lubbock County, Texas*, 929 F.2d 1078, 1084 (5th Cir. 1991); *Hulsey v. State of Texas*, 929 F.2d 168, 172-73 (5th Cir. 1991); *Freeze v. Griffith*, 849 F.2d 172, 175 (5th Cir. 1988); *Lopez v. Reyes*, 692 F.2d 15, 17 (5th Cir. 1982); *Hardwick v. Ault*, 517 F.2d 295, 298 (5th Cir. 1975).

The Court has applied the factors delineated in *Ulmer* to the case at hand. Plaintiff has not, as of this date, established to this Court's satisfaction that the issues are too complex, that complainant is incapable of bringing them, or that appointed "counsel is necessary to present meritorious issues to the Court." *Lopez*, 692 F.2d at 17.

It is therefore **ORDERED** that Plaintiffs' Motion for Appointment of Counsel is **DENIED**.

SIGNED on November 23, 2021



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

(2)