FILED: February 26, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2269
(8:23-cv-04709-DCN)

WILLIE J. WILLIAMS, a/k/a Willie Joe Williams

Plaintiff - Appellant

v.

KELVIN MALHER; JESUS DELGADO MARTINEZ; MONTAVIOUS TINCH

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2269

WILLIE J. WILLIAMS, a/k/a Willie Joe Williams,

Plaintiff - Appellant,

v.

KELVIN MALHER; JESUS DELGADO MARTINEZ; MONTAVIOUS TINCH,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. David C. Norton, District Judge. (8:23-cv-04709-DCN)

Submitted: February 22, 2024 Decided: February 26, 2024

Before NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Willie Joe Williams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie Joe Williams appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Willams' 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915(e)(2)(B). [We have reviewed the record and find no reversible error.] Accordingly, we affirm the district court's order. *Williams v. Malher*, 8:23-cv-04709-DCN (D.S.C. Nov. 28, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Willie J. Williams,	)	C/A No.: 8:23-cv-4709 DCN
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	
Kelvin Malher; Jesus Delgado Martinez; and Montavious Tinch,	)	
	)	
Defendants.	)	
	)	

The above referenced case is before this court upon the magistrate judge's recommendation that this action be dismissed without prejudice, without leave to amend, and without issuance and service of process pursuant to Rule 41 of the Federal Rules of Civil Procedure.

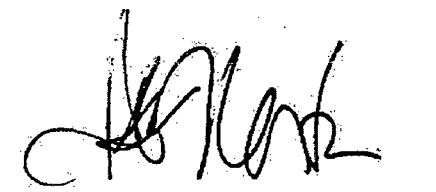
This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).[1] Objections to the Magistrate Judge's Report and

[1]In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections

Recommendation were timely filed on November 20, 2023 by plaintiff.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED** and incorporated into this Order. For the reasons articulated by the magistrate judge, this case is hereby **DISMISSED** without prejudice; without leave to amend, and without issuance and service of process pursuant to Rule 41 of the Federal Rules of Civil Procedure.

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

November 28, 2023
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Willie J Williams
Plaintiff
v.
Kelvin Malher, Jesus Delgado Martinez, and Montavious Tinch
Defendant

Civil Action No. 8:23-cv-4709-DCN

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

■ other: this case is hereby **DISMISSED** without prejudice; without leave to amend, and without issuance and service of process pursuant to Rule 41 of the Federal Rules of Civil Procedure.

This action was *(check one)*:

■ decided by the Honorable David C. Norton.

Date: November 28, 2023

ROBIN BLUME, CLERK OF COURT

s/ P.G. Brissey

Signature of Clerk or Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON/GREENWOOD DIVISION

Willie J. Williams, Plaintiff, vs. Kelvin Malher, Jesus Delgado Martinez, Montavious Tinch, Defendants.	C/A No. 8:23-cv-04709-DCN-KFM **REPORT OF MAGISTRATE JUDGE**

The plaintiff, a non-prisoner proceeding *pro se* and *in forma pauperis*, brings this action seeking damages from the defendants. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's complaint was entered on the docket on September 20, 2023 (doc. 1). By order filed October 11, 2023, the plaintiff was given a specific time frame in which to bring his case into proper form for judicial screening (doc. 9). The plaintiff complied with the court's order, bringing his case into proper form for judicial screening. However, for the reasons that follow, it is recommended that this matter be summarily dismissed.

ALLEGATIONS

The plaintiff filed this action regarding a nose bleed he suffered while at work in 2022 (doc. 1). The plaintiff alleges federal question jurisdiction based on 42 U.S.C. § 1983 because of a denial of his equal protection rights and right to life by the defendants (*id.* at 3). The plaintiff contends that on February 9, 2022, while being employed at the

Fujifilm Plant, he got a severe nose bleed, but the defendants would not take him to the hospital (*id.* at 5). For relief, the plaintiff seeks money damages (*id.*).

APPLICABLE LAW & ANALYSIS

The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a Defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

This complaint is filed pursuant to 42 U.S.C. § 1983, which "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). A civil action under § 1983 "creates a private right of action to vindicate violations of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated. and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

DISCUSSION

As noted above, the plaintiff filed the instant action pursuant to § 1983, seeking damages from the defendants. However, the plaintiff's complaint is subject to summary dismissal.

Section 1983 Claim

As noted, the plaintiff alleges that the defendants violated his equal protection rights and his right to life when they did not take him to the hospital in February 2022 (doc. 1 at 3). However, the plaintiff's § 1983 claims are subject to summary dismissal because the defendants were not acting under color of state law. It is well-settled that "[a]nyone whose conduct is 'fairly attributable to the state' can be sued as a state actor under § 1983." *Filarsky v. Delia*, 566 U.S. 377, 383 (2012). However, private conduct, no matter how discriminatory or wrongful, is not covered under § 1983. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50–51 (1999). In distinguishing between state action and private action,

> The judicial obligation is not only to preserv[e] an area of individual freedom by limiting the reach of federal law and avoi[d] the imposition of responsibility on a State for conduct it could not control, but also to assure that constitutional standards are invoked when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains.

Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (internal quotation marks and citations omitted). State action may be found to exist "if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." *Id.* (internal quotations and citations omitted).

The United States Court of Appeals for the Fourth Circuit has identified several contexts in which private action may be found to constitute state action, such as "when the state has coerced a private actor to commit an act that would be unconstitutional if done by the state"; "when the state has delegated a traditionally and exclusively public function to a private actor"; "when the state has sought to evade a clear constitutional duty

through delegation to a private actor"; or "when the state has committed an unconstitutional act in the course of enforcing a right of a private citizen." *Andrews v. Fed. Home Loan Bank*, 998 F.2d 214, 217 (4th Cir. 1993). The critical inquiry in each case is whether the private actor's conduct was fairly attributable to the state. *Mentavlos v. Anderson*, 249 F.3d 301, 313 (4th Cir. 2001). "[T]he ultimate resolution of whether an actor was a state actor . . . is a question of law for the court," *Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 344 n.7 (4th Cir. 2000). Here, the plaintiff's complaint, alleging that the defendants – employees at the Fujifilm Plant – violated his rights by failing to take him to the hospital (doc. 1 at 5), "includes no facts that establish such a 'close nexus' between" the defendants' challenged actions and the state such that their actions "may be 'fairly treated' as those of the state itself." *See Perry v. Chattem, Inc.*, C/A No. 7:08-cv-00106, 2008 WL 983428, at *4 (W.D. Va. Apr. 9, 2008). Likewise, there is nothing in the plaintiff's complaint to suggest that the defendants themselves are somehow state actors (*see* doc. 1). In light of the foregoing, the plaintiff's § 1983 claims against the defendants should be dismissed because they are not state actors amenable to suit under 42 U.S.C. § 1983.

Employment Claim

To the extent the plaintiff's claims can be construed as claims involving employment discrimination or based on a workplace injury, such a claims are still subject to dismissal. As an initial matter, as noted above, the plaintiff does not indicate on his complaint form that he brings this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"); instead, he indicates that his basis for jurisdiction is "federal question," based on 42 U.S.C. § 1983 (doc. 1 at 3). Nevertheless, even under Title VII, the plaintiff's complaint would be subject to dismissal. First, the plaintiff has not named his employer as a defendant and Title VII liability only lies against an individual's employer, because there

is no individual liability under Title VII. *See* 42 U.S.C. § 2000e(b) (defining employer as "a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person."); *Lissau v. S. Food Serv., Inc.*, 159 F.3d 177, 180–81 (4th Cir. 1998) (noting that Title VII does not impose individual liability on supervisory employees). As such, the plaintiff cannot seek relief under Title VII against the defendants named in this action.

Further, even had the plaintiff named his employer as a defendant, his complaint would still fail to state a claim for relief. Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's **race**, **color**, **religion**, **sex**, or **national origin** . . ." 42 U.S.C. § 2000e(a)(1) (emphasis added). However, the plaintiff has failed to allege discrimination/retaliation based upon a protected class – and has not alleged any facts that he was a part of a protected class (*see* doc. 1). As such, even construing the plaintiff's claims under Title VII, they are still subject to summary dismissal.

RECOMMENDATION

The undersigned is of the opinion that the plaintiff cannot cure the defects identified above by amending his complaint. Therefore, the undersigned recommends that the district court dismiss this action without prejudice, without leave to amend, and without issuance and service of process pursuant to Rule 41 of the Federal Rules of Civil Procedure. *See Britt v. DeJoy*, 45 F.4th 790, 2022 WL 3590436 (4th Cir. Aug. 17, 2022)

(mem.) (published) (noting that "when a district court dismisses a complaint or all claims without providing leave to amend . . . the order dismissing the complaint is final and appealable"). **The attention of the parties is directed to the important notice on the next page.**

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

November 13, 2023
Greenville, South Carolina

FILED: April 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2269
(8:23-cv-04709-DCN)

WILLIE J. WILLIAMS, a/k/a Willie Joe Williams

Plaintiff - Appellant

v.

KELVIN MALHER; JESUS DELGADO MARTINEZ; MONTAVIOUS TINCH

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Heytens, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

Additional material from this filing is available in the Clerk's Office.