

United States Court of Appeals  
for the Fifth Circuit

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No. 23-30046  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 19, 2023

Lyle W. Cayce  
Clerk

DR. SHIVA AKULA,

*Plaintiff—Appellant,*

*versus*

DR. STEPHEN ROBERT RUSSO, *in his official capacity,*

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:22-CV-1070

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Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Dr. Shiva Akula appeals the dismissal of his 42 U.S.C. § 1983 action against Louisiana Department of Health (“LDH”) Secretary Dr. Stephen Robert Russo (the “Secretary”). His complaint stems from LDH’s termination of his Medicaid provider agreements pursuant to Louisiana Revised Statute § 46:437.11(D)(2), which allows for immediate termination

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

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of such agreements if, *inter alia*, a provider is the subject of a criminal proceeding. Akula's agreements were terminated after he was charged with multiple counts of healthcare fraud in violation of 18 U.S.C. § 1347. He now challenges the Federal Rule of Civil Procedure 12(b)(6) dismissal of his Section 1983 complaint. The district court correctly determined that it had jurisdiction over Akula's claims, *see Stem v. Gomez*, 813 F.3d 205, 210 (5th Cir. 2016), and we have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

We review a dismissal for failure to state a claim pursuant to Rule 12(b)(6) de novo. *Morin v. Caire*, 77 F.3d 116, 120 (5th Cir. 1996). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted).

The district court correctly determined that Akula did not have a property interest in his participation in Medicaid. *See Shah v. Azar*, 920 F.3d 987, 997–98 (5th Cir. 2019). Akula's argument that *Shah* is inapplicable because he has pleaded not guilty to the criminal charges against him is unpersuasive. *Cf. Pers. Care Prods., Inc. v. Hawkins*, 635 F.3d 155, 159 (5th Cir. 2011) (holding that a provider has no property interest in Medicaid reimbursement claims "while past claims are under investigation for fraud"). The court also correctly found that Akula cannot satisfy the stigma-plus test, which is required to show a protected liberty interest in his reputation, because he has not alleged that the Secretary made any false statement about him. *See Phillips v. Vandygriff*, 711 F.2d 1217, 1221 (5th Cir. 1983); *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019). Accordingly, the court did not err in dismissing Akula's due process claims premised on the deprivation of his purported property and liberty interests. *See Phillips*, 711 F.2d at 1221.

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We also reject Akula’s argument that he has a federal right pursuant to 42 U.S.C. § 1396a(a)(23) to participate in the Medicaid program until he is convicted of a crime. Because nothing in the “text and structure of” Section 1396a(a)(23) indicates that Congress intended “to create new individual rights,” any alleged violation of this statute cannot be the basis for a Section 1983 action. *Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs., Inc. v. Kauffman*, 981 F.3d 347, 359 (5th Cir. 2020) (en banc) (internal quotation marks and citation omitted); *see also Gonzaga Univ. v. Doe*, 536 U.S. 273, 282–83 (2002).

To the extent that we need consider Akula’s claim, raised for the first time on appeal, that the termination of his provider agreements pursuant to Section 46:437.11(D)(2) amounted to a criminal punishment that was imposed without due process, we find no error. *See Hudson v. United States*, 522 U.S. 93, 99 (1997); *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1). Finally, we do not address Akula’s conclusory assertion that the district court erred in finding that the presumption of innocence does not apply in the context of civil proceedings, as Akula, who was represented by counsel at the time of filing of the original brief, has abandoned this argument by failing to adequately brief it. *See Beasley v. McCotter*, 798 F.2d 116, 118 (5th Cir. 1986); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Accordingly, the district court’s judgment is AFFIRMED.