

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50334
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
May 13, 2020

Lyle W. Cayce
Clerk

MICHAEL ALLEN BAKER,

Plaintiff-Appellant

v.

BRUCE ARMSTRONG; TDCJ-CID; RICK THALER; UNIVERSITY OF
TEXAS MEDICAL BRANCH; DR. DOUGLAS E. GREENE, M.D.; OFFICE OF
ATTORNEY GENERAL,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:16-CV-303

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Michael Allen Baker, Texas prisoner # 1654093, filed a civil action stemming from the failure of the defendants to accommodate his special dietary needs, which were the result of a pre-incarceration gastric bypass surgery. His claims focused on the denial of a slow-eating pass during his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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incarceration in the Alfred D. Hughes Unit.¹ In his appeal, Baker challenges the summary judgment dismissal of the claims brought pursuant to the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and 42 U.S.C. § 1983 as well as the district court's denial of his motion for the appointment of counsel. As the district court granted Baker's motion to dismiss Bruce Armstrong and Rick Thaler, the instant appeal involves only the remaining defendants.

We review a summary judgment *de novo*, “view[ing] the evidence in the light most favorable to the nonmoving party and draw[ing] all reasonable inferences in that party's favor.” *Cadena v. El Paso Cty.*, 946 F.3d 717, 723 (5th Cir. 2020). To establish a *prima facie* case under either the ADA or the RA, the plaintiff must show the following: (1) he is a qualified individual with a disability; “(2) [] he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) [] such exclusion, denial of benefits, or discrimination is by reason of his disability.” *Id.* (internal quotation marks and citation omitted).

The summary judgment evidence shows that, even if there were factual disputes, Baker did not show a genuine dispute as to any material facts. *See Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017). Baker was provided with medications and various diets, some of which he refused. He received numerous medical screenings, was referred to a specialist for his gastrointestinal issues, and gained weight during the applicable time period in the Hughes Unit. Given that Baker was entitled to reasonable accommodations and not his preferred accommodations, *see Griffin v. United*

¹ Baker's similar claims pertaining to his incarceration in the Price Daniel Unit were the subject of an appeal in *Baker v. TDCJ-CID*, 793 F. App'x 220 (5th Cir. 2019).

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Parcel Serv., Inc., 661 F.3d 216, 224 (5th Cir. 2011), there is no genuine dispute as to any material fact because no reasonable jury could find that the defendants failed to reasonably accommodate Baker's eating disability, *see Austin*, 864 F.3d at 328. Accordingly, summary judgment dismissal was proper. Because we conclude that Baker has failed to raise a genuine dispute of any material fact with respect to his ADA claim, it is unavailing for Baker to assert that the district court improperly found that the State had not abrogated its sovereign immunity. *See Block v. Texas Bd. of Law Exam'rs*, 952 F.3d 613, 617 (5th Cir. 2020).

Regarding Baker's deliberate indifference claims, the district court's summary judgment dismissal was proper because the undisputed facts demonstrate that Dr. Greene provided ongoing care, did not refuse to treat Baker, did not ignore his complaints, did not intentionally treat him incorrectly, and did not otherwise disregard Baker's serious medical needs. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). Baker's disagreement with his treatment regimen and any unsuccessful treatment are insufficient to establish deliberate indifference. *See id.*

Next, Baker challenges the denial of appointed counsel in the district court. Because Baker has not demonstrated exceptional circumstances warranting the appointment of counsel, we find no abuse of discretion. *See Baranowski v. Hart*, 486 F.3d 112, 126 (5th Cir. 2007); *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987).

Finally, we note that Baker asserts that the district court held him to a heightened pleading standard by failing to liberally construe his pleadings. The record belies his assertion. In any event, Baker points to no specific allegations that the district court failed to liberally construe.

AFFIRMED.